

**The Wilderness Society
Colorado Environmental Coalition
Colorado Mountain Club
Center for Native Ecosystems
Sierra Club**

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Via email, hand delivered original

RE: Little Snake Resource Area Resource Management Plan Revision

Dear John and Jeremy,

Please accept and fully consider these scoping comments on behalf of The Wilderness Society, Colorado Environmental Coalition, Colorado Mountain Club, Center for Native Ecosystems, and Sierra Club, whose combined membership includes thousands of Colorado citizens and hundreds of thousands of members nationally who care deeply about the management of our Nation's public lands. We appreciate this opportunity to comment and commend the Bureau of Land Management in undertaking this planning process while aiming to strengthen public participation and utilize progressive measures to manage and conserve resources within the Little Snake Resource Area.

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OVERALL CONCERNS:

As BLM is aware, the Little Snake Resource Area is home to seven areas that have been proposed for wilderness protection in the Citizens' Wilderness Proposal (CWP). We would like to again thank the Little Snake Field Office for listening and considering our views on the protection of CWP lands and for the comprehensiveness of the inventory and report on the Vermillion Basin. The status and management of these CWP lands has been the subject of great discussion over the past decade, and the BLM's re-inventory and finding of wilderness character in Vermillion Basin in particular was the primary motivation for the Little Snake Field Office to initiate an amendment or revision of the area's Resource Management Plan (RMP). This field office has done a tremendous job in working with diverse groups with interests in the management of these lands and has made a bold step forward in the decision to revise the RMP.

The public expects the issue of the management of these wildlands to be a major component of the plan revision, and indeed the BLM is legally obligated to ensure that this issue is fully addressed. Scoping is a critical aspect of this planning process where BLM should have identified protecting lands with wilderness character as a major planning issue in public documents and should have provided the public with full information on existing wilderness character within the Little Snake Resource Area. As we send this letter to the BLM at the close of the scoping period, we feel that these obligations have not been met. We are also concerned that these issues and the opportunity for dissemination of information on the recent BLM inventories finding wilderness character in relation to this RMP revision, despite our continued requests, have been overlooked.

We acknowledge BLM recognized wilderness character in the Notice of Intent published in the Federal Register on November 18, 2004,

Lands with wilderness characteristics may be managed to protect and/or preserve some or all of those characteristics. This may include protecting certain lands in their natural condition and/or providing opportunities for solitude, or primitive and unconfined types of recreation.

In addition to the NOI, and recognizing the issue as to whether members of general public read the Federal Register, BLM published other literature to inform the public about scoping and the RMP planning process. BLM drafted two press releases (November 23, 2004 and December 21, 2004) and a planning bulletin (mailed late December 2004) to inform and engage members of the public. The NOI, both press releases and the planning bulletin directed members of the public to a website published in late December to gather further information on the Little Snake Resource Area and the RMP planning process. However, none of these additional sources mention protection of lands with wilderness character as a major planning issue, nor acknowledge the recently re-inventoried lands with wilderness character or its driving force behind why BLM is revising the RMP. Additionally, the BLM prepared numerous handouts and maps that were distributed at the public scoping meetings in northwest Colorado on January 3, 4 and 5, 2005, which were later published on the planning website in late January 2005. While "Should BLM protect wilderness characteristics found in areas outside current WSAs? If so, where and how?" is stated as a planning issue on one of these handouts, the BLM's maps prepared for the meetings did not illustrate the full extent of wilderness character within the resource area including two areas BLM has inventoried and found wilderness character outside WSAs. Moreover, on one occasion described below, these maps were displayed without even illustrating the lands currently managed as Wilderness Study Areas (WSAs) in the 1989 RMP.

Conservation groups raised concerns related to BLM's consideration of wilderness character through scoping in a letter to BLM dated December 21, 2004. We incorporate that letter by reference into these scoping comments and note that BLM received this letter over a month before the close of the scoping period, ample time to respond and address these issues. Despite our requests, at the first public scoping meeting (Steamboat Springs on January 4, 2005) where roughly half of total public

scoping meeting attendees visited, the BLM not only failed to disclose the lands the conservation groups have proposed for wilderness designation, but the BLM also failed to disclose the lands BLM has inventoried and found wilderness character including lands currently managed in the 1989 RMP as WSAs and the recently re-inventoried lands in the Vermillion Basin and along the Yampa River. While information provided in handouts at the public meeting acknowledged that management of lands with wilderness characteristics would be an issue, these public attendees were not available the additional information that there actually are lands within the resource area that contain wilderness character. At the later two public meetings, the BLM corrected this map to illustrate the WSAs retained in the 1989 RMP, but the “Special Management Areas and Wilderness Characteristics” resource station at all three public meetings, consistent with the maps currently on the RMP planning website, neglected to provide information or illustrate the additional lands BLM inventories have recently concluded contain wilderness character. As a contrast, the public was available detailed information through maps showing grazing allotments, important wildlife habitat, rights-of-ways, existing oil and gas leases, OHV designations, and detailed information of the geologic structures potentially containing coal and oil and gas throughout the resource area.

The need for BLM to immediately address these issues is paramount. We cite numerous missed opportunities above where BLM could have informed the public on the full extent of wilderness character during scoping, yet the only place where information can be found related to the BLM’s re-inventory of the Vermillion Basin exists on the general Little Snake Field Office website outside where the public is directed to the RMP planning website. On the general LSFO website, information on the Vermillion Basin’s re-inventory can only be read as assuring that issues related to management of those lands will be addressed in a plan amendment (See “Dear Interested Citizen” letter, June 26, 2001). We are concerned that individuals reading the current RMP planning website, in conjunction with this information on Vermillion Basin (supposing they found it), would reasonably conclude that in the nearly four years since BLM announced the intention to initiate a plan amendment, that the issues related to the management of wilderness character in the Vermillion Basin have been resolved. While we encourage the BLM to leave all this information available to the public, the history of the Vermillion Basin and prior attempted planning measures must be made clear. We feel that in not informing the public on the full extent of wilderness character and its management within in the resource area through scoping, the BLM may actually be misinforming the public, though perhaps inadvertently.

Information regarding existing wilderness character within the resource area should have been widely disseminated during scoping. In light of our requests, and in light of relative ease in which this information could have been included and the detailed information that was provided on other resources, we are left to wonder whether BLM has consciously decided to shield the public from information on existing wilderness character within the resource area or its relation to this RMP revision. Should the BLM decide to change course, providing full information on the BLM’s existing wilderness inventories and citizen proposals throughout the planning process will assist the public in understanding values of wilderness-quality lands and the potential effects of other multiple uses on wilderness character. This information will further aid the public in communicating comments or concerns regarding the management of these lands to BLM. In responding to the specific information, BLM will be in a better position to clarify any misconceptions and provide complete responses throughout the planning process.

We ask that, in addition to the resource management issues raised below, the BLM address these concerns and those raised in the December 21, 2004 letter including the following: Why did the BLM decide not to list management of lands with wilderness character as major planning issue? Why issues related to management of lands with wilderness character—specifically after the re-inventory of Vermillion Basin—are never mentioned as a major reason for this RMP revision? And, why did BLM decide not to provide the public information during scoping (through public meetings, documents or through the planning website) that reflects the full extent of existing wilderness character within the Little Snake Resource Area including the recent BLM inventories?

OVERALL MANAGEMENT:

Inventory and Monitoring

Goal: At the outset of this RMP planning process, BLM must analyze current resource uses, existing inventory data, and fill inventory “gaps” before proceeding to alternative development and NEPA environmental analysis.

In enacting the Federal Land Policy and Management Act (FLPMA), Congress set forth a policy establishing a dual regime of inventory and planning stating, “the national interest will be best realized if the public lands and their resources are periodically and systematically inventoried and their present and future use is projected through a land use planning process...” 43 U.S.C. 1701(a)(2) (emphasis added). Furthermore, FLPMA emphasizes ongoing inventory in land planning processes stating,

The Secretary shall prepare and maintain on a continuing basis an inventory of all public lands and their resource and other values (including, but not limited to, outdoor recreation and scenic values), giving priority to areas of critical environmental concern. This inventory shall be kept current so as to reflect changes in conditions and to identify new and emerging resource and other values. The preparation and maintenance of such inventory or the identification of such areas shall not, of itself, change or prevent change of the management or use of public lands.

43 U.S.C. 1711(a) (emphasis added). Section 1711(a) of FLPMA can be read as stating two interrelated principles, the first dealing with the obligation of the BLM to continually inventory resources within the Little Snake Resource Area, and the second dealing with the use of such inventory in prompting changes in land management.

In considering the first principle, BLM must prepare an inventory of the resources within the planning area and must not merely rely on an inventory of the BLM and other agencies’ files, often decades old, in the preparation of the Analysis of the Management Situation document. Moreover, the second principle of Section 1711(a) as well as Section 1701(a)(2), contemplates the use of this inventory in connection with projecting future land uses and changes in management of the public lands. Since the BLM has already decided (through initiation of this RMP revision and EIS process) to analyze a “change of the management use of public lands,” such changes must be grounded on current inventory and baseline analysis of current land uses.

In the preparation of management plan, FLPMA provides that the plan should “rely, to the extent it is available, on the inventory of public lands, their resources, and other values.” 43 U.S.C. 1712(c)(4). In light of the obligation under Sections 1711 to continually prepare such inventory, and the national interest stated in Section 1701 that land use planning be tied to periodically and systematically inventoried lands, it is inexcusable that BLM should endeavor to prepare a management plan without the best available understanding of the current resource conditions. While reliance on an inventory for creation of land planning is with the caveat “to the extent it is available,” this caveat does not excuse the BLM from the obligations to continually and systematically inventory their lands especially where proceeding with a discretionary land use plan revision where BLM is aware that the current inventory is lacking. The BLM should identify areas through the AMS where inventory data is lacking or has not been maintained on a continuing basis and seek such information before proceeding with the planning process. The BLM’s inability to or decision not to acquire such inventory data at the outset seriously calls into question the agency’s ability to provide an adequate baseline of the affected environment against which to measure potential environmental impacts or carry forward the purported goal to use principles of adaptive management and monitoring.

Adaptive Management (AM)

Goal: Adaptive managements should strengthen BLM's ability to conserve resources within the multiple use mandate and should not be employed to relieve BLM of specific obligations, restrictions on development, or use of appropriate management tools such as special designations.

We understand the BLM will attempt to employ adaptive or “outcome-based” management (AM) at some level in this management plan. While we are skeptical in several areas of how application of AM in this plan will improve resource conservation and reverse any current trend toward environmental degradation, we do believe that AM, properly applied to various resources, could have beneficial effects. We view AM in its fullest form as providing the BLM a protocol to fully and actively manage the resources beginning with inventory and continuing through monitoring and analysis of impacts.

Our deepest concerns with AM are related to BLM's ability to conduct even the basic monitoring and inventory phases needed for a robust AM plan. While the existence of a community group (namely NWCOS) seems to be one of the largest factors in BLM's decision to move toward AM in this RMP, the BLM has not sought commitment from the group (over the 20 year life of the plan) or expressed plans for convening any federal advisory council to perform any monitoring or analysis functions the BLM currently does not, by itself, maintain adequate personnel numbers to perform.

Another major concern is the integration of AM into the requirements of NEPA in preparation of this EIS and any implementation decision based on this plan or resting on the adequacy of the RMP/EIS alone under a DNA.

When specific agency policy on AM becomes available, we look forward to reviewing and the opportunity to comment on its application to this plan and hope to continue to provide BLM with our comments on AM throughout the planning process. For now, we set forth some general principles of AM and recommendations below that we hope can guide BLM in these early phases of the planning process.

- **AM should start small and pace development with level of learning.**

While the philosophical underpinnings of AM are rooted in not avoiding “prescriptive” management, the early life of the plan should very much limit actions that may cause environmental impact until such a time where inventory, monitoring, and analysis can confirm that the resources are tending toward the desired goal. On the day the ROD becomes effective, the breadth of resources through which the BLM is managing under any AM scheme should be not be too cumbersome for the BLM or any supplementary community or federal advisory group through which the BLM will seek advice.

While we are aware that AM can provide efficiency in approval of agency action, never should such efficiency take place as a result of the BLM's inability to perform the monitoring and analysis that might otherwise direct a recommendation to deny such action. Furthermore, the principles of NEPA still apply, and BLM should seek meaningful public comment on resource commitments. The BLM's ability to attain such comment is dependent on not only BLM's level of learning through inventory, monitoring and analysis, but also the public's ability to understand how all the pieces of AM fit together in light of the resource and the desired outcomes.

- **Define in detail what the AM process will and will not address.**

BLM should prepare a monitoring protocol that guides whether or not BLM plans to use AM with specific resources. The prep-plan describes an “AM filter” through which BLM will determine which resources, if any, are appropriate for AM. Throughout the planning process the BLM should disclose which resources, if any, BLM believes it can apply principles of AM. The DEIS should also describe

the resource in terms of each step of the AM filter so the public can provide meaningful comment on both what resources or actions should be included in the AM process or how the AM filter was not properly applied to a specific resource or action.

- **Ensure solid baseline prior to starting AM.**

BLM should prepare detailed analysis of current inventory status to accompany the EIS that clearly specifies resources and locations for which BLM's lacks inventory data and establishes a timeframe to accomplish inventories for resources or locations where data is lacking. As part of this inventory, BLM should prepare a baseline air quality and analysis report (see discussion of Air Quality under Resource Management below). FLPMA and NEPA require such baseline whether or not the agency is embarking on AM, and the strength of this plan and ability to analyze the environmental consequences of proposed actions relies on an understanding of the current uses and resource conditions (see discussion of Inventory and Monitoring above).

- **Ensure agency commitment to fund monitoring.**

Commitment of adequate resources for administration of this AM process should be an integral part of the "AM filter." Funding commitments should be such that they would support the full implementation of AM and facilitation of any community participation. The AM plan must not rest on shifting the financial and personnel burden of AM to various user interests or the cooperating community or federal advisory group. Funding, lack of agency commitment to staffing AM, and industry's lack of enthusiasm to shoulder this financial burden has staggered meaningful AM oversight of development in other resource areas, namely the Pinedale Anticline Project Area, and should not occur in this plan.

- **Have fallback plan should monitoring or AM process not be fully carried out.**

The OPEC definition of adaptive management BLM is currently operating under states AM is

a system of management practices based on clearly identified outcomes, monitoring to determine if management actions are meeting outcomes, and if not facilitating management changes that will best ensure that outcomes are met or to re-evaluate the outcomes.

(Prep-Plan at 9-10, ESM03-6) The BLM's Prep-Plan "AM filter" describes the requirement for "clearly defined and measurable performance standards" (Prep-Plan at 10). Between these two definitions is an area that is so vague as to potentially render AM or its future goals or objectives meaningless. To require that a resource in the AM filter be one of clearly defined standards, yet provide no such requirement as to when or how the outcome would be reevaluated if it were not being met, would leave a gaping hole in a management plan. This is especially troubling if such reevaluation or amending of the desired outcomes would take place outside of preparation of a new EIS or EA through an RMP amendment. Without answering the specific issues as to what is the threshold tolerance or margin of error that will be built into the planning process that would trigger reevaluation of an outcome, we are concerned that clear desired future conditions and impact analysis in the EIS will simply represent a straw man subject to continued re-evaluation without further environmental analysis.

The agency's ability to reevaluate or amend desired outcomes should not be the sole fallback if either the AM process is not working or outcomes are not being met. As stated above, in the early life of this AM plan it would be wise for the BLM to begin slow and pace development with learning. Should the AM process and feedback loop completely fail or stall for a significant duration (such as in the Pinedale Anticline Planning Area), clear management prescriptions must guide the BLM. The BLM should build into the plan situations based on new information, circumstances, regulatory requirements, or discontinued agency funding for monitoring that would trigger a plan amendment or revision under a new EIS. Doing so is the only way to provide confidence that the plan itself can be truly "adaptive" while managing for the multiple use and conservation of resources.

- **Process should be managed so citizens can actively and effectively participate.**

The AM process should be managed so citizens can actively and effectively participate. This resource area is broad; citizens interested in the resources of the Little Snake Resource Area reside across the country; and, involvement of citizen participation in AM process can be both timely and costly to individuals. The BLM should, in addition to seeking funding commitments for fund monitoring and analysis, seek funding for citizen participation.

The BLM should also begin planning now on how the citizen involvement will meet the requirements of the Federal Advisory Committee Act (FACA), and such planning should not be left to the citizens or community groups wishing to collaborate or advise the BLM.

Northwest Colorado Stewardship (NWCOS)

Goal: BLM should continue to utilize input from, and appropriately support the existence of, NWCOS as a collaborative group. However, BLM should remain cautious that NWCOS might not provide a representative cross-section of the interested public for all topics that will be addressed in this RMP.

We commend the forward thinking of this field office in its patience and continued support of NWCOS. While the BLM has experimented with collaborative approaches to land use planning elsewhere, the long-term commitment of the Little Snake Field Office is evident in its ability to work closely and endure the struggles of the diverse communities of place and interest. The commitment of this field office to collaboration is further evident in scale to which the BLM personnel wish to utilize the collaborative efforts of NWCOS—this RMP revision. The BLM should continue to be clear with NWCOS the relative importance of NWCOS input on various aspects of the planning process, including resource management and more traditional planning issues, while being sympathetic to the complexity of issues its members are wrestling with.

Providing community training on topics such as NEPA, RMP processes, community collaboration, and the upcoming socioeconomic workshop provide the community exposure and understanding of the laws and regulations that guide the BLM in the planning process. The BLM should continue to use such trainings where appropriate to educate NWCOS of the “decision space” and clear legal sideboards within which NWCOS is able to function.¹ Additionally, BLM should regularly monitor NWCOS in the context of the Federal Advisory Committee Act and provide additional training or guidance on these legal sideboards as needed.

Finally, in recognizing that these are public lands managed in the interests of all Americans, BLM should strive to make available all information that is open for NWCOS comment and consideration widely available to all interested members of the public. The BLM should also regularly update the general public on issues and questions the BLM wishes NWCOS to provide input. Generally, the broad requirements of NEPA should be met throughout this planning process, and the use of a local community collaboration should supplement the traditional BLM functions and requirements for broad public participation not supplant them.

¹ See generally Bureau of Land Management and the Sonoran Institute, A Desktop Reference Guide to Collaboration Community-Based Planning

Cooperating Agencies

Throughout this planning process, BLM should disclose the list of areas of expertise or other qualifications of agencies or local governments seeking or granted cooperating agency status. BLM should provide training to cooperating agencies on their responsibilities, limitations, and duties, and encourage cooperating agencies to establish and share with BLM their internal protocols guiding flow of recommendations or advise to the BLM from within the participating cooperating agencies staff members' given chain of command.

Multiple Use

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;" (2) It is appropriate that some land be used "for less than all of the resources;" and (3) 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). Sustained yield as defined in FLPMA can be achieved either by "high-level annual" or "regular periodic" output of resources, so long as this is accomplished in a way that can be maintained in perpetuity and is consistent with the definition of multiple use. 43 U.S.C. §1702(h). These definitions give substance to the requirement that land use plans and resulting management actions are to use and observe multiple use and sustained yield principles.

The purpose of this planning process must be to produce a plan that "best" meets the present and future needs of the American people. The RMP 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 plan 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.

FLPMA explicitly provides that the alternative plans that are developed need not accommodate all resource uses on all lands. This provision has special significance relative to oil and gas leasing, exploration, and development because too often essentially all lands are made available by BLM for oil and gas extraction such as in the current 1989 RMP for the Little Snake Resource Area. Therefore, we request that the alternatives developed for consideration in the EIS include a wide range of options relative to allocating lands in this area to oil and gas extraction activities. Moreover, FLPMA provides that areas where less than all resource uses are allowed should be "large enough to provide sufficient latitude for periodic adjustments" to accommodate changing circumstances. 43 U.S.C. §1702(c).

It is also important to emphasize that under FLPMA the alternatives that are developed must consider 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. The same is true of many other resources, such as cultural and wilderness resources. Accordingly, the alternative plans that are developed, and particularly the preferred alternative, must give special emphasis to protecting and providing for relatively rare resources.

Since sustained yield can be achieved by providing for regular periodic outputs of renewable resources, we ask that BLM consider this measure of sustained yield rather than just high-level annual measures. Occasional (periodic) outputs of some resources may be a far more sustainable means to manage for multiple use in perpetuity than to attempt to produce the resource annually, especially at a “high-level.” For example, drought could well make livestock grazing ill-advised and unsustainable in some years if other resource values such as wildlife are to be protected and maintained.

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 through the planning process for these public assets. The EIS should reflect this Congressional guidance in all alternatives that are developed and considered, especially in the plan that is finally selected.

RESOURCE MANAGEMENT:

Wilderness

GOAL: The RMP should recognize the full extent and value of existing wilderness character as a resource within the planning area. Such recognition must include wilderness character beyond the existing WSAs. This plan should not only manage all existing wilderness character in a manner that protects against its degradation but also manage lands in other locations that might expand the existence of wilderness within this resource area for future generations.

1. All lands within the citizens' wilderness proposal should be managed to protect their wilderness qualities.
 2. This RMP should recognize that management to protect and enhance wilderness character where it exists should be the highest and best use of the land within multiple-use.
 3. Withdraw all citizens proposed wilderness areas from fluid mineral leasing and locatable mineral entry.
 4. Manage travel, range improvements and all other actions in a manner so as not to impair wilderness character, including express prohibition of such proposed development.
 5. Expansion and restoration of the resource area's wilderness character must begin through this revision and continue through several subsequent RMP revisions into the future.
- **Wilderness character is a valuable resource and important multiple use of the lands in the Little Snake Resource Area.**

BLM has identified "wilderness characteristics" to include naturalness or providing opportunities for solitude or primitive recreation. These values should also be identified and protected through this planning process. The Little Snake Resource Area contains substantial lands with wilderness character. This area encompasses seven areas that have been proposed for wilderness protection in the Citizens' Wilderness Proposal (CWP). In addition, BLM's inventory of Vermillion Basin found significant wilderness quality lands. Other lands in the planning area may also have wilderness characteristics that can be protected or enhanced in the RMP. BLM should recognize the wide range of values associated with lands with wilderness character, including:

a. Scenic values – FLPMA specifically identifies "scenic values" as a resource of BLM lands for purposes of inventory and management (43 U.S.C. § 1711(a)), and the unspoiled landscapes of lands with wilderness characteristics generally provide spectacular viewing experiences. Limestone Ridge, located in the Cold Spring Mountain CWP area, with an elevation of 8636 feet includes such stunning vistas. The scenic values of these lands will be severely compromised if destructive activities or other visual impairments are permitted.

b. Recreation – FLPMA also identifies "outdoor recreation" as a valuable resource to be inventoried and managed by BLM (43 U.S.C. § 1711(a)). Lands with wilderness characteristics provide opportunities for primitive recreation, such as hiking, camping, hunting and wildlife viewing. The Cross Mountain CWP area includes a wide range of recreation opportunities, such as kayaking, caving and hunting. Most, if not all primitive recreation experiences will be foreclosed or severely impacted if the naturalness and quiet of these lands are not preserved.

c. Wildlife habitat and riparian areas – FLPMA acknowledges the value of wildlife habitat found in public lands and recognizes habitat as an important use (43 U.S.C. § 1702(c)). Due to their unspoiled state, lands with wilderness characteristics provide valuable habitat for wildlife, thereby supporting additional resources and uses of the public lands. As part of their habitat, many species are also dependent on riparian and other wetland habitats, especially during either seasonal migrations or seasons and years when surrounding habitats are dry and unproductive. Wilderness quality lands support biodiversity, watershed protection and overall healthy ecosystems. The Diamond Breaks

CWP area provides critical winter range for deer and elk; and the riparian areas of the Yampa River and Cross Mountain CWP areas also provide winter habitat for bald eagles and critical habitat for the endangered pikeminnow. The low route density, absence of development activities and corresponding dearth of motorized vehicles, which are integral to wilderness character, also ensure the clean air, clean water and lack of disturbance necessary for productive wildlife habitat and riparian areas (which support both wildlife habitat and human uses of water).

d. Cultural resources – FLPMA also recognizes the importance of “historical values” as part of the resources of the public lands to be protected (43 U.S.C. § 1702(c)). The lack of intensive human access and activity on lands with wilderness characteristics helps to protect these resources, such as the petroglyphs in Vermillion Canyon, found in the Vermillion Basin CWP area.

e. Economic benefits – The recreation opportunities provided by wilderness quality lands also yield direct economic benefits to local communities. According to the U.S. Fish & Wildlife Service, in 2001 State residents and non-residents spent \$2.0 billion on wildlife recreation in Colorado.² In addition, local communities that protect wildlands reap measurable benefits in terms of employment and personal income. For instance, as recent report by the Sonoran Institute found that:

Protected lands have the greatest influence on economic growth in rural isolated counties that lack easy access to larger markets. From 1970 to 2000, real per capita income in isolated rural counties with protected land grew more than 60 percent faster than isolated counties without any protected lands.³

These findings confirm earlier research, showing that wilderness is in fact beneficial for local economies. Residents of counties with wilderness cite wilderness as an important reason why they moved to the county, and long-term residents cite it as a reason they stay. Recent survey results also indicate that many firms decide to locate or stay in the West because of scenic amenities and wildlife-based recreation, both of which are strongly supported by wilderness areas.⁴ Other “non-market” economic values arise from the ability of wildlands to contribute to recreation and recreation-related jobs, scientific research, scenic viewsheds, biodiversity conservation, and watershed protection.⁵ All of these economic benefits are dependent upon adequate protection of the wilderness characteristics of the lands.

f. Quality of life – The wildlands of the Little Snake Resource area help to define the character of this area and are an important component of the quality of life for local residents and future generations. Their protection enables the customs and culture of this community to continue.

g. Balanced use – The vast majority of BLM lands are open to motorized use and development. FLPMA recognizes that “multiple use” of the public lands requires “a combination of balanced and diverse resource uses” that includes recreation, watershed, wildlife, fish, and natural scenic and historical values (43 U.S.C. § 1702(c)). FLPMA also requires BLM to prepare land use plans that may limit certain uses in some areas (43 U.S.C. § 1712). Many other multiple uses of public lands are compatible with protection of wilderness characteristics – in fact, many are enhanced if not dependent on protection of wilderness qualities (such as primitive recreation and wildlife habitat). Protection of wilderness characteristics will benefit many of the other multiple uses of BLM lands, while other more exclusionary uses (such as off-road vehicle use and energy development) will still have adequate opportunities on other BLM lands.

² USFWS 2001, National Survey of Hunting, Fishing and Wildlife-associated Recreation – available at: <http://www.census.gov/prod/2002pubs/fhw01-co.pdf>.

³ Sonoran Institute 2004, Prosperity in the 21st Century West -The Role of Protected Public Lands.

⁴ See Morton 2000, Wilderness: The Silent Engine of the West's Economy.

⁵ See also, Morton 1999, The Economic Benefits of Wilderness: Theory and Practice; Loomis 2000, Economic Values of Wilderness Recreation and Passive Use: What We Think We Know at the Turn of the 21st Century.

- **BLM can and should protect lands with wilderness characteristics.**

Pursuant to FLPMA, BLM retains an obligation to inventory the values of the public lands and develop management plans that will protect the multiple resources and uses of these lands. This obligation includes inventorying for wilderness characteristics and, under current BLM guidance, BLM retains the authority to develop and enforce management prescriptions that will protect and enhance wilderness qualities. Wilderness quality lands have already been identified as a significant issue in this planning process by the BLM and the public. Formal recognition of these lands and development of appropriate protection are key elements of the new plan for the LSRA.

The seven CWP areas in the LSRA include four areas that contain expansions to existing Wilderness Study Areas (WSAs) (Cold Spring Mountain, Diamond Breaks, Cross Mountain, and Dinosaur Additions), and three citizen-proposed areas (Pinyon Ridge, Vermillion Basin, and Yampa River) which were re-inventoried by BLM within the past decade. Colorado citizens have provided BLM with substantial additional evidence regarding the wilderness characteristics of these areas, and BLM's own assessments likewise indicate that much of the acreage included in the Cold Spring Mountain, Cross Mountain, Diamond Breaks, Dinosaur Wilderness Additions, Vermillion Basin, and Yampa River Proposed Wilderness Areas have wild character and merit special protections. The status and management of these CWP lands has been the subject of much discussion, debate and focus over the past decade, and the BLM's re-inventory and finding of wilderness character in Vermillion Basin in particular was the primary motivation for the Little Snake Office to initiate an amendment or revision of the RMP in the first place. As such, the public expects the issue of the management of these wildlands to be a major component of the plan revision. Further, the BLM is legally obligated to ensure that this issue is fully addressed.

We are aware of the April 2003 settlement agreement (Utah Settlement) between Secretary Norton and the State of Utah (in which BLM abdicated its authority to designate any additional Wilderness Study Areas (WSAs)), and we maintain that this agreement is invalid and will ultimately be overturned in pending litigation. As a result, we believe that BLM can and should continue to designate new WSAs as part of this RMP revision, including the seven CWP areas identified above. In addition, both existing law and current guidance provide for BLM to identify and protect lands with wilderness character in this planning process using other management tools.

FLPMA requires BLM to inventory its lands and their resources, "including outdoor recreation and scenic values" (43 U.S.C. § 1711(a)), which by definition includes wilderness character. FLPMA also obligates BLM to take this inventory into account when preparing land use plans, using and observing the principles of multiple use and sustained yield (43 U.S.C. § 1712(c)(4); 43 U.S.C. § 1712(c)(1)). Through management plans, BLM can and should protect wilderness character and the many uses that wilderness character provides on the public lands through various management decisions, including by excluding or limiting certain uses of the public lands (See 43 U.S.C. § 1712(e)). This is necessary and consistent with the definition of multiple use, which identifies the importance of various aspects of wilderness character (such as recreation, wildlife, natural scenic values) and requires BLM's consideration of the relative values of these resources but "not necessarily to the combination of uses that will give the greatest economic return" (43 U.S.C. § 1702(c)).

The April 2003 Utah Settlement does not affect BLM's obligation to value wilderness character or, according to BLM directives, the agency's ability to protect that character, including in the development of management alternatives. In fact, BLM has not only claimed that it can continue to protect wilderness values, but has also committed to doing so. On September 29, 2003, BLM issued Instruction Memoranda (IMs) 2003-274 and 2003-275, formalizing its policies concerning wilderness study and consideration of wilderness characteristics in the wake of the Utah Settlement. In the IMs and subsequent public statements, BLM has claimed that its abandonment of previous policy on WSAs would not prevent protection of lands with wilderness characteristics. The IMs contemplate that BLM can continue to inventory for and protect land "with wilderness characteristics," such as naturalness or providing opportunities for solitude or primitive recreation, through the planning

process. The IMs further provide for management that emphasizes “the protection of some or all of the wilderness characteristics as a priority,” even if this means prioritizing wilderness over other multiple uses.

In a February 12, 2004, letter to William Meadows, President of The Wilderness Society (see attached), Assistant Secretaries of the Interior Rebecca Watson and Lynn Scarlett stated: “Wilderness characteristics can be protected by imposing a variety of designations and management prescriptions that are available to BLM as part of its resource management planning process.” BLM’s Arizona State Office has recently issued guidance that elaborates upon this guidance by providing for identification of lands with wilderness characteristics and development of management prescriptions to protect and enhance these values (See IM No. AZ-2005-007, attached). Similarly, the recently-released Draft RMP/EIS for the Roan Plateau (prepared by BLM’s Glenwood Springs Field Office) includes at least one alternative that manages certain areas “to protect and maintain wilderness characteristics (naturalness, roadlessness, and outstanding opportunities for solitude” as a priority over other uses (pp. 2-53 through 2-54). The Roan Draft RMP/EIS recognizes that such management is consistent with the Utah Settlement, specifically stating that while no new WSAs can be designated, BLM can pursue the “protection and management of wilderness characteristics” (p. 1-5).

As BLM is aware, prior to the 2003 “no more wilderness” settlement the agency was guided by its “Colorado Wilderness Review Policy.” This policy required land managers to review citizen-proposed wilderness areas on BLM lands before moving forward with any new proposals (such as oil and gas extraction) that would irreparably or irretrievably degrade the wildness of these areas. In 1997, under this wilderness review policy the BLM examined the roadless and wilderness quality of Vermillion Basin in response to industry interest in drilling some areas within it. In June 2001, BLM found that 77,067 acres out of Vermillion’s 81,028 total acres (or 95% of the area) have wilderness character.⁶

This conclusion set the stage for BLM to initiate a process to reassess the management plan for Vermillion Basin, in order to consider protection of its wilderness values and to let the public weigh in on its fate (See Little Snake Field Office “Dear Interested Citizen” letter, June 26, 2001). BLM’s recognition of the wilderness values of Vermillion Basin, as well as the importance of protecting those values from incompatible uses, highlighted the need for the revision of the Little Snake RMP and sparked the current planning process. Wilderness characteristics were mentioned as planning criteria in the Notice of Intent (NOI) for revision of this plan, but did not acknowledge BLM’s recent wilderness inventory. In order to carry out the intention of this process and fulfill the goal of considering protection for wilderness-quality lands, BLM must use the RMP revision as an opportunity to thoroughly inform the public and provide an opportunity for public comment on the protection of the wilderness-quality lands in Vermillion Basin and the rest of the LSRA.

To ensure that wilderness values receive proper and sufficient attention as a critical aspect of land management in the LSRA, BLM must address wilderness as a separate and unique issue in the planning process including the Analysis of the Management Situation and in each section of the RMP. Protection of lands with wilderness character should be identified as a major issue in the scoping report. This will assist the public in understanding the values of wilderness-quality lands and the potential effects of other multiple uses on wilderness character, as well as in communicating comments or concerns regarding the management of these lands to BLM. Because comments on protection of wilderness values will be clearly identified, BLM will be in a better position to clarify any misconceptions and provide complete responses.

⁶ The BLM also reviewed the roadless and wilderness character of Yampa River and Pinyon Ridge, but neither findings prompted the BLM to initiate a plan amendment or revision. The agency concluded that Yampa River was eligible for wilderness consideration, but was already protected well enough in the interim by its Special Recreation Management Area designation; the agency found that Pinyon Ridge was indeed roadless, but concluded that it failed to meet other criteria for wilderness.

In preparing the revised RMP and accompanying EIS, BLM should clearly present management alternatives in the context of protecting wilderness character and analyze environmental consequences to that character. First, in the “Purpose and Need” section, BLM must acknowledge that considering environmental impacts of activities on wilderness-quality lands and the appropriate protection of those lands (including in response to the CWP areas in the LSRA) was one of the catalysts for the RMP revision and remains a key purpose and need of the revision. The protection of wilderness character should also be identified as one of the major scoping issues in the RMP. BLM has been aware of these proposed wilderness areas for some time, and the agency must attend to them. In the “Alternatives” section of the RMP, BLM must include various ways to protect these lands in each of the management alternatives. Since BLM is currently directed not to designate additional WSAs, BLM should propose protective management prescriptions or other protective status (including mineral withdrawals, non-motorized recreation prescriptions, ACEC designations, and prohibitions on new road construction and erection of structures such as cell towers) for these lands. The Alternatives section must also discuss the implications of each alternative for the wilderness-quality lands in the LSRA. BLM must include and specifically address the CWPs and the wilderness quality of the lands they contain in the “Affected Environment” section of the RMP, as these lands are part of the existing environment in the LSRA and are sure to be affected by any and all management activities. Finally, BLM must specify the “Environmental Consequences” of the resource management decisions on the wilderness-quality and CWP lands in the LSRA. This discussion should include, but not be limited to, an analysis of the cumulative impacts of other activities (including those undertaken by non-federal entities) within the Little Snake Resource Area on these unique lands. In short, in every major section of the RMP, BLM must address wilderness-quality lands and citizen-proposed wilderness areas.

BLM should take appropriate actions to protect wilderness character. The 272,000 acres included in the seven areas that Colorado citizens have proposed for wilderness protection are barely a fifth of the 1.3 million acres of public land and less than 12 percent of the entire 2.4 million acres of mineral estate in the LSRA. Protection of wilderness character is a necessary and consistent component of BLM’s multiple use mandate, and indeed enhances many other uses such as the experience of primitive recreation, trophy hunting opportunities, and the appreciation of scenic values, while also protecting watersheds and core wildlife habitat. Extending special protections to these wildlands will still leave more than one million acres available for other uses such as energy development that are incompatible with protection of wilderness character, thereby giving BLM ample opportunity to accommodate a wide range of multiple uses throughout the LSRA.

Protecting the unique and spectacular wildlands of the LSRA is essential to preserving the natural heritage and rich history so important to northwest Colorado. Protection of these values is also an important element of BLM’s management mandate and an obligation under existing law.

- **The Citizens’ Wilderness Proposal contains significant new information about lands with wilderness characteristics that should be protected.**

As discussed above, the Citizens’ Wilderness Proposal includes substantial additional information on the wilderness characteristics of seven areas, many of which BLM also re-inventoried within the past decade, including the 2001 determination on the wilderness quality of Vermillion Basin. This information was not available during the preparation of the existing plan and, as significant new information, justifies development of new management prescriptions to protect these areas. Detailed information on each CWP area is attached as Exhibit I and also highlighted below:

- a. **Cold Spring Mountain** – A proposed addition of 54,010 acres to the existing 17,682-acre WSA, Cold Spring Mountain is dominated by Limestone Ridge at the eastern end, which drops into Irish Canyon, providing spectacular geological formations and habitat for an array of wildlife. The expanded boundary would encompass ecologically important areas on Cold Spring Mountain as well as scenic canyon walls and riparian habitat in the upper reaches of Beaver Creek canyon and east of Cold Spring Peak. The additions would create a logical topographic and ecological boundary. Also, the new boundary acknowledges the changed

circumstances of this area, where former deteriorating grazing improvements have now blended into the area, as documented in the CWP submission.

- b. **Cross Mountain** – A proposed addition of 18,027 acres to the existing 14,081-acre WSA, Cross Mountain provides habitat for big game and for endangered fish in a gorge that also provides excellent opportunities for primitive recreation. There is also extensive evidence of prehistoric human occupation. The additions would maintain topographic continuity on the west side of Cross Mountain and extend a logical boundary to encompass the southern end of mountain area.
- c. **Diamond Breaks** – A proposed addition of 42,961 acres to the existing 36,430-acre WSA, Diamond Breaks contains an impressive variety of topography and vegetation, with rugged ridges and peaks covered by pinon juniper broken by open draws and stands of aspen leading ultimately to sagebrush in the valleys. The area also provides critical winter range for deer and elk and habitat for pronghorn and sage grouse. The proposed additions include approximately 1200 acres recommended by BLM for protection in 1991 in order to bring the boundary up to the boundary of the Browns Park National Wildlife Refuge, as well as the south half of Pitt Draw in order to complete the protection given to the north half included in the WSA. A final addition would incorporate a major drainage between Allen and Marshall Draws, which would improve access into Diamond Breaks from the west side.
- d. **Dinosaur Additions** – A proposed addition of 57,207 acres to the existing 23,744-acre WSA, Dinosaur Additions includes roadless areas that share almost 20 miles of boundary with Dinosaur National Monument, providing habitat for deer, elk, pronghorn and mountain lions. The area also makes up the scenic vistas that are viewed from the national monument. The additions would provide critical buffers to protect and enhance habitat and views.
- e. **Vermillion Basin** – Vermillion Basin consists of 86,330 acres that hosts rare plant species and communities, a desert canyon surrounded by delicate badlands, and one of the most spectacular collections of petroglyphs found in the State of Colorado. In its own inventory, completed in 2001, BLM found that most of this area had wilderness character.
- f. **Yampa River** – This 12,414-acre area includes a wild stretch of river that provides winter habitat for bald eagles and critical winter range for deer and elk, while also providing numerous opportunities for primitive recreation such as rafting, camping, canoeing and hunting. In its own inventory, completed in 2001, BLM found that the Yampa River CWP area had wilderness character.
- g. **Pinyon Ridge** – This area contains 20,853 acres that make up one of the very few undeveloped areas of the lower White River drainage and provide habitat for eagles and other raptors to build nests along ridge outcrops and prey on the extensive prairie dog populations. Larger mammals such as deer, coyotes, and mountain lions also inhabit the forested slopes, creating prime hunting opportunities that are enhanced by the scenic vistas and rugged access on overgrown ways, which would be properly limited to foot and horse trails. The area is bounded by jeep trails and oil and gas development, although the steep topography effectively shields the proposed area from the impacts of oil and gas development.

Wildlife, Fisheries and General Habitat Management

GOAL: This RMP should recognize that this resource area provides habitat for imperiled species that exist nowhere else in the state except northwest Colorado, provides general habitat to one of the most diverse wildlife habitats in North America, and habitat to one of the largest populations of elk in North America. Turning the focus from how little impact development can have on wildlife to one where the focus is on how much habitat is protected and expanded upon would bring direct and immediate benefits to the local economy and substantial long-term benefits to the area's wildlife.

1. Broad and contiguous unfragmented portions of BLM lands should be managed throughout the resource area.
2. Allowed management activities should proceed in a manner that best preserves habitat.

3. Severe winter range for big game should be managed to prevent fragmentation and loss of habitat.
4. Direct effects of wildlife related income on the local economy should be considered in socioeconomic analysis of proposed actions; however, these impacts should never purport to represent the sole downside economic measure of development.

BLM has a duty to protect the diversity of all native wildlife on public lands by providing for ecosystem-based management. The FLPMA requires public land management to protect ecological and other values, and also requires that lands be managed for multiple use and sustained yield. 43 U.S.C. §§ 1701(a)(7)-(8). The NEPA requires BLM to fulfill its trustee obligation for future generations, assure productive surroundings, avoid environmental degradation, preserve important natural aspects of our national heritage, and enhance the quality of renewable resources. 42 U.S.C. §§ 4331(b)(1)-(6). The CWA established the objective of restoring and maintaining the chemical, physical, and biological integrity of the Nation's waters, which of course includes the Little Snake Resource Area. 33 U.S.C. § 1251. The ESA establishes the purpose of conserving the ecosystems upon which threatened and endangered species depend. 16 U.S.C. § 1531(b). BLM's livestock grazing standards and guidelines establish standards of ecological health applicable not only to livestock grazing, but to resource management generally. See 43 C.F.R. subpt. 4180. The Clean Water Action Plan establishes the need to manage public lands on a watershed—that is, ecosystem—basis. Read together, these and other legal standards establish that BLM must ensure the ecosystems it manages are fully protected so as to enhance biological diversity.

With this in mind, we ask that the RMP provide for the following steps to ensure that wildlife diversity is protected. All riparian areas should be given special management and considered for designation as ACECs. It is widely recognized that (1) riparian areas in the west are crucial centers of biological diversity, (2) many BLM riparian areas are in unhealthy condition, and (3) funding and monitoring capabilities of the field office greatly limit the BLM's ability to visit, let alone monitor riparian areas throughout the field office. Consequently, special management provisions for these areas must be made in the RMP. Riparian area management is discussed in more detail below (See Vegetation). The RMP must also ensure that other special habitats are protected and enhanced. As noted, all wildlife requires adequate habitat for feeding, reproducing, and hiding or resting (sheltering), and the plan must ensure that such is provided for all species at all critical life stages. Wintering areas, colonial or other concentrated avian nesting areas, spawning beds, and traditional birthing areas are examples of the special habitats the RMP should provide for and protect.

In addition to protecting special habitats, the plan must provide for protecting certain species to ensure that biological diversity is protected. Certainly species listed pursuant to the ESA and BLM and/or State sensitive species must receive species-specific attention, but other species should receive special emphasis as well. The plan should identify and provide for the protection of "keystone" species, which can be literally key to preventing undesirable, cascading ecological effects, such as widespread extinctions. Prairie dogs are an example of a keystone species that demand special management efforts. The status of carnivores is often indicative of the overall environmental health of an area, and thus they warrant special management prescriptions, and in any event there is widespread public demand and support for protecting these magnificent creatures. It is also important to note that there are keystone resources that are critical for protecting a host of species. Springs or other water holes, deep pools in streams, and salt or mineral licks are examples. BLM should ensure that the RMP makes special provision for protecting keystone resources.

The EIS must carefully evaluate problems resulting from habitat fragmentation and the need for maintaining the connectivity or linkage of habitats. Habitat fragmentation is strongly associated with the road building that accompanies many management activities.⁷ By altering the physical

⁷ See *Fragmenting Our Lands: The Ecological Footprint from Oil and Gas Development*. TWS-Weller et. al (Sept. 2002) incorporated by reference and attached. Even though oil and gas infrastructure can occupy relatively small percentages of a larger landscape, their broad distribution can have negative impacts on an area more than 20 times the size of that occupied area. When energy is developed, roads, pipeline corridors, well-heads,

environment, roads and highways modify animal behavior. Many species shift home ranges, change movement patterns and even reproductive and feeding behaviors to avoid roads. Perhaps the most pervasive, yet insidious, impact of roads is providing access to natural areas and encouraging further development.⁸ Based on the information from this and other sources, it is apparent that the RMP must limit habitat fragmentation resulting from road building, protect current roadless areas, provide for aggressively closing unneeded or ecologically destructive roads, and provide for maintaining needed roads so as to reduce negative environmental impacts. The RMP must also limit habitat fragmentation resulting from other activities, such as the construction of well pads.

More generally, the BLM should consider the principles of island biogeography so as to ensure that fragmentation does not degrade existing wildlife habitats. That is, it must insure that small islands of habitat are not created by management activities such as logging, chaining, or oil and gas development. The RMP should ensure both that the total areas of important habitats are maintained and that these habitats are not further fragmented. Creating habitat fragments impedes dispersal, colonization, and foraging. Moreover, fragmented habitats can have altered environmental conditions and allow for intrusions of pests (weed invasions and cowbird nest parasitism are classical examples). We specifically request that BLM limit any further fragmentation of sagebrush communities, which are critical to many species on many BLM lands, and which is an increasingly imperiled ecosystem.

The flip side of habitat fragmentation is maintaining migration corridors and other ecological linkages. The conservation biology literature indicates it is probably more effective to preserve existing corridors/linkages than to attempt to create new ones. It is crucial the EIS identify all existing migration and other movement corridors. The RMP must ensure that management actions authorized by the RMP protect the ecological integrity of these corridors and linkages. Big game migration routes have been widely documented, but riparian areas, mountain ranges and ridges, and other areas serve as important linkages among habitats (and even eco-regions) that must be preserved. Ensuring that corridors remain as wide as possible is the best way to ensure that they are in fact effective.

The principles of island biogeography should also guide BLM in creating protected areas. Here, an obvious application is the creation of ACECs. Modern conservation biology has firmly established that larger protected areas are of greater value, and are more effective, than smaller areas for maintaining the ecological integrity of a protected area. Consequently, when BLM designates ACECs, or other areas, to protect wildlife, it should ensure they are large enough to protect the species, habitat, or ecological attributes for which the ACEC is created.

We also request that BLM consider and enunciate in the RMP a policy relative to habitat "edge." Increasing edge has been common in classical wildlife management because it was perceived as a means to increase biological diversity, or more particularly, as a means to benefit certain games species. Modern conservation biology, however, recognizes a number of problems associated with increasing the amount of edge, such as: modifying microclimates needed by some species, increasing impacts of wind in some communities, increasing the incidence of fire, and increasing predation and competition from exotic and pest species that are often well adapted to the disturbed conditions that characterize ecological edges. Furthermore, even if increasing edge increases overall biological diversity, it can be harmful to certain, usually rare and/or specialized, species. Similarly, increasing edge can be problematic for species that require large, undisturbed blocks of habitat, such

retention ponds, buildings, parking lots, and other components of the infrastructure pepper larger landscapes, coming within a quarter of a mile of as much as 97% of wildlife habitat. See also *Ecological Effects of a Transportation Network on Wildlife*. TWS- Hartley et. al (2003) and *Protecting Northern Arizona's National Monuments: The Challenges of Transportation Management*. TWS-Thomson et. al (2004) incorporated by reference and attached. In addition to their direct effects (such as immediate landscape disturbance and habitat fragmentation), motorized routes also have negative impacts such as noise, dust, erosion, and human presence that extend beyond the immediately disturbed area. Road densities as low as 1% or less of a given landscape can impact more than 99% of that landscape, leaving little undisturbed area in which wildlife can thrive. See

⁸ Additional information on the impacts of roads on wildlife can be found at <http://www.defenders.org/habitat/highways/new/ecology.html>, which we incorporate into these comments by this reference, and ask BLM to consider.

as many predators. We believe it would be inappropriate to increase edge to the detriment of rare or highly specialized native species or species that need large contiguous habitats, and the RMP must ensure that this does not occur.

It may be impossible to fully protect biological diversity (and to effectively manage many other resources) without considering other landowners and landholdings, including the State Land Board sections, within the RMP area. Therefore, we request that the EIS consider other landholdings relative to BLM's efforts to protect biological diversity and other resource. Land exchanges could be warranted in some circumstances, and if so the RMP should provide for initiating any needed legislative authority or other processes. The Land and Water Conservation Fund, as well as the Land Conservation, Preservation and Infrastructure Improvement Fund, are two funds that might allow acquisition of important inholdings, or other lands, in fee simple or perhaps via other mechanisms such as conservation easements. The RMP should establish a program or at least guidance for how BLM will attempt to work with other landowners relative to biodiversity protection efforts, and make provision for accessing funding needed to implement those efforts.

It is critical to note that biological diversity encompasses far more than just species diversity. Genetic diversity and the diversity of biological communities are also components of biological diversity. Consequently, the RMP should make provisions for maintaining these elements of diversity, although our reservations regarding increasing edge should be borne in mind relative to modifying community level diversity.

It is also critical to note that protecting biological diversity can only be dealt with appropriately at the planning level; it certainly cannot be dealt with appropriately or effectively at a project-specific level. The reason for that is readily apparent: fragmentation, connectivity and other factors affecting biological diversity are inherently landscape level considerations, not site specific. The project level is simply too small a scale to effectively consider what are inherently ecosystem level concerns and processes. The import of this is that the RMP should establish specific, binding limits on road densities and other disturbances that cannot be exceeded in the planning area. This is the only way to ensure biological diversity is preserved, and that ecosystem attributes are not "nickel and dimed" to death by individually small but cumulatively significant site-specific projects. The BLM should consider bio-regional plans developed by the Heart of the West Conservation Coalition⁹ the Nature Conservancy in assessing broad-scale needs relative to biodiversity protection.

Part and parcel of planning for maintaining biological diversity via ecosystem-based management is a need to ensure that indirect and cumulative impacts of management actions are fully considered. As noted above, the NEPA regulations provide guidance in this regard. Cumulative impacts are the incremental impacts of actions, past, present and future, regardless of whom undertakes them. See 40 C.F.R. §1508.7. Indirect effects of an action are further removed from the action itself, but still are reasonably foreseeable. See 40 C.F.R. §1508.8. See *also* 40 C.F.R. §1508.25(c). It is worth noting that the ESA provides somewhat similar definitions for these concepts that are applicable to listed species. See 50 C.F.R. § 402.02 (defining actions, action areas, and effects of the action in very broad terms). The RMP EIS must take special care that these "second-order" impacts are fully considered and analyzed if BLM is to meet its legal mandate for ecosystem management and preserving biological diversity. Again, these considerations should not and cannot be left to the project level because the perspective at that point is too constrained to permit meaningful ecosystem level analysis.

⁹ See Heart of the West, which we incorporated by reference and was submitted under earlier cover by Center for Native Ecosystems.

- **Threatened, Endangered, and Special Status Species**

GOAL: BLM should provide special management for the special species and places that need it, meet BLM's obligations regarding Sensitive Species, and manage resources so as to maintain healthy ecosystems and native biodiversity.

In particular, there are a number of species that are of concern to us and that should be addressed in any management plan that is adopted for the Little Snake Planning Area. Greater sage grouse is one such species which requires particular management attention to avoid further population declines and the need for future listing under the Endangered Species Act. Though state-level conservation plans will play a large part in the future protection of this species, in the northwest corner of Colorado the BLM will play a critical role in enacting the specific measures that will protect sage grouse. The Columbian sharp-tailed grouse, which like the greater sage grouse has been recently proposed for listing under the Endangered Species Act, is also found in the Little Snake area, and like the sage grouse its populations have been rapidly dwindling due to the loss of sagebrush habitat. White-tailed prairie dogs, another species recently proposed for Endangered Species listing, also live here. Several endangered or sensitive native fish species, including the Colorado River cutthroat trout and the Razorback sucker, two species already listed federally as Endangered, live downstream of the Little Snake lands and are affected by what happens to the land there. Ferruginous hawks, which BLM recognizes as a sensitive species, live throughout the Little Snake area and rely on healthy populations of prey to continue to survive. Duchesne milkvetch and narrowleaf evening primrose, two rare native plants found in only a few places in the world, including the Little Snake area, are currently not adequately protected from oil and gas drilling or trampling by cattle which could destroy the few populations left. All of these species should be given careful consideration in any management alternative.

To preserve these species and others found in the Little Snake Planning Area, we urge the BLM to adopt a management plan that maintains and restores healthy ecosystems and wildlife populations and protects the special plants and animals of the region. To do this, the BLM should adopt a plan that will provide special management for the special species and places that need it, meet BLM's obligations regarding Sensitive Species, and manage so as to maintain healthy ecosystems and native biodiversity.

One of the most critical aspects of providing the management necessary to protect special species and habitat is the identification and subsequent protection of important habitat for rare, sensitive, and imperiled species. For greater sage grouse and Columbian sharp-tailed grouse, this means that lek sites, brooding grounds, and severe winter range should be protected from surface disturbances such as oil and gas drilling, grazing, and off-road vehicle riding. For white-tailed prairie dog, an ACEC has been nominated to protect the Little Snake colony, and this ACEC should be proposed in the RMP; any such designation should include protection from surface disturbances such as oil and gas drilling, grazing, and off-road vehicle riding (see Center for Native Ecosystems' Nomination of ACECs for white-tailed prairie dog for specific information). For the four fish species of concern in the area (Colorado pikeminnow, Colorado cutthroat trout, Razorback sucker, and Bonytail chub), two of which are federally listed as endangered species, specific aquatic habitat should be identified where appropriate and, in general, surface disturbing activities that can contribute to degraded watershed conditions and increased sedimentation and pollution downstream, such as off-road vehicle riding, should be carefully analyzed before such activities are allowed to ensure that such use will not contribute to declines for these species and, ultimately, the need to list. All impacts to water quality in the Little Snake and Yampa and waterways further downstream will need to be considered in light of these species, and for the two federally listed species, Section 7 consultation with the U.S. Fish and Wildlife Service may be needed for projects and proposed actions that could affect habitat.

For Duchesne milkvetch, narrowleaf evening primrose, and other rare and sensitive plant species, known populations should be protected from ground disturbing activities that would harm individuals or whole populations, such as oil and gas drilling, grazing, and off-road vehicle riding. In addition, native plant species known to be sensitive to competition by invasive species, including noxious weeds,

should be specifically protected from further invasions of invasive species. To protect Ferruginous hawks, impact to this species should be considered in situations where management proposals could affect its food sources, availability of habitat, and quality of habitat rangewide.

A second critical aspect of providing the management necessary to protect special species and habitat is the use of special designations such as ACECs to protect known populations of rare, sensitive, and imperiled species. For greater sage grouse and Columbian sharp-tailed grouse, such special designations should include non-waivable provisions that specifically protect these species from ground disturbing activities such as oil and gas drilling, grazing, and off-road vehicle riding. For white-tailed prairie dog, an ACEC has been nominated to protect the Little Snake colony, and this ACEC should be proposed in the RMP. In addition, any such designation should include protection from surface disturbances such as oil and gas drilling, grazing, and off-road vehicle riding. For Duschesne milkvetch, narrowleaf evening primrose, and other rare and sensitive plant species, the largest, most robust, and important populations should be protected in ACECs or other special designations that include specific provisions to protect them from ground disturbing activities that would harm individuals or whole populations, such as oil and gas drilling, grazing, and off-road vehicle riding. Native plant species known to be sensitive to direct trampling and/or erosion should be specifically protected from trampling by livestock, off-road vehicles, and oil and gas drilling equipment and infrastructure. In addition, native plant species known to be sensitive to competition by invasive species, including noxious weeds, should be specifically protected from further invasion of invasive species.

Both special land designations and management of activities like oil and gas drilling, grazing, and off-road vehicle riding should include nonwaivable stipulations that specifically protect rare, sensitive, and imperiled species from ground disturbance. These stipulations may include No Surface Occupancy requirements in oil and gas leases, seasonal limits to grazing or AUM limits, and limiting off-road vehicles to designated routes or closing some areas to ORV use altogether. In general, BLM should manage so as not to contribute to further population declines of rare, sensitive, and imperiled species, thus avoiding any need to list these species under the Endangered Species Act.

In order to meet its obligations with regard to Sensitive Species, BLM must manage those species so as to provide at least “the protection provided to candidate species” under the Endangered Species (BLM Manual 6840). This means Sensitive Species must be managed so as not to “contribute to the need to list” them under the Endangered Species Act (Id.). Consequently, BLM must identify and evaluate the effects of their actions on these species.

Instruction Memorandum (IM) 97-118 advises all BLM directors to identify Sensitive Species early to avoid species endangerment; it also encourages directors to collect information on all species of concern to determine if Sensitive Species designation and special management are needed. BLM must determine the distribution, abundance, habitat needs, and reasons for current status for each Sensitive Species (BLM Manual 6840). During the RMP planning process, BLM is required to identify priority species and habitats; establish objectives for habitat maintenance, improvement, and expansion for priority species and habitats; establish priority habitat monitoring objectives; and decide on specific conservation measures for such species (BLM Manual 1622.1).

In order to manage so as to maintain healthy ecosystems and native biodiversity, BLM should study, monitor, and act to maintain healthy populations of big game and other critical wildlife species so as to allow for adequate native biodiversity as well as hunting and wildlife viewing opportunities. BLM should also regularly monitor all sensitive plants found within the planning area to ensure accurate information about their status and health is being used to inform management decisions and to avoid further degradation to their habitat and overall condition. Priority should be given to protecting sensitive plant species and outstanding examples of native plant communities when drawing boundaries for special designations, such as ACECs, and specific regulations for such special designations should be designed with the intent of protecting sensitive plant species.

Specifically, sagebrush-steppe is an important plant community that deserves specific preservation measures, in light of its rapid disappearance. Sagebrush should be preserved through minimizing

mechanical sagebrush treatments, favoring natural fire regimes wherever possible, and managing activity in sagebrush areas to maintain and restore a healthy sagebrush understory of native grasses and forbes. The only exception to the general rule of thumb that natural fire regimes are preferred is in locations where cheatgrass has already invaded significantly; in such a circumstance, fire may actually favor further cheatgrass establishment.

BLM should adopt a comprehensive weed management plan that includes specific goals to limit the spread of invasive weed species, protects native and rare plants and plant communities from competition and degradation by weeds, and limits the vectors that can facilitate the spread of invasive species, including ORVs, oil and gas drilling infrastructure, and livestock. Effective limitations on these vectors may include limiting ORV use to designated routes or closing critical areas (such as ACECs) to ORV use altogether, limiting the geographic extent of oil and gas drilling infrastructure to concentrate and reduce new road building, and limiting AUMs or seasonal use of grazing allotments.

Particular attention must be paid to areas containing rare or sensitive native species, which could be negatively affected by competition with invasive plant species, and to areas of special designation that are intended to protect natural values such as native plant populations. In riparian areas, BLM should work to control the further spread of tamarisk that could displace native riparian vegetation, increase salinity levels in affected waterways, and/or dewater local streams and rivers. In general, instream flows for waterways within and downstream of the Planning Area should be maintained.

As described in various places above, BLM should use specific, nonwaivable stipulations to reduce potential harms to species and habitat from land uses such as oil and gas drilling, grazing, and off-road vehicle riding, as these are among the land uses that have the most potential for conflict with the goals of maintaining native biodiversity and protecting special species and their habitat. These stipulations may include No Surface Occupancy requirements in oil and gas leases, seasonal limits to grazing or AUM limits, and limiting off-road vehicles to designated routes or closing some areas to ORV use altogether.

Cultural Resources

GOAL: Cultural resources should be inventoried, actively monitored, and given long-term protection extending beyond the life of this plan.

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 RMP should reflect—and require—this conservative approach to managing these priceless and irreplaceable resources.

1. BLM should consult with Native American tribes in identifying sites that should be protected through special designations, including ACECs.
2. Sites of known cultural or paleontological resources should be considered for designation and protected as ACECs.
3. For important historical or cultural sites identified by a tribe, BLM should place buffers in place that limit surface disturbing activities (including fluid mineral NSO stipulations on leasing). These buffers should not be waived for activities within the viewshed of significant historical or cultural resources.

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 RMP should ensure this problem is avoided. RMPs are the principle guide for the BLM’s management of cultural resources. See BLM Manual MS-

8100.08.A.1.a. Therefore, BLM's preparation of the RMP EIS 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 RMP, and must provide evidence of cultural resource consideration as part of the EIS prepared as part of the RMP revision process. See BLM Manual MS-8100.08.A.1.b.(3).

As noted above, the BLM's multiple-use mandate requires managers to balance resource use and resource preservation. BLM Manual MS-8100.08.A.1.b.(2) states that land use plans should take into account the effects other land and resource uses may have on cultural resources. The manual notes that the need for additional information should be evaluated, responsibilities assigned, and schedules established at the outset of the planning process. See BLM Manual MS-8100.08.A.1.b.(2). In other words, not only must the BLM examine the effects of other land and resource uses 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 the planning process. The BLM should clearly spell out the process the agency will follow in order to comply with the procedures outlined by BLM Manual MS-8100.08.A.1.b.(2).

Of particular concern in the planning process is the preparation and maintenance of cultural resource inventories. FLPMA requires the Secretary of the Interior to "prepare and maintain on a continuing basis an inventory of all public lands and their resources and other values." 43 U.S.C. §1711(a). Surveys for cultural resources are also mandated by ARPA. See 16 U.S.C. 470ii (requiring the Secretary of the Interior to develop plans for surveying lands to determine the nature and extent of archaeological resources and to prepare a schedule for surveying lands that are likely to contain the most valuable archaeological resources); Executive Order 11593, Protection and Enhancement of the Cultural Environment (requiring federal agencies to nominate to the Secretary of the Interior all sites that appear to qualify for listing on the National Register of Historic Places). Further, the NHPA mandates that the BLM establish a preservation program to identify, evaluate, and protect historic properties, and to nominate qualifying properties to the National Register of Historic Places. See 16 U.S.C. § 470h-2.

The RMP must ensure these legal mandates are fully complied with. The required inventories and programs can—and should—serve to identify areas of resource sensitivity and should be used proactively by the BLM in its planning and management in order to avoid resource conflicts.

Another concern is consultation with Native American tribes during the planning 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 within the planning area. BLM Manual MS-8120.51.A describes consultation requirements during land use planning. See also BLM Handbook H-8160-1 (Procedural Guidance for Native American Consultation); BLM Manual MS-8160 (Native American Consultation). 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.

BLM Manual MS-8120.32.A makes clear that the BLM can prevent unauthorized use of cultural properties through a variety of measures, including administrative protection measures. The manual specifically notes that the BLM's protective measures may include "withdrawal, closure to public access and off-road vehicles, special designations," etc. See BLM Manual MS-8120.32.A. The EIS should identify areas where cultural sites are at risk, and the RMP should employ one or more of these

administrative 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. More specifically, the BLM should consider closing culturally sensitive areas to mineral leasing and entry, grazing, and designating ACECs to protect fragile cultural resources. Also, the RMP should specify a travel plan for ORVs that limits vehicle travel to routes that do not pass near culturally sensitive areas. All ORV routes designated in the RMP should be surveyed for cultural resources to ensure the protection of those resources. Finally, the EIS should address the impacts of oil and gas exploration and development activities on cultural resources, with particular attention being given to the effects of the use of explosives or “vibroesis” vehicles during exploration activities. The RMP should make provisions that ensure these activities will not destroy or alter cultural resources.

Transportation and Off Highway Vehicle Management

GOAL: Oil gas development along with off highway vehicle recreation is the primary cause of habitat fragmentation within the Little Snake Resource Area. Tight regulation on proliferation of roads and trails associated with increased energy and OHV recreation pressures should be a primary concern of this plan revision.

There are multiple users of the public lands, including a wide variety of recreationists, and BLM should take these interests into account when making travel planning decisions. Off-road vehicles are one of many recreational uses, but this use presents a high cost to BLM for management, has the potential to damage many other resources and tends to exclude (or at least substantially interfere with and undermine) other recreational uses (such as hunting, fishing, hiking and enjoyment of solitude). Travel planning is a vital part of land use planning that permits BLM to consider protection of the multiple resources, values and uses of the public lands when deciding where, when and how travel should occur.

In light of BLM's obligation to protect resources and conduct travel planning, as well as its separate legal obligations to designate routes, BLM should not delay preparation of a travel plan and must designate routes and specify closures as part of developing this RMP. Many other components of the RMP (e.g., visitor access, resource protection, regional connectivity) are driven by the travel system. Because the RMP will collect information about and make determinations on the existing resources, it simply makes sense to take advantage of this work in a timely fashion and use the RMP process to support route designation decisions. In addition, BLM is bound to protect the landscape from damaging and irresponsible motorized use, and thus a delay in the designation of routes and in the closure of roads and routes would allow any damage to continue.

As part of this planning effort, BLM is required to designate areas as “open,” “closed” or “limited” for ORV use. “Open” areas permit cross-country travel, which is difficult to monitor and can cause wide-ranging damage to the land. On virtually all public lands, this type of ORV use would effectively prevent any other uses both during active use, because there is no safe way to conduct other activities at the same time as unrestricted ORV access, and for the foreseeable future, because resources that would support other uses and values (such as vegetation and wildlife habitat) will be destroyed. As a result, “open” should not be a designation used by BLM.

BLM is obligated to address off-road vehicle usage in the planning process. Executive Order No. 11644 (1972) (as amended by Executive Order No. 11989 (1977)) requires federal agencies to make designations as to use of routes by off-road vehicles. BLM's regulations require the agency to “designate all public lands as either open, limited or closed to off road vehicles.” 43 C.F.R. §8342.1. BLM is specifically obligated to make such designations in its resource management planning process, with public participation. 43 C.F.R. §8342.2. As explicitly stated by BLM regulations (43 C.F.R. § 8342.2(a)):

The designation and redesignation of trails is accomplished through the resource management planning process described in Part 1600 of this Title. Current and potential impacts of specific vehicle types on all resources and uses in the planning area shall be considered in the process of preparing resource management plans, plan revisions, or plan amendments.

In making designations, BLM is required by both the Executive Orders and its regulations (43 C.F.R. § 8342.1) to ensure that areas and trails are located to minimize: damage to other resources (soil, watersheds, vegetation, air, wilderness character); impacts to wildlife; and conflicts with other existing or proposed recreational uses. Neither areas “open” to unrestricted cross-country use or areas limited to “existing” trails (which are, by definition, not first assessed for their potential impacts or even legality) comport with these obligations.

The BLM should have a detailed plan for closing and obliterating those roads and routes identified for closure. This plan should include a timeline, budget commitment, and restoration strategy for all such excess routes. Excess/closed routes should be restored by decompacting soils, restoring original contour and drainage, replanting with appropriate native vegetation and other known methods shown to be successful in obliterating all visual evidence of past disturbance. BLM is obligated not just to identify areas and routes for closure but to actually close those areas and routes once designations are made. Although these designations can and should be made as part of a RMP (if one is in process), they can also be made in a separate travel planning process (if the current RMP is not being revised). In either situation, route designations are considered to be implementation decisions (see, IM No. 2004-079) and, as a result represent enforceable commitments by the agency to take specific actions (see, BLM Land Use Planning Handbook, H-1601-1, Section IV).¹⁰ BLM can best fulfill its commitments to closures by detailing its plan for closure in terms of timing and methodology.

BLM’s responsibility to complete travel planning as part of an RMP, including designation of routes, is confirmed by the agency’s internal guidance (IM No. 2004-005), which states:

- “At a minimum, each RMP will divide planning areas into OHV area designations that are open, limited or closed.”
- “Selection of a network of roads and trails should be performed for all limited areas in each RMP. This requires establishment of a process that includes selecting specific roads and trails within the limited area or sub-area and specifying limitation(s) placed on use.”¹¹

As noted by through the various Executive Orders and BLM regulations, the use of motorized vehicles has the potential to damage many public resources, such as vegetation, wildlife habitat, soil, water and air. A network of extensive motorized travel routes may also increase improper cross-country ORV use by irresponsible users unless BLM can provide adequate enforcement. As detailed above, motorized use can also fragment and degrade critical wildlife habitat. As recognized by the Clean Water Act, water quality can be degraded from erosion and runoff caused by motorized vehicles. Further, as acknowledged in the Clean Air Act, emissions and disturbance from vehicles can impair air quality. EPA issued final emission standards for dirt bikes, ATVs and snowmobiles in September 2002 pursuant to Clean Air Act Amendments of 1990.

Consequently, the designation of roads and routes, including closures and limitations on use, will have a significant effect on the resources in the planning area. BLM’s official guidance on travel planning (IM NO. 2004-005) identifies the importance of a “well-designed travel system” because it will “direct travel away from sensitive areas, yet provide quality recreational activities and access for commercial

¹⁰ Note: This distinction and the availability of enforcement was also acknowledged in the recent Supreme Court decision, *Norton v. SUWA*, 124 S.Ct. 2373, 2382-83 (2004).

¹¹ While this IM also permits some delay if designation of all routes is truly not feasible, it also describes examples of the barriers that could prevent the BLM from completing this process as part of an RMP. In addition, any failures to fully complete route designation will still require completion of as many areas as possible and short-term maintenance to protect sensitive resources.

and recreational needs.” As BLM’s guidance also concludes, such a travel system can only be accomplished through careful assessment and designation of routes. Therefore, BLM is directed (in IM No. 2004-005) to:

Choose individual roads and trails, rather than using inherited roads and trails. Most existing roads and trails on public lands were created by use over time, rather than planned and constructed for specific activities or needs. Instead of a decision-making process to decide which individual roads and trails should be closed or left open, consider a broader range of possibilities for management of individual roads and trails, including reroutes, reconstruction or new construction, as well as closures. These are tools that should be used to develop a quality travel system.

By developing a “quality travel system” as part of creating an RMP, BLM can best comply with its duty to protect the variety of values and multiple uses of the public lands through designation of routes.

Travel planning determines how, when, and why people access and recreate on federal lands, and, consequently, determines the future condition of riparian areas and watersheds, the level of protection for archeological resources, acres of intact core wildlife habitat, and other natural values and experiences. Travel management decisions will impact landscapes for decades and even centuries. The goal of the BLM’s travel planning should be to create a travel and recreation system that provides appropriate access to public lands, contributes as needed to the regional transportation system *and* ensures that biodiversity, wildlife habitat condition, and overall landscape condition and function is maintained or improved. The RMP should direct a travel planning process that is based on natural resource protection, and is guided by a vision of the experience that BLM intends to provide for visitors. Moreover, the RMP should direct the incorporation of both motorized and nonmotorized uses, since route designation has an impact on access to and the quality of non-motorized experiences, and must therefore take place within comprehensive land management decision-making. The inventory, analysis, and decision-making process involved in travel management planning must occur first at the landscape level and then at the site level. This direction is necessary because the placement and design of travel routes defines which areas will remain or become roadless, and which areas will be disturbed and how. In other words, route decisions determine the fragmentation of the landscape, and, thus, how naturally or unnaturally a landscape will behave in terms of water flow and quality, wildlife migration, and species composition and function. Site level decisions do not affect as much the overall function and form of the landscape, however they do have a significant effect on site conditions and experiences.

Travel planning requires the BLM to manage human travel across the landscape. Travel may be motorized or non-motorized, and may be for one of the following two purposes: (1) travel for transportation, which includes connecting people to regional transportation corridors on surrounding lands or to a specific destination on BLM lands (e.g. scenic vista, trailhead, campground), and (2) travel for recreation, where the travel itself is the reason for being there. These two purposes can sometimes occur on the same route; however, the BLM should consider these two purposes differently when assessing and deciding upon needs or appropriate uses for routes. Transportation routes may be critical for connectivity within a region, or be necessary to provide public access to popular sites. However, recreation routes, especially motorized recreation routes, should undergo a more stringent review process to account for impacts to other resources or visitor experiences (such as nearby primitive recreation). This stringent review is especially critical for areas such as National Monuments, where the BLM has specific mandates to prioritize protection of specified natural resources, many of which can be impacted by travel corridors.

As the agency has recognized and explicitly stated in its current revisions to the *Land Use Planning Handbook*: “Comprehensive travel management planning should address all resource use aspects (recreational, traditional, casual, agricultural, industrial, educational etc.) and accompanying modes

and conditions of travel on the public lands, not just motorized or off-highway vehicle activities.” H-1601-1, Appendix C, p. 88¹² (emphasis added).

FLPMA requires BLM to inventory the public lands and their resources and values, including non-economic uses and, specifically, “outdoor recreation and scenic values” and, based on this inventory, prepare land use plans. 43 U.S.C. §§ 1711(a), 1712(a). (emphasis added). The agency manages the public lands in accordance with the principles of multiple use and sustained yield, which requires considering values of different resources and seeking “the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of the public lands.” 43 U.S.C. §§ 1702(c), (h). In the planning process, FLPMA directs BLM to “consider present and potential uses of the public lands” and “weigh long-term benefits to the public against short-term benefits.” 43 U.S.C. §§ 1712(a)(5), (a)(7). FLPMA further requires that BLM “take any action necessary to prevent unnecessary or undue degradation of the lands” and “minimize adverse impacts on the natural, environmental, scientific, cultural, and other resources and values (including fish and wildlife habitat) of the public lands involved.” 43 U.S.C. § 1732(b); §1732(d)(2)(a). BLM also has the authority to immediately close routes if it determines that off-road vehicles are causing or will cause damage to soil, vegetation, wildlife habitat, or other cultural, historical or natural resources. 43 C.F.R. § 8341.2. BLM can best fulfill these mandates by making travel planning decisions while making other land use decisions and in the context of the many uses and values at issue.

BLM is also required to give priority to certain resources when making decisions, such as travel planning. The Endangered Species Act requires BLM to conserve threatened or endangered species (including by designating critical habitat and developing site-specific recovery plans) and other requirements may apply to additional special status species, designated by federal or state agencies. The National Historic Preservation Act (NHPA) and the Historic Sites Act require that BLM preserve cultural resources. Section 110 of the NHPA requires that BLM proactively identify, evaluate, and nominate historic resources to the National Register of Historic Places. 16 U.S.C. § 470h-2(a)(2)(A). BLM also must manage and maintain cultural and historic properties under its jurisdiction or control “in a way that considers the preservation of their historic, archaeological, architectural, and cultural values. . . and gives special consideration to the preservation of such values in the case of properties designated as having National significance.” 16 U.S.C. § 470h-2(a)(2)(B). Prior to approving a transportation plan, BLM must consider its potential effects on all cultural and historic resources under its jurisdiction and provide the federal Advisory Council on Historic Preservation a reasonable opportunity to comment. 16 U.S.C. § 470f. BLM must also seek to consult with Indian Tribes who may attach traditional religious and cultural significance to properties. 16 U.S.C. § 470a(d)(6).

In addition, the Wilderness Act and FLPMA directs BLM as to protection of Wilderness and Wilderness Study Areas. The Antiquities Act requires that BLM protect “objects of interest” identified in the Proclamations creating National Monuments. BLM also has the ability to protect other resources and uses, such as recreation, through the planning process. Further, Executive Orders (Executive Order No. 11644 (1972) as amended by Executive Order No. 11989 (1977)) and BLM’s regulations (43 C.F.R. § 8342.1) require BLM to ensure that areas and trails for off-road vehicle use are located:

- to minimize damage to soil, watershed, vegetation, air, or other resources of the public lands, and to prevent impairment of wilderness suitability;
- to minimize harassment of wildlife or significant disruption of wildlife habitats, and especially for protection of endangered or threatened species and their habitats;
- to minimize conflicts between off-road vehicle use and other existing or proposed recreational uses of the same or neighboring public lands; and
- outside officially designated wilderness areas or primitive areas and in natural areas only if the agency determines that off-road vehicle (ORV) use will not adversely affect their natural, aesthetic, scenic, or other values for which such areas are established.

¹² The “Final Draft” of revised H1601-1 is available at <http://www.blm.gov/nhp/efoia/wo/fy04/ib2004-128attach2.pdf>.

WSAs have been established based on their potential for congressional designation as Wilderness, so that these areas have been found to be essentially roadless and in natural condition. Travel management designations for WSAs should disallow ORV use. For existing routes, BLM should scrutinize them carefully given the high potential for resource damage resulting from illegal cross-country travel off such designated routes that could result in the impairment of resource values within WSAs and may adversely affect their future consideration by Congress as Wilderness. Only those routes in WSAs that provide access to private or state inholdings, valid leases, or that provide access to or along existing easements, rights-of-way or livestock improvements within the WSA should be permitted to remain open to vehicle use. Further, for routes that remain open, BLM should consider designations that are "limited" to the time or season necessary for such use, to licensed or permitted vehicles or users, or to BLM administrative use only, as appropriate. FLPMA requires BLM to manage WSAs "in a manner so as not to impair the suitability of such areas for preservation as wilderness." 43 U.S.C. § 1782(c). Further, BLM regulations require that ORV areas and trails be designated so as to "prevent impairment of wilderness suitability." 43 C.F.R. § 8324.1(a). The RMP should continue to manage Diamond Breaks WSA and Cross Mountain WSA as "closed" to OHV use. Priority should be given in this plan to address the above concerns for all other existing WSAs, including Cross Mountain, Vale of Tears, West Cold Spring, Ant Hills, Chew Winter Camp, Peterson Draw, and Vale of Tears. BLM should similarly apply the above recommendations to other lands with wilderness character within the Little Snake Resource Area through newly designated WSAs or other means of managing wilderness character.

Similarly, ACECs have been designated based on having significant and distinct values. BLM manages ACECs to protect important historic, cultural, or scenic values or other natural systems or to protect life and safety from natural hazards. For many ACECs, preventing or limiting exposure to motorized vehicle use will provide vital protection of these special values. BLM is obligated to prioritize protection of ACECs in the planning process and can best fulfill this mandate by designing and implementing management prescriptions that prohibit new routes and prevent damage that may arise from motorized use. FLPMA requires BLM to give ACECs in the development and revision of land use plans. 42 U.S.C. § 1712(c)(3). BLM's regulations define an ACEC as an area "within the public lands where special management is required to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources, or other natural systems or processes, or to protect life and safety from natural hazards." 43 C.F.R. § 1610.7-2. In the land use planning process, the BLM has both the obligation and the authority to designate ACECs. BLM makes a determination as to whether a given area meets the criteria for designation as an ACEC based on its relevance (in having significant value(s)) and importance (in having special significance and distinctiveness). 43 C.F.R. § 1610.7-2. Based on an area meeting these standards, the BLM makes determinations regarding designation and management of ACECs that will provide focus and guidance for land managers when actions are proposed in the future in order to protect the values for which the ACEC was designated. The Four existing ACECs within the Little Snake Resource Area (Limestone Ridge [ACEC/RNA], Irish Canyon, Lookout Mountain, and Cross Mountain) should maintain and strengthen management related to their scenic qualities and plant species, and active monitoring to evaluate any impacts of OHVs.

BLM can also close an area immediately until adverse effects are eliminated if there are "considerable adverse effects" on soil, plants, wildlife, habitat, or cultural/historic resources. 43 C.F.R. § 8341.2. Further, as acknowledged in BLM's official guidance on travel planning (IM No. 2004-005): "A well-designed travel system can direct travel away from sensitive areas, yet provide quality recreational activities and access for commercial and recreational needs." Unless BLM first recognizes the many values present in an area, the agency cannot make travel planning decisions that comport with its obligations and authority to protect public lands and resources.

The BLM must apply a legal definition of "road" within the planning process, develop appropriate criteria to accurately gauge what is or is not a road, ensure that illegal "ghost roads" are not legitimized, and in fact, close and reclaim such "ghost roads." Some legal roads serve important travel needs and are appropriate for motorized use. However, routes that are not "roads" should not receive

equal consideration. The agency has a definition of “road,” and this definition should be adopted and used consistently in order to create a regular expectation and approach on BLM lands. We note however, that merely meeting the definition of a road is not sufficient to justify designating a route. In fact, the BLM must still consider whether a route has negative impacts to sensitive or protected resources, such as by the process recommended in this document, and should only designate those that do not impact these resources.

The legal definition of road for the BLM public lands is derived from the definition of “roadless” in the legislative history of FLPMA:

The word “roadless” refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road. (H.R. Rep. No. 94-1163 at 17 (1976)).

In addition, the Code of Federal Regulations (43 C.F.R. § 19.2(e)) establishes the following definition: An improved road that is suitable for public travel by means of four wheeled, motorized vehicles intended primarily for highway use.

Although BLM’s regulations and internal guidance address designation of areas and routes for ORV use, this use does not have priority over other multiple uses. Rather, due to its potential for damaging resources and interfering with other uses, ORV use should be subject to heightened scrutiny. In fact, BLM’s regulations provide for designation of areas as open, limited or closed to ORVs “based on the protection of the resources of the public lands, the promotion of safety of all the users of the public lands, and the minimization of conflict among various uses of the public lands.” 43 C.F.R. § 8342.1. Essentially, ORVs are permitted where they do not endanger or interfere with the other resources and users of the public lands. Accordingly, these regulations also provide that an ORV shall not be operated “in a manner causing, or likely to cause, significant, undue damage to or disturbance of the soil, wildlife, wildlife habitat, improvements, cultural, or vegetative resources or other authorized uses of the public lands.” 43 C.F.R. § 8341.1(f)(4) (emphasis added). While consideration of ORV use is a necessary part of travel planning, it is important to distinguish the discretionary use of routes for recreation from other uses of roads and routes for transportation to or across public lands for recreation, administration and other valid uses.

Pursuant to BLM’s regulations regarding ORV use:

where the authorized officer determines that off-road vehicles are causing or will cause considerable adverse effects upon soil, vegetation, wildlife, wildlife habitat, cultural resources, historical resources, threatened or endangered species, wilderness suitability, other authorized uses, or other resources, the authorized officer shall immediately close the areas affected to the type(s) of vehicle causing the adverse effect until the adverse effects are eliminated and measures implemented to prevent recurrence.

43 C.F.R. § 8341.2 (emphasis added). Once BLM makes a determination that ORVs are or will endanger soil, plants, wildlife, habitat, wilderness suitability, cultural/historic resources or other users, the agency is obligated to close the area until the adverse effects are halted and protective measures put in place. This regulation provides BLM with a mandate for taking immediate action to protect resources from potential damage due to ORV use.

- **Implementation and Monitoring:**

In order to ensure that the designated travel network continues to meet BLM’s obligations to protect the values and resources of the public lands, BLM should monitor its effect on these values and resources and implement necessary changes. Therefore, the travel plan must include a monitoring plan, with specified indicators of route impacts based on definitive measurements and actions to be

taken if impacts are exceeding expectations. For instance, use of a route may exceed expectations and require additional maintenance, further restrictions on use, or consideration for closure depending upon its importance for reaching certain destinations and impacts on resources (such as endangered species). These considerations should be outlined in the monitoring plan. Similarly, insufficient funding for enforcement or maintenance of routes designated in a travel plan (such as those designated for ORV or limited seasonal use) may require closure of the routes until sufficient maintenance or enforcement personnel are available.

These recommendations are consistent with direction contained in the current draft of the *Land Use Planning Handbook*, which states that the implementation phase of each travel plan must include establishing a process to produce “guidelines for management, monitoring, and maintenance of the system” and that “travel management networks should be reviewed periodically to ensure that current resource and travel management objectives are being met (see 43 CFR 8342.3).” H-1601-1, Appendix C, p. 90. Protection of the multiple uses of our public lands require that BLM establish a definitive monitoring schedule, using measurements that will represent the health of the land, and mandating actions to be taken if damage is occurring.

BLM’s regulations (43 C.F.R. § 1610.4-9) require that each resource management plan:

establish intervals and standards, as appropriate, for monitoring and evaluation of the plan. Such intervals and standards shall be based on the sensitivity of the resource to the decisions involved and shall provide for evaluation to determine whether mitigation measures are satisfactory, whether there has been significant change in the related plans of other Federal agencies, State or local governments, or Indian tribes, or whether there is new data of significance to the plan.

Further, based on the results of this monitoring and evaluation, BLM is required determine when the information generated will “warrant amendment or revision of the plan.” 43 C.F.R. § 1610.4-9.

▪ **Additional recommendations:**

1. New oil and gas roads should be reclaimed immediately following their use with end of use and reclamation clearly defined in the APD. New road construction should not become a permanent expansion on the existing transportation infrastructure.
2. This plan should recognize the rapid expansion of user-created routes throughout the resource area with addressing travel management within the Sand Wash Basin¹³ a top priority.
3. “Existing” routes should be carefully identified and exclude wild horse, game or livestock trails. Because of this confusion, limiting travel to “existing routes” is not recommended. Motorized recreation should be limited to existing designated routes, or put another way, this BLM should adopt a closed unless marked open policy.
4. Exclusion areas for ROW corridors should exclude proposed wilderness, ACECs, critical winter ranges, and critical habitat for T and E and special status species.

▪ **Issues related to RS 2477 Claims**

No decision in this management plan will affect valid existing rights. However, BLM must not consider assertions of R.S. 2477 rights-of-way over public lands when addressing how those lands should be managed for vehicles or any other uses, unless a U.S. court has issued a decision recognizing such right-of-way. BLM is prohibited by agency policy from administratively recognizing R.S. 2477 claims except in a very narrow set of circumstances. See Memo of the Secretary of the Interior, January 22,

¹³ We endorse and incorporate by reference specific comments related to Sand Wash submitted by Rocky Mountain Recreation Initiative et. al December 4, 2003 and direct those issues that should be addressed in this RMP.

1997¹⁴ (direction Interior Department agencies to “defer any processing of R.S. 2477 assertions except in cases where there is a demonstrated, compelling, and immediate need”). Any decision by BLM to manage a route as open to vehicle use in whole or in part because a county or other entity has claimed the route is an R.S. 2477 right-of-way would constitute such a recognition that is prohibited by agency policy. BLM cannot make decisions recognizing R.S. 2477 rights-of-way as part of the management planning process.

In addition, as the January 1997 departmental policy makes clear, alternative avenues exist – namely the federal courts – for those seeking recognition of R.S. 2477 rights. Those seeking to pursue claims have had nearly 30 years (if not more) to pursue their claims under the Quiet Title Act (28 U.S.C. Sec. 2409a).

Should the BLM wish to examine those claims made in Moffatt County resolution number 2003-05, adopted January 10, 2003, BLM should note the County has provided virtually no evidence to support those claims. For many claims, field checked by conservationists, there was not only no evidence of construction, there was no evidence of use by vehicles. Many of the routes do not appear on any USGS map, nor can they be located on the ground. Many of the routes were allegedly “constructed” by Native Americans foot travel from place to place, a standard of construction adopted by no federal appeals court in the nation. Perhaps most telling, BLM released its released its Final Wilderness Character Inventory for the Vermillion Basin Area in 2001 finding more than 77,000 acres of roadless lands with wilderness character. Despite the fact that BLM found no constructed or maintained roads within these roadless areas, Moffatt County nevertheless claims more than a hundred miles of “constructed highways” criss-cross these same lands. Photos and maps of some of these alleged “highways” are attached as Exhibit II.

In sum, no decision in this management plan will affect valid existing rights; however, BLM cannot address assertions of R.S. 2477 rights-of-way over public lands as part of this management because doing so would be in violation of agency policy. Further, Moffatt County has little or no evidence to support assertions of such rights-of-way and is available alternative avenues to pursue claims such as under the Quiet Title Act.

Special Management Areas Including Recreation

GOAL: BLM should use its authority to designate special management areas under planning regulations and proposed revisions to the BLM planning handbook. The BLM should use special management area designations to protect known resources including wilderness, species, cultural and historical resources, or to protect important visual, recreational or educational values. While adaptive management may be a supplemental tool in which to manage these resources, it is inappropriate for the BLM to manage these resources solely through adaptive management where special designations are available and could provide more distinct management prescriptions specific to the resources.

▪ Wilderness Study Areas

As stated above, we believe that pending litigation, which will be decided during the life of this planning process, will overturn the Utah Settlement. We hold that BLM is legally required to consider, and we recommend use Wilderness Study Areas to protect all lands within the Little Snake Resource Area possessing wilderness character, including existing WSAs, recently re-inventoried lands, and all other lands contained within the CWP be protected as WSAs.

¹⁴ available at www.rs2477.com/documents/1-22-1997_memo_from_Bruce_Babbitt_RS2477_policy.pdf

All current WSAs should continue to be managed under IMP (for recommend management for travel and OHV use within, see Travel above). The RMP should specifically reevaluate the Tepee Draw WSA and provide in the EIS specific prescriptions or designation as a WSA or management for its wilderness character. The RMP should also manage adjoining land or lands within the viewshed of existing WSAs in a manner so as not to impair their wilderness character.

- **Areas of Critical Environmental Concern**

Within the Little Snake Resource Area, all existing Areas of Critical Environmental Concern (ACECs) as defined in FLPMA, should be maintained with management objectives strengthened to protect the stated resources for which the ACEC was created. Just as the definitions of multiple use and sustained yield give substance to FLPMA's requirements for management to be based on multiple use and sustained yield, the definition of ACEC gives substance to the requirement that priority be given to designation and protection of ACECs. ACECs are defined as areas "where special management attention is required . . . to protect and prevent irreparable damage" to important resources, including fish and wildlife resources, ecological features, and historical, paleontological and archeological resources. 43 U.S.C. §1702(a). Candidate ACECs must have relevance and importance. 43 C.F.R. § 1610.7-2(a). Since Congress required that designation and protection of ACECs be given priority in land use planning, it is critical that all alternatives developed in the EIS do so and that BLM, in its inventory of resources identify areas of critical environmental identify and disclose places that are candidates for protection through a designated ACEC. 43 U.S.C. §1702(a); 43 U.S.C. § 1712(c)(3).

Relative to ACECs, the RMP "shall include the general management practices and uses, including mitigating measures, identified to protect designated ACEC[s]." 43 C.F.R. § 1610.7-2(b). In our view, this requires the following. First, given the purpose of ACECs the requirement to "prevent irreparable damage" establishes a greater protective standard than either the nonimpairment standard in the definition of multiple-use or the prevention of unnecessary or undue degradation standard applicable to all actions. Compare 43 U.S.C. § 1702(a) with 43 U.S.C. §§ 1702(c), 1732(b). Second, wherever, an ACEC is designated, BLM should consider withdrawing the areas from operation of the mining and mineral leasing laws pursuant to 43 U.S.C. § 1714, or consider non-waiveable NSO stipulations so as to ensure there is no irreparable damage. Third, where a potential ACEC has only been identified, BLM must nevertheless "take all feasible action to assure that those qualities that make the resource important are not damaged or otherwise subjected to adverse change pending an ACEC designation decision." 45 Fed. Reg. 57318, 57326 (Aug. 27, 1980).

- **Research Natural Areas**

Research Natural Areas (RNAs) are areas that contain important ecological and scientific values and are managed for minimum human disturbance primarily for non-manipulative research and data gathering where natural processes are allowed to dominate.

FLPMA directs the BLM to manage public lands on the basis of multiple use, "in a manner that will protect the quality of scientific, ... ecological, (and) environmental ... values ... and where appropriate, will preserve and protect certain public lands in their natural condition." The act establishes that priority will be given to the designations and protection of ACECs in the development and revision of land use plans. All RNAs shall be designated ACECs, and follow the ACEC designation process.

To be designated a RNA, an area must have one or more of the following five characteristics:

- (1) a typical representation of a common plant or animal association;
- (2) an unusual plant or animal association;
- (3) a threatened or endangered plant or animal species;
- (4) a typical representation of common geologic, soil, or water features; or

(5) outstanding or unusual geologic, soil, or water features.

BLM should analyze remnant plant populations for RNA, such as those currently managed for avoidance, including: Ace in the Hole, Hells Canyon, G Gap, Vermillion Creek, Vermillion Bluffs, and Horse Draw.

In the context of Adaptive Management, BLM should inventory, identify, and designate RNAs that are representative of “controls” for like communities currently being managed under a variety of uses. BLM should coordinate with other Federal and State agencies, as well as private organizations, to identify potential and determine if identified locations for RNA designation are representative of communities where natural processes are allowed to dominate or other areas that possess high educational or research value.

The RMP should establish a clear monitoring plan for RNAs and all allowed uses, such as research or educational tools, should be addressed in the RMP.

- **Important Bird Areas (IBAs)**

IBAs are identified using a site-based approach, to maintain naturally occurring bird populations by protecting habitats and the ecosystems in which they occur. Selection of IBA sites is based on bird numbers and species complements held and when taken together form a network throughout the specie’s biogeographic distribution. These networks represent areas critical to the conservation of some bird species and may include best examples of the species’ habitat or typical examples due to threat. FLPMA requires BLM to manage public lands for the benefit of wildlife species and the ecosystems upon which they depend 43 U.S.C. § 1701(a)(8), and IBAs, like RNAs, can be nominated as and follow the designation process for ACEC in planning processes where area contains “a fish and wildlife resource” such as habitat for endangered, sensitive, or threatened species, or habitat essential for maintaining species diversity. 43 C.F.R. §1610.7-2. Perhaps oblivious, an immediate candidate for establishing IBAs within the Little Snake Resource Area is protection of sage grouse and Colombian sharp-tailed grouse leks, which should be considered in this plan.

To qualify as an IBA, sites must satisfy at least one of the following criteria:

- (1) regularly support species of conservation concern (e.g. threatened, endangered, or vulnerable species);
- (2) regularly hold a significant component of the group of species or distinct populations that have a restricted range, which are vulnerable because they are not widely distributed;
- (3) support species which breed only or primarily in a single biome (a major regional ecological community characterized by distinctive life forms and principal plant species like deserts), which are vulnerable because their populations are concentrated in one general habitat biome;
- (4) support congregations of species, or groups of similar species (such as waterfowl or shorebirds) that are vulnerable because they occur at high densities due to their congregatory behavior.

See BLM Information Bulletin No. 97-62.

- **Wild and Scenic Rivers**

The historical, recreational and ecological importance of the Yampa River and Little Snake River warrant BLM’s proposal, through this plan revision, that segments of the Yampa and Little Snake are suitable for inclusion into the Wild and Scenic River system.

In formulating, analyzing, and making decisions regarding future management in the RMP area, the BLM must comply with the National Wild and Scenic Rivers Act of 1968. 16 U.S.C. §§ 1271-87. As Congress made clear, the purpose of the Act is to safeguard one of the Nation's most spectacular and critical resources—our rivers. To that end, the Act requires that rivers of the Nation which

possess outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values, shall be preserved in free-flowing condition, and that they and their immediate environments shall be protected for the benefit and enjoyment of present and future generations.

16 U.S.C. § 1271 (emphasis added). In fulfilling the requirements of this statute, the BLM should consider that rivers and streams in the RMP area are of tremendous importance to the wildlife and fish, and the beauty and recreational appeal of the area. Water is the lifeblood of the arid west, and a priceless resource. Unless the BLM is willing to protect these vital corridors, its efforts to preserve ecosystem integrity, conserve wildlife and fish, and manage the public lands in the best interests of the American people, may be for naught.

Recognizing the importance of rivers to every aspect of public land values, the Wild and Scenic Rivers Act requires the BLM, as part of its land use planning duties, to consider whether the rivers under its jurisdiction qualify for inclusion in the Wild and Scenic Rivers System. 16 U.S.C. § 1276(d); BLM Manual MS-8351 (Wild and Scenic Rivers Policy). To do this, the agency must first make a determination of which river segments are “eligible” for inclusion in the system. The agency must consider all stream segments under its jurisdiction and must recognize that all free-flowing rivers and streams with outstandingly remarkable values are eligible for Wild and Scenic River designation.

Second, the BLM must determine which of the eligible segments are “suitable” for designation as Wild and Scenic Rivers. In this phase, BLM evaluates rivers eligible for inclusion in the system in terms of conflicting uses. Conflicting uses must be real and reasonably foreseeable, not theoretical or unsubstantiated. The BLM's suitability determinations must reflect that the law favors inclusion of eligible rivers in the Wild and Scenic Rivers System, as opposed to exclusion.

As BLM practice makes clear, when the agency deems a river eligible for status as a Wild and Scenic River, it must manage the river to preserve its outstandingly remarkable qualities until the agency can address its suitability. In turn, once the agency determines a river is suitable, the agency must take all management steps necessary to protect the river so that Congress may have a meaningful opportunity to include the river in the Wild and Scenic Rivers System. To do otherwise would run counter to agency policy, undermine the Act, and disregard FLPMA's requirement that the BLM protect resources valuable to the American people, such as rivers that are eligible or suitable for Wild and Scenic River designation, for the benefit of future generations and without undue degradation of these resources. 43 U.S.C. § 1702(c); 43 U.S.C. § 1732(b).

We understand that the BLM is currently preparing a Wild and Scenic River report which will become available in the coming months, and we look forward to commenting on the specific aspects of the eligibility findings.

- **Recreation and SRMAs**

The recreation resource on public lands is becoming increasingly valuable: more people want to recreate on a finite amount of public land. Many recreationists desire solitude, clean air, clean water, vast undeveloped landscapes, and a place to witness healthy natural systems thriving with native plants and wildlife. The RMP should accommodate those desires.

In order to ensure the continued viability of these desired experiences, the BLM must manage public lands under a “recreation opportunity spectrum,” or ROS. Increasing recreation pressure dictates the need to include more lands within ROS classes that protect the land's undeveloped, wild character, i.e.

primitive and semi-primitive non-motorized recreation classes. These designations allow for multiple activities of the sorts most desired by the public: camping, picnicking, hiking, climbing, enjoying scenery, wildlife or natural features viewing, nature study, photography, spelunking, hunting (big game, small game, upland birds, waterfowl), ski touring and snowshoeing, swimming, fishing, canoeing, sailing, and non-motorized river running. All lands within WSAs, BLM inventoried lands of wilderness character, proposed wilderness, and ACECs should be managed as ROS class primitive, while other spectacular and important lands in the RMP area, such as important wildlife habitat, should be managed as ROS semi-primitive non-motorized.

Existing SRMAs should be retained and expanded upon to include adjoining lands which provide expanded opportunities for their stated purpose, for example that additional roadless lands that are part of the Yampa River CWP.

The revised Planning Handbook (Appendix C) offers the following tools BLM could employ to establish recreation management (RMAs) within the Little Snake Resource Area.

- **Extensive Recreation Management Areas (ERMAs)**

Consist of all public lands not identified as Special RMAs. These are public lands having no particularly noteworthy Intensive, Community, or Open Space recreation opportunities. Within these areas, management objectives target no specific recreation opportunities, no specific setting conditions are prescribed, and recreation management actions are limited to custodial actions only

- **Community Recreation Management Areas**

Special Recreation Management Areas (RMAs) adjoining communities and which are managed to provide structured recreation opportunities in response to recreation-tourism demand generated by community and/or tourism growth and development. Major investments in facilities and visitor assistance are authorized in these areas. Niches served by these prominent areas are comprised of local community-based markets that focus national or regional demand on adjoining public lands through area resort, second home, or other recreation-related developments. Here the emphasis is on meeting community, resident, and guest demand for open-space recreation opportunities and the stabilization of recreation-tourism industry and area economies through shoulder-season product development and promotion.

- **Intensive Recreation Management Areas**

Special RMAs having distinctive, highly visible, or otherwise outstanding resource attractions that are managed to provide structured recreation opportunities in response to demonstrated national or regional recreation-tourism demand. Major investments in facilities and visitor assistance are authorized in these areas. Niches served by these prominent areas are comprised of national and regional recreation-tourism markets. Here the emphasis is on meeting demand for specific activity, experience, and benefit opportunities provided through these superlative natural and cultural settings.

- **Open Space Recreation Management Areas**

Special RMAs having primary open space characteristics, that are managed to support BLM's traditional role as a provider of dispersed recreation, maintaining their highly-valued, distinctive, undeveloped recreation setting character. Within the bounds of legal requirements and sound management practices, resource and visitor management actions exercise minimal regulatory constraint and exclude major investments in facilities and visitor assistance to preserve the visitor's freedom to choose where to go and what to do. Niches served by these high visibility areas may be comprised of national, regional, community, and/or local markets. Here the emphasis is on accommodating use and enjoyment, but prohibiting the kinds of recreation use, project, and other facility developments that would change the areas' distinctive open space setting character.

Energy and Mineral Development

GOAL: This plan should accept and enforce the promises that the energy industry will employ technologies that minimize environmental degradation. Best available technologies and practices should be required in all instances of development.

Energy development is a potentially harmful activity that must be addressed in the EIS and regulated by the RMP. Wildlife habitat can be fragmented, scenic vistas can be marred and obstructed, air quality degraded, vegetation crushed and altered, and water sources drained and polluted. Primitive areas can be converted into industrial zones, and wilderness and wilderness quality lands can be trampled and degraded by oil and gas related activities. On “split-estates” the rights, and lives, of private surface owners can be severely impacted.

The concerns expressed in this section with regard to oil, gas, and coal development also generally apply to other leasable minerals, including but not limited to tar sands, oil shales, phosphate, and gilsonite. The EIS should make similar analyses relative to these minerals. Additionally, many of the recommendations in this section are in conformance with the report “Land Use Planning and Oil and Gas Leasing on Onshore Federal Lands.”¹⁵ We request that BLM consider and respond to this report as it develops the RMP.

- **Oil and Gas Development**

1. BLM should identify proposed wilderness, ACECs (existing and proposed), and lands managed for visual resources as lands that should be spared from the impacts of development.
2. BLM should identify cultural and historic resources, as well as ACECs (for visual resources), that may be leased only under a no surface occupancy stipulation that is non-waivable except where development invisible due to natural topography.
3. BLM should require that the Best Available Technology including pitless rigs and directional drilling¹⁶ be utilized in operation and reclamation.
4. Recognizing 04-IM-194 (Integration of Best Management Practices into Application for Permit to Drill Approvals and Associated Rights-of-Way), this RMP should recognize the “overall goal of the Bureau is to promote the best examples of responsible oil and gas development.” We request that the BLM respond to how this overall goal will be achieved in the RMP and require that we believe it is vital that BMPs be developed through this RMP and made mandatory for inclusion in lease stipulations

¹⁵ National Academy of Sciences, 1989

¹⁶ Molvar, E., Drilling Smarter: Using Directional Drilling to Reduce Oil and Gas Impacts in the Intermountain West (Feb. 18, 2003) attached and available at: <http://www.voiceforthewild.org/blm/pubs/DirectionalDrilling1.pdf>. We incorporate the findings of this report into these scoping comments by reference.

5. BLM should require full-field and infill development to proceed only from cluster pads.
6. Reduced profits should never be a rationale for BLM to conclude that an environmentally preferable technology is not “economically feasible.”
7. This plan should require that environmental impact documents (EA or EIS) clearly set forth calculations and industry estimates as to the foreseeable cost and economic feasibility of projects under the widest possible range of alternatives, especially in cases where alternatives are not considered because they are concluded “not economically feasible.”
8. Any economic analysis of recoverable oil and gas estimates should include descriptions of economically recoverable versus technically recoverable, and clearly describe any “hidden” costs to development.¹⁷
9. Surface owners (state, local government, or private) should be notified upon any nomination to lease federal minerals for split-estate lands. Lands held in split-estate should not be leased until site-specific analysis is complete and surface owner has had notice and reasonable opportunity to comment.

Ten days after the close of the scoping period, approximately 25,000 acres of mineral leases within the Little Snake Field Office will be sold at auction (February 10, 2004).¹⁸ A map of the location of those parcels is attached as Exhibit III.¹⁹ The public, and NWCOS, should be informed of this and further agency actions which are determining the management fate of these lands at an increasing pace while the public is engaged in this plan revision. During this plan revision future leasing should not occur without completion of a site specific EIS or include no surface occupancy stipulation.

We believe the revised RMP should also prohibit future oil or gas leasing prior to completion of an EIS that analyzes the site-specific impacts of proposed leasing. It is crucial that this “look before you leap” policy be adopted in the RMP to ensure that a lease is not issued before the site specific resource values in an area are fully understood. This is necessary to ensure that an informed balancing can be made pursuant to NEPA as to whether leasing is appropriate, or is outweighed by other resource values. Waiting to do site-specific analyses until after a lease is granted is simply too late: at that time the ability to regulate and control impacts is reduced. If leasing under the revised RMP occurs prior to completion of a site-specific EIS, options are foreclosed, in contravention of NEPA, the ESA, and the definition of multiple-use in FLPMA. Alternatively, the RMP should specify that all leases should be issued with a no surface occupancy stipulation on the entire lease pending completion of a site-specific EIS to determine if surface occupancy can be allowed. We believe these recommendations are consistent with the provisions in BLM’s Land Use Planning Handbook. See BLM Handbook H-1601-1, at Appendix C.²⁰

Furthermore, it is crucial that lease stipulations that ensure necessary protection of public lands be developed and included in the RMP for attachment to all leases. See 43 C.F.R. §§ 3101.1-2 to

¹⁷ See *Drilling in the Rocky Mountains: How Much and at What Cost?* TWS-Morton et. al (2004) and *Energy & Western Wildlands: A GIS Analysis of Economically Recoverable Oil and Gas*. TWS-Morton et. al (Sept. 2002), which we incorporate by reference and attach. Recent research by economists at The Wilderness Society indicates that the federal government’s assessments of the oil and gas resources on public lands are flawed and consistently over-estimate their value. Federal reports inappropriately use technically recoverable gas rather than economically recoverable gas in their conclusions, fail to consider improved access to gas from directional drilling and drill bit technology, and fail to examine access to existing gas reserves. The environmental costs of drilling include erosion, loss of wildlife and fish habitat, decline in quality of recreational opportunities, proliferation of noxious weeds, and increased air and water pollution. These costs increase with scale and when data are limited. Lease stipulations help protect wildlife but only if they are enforced, and data from BLM and other sources indicate that they are not. In the Rocky Mountain West, where hunting, fishing, and wildlife viewing generated \$5.9 billions in revenue in 2001, drilling (and its direct impacts on wildlife and their habitat) has hidden economic costs in terms of lost revenues from license fees, equipment sales, and other related purchases.

¹⁸ See <http://www.co.blm.gov/oilandgas/leasinfo.htm>.

¹⁹ Map is also available at:

http://www.co.blm.gov/oilandgas/documents/oil_and_gas_sale_feb_2005_esize_normal_000.pdf

²⁰ In areas of high industry interest that also have other important values, BLM should permit only drilling of exploratory wells. In these areas, data from the initial wells could be used in more detailed environmental studies prior to any further activity. If the studies reveal the need to halt development, lease payments could be refunded.

3101.1-3. Non-waivable no surface occupancy stipulations should attach to leases that could threaten important wildlife habitat or use areas, water resources, recreation areas, etc., particularly if site-specific impacts are unknown or poorly known when the land is leased. All riparian and wetland areas should be subject to no surface occupancy stipulations. The RMP should adopt a prohibition against leasing in any Scenic or Recreational river corridors, or potential corridors, not just Wild river corridors, and failing that no surface occupancy stipulations should be required. ACECs should not be subject to leasing, or, at a minimum, should be subject to no surface occupancy stipulations. Archeological, paleontological, and historical resources must be adequately protected.

The RMP should guide and regulate the configuration and timing of lease offerings when parcels are offered for lease. Currently, industry nominates parcels that are typically scattered throughout millions of acres of public lands. As a result, pre-leasing environmental analyses are not based on common airsheds, river drainages, or other ecological units; nor do they adequately assess cumulative impacts. The RMP should ensure that these problems are not perpetuated.

As noted above, FLPMA requires consideration of the relative scarcity of the values involved, and the availability of alternative sites for producing those values must be considered. See, FLPMA § 202(c). Often, the most appropriate opportunities for oil and gas development from both an economic perspective and ecological perspective are within known and operating oil and gas fields, while the dwindling wildlife, scenic, wilderness and other resource values throughout the rest of the area are irreplaceable and should be protected. The EIS should consider this issue, and again, in our view, oil and gas drilling is not appropriate in potential wilderness areas, ACECs, important wildlife habitat, and in areas with important archeological, historical, or paleontological resources due to the great relative value of the resources involved.

The RMP should explicitly prohibit oil and gas leasing whenever the reasonably foreseeable development scenario (RFD) has been exceeded, especially if this development is occurring due to new technological innovations that have not been subject to adequate environmental review. Coalbed methane (CBM) is a clear example in this regard: many development proposals for this method of extracting methane far outstrip the RFDs in existing RMPs, largely because this technology was not even envisioned when many RMPs were prepared. Moreover, the environmental impacts may not have been adequately evaluated (water from CBM development is the obvious example). Under these conditions, leasing should not proceed until updated environmental analyses are completed, and the RMP should so provide. Recent decisions of the Interior Board of Land Appeals require the unique impacts of CBM development to be analyzed.

The BLM must objectively analyze any purported “limits” on oil and gas development in the RMP process, and continue regulating this activity as required by law. The BLM should focus analysis of the purported “adverse effects” of lease stipulations on energy supplies on realistic estimates of economically recoverable resources, not just “technically recoverable” resources. The recently released study done pursuant to the Energy Policy and Conservation Act (EPCA) failed to do this.²¹ If

²¹Other shortcomings in the EPCA study include the following. While criticizing the use of economically recoverable resources due to variability and change in economic conditions, the study proceeded under a number of other assumptions that are also variable: the technology for extracting oil and gas is constantly changing, applicable lease stipulations change with time, and estimates of oil and gas resources are constantly changing. Thus, variability and change, standing alone, provide no basis for not considering resource availability from an economic perspective. Furthermore, the EPCA study presented the total amount of oil and gas present on all lands in several basins, yet only analyzed the amount of oil and gas on Federal lands subject to various “restrictions,” thus inflating the proportion of oil and gas that is purportedly off limits. The study assumed that old leases without stipulations potentially limiting access effectively do have currently-applicable stipulations because conditions of approval act as a “proxy” for the “missing” stipulations. Despite these limitations, all of which inflate the amount of oil and gas purportedly subject to “restrictions,” the EPCA study clearly showed that the vast majority of Federal oil and gas resources are available for development. And even where limitations apply, the study showed that most drilling can still occur from 6-9 months during the year. The EPCA study can be used as a starting point but due to its shortcomings it should not be used for decision-making without supplemental information.

oil and gas is not economical to extract, there will be no adverse impacts on supply from stipulations designed to protect wildlife, archeological sites, recreation sites and other public assets. The BLM should use well-supported high and low range estimates of gas and oil prices in any analysis of the amounts of oil and gas affected by stipulations.²²

BLM's regulations regarding environmental protection at the field development and well drilling stage are general and non-specific. See 43 C.F.R. § 3162.5-1(b). Consequently, the RMP should adopt specific definitions of what constitutes "due care and diligence," "undue damage to surface or subsurface resources" and what specifically must be achieved to "reclaim the disturbed surface" At a minimum, the requirements of Onshore Oil and Gas Order No. 1, especially relative to reclamation plans, must be strictly complied with, and the EIS should analyze whether wells reclaimed in the past pursuant to these requirements have actually been effectively reclaimed. If not, appropriate modifications should be made to ensure effectiveness. Just as important, it is crucial that the RMP and any subsidiary instruments (leases, APDs, surface use plans, etc.) provide assurance, based on a realistic assessment of past, current and projected budgets and allocations of personnel, of adequate inspection and enforcement as a precondition to lease issuance and operations. Monitoring and enforcement needs are addressed further, below.

The lease acreages limits specified at 43 C.F.R. § 3101.2-1(a) should be monitored and enforced by BLM, and the RMP should make provision for such. BLM's LR2000 database makes this a relatively simple undertaking. To the extent BLM views this as an activity for the State Office or other BLM administrative level, the EIS should nevertheless discuss what actions are being taken at that other level and provide citizens with information so they can become aware of and monitor those efforts.²³

The regulations at 43 C.F.R. § 3162.3-1(a)(3) allow BLM to regulate well spacing pursuant to "any other program established by the authorized officer"—well spacing designations of the State oil and gas commission are not controlling. BLM should fully utilize this authority by specifying, in the final RMP, well spacing densities that are appropriate for protecting other resource values in an area, as required pursuant to 43 U.S.C. § 1732(b) and other law.

Private landowners who live on "split estates" are often severely affected by BLM's oil and gas leasing decisions. BLM has often ignored or given little attention to the legitimate concerns of surface owners and their communities. BLM must minimize conflicts between surface owners and companies developing subsurface minerals by proactively seeking and addressing their concerns in the design and review of projects, including leasing itself. The RMP should provide for this. BLM should make full use of provisions in the Surface Mining Control and Reclamation Act that apply to all mineral development, not just coal. Areas used primarily for residential or related purposes can be deemed unsuitable for mineral development and withdrawn from leasing, or have development activities conditioned appropriately. 30 U.S.C. §1281. BLM also has general withdrawal authority pursuant to 43 U.S.C. § 1714. BLM should make use of these provisions, as well as its general authority to condition development, to protect private surface owners who could be adversely affected by oil and gas development.

Finally, BLM should include in the EIS Affected Environment and the AMS information regarding existing leases, including: -leased acres total within the resource area, leased acres in production, wells drilled and status of wells (active, abandoned, plugged, etc.), date leases issued and any NSOs

²² Of course, the stipulations and other protections may be fully warranted (or required) despite any effect they may have on energy supply, and the BLM should acknowledge this.

²³ This point applies to any activity BLM claims does not need to be fully explored in the EIS or decided in the RMP. Even if true, the RMP and RMP EIS should still assist citizens who desire to get information about these activities and to participate in them. Thus, BLM should, at a minimum, provide a discussion of what is occurring at the other administrative level and provide basic contact information.

in place on those leases, map of leased acreage and wells, and unitization agreements in place. BLM should analyze this information and such information should be reflected in the RFD.²⁴

- **Coalbed Methane Issues**

As indicated above, extraction of CBM has become rampant in some areas, so special precautions must be taken in the RMP to ensure resource protection in the face of this development pressure. The RMP should prohibit discharge of water extracted from coalbeds onto the ground or into surface waters. This is particularly true of saline “produced” water. In addition to salinity problems, produced water—whether from CBM production or from conventional wells—can be contaminated with heavy metals (Se, As, Ba, Hg, etc.). Selenium may be of particular concern, especially relative to impacts on avian species, and it is important to note that if produced water is stored in reservoirs or pits, heavy metals can become even more concentrated than in the produced water itself. The EIS should consider the problem of produced water storage pits/reservoirs leading to concentrated chemical solutions that harm wildlife (or other resources), and should particularly consider compliance with the Migratory Bird Treaty Act in this regard.

Water from CBM development should be reinjected in an environmentally safe manner (i.e., in a manner that ensures groundwater supplies are not contaminated). However, if water from CBM production is discharged, directly or indirectly, into streams, the impacts of augmented flows and increased concentrations of salts (ions) and dissolved solids on the ecological characteristics of the streams (perennial or intermittent) should be analyzed. Such analyses must account for the full range of variations in stream flow, effluent (produced water) concentrations, and sensitivities of different species at different life-stages. Impacts from altering stream thermal conditions and the timing of flows must be analyzed. Effects of discharged produced water on adjacent riparian areas, and the effects of increased turbidity and sedimentation should be considered. The analysis should consider lethal and sub-lethal effects on biota. If produced waters are or become a “discernible, confined and discrete conveyance . . . from which pollutants are or may be discharged”, they must be treated as point source discharges of pollutants and a National Pollution Discharge Elimination System (NPDES) permit must be required. 33 U.S.C. §§ 1362(14), 1342. Based on these analyses, the RMP should provide standards to prevent or mitigate these impacts.

CBM development can lower water tables, which has widespread implications and therefore these issues must be addressed in the EIS. If produced waters are not reinjected, potential effects on agriculture must be considered. Dewatering coalbeds can increase the likelihood of difficult-to-control coal seam fires. Seepage of methane and its effects on vegetation, water (including domestic water and aquifers), and even the safety of people’s homes must be considered. Again, the RMP must ensure these impacts are prohibited or mitigated.

CBM fields can have a much higher density of wells than occurs in conventional gas fields. Consequently, issues such as habitat fragmentation, outright loss of habitat, and impacts to visual resources are magnified. Because of this, the RMP must ensure that the unique impacts of CBM development are evaluated prior to leasing, and that such analyses do not simply duplicate the analyses done for conventional gas fields. As noted, recent Interior Board of Land Appeals and 10 Circuit decisions require consideration of the unique impacts of CBM development.

²⁴ See *Drilling in the Rocky Mountains? Not So Fast! An Assessment of Surplus Drilling Permits & Leases on Federal Public Lands*. TWS-Morton et. al (2004), which we incorporate by reference and attach a summary of the report. Nationally, the oil and gas industry has leased about 42 million acres of public land managed by the BLM. This does not include leases on private and state lands, National Forests, or the Outer Continental Shelf. Nearly 73 percent of that land is not in production. In Colorado, there are 3,092,886 acres of leased land that are not presently in production 70% of all leased federal land in the state. Since Colorado clearly does not need more surplus leases and every permit processed by BLM costs American taxpayers \$3,900, approving additional leases promises only to burden taxpayers with unnecessary costs while achieving no material gain in terms of actual energy resources available for development.

- **Full Field Development and Application for Permit to Drill Issues**

BLM sometimes seems to take the position that it must approve an application for permit to drill (APD) within 30 days. This is incorrect, and the RMP should specify the circumstances under which BLM may take more than 30 days to review an APD. Final action on APDs can be, and must be, delayed as needed to conduct needed, thorough environmental analyses. 43 CFR § 3162.3-1(h)(3); Onshore Oil and Gas Order No. 1, III.B.2. The list of reasons for extending the time for when an APD may be processed is not limited to just the enumerated concerns in Onshore Oil and Gas Order No. 1, and the preparation of an environmental assessment (EA) or EIS is a specific reason for extension of the APD processing time. Onshore Oil and Gas Order No. 1, III.D.

A specific purpose and need for an EA for an APD is to determine whether an EIS is needed. 40 C.F.R. § 1501.4; Onshore Oil and Gas Order No. 1, III.G.5.a. Yet it is extremely rare, at best, for an EIS to be prepared at the APD stage. The RMP should provide guidance for when the cumulative impacts of approving a number of APDs rises to the level of producing significant impacts on the human environment, requiring preparation of an EIS. This is especially important if drilling in an area has not previously been analyzed in a “full field” EIS because there is no question that the approval of several individual wells can have cumulatively significant impacts. And even if a prior full field EIS has been prepared, the RMP should provide guidance as to when supplementation of the prior EIS should occur. See 40 C.F.R. § 1502.9(c) (outlining requirements for supplementing an EIS).

Local residents and other concerned citizens wanting to be involved in the actual development of oil and gas fields and/or drilling of wells are often stymied. One reason participation is stymied is that BLM does not make Notices of Staking (NOS) and APDs readily available to the public in a timely fashion. In some cases citizens are expected to physically review NOSs and APDs by visiting the BLM office, or if they do not live nearby, to make weekly telephone calls to the BLM office to request that these documents be faxed to them. That is unacceptable, and in this day and age there is no reason they should not simply be posted on BLM websites in a timely fashion. Any proprietary or privileged information can be redacted. The lack of availability of NOSs and APDs hampers public participation, which violates NEPA. The BLM should include provisions in the RMP that will correct these problems. This recommendation is consistent with and required by the public participation provisions in the CEQ NEPA regulations, 43 C.F.R. §3162.3-1, and Onshore Oil and Gas Order No. 1. The Mineral Leasing Act provision related to notifying persons of APDs is a minimum requirement and does not supercede or abrogate other requirements, such as those in the CEQ NEPA regulations. See 30 U.S.C. § 226(f) (providing “[t]he requirements of this subsection are in addition to any public notice required by other law.”) (emphasis added).

The EIS must address the issue of granting exemptions and exceptions to lease stipulations at the APD stage. At a minimum, the RMP must identify which stipulations cannot be relaxed and the specific conditions that must be met before a request to exempt or relax any of the others will be granted. In our view, relaxing environmental protections should not be allowed. All too often exemptions or exceptions are granted when a company needs “just a few more days” to complete drilling or other activities. This is not a sufficient reason in our view—the stipulations are clear and companies should be able to complete activities as agreed to, or wait a few months to complete them when resource damage is lessened. Allowing drilling to continue essentially for the convenience of a company leads to unnecessary or undue degradation. Another common rationale for permitting exemptions or exceptions are claims that “game species aren’t on the winter range yet” and other similar justifications. Rationales such as this are insufficient: drilling during a restricted period may prevent animals that would have moved onto the range from doing so, it may disturb and stress animals that are in areas adjacent to or nearby the area being drilled, it may concentrate animals in areas that are not being drilled, it may cause undisturbed areas to be overgrazed and degraded, etc. At a minimum, granting exceptions and exemptions to stipulations constitute Federal actions subject to NEPA; that is an EIS or EA needs to be prepared before they are granted. The public participation requirements of NEPA must be fully complied with. Even if the RMP provides guidance on the circumstances under which relaxation of environmental standards can be allowed, and such guidance was subject to NEPA (as it must be), BLM must still comply with NEPA when actual requests are

made and the site-specific consequences can be analyzed. RMP level analysis supporting exemptions and exceptions is simply not site-specific enough to allow for approval of site-specific requests, and the RMP should so provide.

BLM employs Sundry Notices pursuant to 43 C.F.R. § 3162.3-2(a) (authorizing use of Form 3160-5, the Sundry Notice). In our experience, Sundry Notices are used for a wide array of activities, and not necessarily just for “further well operations”, as required by the regulations. The RMP should define precisely when the use of Sundry Notices is appropriate, and in our view they are inappropriate for anything other than the enumerated activities mentioned at 43 C.F.R. § 3162.3-2(a). Additionally, the RMP should define when NEPA compliance is required and what opportunities exist for public involvement relative to Sundry Notices.

- **Toxic and Hazardous Wastes and Chemicals; Stormwater Runoff**

The use of hydraulic fracturing and the impacts of drilling fluids (muds) and chemicals must be considered in the EIS. Hydraulic fracturing and drilling fluids contain a wide array of chemicals, many of which are clearly toxic or hazardous. The appropriateness of using these chemicals must be addressed in the EIS, and in particular the EIS and the final RMP should ensure compliance with the Clean Water Act, Safe Drinking Water Act, Toxic Substances Control Act, Resource Conservation and Recovery Act, and the Comprehensive Environmental Response Compensation Liability Act (CERCLA—the Superfund) relative to the use of these and other toxic and hazardous substances. We specifically recommend that, if “fracking” is contemplated, the option of requiring water only – i.e., prohibiting the use of toxic chemicals – be considered. The RMP should provide specific guidance regarding the requirements oil and gas companies must abide by to meet the requirements of these laws, and provide for complete and thorough compliance, monitoring, and enforcement by BLM. Spill prevention and cleanup requirements must be specified, and provisions for collecting and disposing of these wastes must be provided for in detail, again with sufficient monitoring and enforcement to ensure compliance. While Federal pollution and toxic and hazardous waste law may provide some exemptions for the oil and gas industry, BLM still has sufficient authority, and responsibility, under NEPA and FLPMA to require inventory and monitoring of these chemicals, as well as spill prevention, cleanup, and mitigation plans. See, e.g., 43 U.S.C. 1732(b); 43 C.F.R. §§ 3162.4-1(a), 3162.5-1(c)-(d); Onshore Oil and Gas Order No. 1, III.G.4.b.(7). See also Executive Order No. 13,016 (delegating authority to land management agencies to enforce CERCLA on lands they manage); BLM Manual MS-1703 (Hazardous Materials Management). In a related issue, BLM should ensure that oil and gas drilling operations (including well pads) comply with any applicable stormwater discharge requirements, including acquiring NPDES permits, as required.

BLM should work with the EPA relative to regulation of hazardous and toxic wastes generated from oil and gas development activities. EPA’s report on the oil and gas extraction industry (see footnote 2) provides information regarding these substances and data on rates of inspection and enforcement actions for this industry. These data show oil and gas extraction facilities receive little in the way of inspection and enforcement relative to the other 29 industrial sectors, despite the significant levels of toxic and hazardous materials used and generated by the industry. The RMP should make provisions for ensuring that, in cooperation with the EPA, the rate of inspections (and as necessary, enforcement) is increased.

- **Rights-of Way**

Rights-of-way are often part-and-parcel of energy development projects, as well as many other activities. All provisions in the Mineral Leasing Act and FLPMA must be adhered to relative to rights-of-way to help ensure environmental protection. We specifically request that the EIS address several issues. The issue of the impact of power lines on birds and bats should be addressed, particularly with regard to raptors. Electrocutions are one negative impact of power lines, and electrocutions could violate the Migratory Bird Treaty Act and Bald Eagle Protection Act, not to mention the ESA. The RMP should have provisions to ensure these laws are not violated if rights-of-way are granted, as well as provisions that specify thorough monitoring and the penalties that will be imposed by BLM for failure to

comply. Perhaps just as importantly, power lines change the “structure” of habitat, which may create favorable conditions for some species but be unfavorable for others. For example, there is evidence that ferruginous hawks, which are becoming rare, can be placed at a competitive disadvantage to other raptors when power lines create perches in otherwise open habitat. Likewise, the increasingly imperiled sage grouse can be further threatened if raptors are provided hunting perches in habitat occupied by sage grouse. The EIS must take account of these kinds of effects, and the RMP must ensure they are avoided or at least mitigated. For example, the RMP should require that existing rights-of-way, with similar types of structures, be utilized to the extent possible. Similarly, the impacts rights-of-way have on habitat fragmentation must be analyzed in the EIS, and provision made to avoid or mitigate these impacts in the RMP.

- **Monitoring and Enforcement**

The EIS should include a realistic assessment and analysis of oil and gas well plugging, abandonment, reclamation, and enforcement needs and problems. The RMP must provide that wells are abandoned and plugged in accordance with the provisions of 43 C.F.R. § 3162.3-4 and Onshore Oil and Gas Order No. 1. In addition, the BLM must not only quantify the needs that projected development will entail in terms of personnel and costs, it must also explain how it will ensure that these needs will in fact be met. In our view, if BLM lacks resources to engage in monitoring and enforcement sufficient to ensure compliance with all requirements applicable to oil and gas drilling on public lands within the RMP area, then it should not allow further development to occur—it should deal with the backlog of cleanup needs first. BLM has sufficient authority, and a responsibility, to prevent development if it lacks sufficient resources to ensure compliance with requirements applicable to oil and gas development. See, e.g., 43 U.S.C. 1732(b).

The RMP should ensure that reclamation standards are enforced and increase bonds to cover actual reclamation costs, so neither taxpayers nor landowners are left to foot the bill. In the past, BLM has estimated the cost of reclaiming just one well ranges from \$2,500 –\$75,000. The EIS should include up-to-date estimates for costs of reclamation of development activities in this area. The RMP should increase bonds as needed to ensure the full costs of reclamation are met and should not rely on per lease bonds (currently set at \$10,000) or on statewide bonds (now \$25,000) if they will not cover anticipated costs. BLM has this authority. See, e.g., 30 U.S.C. § 226(f); 43 C.F.R. §§ 3104.1(a), 3104.5, 3106.6-2.

- **Coal Development**

The RMP must ensure full compliance with the Mineral Leasing Act and Surface Mining Control and Reclamation Act (SMCRA) for any coal development in the RMP area. The RMP must assure the environmental protection performance standards and reclamation standards required by SMCRA are fully adhered to. The “federal lands program” for coal mining must also be carefully adhered to. The RMP should include provisions that will ensure that BLM works carefully with the State of Colorado in the regulation of coal mining, and BLM must ensure the State is adequately implementing and enforcing the program. See 30 U.S.C. § 1273 (providing the Federal lands program must consider the “unique characteristics of the Federal lands in question” and that “at a minimum” the Federal lands program shall include the requirements of the State’s program). The EIS should evaluate whether the State is in fact adequately protecting public lands resources and develop means to protect those resources as needed. It should also address any potential new coal mining or expansion of coal mining that might occur so that BLM can work with the Office of Surface Mining to ensure the requirements related to mining plan decisions can be fully complied with.

The provisions for unsuitability determinations in SMCRA must also be fully utilized and complied with. BLM should ensure that “Determinations of the unsuitability of land for surface coal mining . . . shall be integrated as closely as possible with present and future land use planning and regulation processes at the Federal, State, and local levels.” 30 U.S.C. § 1272(a)(5). BLM should ensure that the suitability review for Federal lands complies with the requirements at 30 U.S.C. § 1272(b) and that any needed

withdrawals and conditions are made, as provided for in that section. Similarly, BLM should ensure that existing suitability determinations are as up-to-date as possible and in conformance with the RMP. As mentioned above, the provisions at 30 U.S.C. § 1281 should be fully utilized to protect surface owner rights. Roadless areas, proposed wilderness, ACECs, unique wildlife habitats, and other special management areas should not be deemed suitable for coal mining.

- **Locatable Minerals**

The location of a mining claim alone does not give rise to a vested property right. Instead, a mining claim only creates a vested property right if there has been a discovery of a valuable mineral; until that condition has been demonstrated, no rights exist. In determining whether such a discovery has been made, the BLM must take into account the cost of the recovery of the mineral and the costs associated with compliance with all State and Federal laws and regulatory requirements, including those intended to protect the environment. Unless a claimant can prove that it can recover the mineral at a profit, the BLM has no choice but to reject a claimant's mining plan of operations. The BLM has the authority to contest mining claims on these grounds "when such action is deemed to be in the public interest." Of determinative importance in defining the "public interest" is the requirement that BLM "shall" take actions to prevent unnecessary or undue degradation of the public lands, and this provision has special force and effect relative to "hard rock" mining. 43 U.S.C. § 1732(b). The RMP must include binding provisions that reflect these requirements.

The BLM should consider withdrawal of special places from mineral entry. Often mineral claims have a low potential for economically recoverable mineral deposits, there can be severe impacts due to the scale of modern mining activities, and the public interest of protecting more valuable resources (including wildlife habitat, water, recreation, wilderness, etc) can outweigh the mineral values. Special places that should be considered for withdrawal include, but are not limited to, lands proposed for wilderness designation, important wildlife habitat, water sources, and unique geologic formations.

Range Management and Grazing

GOAL: Manage grazing in a sustainable manner; monitoring and avoiding overgrazing; managing the compatibility of livestock grazing with other multiple-use values; careful determination of lands that are "open" to grazing through evaluation of locations where lands are in "poor" condition or that management for other multiple use values warrant lands unsuitable for grazing.

1. Manage sufficient forage after grazing of livestock and wild horses to support wildlife.
2. Scheduled monitoring and adaptive management moving allotments in direction of improved range conditions.
3. Avoid impacts of range improvements (fences, water developments) that would interfere with wildlife dispersal and migration.

Livestock grazing has the potential to inflict profound impacts on wildlife and the public lands. See 43 U.S.C. §§ 1901(a)(1) (determining that "vast segments" of the public rangelands are in unsatisfactory condition), 1751(b)(1) (finding that much federal rangeland "is deteriorating in quality"). Recognizing this, BLM adopted standards and guidelines for grazing administration in 1995 that are designed to restore and protect range health and degraded range conditions. See 43 C.F.R. Subpt. 4180. The RMP should provide a clear and binding schedule for ensuring that the three steps the grazing rules establish for determining if grazing needs to be modified are accomplished in a timely manner.²⁵ Furthermore, for allotments that have already been assessed, provision should be made in the RMP for future assessments and determinations—the standards and guidelines are intended to be an

²⁵ The three steps are: assess rangeland health, determine if grazing is a significant factor causing unhealthy rangelands, take appropriate actions to eliminate or modify grazing by the start of the next grazing season.

ongoing, prominent factor in grazing management, and the Fundamentals of Rangeland Health are standing national requirements. It is also worth noting that pursuant to the Public Rangelands Improvement Act (PRIA), “the goal” of rangeland management “shall be to improve the range condition of the public rangelands” 43 U.S.C. § 1903(b) (emphasis added).

BLM’s standards and guidelines and the Fundamentals of Rangeland Health also have potential applicability and utility for properly managing all resource uses in the RMP area. For example, many standards and guidelines and the Fundamentals of Rangeland Health would be appropriate as stipulations to oil and gas leases to ensure there is not unnecessary or undue degradation. Consequently, as part of this planning effort, the BLM should consider what changes if any are needed to extend the standards and guidelines and Fundamentals of Rangeland Health to all other programs, and the RMP should provide for their adoption as requirements to guide all future management activities and decisions. The standards and guidelines, and the Fundamentals of Rangeland Health, provide a convenient existing means to meet many of the requirements highlighted in these comments, which BLM, through the RMP, should take advantage of.

In addressing livestock grazing in this plan, we urge the BLM to pay special attention to the following. Monitoring and follow-up monitoring needed to ensure any changes necessary to meet the standards and guidelines must be provided for in the RMP. The condition of springs and riparian areas, including biotic and abiotic components, and whether they are in proper functioning condition must be given special attention. The condition of upland areas, including cryptobiotic crusts must be carefully monitored and protected. In all cases where these important resources and areas are not functioning properly, the BLM must include in the RMP mandatory steps that will be taken to remedy these failures.

We also ask that BLM address compliance with the “Comb Wash Decision” in the EIS and the RMP itself. National Wildlife Federation v. BLM, 140 IBLA 85 (1997). That appeal not only affirmed the longstanding rule that NEPA requires the BLM to analyze the site-specific impacts of grazing, it must also engage in “reasoned decision-making” on the question of whether to allocate lands and associated resources to this particular use. The EIS should include the required analysis of site-specific impacts of grazing and the required discussion of the balancing of values that will ensure that grazing best meets the present and future needs of the American people. As noted above, this balancing is required so as to meet the requirement that public lands are managed on the basis of multiple use and sustained yield. See 43 U.S.C. §§ 1702(c), 1732(a). The Comb Wash Decision held that this balancing is mandatory, and the plan should reflect both that this balancing was carried out and what its results were, on a site-specific basis.

In accordance with the standards and guidelines, the Comb Wash Decision, and provisions in the FLPMA and PRIA, the EIS should determine the suitability of lands within the RMP area for livestock grazing and the RMP should require adjustments accordingly. There is no doubt BLM has this responsibility and authority. See, 43 U.S.C. §§ 315 (grazing districts must be chiefly valuable for grazing), 315a (BLM can do “any and all things” necessary to manage grazing), 1701(a)(8) (public lands to be managed to protect environmental values), 1702(c) (multiple use management allows for areas to be deemed unsuitable for certain uses and requires consideration of relative resource values), 1712(a)-(c) (land use plans to be based on multiple use), 1712(d) (land use classifications can be modified or terminated), 1712(e) (allowing for elimination of principle or major uses), 1732(c) (revocation of permits authorized), 1752 (allowing discontinuation of grazing permits and a determination in land use plans of whether lands “remain available for domestic grazing”), 1903(b) (allowing for discontinuation of grazing pursuant to land use planning decisions). See also Public Lands Council v. Babbitt, 529 U.S. 728 (2000) (holding that allocation of forage in a land use plan pursuant to 43 C.F.R. § 4100.0-5 does not, on its face, violate the Taylor Grazing Act). Livestock grazing, like all land uses, should only occur in areas where it has been carefully determined, pursuant to the land use planning process, to be a suitable use of the land. The suitability determination should be made in the RMP at two levels: (1) for the RMP area as a whole and (2) for site-specific areas.

As noted above, the impacts of grazing on riparian areas should receive particular attention in the EIS, and the RMP should make binding and mandatory provisions to deal with the impacts of grazing in riparian areas. BLM's Riparian-Wetlands Initiative acknowledged the importance of insuring that livestock grazing is compatible with riparian habitat protection, and set an ambitious goal for the agency to achieve. It is now years past the date the Initiative set, so the BLM has no excuse for failing to include, in the RMP, binding benchmarks to ensure its goal is finally achieved. This could require reducing or eliminating livestock grazing in some riparian areas due to their overwhelming ecological importance and the generally recognized negative impacts of grazing on riparian areas. Upland areas, too, may require special livestock management in order to ensure the restoration of fragile areas and cryptobiotic soils, or to protect remnant high condition/seral stage vegetation. BLM should not rely on water developments as a way to transfer grazing pressure from riparian areas to other (usually upland) areas. This approach often does not solve problems; it just moves them from ecosystems with a relatively high ability to recover due to the availability of water (riparian areas) to ecosystems with little or no ability to recover from excessive livestock grazing (uplands).

Requirements related to the Clean Water Act were mentioned above, but they bear repetition in the context of livestock grazing. BLM should ensure there is sufficient water quality monitoring relative to the impacts of livestock grazing, and take concrete steps to guarantee that livestock grazing does not adversely impact water quality or impair designated beneficial uses of these waters. The BLM must collect all data necessary to evaluate and achieve compliance with water quality standards, including in particular standards related to fecal coliform bacteria. Compliance with the Safe Drinking Water Act should also be addressed.

BLM should recognize and analyze the significant adverse impact of livestock grazing on cultural resources and fulfill its obligation to identify and proactively protect cultural resources. It should also analyze the full suite of economic impacts of livestock grazing, including the direct and indirect costs of the grazing program. The public, the taxpayer, the BLM, the permittees, and the neighboring communities are impacted economically by management choices for grazing on BLM lands. These impacts must be thoroughly analyzed. Only by doing so can the BLM determine the costs and benefits of the proposed action and alternatives to the proposed action. Furthermore, such analysis is part of the FLPMA balancing test and will help determine whether grazing should occur on the relevant allotments.

Wild Horses

Goal: Wild horses are a part of our western heritage and should be managed to preserve their existence in a manner that is compatible with other multiple uses.

1. Numbers should be managed at sustainable levels and take into account impacts to wildlife, sensitive plants, rangelands, necessary range developments and cultural resources.
2. Wild horses should be actively managed for appropriate herd size and genetic variability.
3. Wild horses within the Sand Wash Horse Management Area should be managed so that energy development and OHV use does not degrade the habitat such that horse related impacts on wildlife, sensitive plants, rangelands and cultural resources are increased. Nor should impacts of OHV use and energy developed proceed to such a point where BLM is no longer able to meet its obligations under the Wild and Free Roaming Horse and Burrow Act.

Vegetation: Riparian and Invasive Species

- **Riparian**

The RMP area 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. Consequently, and as discussed above, it is critical that the Clean Water Action Plan and Riparian-Wetlands Initiative be fully implemented by the RMP, and that riparian areas be afforded ACEC protection.

Riparian areas and wetlands provide rare oases of lush vegetation and water in an arid environment. As a result, they are rich in wildlife like birds, deer, elk, amphibians, fish, cougar, bobcat, and other species. They also improve water quality by filtering sediment and other pollutants, stem erosion, improve groundwater reserves, reduce the risk of flash flooding, and provide shelter for wildlife. They are also often home to important cultural sites. See BLM's Riparian-Wetlands Initiative for the 1990's (RWI) at 7-8; BLM Handbook H-1737.08-09.

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 BLM's policy is to "maintain, restore, or improve riparian-wetland ecosystems to achieve a healthy and proper functioning condition that assures biological diversity, productivity, and sustainability. . ." BLM Handbook H-1737.06. RMPs must "recognize the importance of riparian-wetland values, and initiate management to maintain restore, improve or expand them." *Id.* at 1737.06.B.4.

The cornerstone to effective protection of riparian areas is the completion of a comprehensive inventory of the riparian and wetlands resources within the bounds of the RMP area. These areas should be identified and their functioning condition should be evaluated. See RWI at 16 (noting need for inventories). "Improving the functioning condition of these areas is the focus of BLM's riparian-wetland restoration goal." RWI at 11.

Based on the critical importance of riparian areas, and the considerations set forth above, we urge the BLM to incorporate into the RMP specific, measurable riparian and wetland area protections. These include, among other things:

- Completion of "a broad inventory" of all riparian areas and an evaluation of their functioning condition pursuant to BLM Manual MS-1737.22 ("Inventories are usually conducted prior to preparation of . . . RMPs;" and "an RMP will generally require broad inventory"). This inventory should be done prior to preparation of the RMP EIS and should be presented in it.
- Specification of the steps that will be undertaken so that riparian areas that are not in properly functioning condition can be restored, and how the condition of areas that are in properly functioning condition will be maintained.
- Exclusion of ORVs from riparian areas and wetlands except on designated routes;
- Incorporation of riparian and wetland area protection with protection of the associated watersheds. BLM Manual MS-1737.32; Clean Water Action Plan.

- Assurance that livestock grazing standards and guidelines and Fundamentals of Rangeland Health are complied with, and that livestock grazing is excluded from riparian areas as needed;
- Development of an effective monitoring program that measures biodiversity and wildlife populations, soil erosion, vegetation health, the presence of non-native species, water quality and quantity, and the impacts of other uses such as grazing, ORVs, recreation uses, and other activities;
- A prohibition on oil and gas leasing and development in riparian areas, or a requirement for no surface occupancy stipulations. Analysis should be provided in the EIS of how mineral development and associated impacts such as waste pits, roads, pipelines and other uses will be regulated so as to avoid impacts to riparian areas and wetlands;
- A prohibition on the issuance of rights-of-way in riparian and wetlands areas, or in areas where such use would adversely impact riparian areas;
- Identification of lands for acquisition in riparian or wetlands areas that are ecologically, hydrologically or geologically linked to BLM wetlands and crucial to their functioning;
- Designation of riparian areas and wetlands as ACECs .

• Invasive Species

We ask that BLM ensure the RMP 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 EIS 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.

We believe BLM should consider whether it is more effective and efficient, ecologically and economically, to simply avoid certain ground-distributing activities so as to ensure the requirements of the Executive Order are complied with. For example, not building certain roads or authorizing certain oil and gas drilling activities may be a very cost effective, as well as ecologically effective, means to prevent the spread of invasive species, and the RMP should establish guidance as to when avoidance of ground-disturbing activities is preferred and appropriate. Similarly, the effect of ground disturbance resulting from rangeland management actions, including grazing itself, on invasive species status should be fully considered, and again the RMP should establish standards as to when these activities may be inappropriate due to invasive species considerations.

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 EIS, and the RMP should establish standards for protecting native plant communities and rare or special status species. BLM's grazing regulations and the PRIA 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 RMP should establish standards to ensure these requirements are met. To prevent invasive species dominance, and to favor native species and plant communities over non-natives, we make the following specific requests:

- The RMP must insure that no cross-country vehicular (motorized and bicycle) travel is allowed in known habitat or locations of sensitive plant species.
- The RMP must not allow surface disturbing activities in threatened, endangered or sensitive plant species habitat.
- The RMP must target areas with threatened, endangered, or sensitive plants for noxious weed control activities as a first priority.
- The RMP must exclude areas with threatened, endangered, or sensitive plants from fuelwood cutting areas.
- BLM must review grazing allotments and address the protection of areas with threatened, endangered, or sensitive plants species.
- The RMP must not permit communication sites, oil and gas drilling pads, utility rights-of-way, and road rights-of-way in known areas with special status species populations.
- BLM must augment law enforcement personnel and field staff, and instruct them to concentrate efforts in areas with special status species habitat in order to curb noncompliance activities and protect sensitive species from irreversible impacts.
- The RMP must not allow reseeding or surface-disturbing restoration after fires in areas with special status plant species, as the natural diversity and vegetation structure must be allowed to provide regeneration.
- BLM must survey the planning area to document all "relict" or undisturbed plant communities—areas that have persisted despite the warming and drying of the interior west over the last several thousand years, or have not been influenced by settlement and post-settlement activities (livestock grazing, roads, energy development). These are unique areas that can be used as a baseline for gauging impacts occurring elsewhere in the planning area. The RMP should provide that relict and undisturbed plant communities must be managed for their protection; no activities that could negatively affect these communities should be allowed.
- Protection of riparian plant communities should receive special attention in the RMP (see section on riparian habitat management, below), and native cottonwood and willow communities along riparian areas should be targeted for protection and reestablishment where they have been eliminated or degraded.

There are a variety of vegetation restoration methods that can be used to restore and promote a natural range of native plant communities in the planning area. BLM must prohibit methods and projects that do not achieve the objective of restoring and promoting a natural range of native plant communities. Consequently, we believe BLM should establish the following standards in the RMP:

- Chaining, roller-chopping, or similar methods of vegetation manipulation must be prohibited due to the widespread disturbance they cause.
- Livestock must be excluded from a restoration/revegetation site for enough time to document that the restoration is successful.
- Although control of noxious weed species is a priority, chemical treatments of noxious weed species should be used only if damage to other resources in the area is significant, imminent and certain, and if damage to other resources (e.g., the damage to native species) is

determined to be of less significance than the noxious weed problem. Other means of noxious weed control should be given first priority.

- BLM must prioritize areas for which fire could improve the vegetation communities and then allow natural fires to burn in these areas (see section on fire policy, below).
- BLM must establish monitoring plots to determine the effectiveness of the treatments used for invasive plant control *and* to provide baseline data of overall change in conditions.
- Fuelwood harvesting must be carefully regulated, and should be concentrated in areas that have already been disturbed.

Visual Resources

GOAL: BLM should ensure that scenic value is a resource that is conserved and must establish clear management direction describing areas inventoried and possessing high scenic importance with clearly defined objectives that limit surface disturbance within important viewsheds.

1. Lands proposed for wilderness should be managed as Class I.
2. Lands within viewshed of Dinosaur National Monument and Browns Park National Wildlife Refuge (that are not proposed for wilderness) should be managed as Class II.
3. Lands within popular and the easily accessible vantage points (e.g. Lookout Mountain and Cedar Mountain) should be managed for visual resources, including clear provisions dealing with oil and gas development and other human disturbance.
4. ACECs should be used to protect scenic landscapes and lookout points within the resource area with stipulations specifically addressing and managing human development impacts.
5. Existing ACECs for visual resources should be retained with additional management prescriptions addressing human impacts to visual resources and be managed as Class I.

It is BLM policy that visual resource management (VRM) classes are assigned to all public lands as part of the Record of Decision for RMPs. The objective of this policy is to “manage public lands in a manner which will protect the quality of the scenic (visual) values of these lands.” BLM Manual MS-8400.02. Under the authority of FLPMA, the BLM must prepare and maintain on a continuing basis an inventory of visual values for each RMP effort. 43 U.S.C. § 1701; BLM Manual MS-8400.06. In addition, NEPA requires that measures be taken to “. . . assure for all Americans . . . aesthetically pleasing surroundings.” Once established, VRM objectives are as binding as any other resource objectives, and no action may be taken unless the VRM objectives can be met. See IBLA 98-144, 98-168, 98-207 (1998). The RMP must make clear that compliance with VRM classes is not discretionary.

In order to comply with the laws and regulations, the visual qualities of all lands within the RMP area must be inventoried, and VRM classifications for such lands must be analyzed in the EIS. We submit that all areas proposed for wilderness designation, whether citizen-proposed or otherwise, must be designated as VRM I “to preserve the existing character of the landscape.” This would also be true for any visual ACECs identified during the RMP revision process. Visual sensitivity within these areas is very high; the visual quality of these areas is of deep concern to thousands of individuals and local and national organizations; and any action that would impact visual resources within these areas would be extremely controversial and typically unnecessary or undue.

Oil and gas development severely degrades the visual quality of an area. We submit that all areas not currently being developed for oil and gas production should be classified as at least VRM II, in order to “retain the existing character of the landscape.” The fact that development has occurred in the past, however, should not limit VRM classifications. Indeed, BLM objectives for visual resource classes contemplate rehabilitating such areas in order to meet the VRM class determined through the RMP revision process. In addition, it must be noted that other management actions must reflect VRM classifications. For example, oil and gas leasing may need to be prohibited or no surface occupancy may be required so as to comply with the VRM class.

Water Quality

Goal: BLM should proactively manage both the quality and quantity of water resources.

The FLPMA establishes a general requirement that land use planning and the resulting plan provide for compliance with “pollution control laws.” 43 U.S.C. § 1712(c)(8). Compliance with the Clean Water Act (CWA) is an important element of this requirement.

The CWA establishes many requirements that BLM must adhere to in the RMP. It is imperative that BLM insure that waters on its lands comply with State water quality standards. 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 RMP must ensure all components of State water quality standards are met, not just numeric standards.

Adopting this legally sanctioned view of water quality standards is important. For example, a typical designated use for a stream might state that the stream is “protected for cold water species of game fish and other cold water aquatic life, including necessary organisms in their food chain.” Designated uses of this sort encompass a far more holistic, ecosystem-based view than focusing on, say, the concentration of chloride in the stream (a numeric standard). Consequently, the RMP should provide that designated uses be fully achieved, and if they are not, require prompt management changes even if numeric standards are otherwise being met. Similarly, narrative standards can often embody a better ecological synthesis than numeric standards, and thus BLM should ensure that they too are achieved. For example, a State’s narrative standard might make it illegal to contaminate a stream with “floating materials or scum that create objectionable odors or cause undesirable aquatic plant growth.” If the State water quality standards applicable to the RMP area have made narrative provisions a component of water quality standards, the RMP should ensure these narrative standards are fully met, and modify management where they are not.

For example, the designated uses for Vermillion Creek (from the Wyoming Boarder to Highway 318) in accordance with the Colorado Water Quality Standards (5 CCR 1002- 37) are:

- Class 2 – Warm Water Aquatic Life – waters that are not capable of sustaining a wide variety of war water biota due to physical habitat, water flows, or uncorrectable water quality conditions
- Class 2 – Secondary Contact Recreation – waters that are suitable or intended to become suitable for recreational uses on or about the water, including fishing and other streamside recreation
- Class 2 – Agriculture – waters that are suitable or intended to become suitable for irrigation of crops and that are not hazardous as drinking water for livestock.

Designated uses of this sort encompass a more holistic landscape and ecosystem-based view than focusing on, say, pH or chloride concentration in the surface water. Consequently, this RMP should provide for how these designated uses will be achieved, including recreational and agricultural uses, and if they are not, require prompt management changes even if numeric standards are otherwise being met. In meeting the narrative provisions and designated uses of the Colorado Water Quality

Standards, the RMP should clearly establish current conditions in the affected environment, goals, objectives and monitoring protocols for this and every watershed with the Little Snake Resource Area.

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. Of particular significance are Outstanding National Resource waters, where water quality must be maintained and protected. 40 C.F.R. §131.12(a)(3). Outstanding National Resource waters are waters that "constitute an outstanding National resource, such as waters of National and State parks and wildlife refuges and waters of exceptional recreational or ecological significance . . ." *Id.* (emphasis added). While States designate Outstanding National Resource waters, the Clean Water Action Plan makes it appropriate for BLM to identify waters that should be fully protected by this designation during its planning process, and to make recommendations to the State and EPA accordingly.

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 RMP should include 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 RMP is prepared. If any specific load allocation has been made by the State for activities on BLM lands, BLM should obviously ensure that these are complied with.

The RMP should ensure full compliance with sections 401 and 404 of the CWA. Section 401 requires State certification of compliance with State water quality standards prior to authorization of certain actions on BLM lands. 33 U.S.C. § 1341. The RMP 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 RMP, 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.

An important step toward complying with the CWA can be made by ensuring the RMP adheres to and incorporates elements of the Clean Water Action Plan. The Clean Water Action Plan makes many provisions, but several are particularly relevant to public lands management. The Clean Water Action Plan requires "managing natural resources on a watershed basis . . ." ²⁶. Federal agencies must adopt a policy that "will ensure a watershed approach to federal land and resource management that emphasizes assessing the function and condition of watersheds, incorporating watershed goals in planning, enhancing pollution prevention, monitoring and restoring watersheds, recognizing waters of exceptional value, and expanding collaboration with other agencies, states, tribes, and communities." *Id.* The BLM is specifically required to provide for "enhanced watershed restoration efforts, including the integration of watershed restoration as a key part of land management planning and program strategies," among many other requirements. *Id.* The BLM "will increase maintenance of roads and trails and aggressively relocate problem roads and trails to better locations. Where unneeded roads pose threats to water quality they will be obliterated and the land restored." *Id.* Implicit in this requirement is a prohibition on creating, or permitting, additional roads that could become problem roads, especially where there is no realistic basis given budget and personnel constraints to believe they can be adequately maintained. This requirement, of course, has special relevance relative to oil and gas extraction activities, which are typically characterized by a profusion of roads. Relative to riparian areas, the Clean Water Action Plan requires that BLM "will enhance the quality of streams and riparian zones and accelerate restoration." *Id.*

²⁶ See <http://www.cleanwater.gov/action/c2b.html>.

Similarly, the RMP should make provision for implementing BLM's Riparian-Wetland Initiative, and seek to implement the specific objectives established in that initiative, particularly the objective of restoring 75% of riparian areas to "proper functioning condition." The importance of implementing the Clean Water Action Plan and the Riparian-Wetland Initiative will be addressed further, below, in the section on riparian area management.

Air Quality

Goal: The BLM should prepare an Air Quality Baseline and Analysis Report and set air quality goals and objectives aimed at improving air quality both regionally and throughout the Little Snake Resource Area.

In endeavoring to prepare a management plan applying principles of adaptive management, the BLM would be remiss should an Air Quality Baseline and Analysis Report not be prepared as part of the NEPA analysis. The BLM should prepare such a report to be incorporated as baseline air quality of the EIS. Although air quality in the Yampa River Basin and the Little Snake Resource might be characterized as generally "good," there are several air quality issues of note: Environmental Protection Agency (EPA) 1993 designation of Steamboat Springs as a moderate non-attainment area under the National Ambient Air Quality Standards (NAAQS) for 24-hour PM-10 concentration. Additionally, the EPA issued 1996 citation to the Hayden Station for violations of the Clean Air Act due to its emissions of particulate matter, sulfur dioxide (SO₂) and nitrogen oxides (NO_x).

PM-10 is a measure of particulate matter between 2.5 and 10 µm in diameter. Local sources of PM-10 include, but are not limited to, dust from street sanding and unpaved roads, smoke from burning wood and coal, and oil and gas development. These microscopic particles can remain air-borne indefinitely, causing respiratory problems, visibility impairment, climate changes, and damage soil and vegetation. The NAAQS maximum 24-hour PM-10 is 150 µg/m³ and the average annual PM-10 is 50 µg/m³. (Yampa Valley Partners). The 24-hour PM-10 may not be exceeded more than three times during any consecutive 3-year period. Steamboat Springs had exceeded 150 µg/m³ on several occasions prior to 1997, with a maximum 3-year average exceedance of 2.31 in 1991. During the same period (1991–2000), Steamboat Springs had not exceeded the average annual PM-10. Moreover, it had not exceeded the 24-hour PM-10 since 1996 and, in 2001, the City of Steamboat Springs, Routt County and State of Colorado filed requested that EPA redesignate the city as a PM-10 attainment area.

The U.S. Forest Service (USFS) concluded that visibility in the Mount Zirkel Wilderness Area may have been impaired, and that impairment was due, in part, to the Craig and Hayden power stations. The Mount Zirkel Visibility Study, funded by the owners of Craig and Hayden stations, and jointly managed by the owners, USFS, and State of Colorado, was completed in 1996. Under the terms of a 1996 settlement, Public Service Company (now Xcel Energy) agreed to install air pollution controls on its Hayden Station to remove more than 20,000 tons per year of air pollutants that had adversely impacted air quality and make progress toward reducing acid precipitation in the Mount Zirkel Wilderness Area. Controls were installed in 1999, which should reduce SO₂ emissions by 85%, and NO_x emissions by 50% (DOJ 1996; Ely 1999).

- **This RMP should seek to exceed local, State and Federal air quality standards.**

The RMP must manage actions on public lands to meet the air quality standards prescribed by Federal, State, and local laws. Meeting the requirements of applicable State implementation plans and ambient air quality standards is a must, and air quality in non-attainment areas must be improved. Protecting air quality should be a priority – not just an afterthought that is done if convenient or "feasible." The FLPMA requires BLM to consider the relative value of the various resources, and indeed clean air is quickly becoming (along with undeveloped landscapes) a most valued, yet dwindling resource. Therefore, BLM should take a proactive approach to managing air quality by, among other things: gathering baseline air quality data; setting aggressive standards; requiring any

actions on public lands to meet those standards (i.e. no flaring, no two-stroke engine use on public lands, etc); analyzing the cumulative impact of any proposed action with other past, present, and reasonably foreseeable actions; establishing an effective monitoring program; and halting any actions that contribute to air pollution if such monitoring reveals that standards have been exceeded.

The EIS should address the issue of regional haze and the destruction of viewsheds caused by haze. Much of the air pollution causing this haze can be attributed to coal-fired power plants and a general increase in the burning of fossil fuels within and beyond the RMP region. Accelerated oil, gas, and coalbed methane development on Federal, State and private lands is another contributor. Part and parcel of reducing regional haze are the requirements in the Clean Air Act for the prevention of significant deterioration of air quality and protection of air quality in various airshed categories, particularly in Class I airsheds applicable to National Parks and wilderness areas. The EIS should address how prevention of significant deterioration requirements can be met, and the RMP should require steps to ensure they are met. Class I airsheds within 100 kilometers of the Little Snake Resource Area include, the Mount Zirkel Wilderness, Service Creek Wilderness, Flat Tops Wilderness, Eagles Nest Wilderness, Rawah Wilderness, and Rocky Mountain National Park.

Oil and gas development activities directly contribute to air pollution in several ways, and all should be addressed in the RMP EIS. Oil and gas development activities produce large surface disturbances (pads and roads) and increase vehicle traffic, which contributes to particulate pollution. Oil and gas development activities also contribute to NO_x, SO₂, and volatile organic compound (VOCs) pollution, through activities like flaring, drilling, processing plants, and wellhead compressors and compressor stations, to name a few. The Environmental Protection Agency (EPA) has prepared a report on the oil and gas extraction industry.²⁷ Data in the report show the oil and gas extraction industry ranks as follows in terms of creating air pollutants among the 29 industrial sectors EPA had data for in 1997:

<u>Pollutant</u>	<u>Ranking (out of 29)</u>
CO	9 th
NO ₂	3 rd
PM ₁₀	14 th
Particulates	22 nd
SO ₂	2 nd
VOC	5 th

These data emphasize the importance of regulating air pollution from oil and gas development activities in the RMP area.

As indicated, air pollution problems, perhaps more than any other environmental problem, are not subject to human-created, artificial boundaries. Consequently, the EIS must consider air pollution problems existing in the RMP area (whatever their source) at appropriately broad scales. Moreover, the preparation of a baseline air quality baseline and analysis report will guide local communities and BLM in understanding air quality impacts associated with future development and mitigation measures.

Cumulative Effects

Goal: The BLM should address in a comprehensive manner the “connected,” “cumulative,” and “similar actions” associated with the variety of human activities including regional oil and gas development.

²⁷ Profile of the Oil and Gas Extraction Industry, EPA Office of Compliance, Sector Notebook Project, October 2000.

In order to take the “hard look” required by NEPA, BLM is required to assess impacts and effects that include: “ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative.” 40 C.F.R. § 1508.8. (emphasis added). To ensure that the combined effects of separate activities do not escape consideration, NEPA also requires BLM to consider cumulative environmental impacts in its environmental analyses. See *Davis v. Mineta*, 302 F.3d 1104, 1125 (10th Cir. 2002); see also *Grand Canyon Trust v. Federal Aviation Admin.*, 290 F.3d 339, 345-47 (D.C. Cir. 2002). The NEPA regulations define “cumulative impact” as:

the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

40 C.F.R. § 1508.7. (emphasis added). The analysis of impacts included in the FEIS does not adequately address the cumulative impacts of oil and gas operations within the region or the impacts inherent in the proposed action.

Based on these regulations, the EIS must provide useful analysis not only of the indirect effects of the proposed action, but also of these effects in combination with past, present, and future actions. *City of Carmel-By-The-Sea v. U.S. Dept. of Transp.*, 123 F.3d 1142, 1160 (9th Cir. 1997). As the court in *Grand Canyon Trust* has held, the fact that a project may result in even a small incremental increase in the overall impacts to a resource is meaningless if “there is no way to determine . . . whether [this small increase] in addition to the other [impacts], will ‘significantly affect’ the quality of the human environment.” *Grand Canyon Trust*, 290 F.3d at 346.

For determining the scope of the impacts associated with the likely impacts of a project, the Council on Environmental Quality’s regulations require that federal agencies consider “connected actions” and “cumulative actions” together with “direct” and “indirect” impacts (40 CFR § 1508.25). According to NEPA connected actions are those that:

1. “automatically trigger other actions” which may require an EIS;
2. actions that cannot or will not proceed without other previous or simultaneous actions; and,
3. actions that are “interdependent parts” of a larger action and “depend on the larger action for their justification.”

(emphasis added, 40 CFR § 1508.25(a)). Additionally, the CEQ regulations define similar actions as those which “have similarities that provide a basis for evaluation their environmental consequences together, such as common timing or geography.” Currently, there are proposals to construct two interstate pipelines bisecting the Little Snake Resource Area, one a 330 mile 42 inch pipeline with the initial capacity of 1.3 billion cubic feet/day (See Entrega Gas Pipeline Project, FERC, Docket No. PF04-7-000) and the second a 143 mile 24 inch pipeline (See Piceance Basin Expansion Project, FERC, Docket No. PF04-13-000). These projects are associated with development similar, in both timing and geography, to that which is occurring within this resource area and will provide increased transmission capabilities reasonably foreseeable to be connected to this resource area and increased development south of the Little Snake Resource Area. The unprecedented development already approved in the Piceance basin to the south, along with all ongoing oil and gas projects in southwestern Wyoming, should be considered as BLM analyzes impacts of development within this resource area.

There are regional impacts this EIS must consider, in terms of changes to the water quantity and quality, and cumulative impacts to the common airshed, to which oil and gas projects in northeastern Utah, northwestern Colorado, and southwestern Wyoming all contribute in common. Because these environmental parameters share a common geography, BLM must analyze all of the impacts that

affect them. Similarly, changes to the environmental parameters will affect the core habitat and linkages that are critical for survival of wildlife and vegetation in this region.

While federal agencies have considerable discretion in determining the scope of a NEPA document, there are situations where an agency must consider several related actions in a single NEPA document. In *Fritiofson v. Alexander*, the U.S. Court of Appeals for the Fifth Circuit held that in a cumulative impact analysis, an agency should consider “(1) past and present actions without regard to whether they themselves triggered NEPA responsibilities and (2) future actions that are ‘reasonably foreseeable,’ even if they are not yet proposals and may never trigger NEPA-review requirements. 772 F.2d 1225, 1245 (5th Cir. 1985). The court stated:

Sections 1508.7 and 1508.27 require an analysis, when making the NEPA-threshold decision, as opposed to the EIS-scoping decision, whether it is “reasonable to anticipate cumulatively significant impacts” from the specific impacts of the proposed project when added to the impacts from “past, present, and reasonably foreseeable future actions,” which are “related” to the proposed project. The regulation does not limit the inquiry to the cumulative impacts that can be expected from proposed projects; rather, the inquiry also extends to the effects that can be anticipated from “reasonably foreseeable future actions.”

Id. at 1243 (emphasis added). In this case, BLM’s obligation to analyze impacts extends beyond the immediate impacts of the project at hand to include the cumulative impacts of the project, taken together with the impacts of existing, proposed, or reasonably foreseeable projects, on the environment. In doing so, the BLM must describe and analyze such impacts beyond the borders of the Little Snake Resource Area.

North of the Little Snake Resource Area, in Wyoming BLM is currently evaluating or has approved a number of oil and gas projects pending in the Washakie Basin of the southern Red Desert, including those summarized in the table below:

<u>Project Name</u>	<u>Number of Wells</u>	<u>BLM Field Office</u>	<u>Status</u>
Copper Ridge Shallow Gas Project	89	Rock Springs	Decision Record signed, 12/12/03
Pacific Rim Shallow Gas Project	120	Rock Springs	Scoping Statement, 10/17/03
Bitter Creek Coalbed Methane Project/Shallow Gas Development Project	61	Rock Springs	Scoping Statement, Received 10/20/04
Atlantic Rim Coalbed Methane Project and various exploratory pods	3,880	Rawlins	Notice of Intent to Prepare Environmental Impact Statement, 6/26/01 (66 Fed. Reg. 33975)
Continental Divide/Wamsutter II Natural Gas Project	2,130	Rawlins and Rock Springs	Record of Decision, 6/21/00
South Baggs Area Natural Gas Development Project	50	Rawlins	Record of Decision, 8/8/00
Vermillion Basin Natural Gas Exploration and Development Project	56	Rock Springs	Record of Decision, 8/9/00

The distribution of these projects in the Red Desert and in geographic relation to the Little Snake Resource Area, as well as their relationship to sage grouse leks and big game habitat, birthing grounds and migration routes within this resource area are illustrative of the need to address the regional impacts of development. Each of these projects will have a connected and cumulative effect on resources ranging from elk and pronghorn herds to bird of prey populations, sage grouse populations, air quality, water quality (and erosion and sedimentation), and overall potential for primitive recreation and hunting opportunities in the area. Therefore, the impacts of these projects and similar projects in Colorado, Utah and Wyoming should be taken into account as part of the analysis of cumulative impacts associated with the additional development of the EIS. A failure to include a cumulative impact analysis of actions within a larger region will render NEPA analysis insufficient. See, e.g., *Kern v. U.S. Bureau of Land Management*, 284 F.3d 1062, 1078 (9th Cir. 2002) (analysis of root fungus on cedar timber sales was necessary for entire area).

CONCLUSION:

To ensure the above desired outcomes occur, BLM must develop alternatives in the EIS that explicitly incorporate the above legal obligations, and the preferred alternative certainly must meet these legal standards. Alternatives embodying these elements must not be treated as straw men whose only function is to provide “extremes” against which to contrast “moderate” alternatives because all of the elements (affirmative protection of endangered species, restoration of the ecological integrity of the Nation’s waters, protection of wilderness character, etc.) are legally required and have been established as the desired outcome for the public lands by Congress. To the contrary, BLM must provide full, careful, and objective consideration of alternatives embodying these elements.

Under the CEQ regulations, rigorous analysis of all reasonable alternatives is “the heart” of an EIS. Under the FLPMA, the chosen alternative must “best” meet the needs of the American people as a whole. FLPMA makes it explicitly appropriate that not all uses be accommodated in all areas, and requires consideration of the relative values of resources, which cannot be defined in solely economic terms. The elements of an alternative outlined here are appropriate and reasonable under these standards, and thus should be fully considered in the EIS and adopted by BLM in the RMP.

If you have any questions, or need help locating the various references not included in hard copy with these scoping comments, please feel free to give me a call at 970.871.5241.

Sincerely,

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