

*Director's Protest Resolution Report*

**Pinedale**  
**Resource Management Plan**

November 25, 2008



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## Reader's Guide

### *How do I read the Report?*

The Director's Protest Resolution Report is divided up into sections, each with a topic heading, excerpts from individual protest letters, a summary statement (as necessary), and the BLM's response to the summary statement.

### **Report Snapshot**

**Issue Topics and Responses**

NEPA — Topic heading

Submission number

Protest issue number

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**Issue Number:** PP-CA-ESD-08-0020-10

**Organization:** The Forest Initiative — Protesting organization

**Protester:** John Smith — Protester's name

**Issue Excerpt Text:** — Direct quote taken from the submission

Rather than analyze these potential impacts, as required by NEPA, BLM postpones analysis of renewable energy development projects to a future case-by-case analysis.

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**Summary** — General statement summarizing the issue excerpts (optional).

There is inadequate NEPA analysis in the PRMP/FEIS for renewable energy projects.

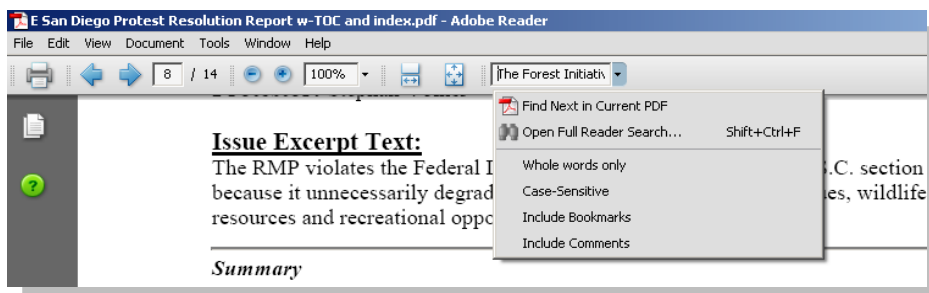
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**Response** — BLM's response to the summary statement or issue excerpt if there is no summary.

Specific renewable energy projects are implementation-level decisions rather than RMP-level decisions. Upon receipt of an application for a renewable energy project, the BLM would require a site-specific NEPA

### *How do I find my Protest Issues and Responses?*

1. Find your submission number on the protesting party index which is organized alphabetically by protester's last name.
2. In Adobe Reader search the report for your name, organization or submission number (do not include the protest issue number). Key word or topic searches may also be useful.



## List of Commonly Used Acronyms

ACEC	Area of Critical Environmental Concern	IB	Information Bulletin
APD	Application for Permit to Drill	IM	Instruction Memorandum
BA	Biological Assessment	MOU	Memorandum of Understanding
BLM	Bureau of Land Management	NEPA	National Environmental Policy Act of 1969
BMP	Best Management Practice	NHPA	National Historic Preservation Act of 1966, as amended
BO	Biological Opinion	NOA	Notice of Availability
CAA	Clean Air Act	NOI	Notice of Intent
CEQ	Council on Environmental Quality	NRHP	National Register of Historic Places
CFR	Code of Federal Regulations	NSO	No Surface Occupancy
COA	Condition of Approval	OHV	Off-Highway Vehicle (has also been referred to as ORV, Off Road Vehicles)
CSU	Controlled Surface Use	RFDS	Reasonably Foreseeable Development Scenario
CWA	Clean Water Act	RMP	Resource Management Plan
DM	Departmental Manual (Department of the Interior)	ROD	Record of Decision
DOI	Department of the Interior	ROW	Right-of-Way
EA	Environmental Assessment	SHPO	State Historic Preservation Officer
EIS	Environmental Impact Statement	SO	State Office
EO	Executive Order	T&E	Threatened and Endangered
EPA	Environmental Protection Agency	USC	United States Code
ESA	Endangered Species Act	VRM	Visual Resource Management
FEIS	Final Environmental Impact Statement	WA	Wilderness Area
FLPMA	Federal Land Policy and Management Act of 1976	WSA	Wilderness Study Area
FO	Field Office (BLM)	WSR	Wild and Scenic River(s)
GIS	Geographic Information Systems		

## *Protesting Party Index*

<b>Protester</b>	<b>Organization</b>	<b>Submission Number</b>	<b>Determination</b>
	The Greater Yellowstone Coalition	PP-WY-Pinedale-08-0012	Denied-Issues Comments
	The Wilderness Society	PP-WY-Pinedale-08-0012	Denied-Issues Comments
	Wyoming Outdoor Council	PP-WY-Pinedale-08-0012	Denied-Issues Comments
Baker, Linda	Upper Green River Valley Coalition	PP-WY-Pinedale-08-0012	Denied-Issues Comments
Brooks, Constance	Coalition of Local Governments	PP-WY-Pinedale-08-0006	Denied-Issues Comments
Cooper, Linda	SDSBT	PP-WY-Pinedale-08-0002	Denied-Issues Comments
Heath, Constance	EnCana Oil & Gas, Inc.	PP-WY-Pinedale-08-0001	Denied-Issues Comments
Heilig, Daniel	Western Resource Advocates (National Audubon Society and Audubon Wyoming)	PP-WY-Pinedale-08-0010	Denied-Issues Comments
Matheny, J. Paul	Questar	PP-WY-Pinedale-08-0013	Denied-Issues Comments
Molvar, Erik	Biodiversity Conservation Alliance	PP-WY-Pinedale-08-0004	Denied-Issues Comments
Purves, Cathy	Trout Unlimited	PP-WY-Pinedale-08-0009	Denied-Issues Comments
Ratner, Jonathan	Western Watersheds Project	PP-WY-Pinedale-08-0011	Denied-Issues Comments
Sgamma, Kathleen	Independent Petroleum Association of Mountain States	PP-WY-Pinedale-08-0008	Denied-Issues Comments
Walker, Ronald	Individual	PP-WY-Pinedale-08-0003	Denied-Issues Comments
Wilmoth, Thomas	Theodore Roosevelt Conservation Partnership	PP-WY-Pinedale-08-0005	Denied-Issues Comments
Zimmerman, Kathleen	National Wildlife Federation	PP-WY-Pinedale-08-0007	Denied-Issues Comments



## *Issue Topics and Responses*

### *National Environmental Policy Act*

#### *Range of Alternatives*

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##### ***Summary***

The PRMP/FEIS does not provide an adequate range of alternatives with respect to all resource uses. See the topics that follow regarding specific resource uses raised by protesters.

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##### ***Response***

The BLM considered a reasonable range of alternatives during the Pinedale planning process in full compliance with the NEPA. The CEQ regulations (40 CFR § 1502.1) require that the BLM consider reasonable alternatives that would avoid or minimize adverse impacts or enhance the quality of the human environment. While there are many possible alternatives or actions to manage public lands in the Pinedale planning area, the BLM used the scoping process to determine a reasonable range of alternatives. As a result, four alternatives were analyzed in detail in the PRMP/FEIS that best addressed the issues and concerns identified by the affected public.

The BLM's range of alternatives in the Pinedale PRMP/FEIS represented a full spectrum of options including a no action alternative (current management, Alternative 1); an alternative emphasizing resource use (Alternative 2); an alternative emphasizing conservation and constraints to resource use (Alternative 3); and a Proposed Plan (based on Alternative 4 from the DEIS) that optimizes production of oil and gas resources while providing the appropriate level of environmental protection for surface resources (Section 2.4, p. 2-21 to 2-25).

The BLM acknowledges that there could be a large number of variations to alternatives put forth in the RMP process. However, the BLM is not required to analyze in detail each variation, including those variations determined not to meet the RMP's purpose and need or those determined to be unreasonable given BLM mandates, policies, and programs including the FLPMA and other Federal laws and regulations applicable to public lands. The CEQ states that when there are potentially a very large number of alternatives only a reasonable number of examples covering the full spectrum of alternatives must be analyzed and compared in the EIS (Forty Most Asked Questions Concerning CEQ's NEPA Regulations, 46 Fed. Reg. 18,026, 18,031 (March 23, 1981)). Each of the alternatives considered and analyzed in detail in the Pinedale RMP achieves the purpose and need for the plan, is implementable, and addresses all significant issues. The BLM's Proposed Plan is the result of a broad range of analysis and public input and represents a balanced, multiple-use management strategy that protects resources and allows for commodity uses.

A detailed rationale is provided for the alternatives and management options considered but eliminated from detailed analyses in Section 2.2.2 of the PRMP/FEIS (p. 2-3 to 2-7).

## Range of Alternatives–Grazing

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**Issue Number:** PP-WY-Pinedale-08-0011-5

**Organization:** Western Watersheds Project

**Protester:** Jonathan Ratner

**Issue Excerpt Text:**

The RMP considers no real range of alternatives with respect to livestock grazing (PRMP Chapter 2).

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**Issue Number:** PP-WY-Pinedale-08-0011-6

**Organization:** Western Watersheds Project

**Protester:** Jonathan Ratner

**Issue Excerpt Text:**

There was no analysis of alternatives such as No Grazing, Significantly Reduced Grazing or closing sensitive areas such as wilderness quality lands, riparian areas, ACECs or areas with sensitive soils, cultural or paleontological, or wildlife resources, to livestock or the application of a suite of management standards based on current science to reduce impacts.

This violates the National Environmental Policy Act (NEPA), 42 D.S.C. §§ 4321-4361, requirement that federal agencies analyze a reasonable range of alternatives. 42 U.S.C. §§ 4332(2)(C)(iii) (EIS must contain "a detailed statement [of]... alternatives to the proposed action"); 4332(2)(E) (independent

requirement that agencies must "study, develop, and describe appropriate alternatives to recommend courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources"). The alternatives section is "the heart" of a NEPA analysis. See 40 C.F.R. § 1502.14. There is no difference in the amount of acres of public lands the BLM considered leaving open, or available, for grazing. All alternatives continued the status quo of maintaining the entire Field Office open to grazing by livestock.

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**Issue Number:** PP-WY-Pinedale-08-0011-61

**Organization:** Western Watersheds Project

**Protester:** Jonathan Ratner

**Issue Excerpt Text:**

The RMP maintains the status quo by continuing with the same authorized use level and grazed areas. By failing to adequately assess on-the-ground conditions and the impacts of current livestock grazing in the resource management planning process, the BLM has maintained the status quo by default. As a result, the RMP does not constitute a reasoned and informed decision in the public interest with respect to whether the land within the planning area can continue to endure livestock grazing.

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### *Summary*

The PRMP/FEIS does not provide a reasonable range of alternatives with respect to livestock grazing.

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### *Response*

The BLM considered a reasonable range of alternatives with respect to livestock grazing. The PRMP/FEIS considered a reduced grazing alternative in Alternative 3, which would reduce permitted active AUMs across the planning area by 22 percent, as well as closing 13 allotments (122,091 acres; 12,229 AUMs) located in intensively developed gas fields (Section 2.5.4, p. 2-78). The total grazing reduction of these actions would potentially be 32 percent of current permitted active AUMs. In addition, Alternative 2 considered activating suspended non-use AUMs, up to a potential total of 55,175 additional AUMs, an increase of 51 percent (Section 2.5.3, p. 2-55). As described in Section 2.2.2, an alternative closing the planning area to all grazing was not considered in detail because it would not meet the purpose and need of the PRMP/FEIS.

For additional information, please refer to the general response for "Range of Alternatives."

## Range of Alternatives-Sage-grouse

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**Issue Number:** PP-WY-PINEDALE-08-0004-15  
**Organization:** Biodiversity Conservation Alliance  
**Protester:** Erik Molvar

**Issue Excerpt Text:**

A Blueprint for *Sage-grouse* Conservation and Recovery by Dr. Clait Braun, arguably the world's leading expert on Sage-grouse conservation provides recommendation for Sage-grouse conservation, was submitted to the BLM during the planning process but was ignored by BLM. See Attachment 1. Dr. Braun's recommendations constituted a reasonable

alternative based on the best available science that would place a moratorium on the construction of well, roads, and other infrastructure for the important nesting habitat that occurs within 3 miles of a Sage-grouse lek. Conservation groups requested similar measures throughout the NEPA process under the Responsible Energy Development Alternative. Yet BLM never considered the implementation of Dr. Braun's recommendations (or the RED's) in any of its own alternatives, in the absence of an analysis showing these alternatives to be unreasonable. This violates NEPA's range of alternatives requirement.

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### *Summary*

The range of alternatives regarding Sage-grouse management do not take into consideration the best available science.

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### *Response*

The BLM incorporated current research regarding Sage-grouse management into Alternative 3 of the PRMP/FEIS (Section 2.5.4, p. 2-98 to 2-99).

## *Baseline Data*

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### *Summary*

The BLM has failed to take the "hard look" required by the NEPA because it did not use adequate baseline data for its analysis and/or necessary inventories and studies were not conducted. See the topics that follow regarding specific resources/uses raised by protesters.

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### *Response*

The prerequisite level of information necessary to make a reasoned choice among the alternatives in an EIS is based on the scope and nature of the proposed decision. The baseline data provided in chapter 3 and various appendixes in the Pinedale PRMP/FEIS is sufficient to support, at the general land use planning-level of analysis, the environmental impact analysis resulting from management actions presented in the PRMP/FEIS.

A land use planning-level decision is broad in scope and, therefore, does not require an exhaustive gathering and monitoring of baseline data. Although the BLM realizes that more data could always be gathered, the baseline data provides the necessary basis to make informed land use plan-level decisions. Land use plan-level analyses are typically broad and qualitative rather than quantitative or focused on site-specific actions. The BLM will conduct subsequent project-specific NEPA analyses for projects proposed for implementation under the land use plan that may include but are not limited to oil and gas field development, allotment management plans, and public land use authorizations (Section 2.3.18, p. 2-20). These subsequent NEPA analyses

will tier to the land use planning analysis and evaluate project impacts at the site-specific level (see 40 CFR 1502.20 and 1508.28). As part of the NEPA process, the public will be presented with the opportunity to participate in the environmental analysis process for these future implementation actions.

Before beginning the Pinedale land use plan revision process and throughout the planning effort, the BLM considered the availability of data from all sources, adequacy of existing data, data gaps, and the type of data necessary to support informed management decisions at the land use plan-level. The data needed to support broad-scale analysis of the 1.2 million acre planning area are substantially different than the data needed to support site-specific analysis of projects proposed for implementation under the land use plan. Much of the data in the DRMP/DEIS and PRMP/FEIS is presented in map form and is sufficient to support the gross scale analyses required for land use planning.

The BLM used the most recent and best information available that was relevant to a land use planning-scale of analysis. During preparation of the RMP/EIS, the BLM consulted with and used data from other agencies and sources, including but not limited to U.S. Geological Survey, Wyoming Game and Fish Department, Wyoming State Geologic Survey, Wyoming Oil and Gas Conservation Commission, U.S. Fish and Wildlife Service, Natural Resource Conservation Service, Native American Tribes, Sublette County, the Sublette County Conservation District, and the Wyoming Department of Environmental Quality. The BLM consulted on the analysis and the incorporation of available data into the PRMP/FEIS with its cooperating agencies and other agencies with jurisdiction or expertise. Considerations included but were not limited to: big game herd numbers and trends; migratory routes and uses; crucial habitat areas (i.e., wintering, calving), locations, and sensitivities; greater Sage-grouse breeding, nesting, and brood-rearing and wintering areas; threatened and endangered species and their habitat; oil and gas development potential; livestock grazing use; uses on State lands; and heritage resource values including traditional Native American concerns.

As a result of these actions, the Pinedale Field Office gathered the necessary data essential to make a reasoned choice among the alternatives analyzed in detail in the PRMP/FEIS. The BLM utilized the available data to provide an adequate analysis that led to an adequate disclosure of the potential environmental consequences of the alternatives (refer to Chapter 4, p. 4-1 to 4-299). As a result, the BLM has taken a “hard look,” as required by the NEPA, at the environmental consequence of the alternatives in the Pinedale RMP to enable the decisionmaker to make an informed decision.

### **Baseline Data–Off-Highway Vehicles**

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**Issue Number:** PP-WY-Pinedale-08-0011-37

**Organization:** Western Watersheds Project

**Protester:** Jonathan Ratner

**Issue Excerpt Text:**

the RMP does not analyze the baseline condition of the planning area OHV use. BLM has not presented baseline inventories and evaluations of OHV damage to the ecosystems and specific ecosystem components such as soils, microbiotic crusts, fish and wildlife, and native vegetation. There is no analysis

of the extent of user created roads and trails, or the loss in wilderness or ACEC quality resources due to OHVs.

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**Issue Number:** PP-WY-Pinedale-08-0011-55

**Organization:** Western Watersheds Project

**Protester:** Jonathan Ratner

**Issue Excerpt Text:**

The RMP also fails to present any baseline or other inventory data on the effects of OHV use within the

planning area. There is no evidence that the BLM has "prepare[d] and maintain[ed] on a continuing basis an inventory" of this particular resource use and its effects on other resource values such as road and trail

density, habitat fragmentation, degradation of wilderness quality lands, wildlife displacement, soil erosion, invasives and loss of biological crusts.

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### **Summary**

The BLM did not use adequate baseline data with respect to OHV use and impacts.

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### **Response**

The PRMP/FEIS includes an adequate description of baseline data associated with OHV use. Section 3.12.3 (p. 3-102 to 3-104) includes OHV use descriptions and trends in the planning area as well as a discussion of OHV use/resource conflicts. Areas in the planning area that experience high levels of OHV use are identified. The expansion of trails by ATVs and motorcycles is also discussed. As described in Section 3.12.3, increased OHV use during the past 10 to 15 years in the planning area has created some identifiable concerns such as degradation of water quality, loss of vegetation, alteration of the visual landscape, impacts on wildlife in crucial winter habitat, and noise (p. 3-103).

For additional information, please refer to the general response for "Baseline Data."

### **Baseline Data—Grazing**

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**Issue Number:** PP-WY-PINEDALE-08-0006-50  
**Organization:** Coalition of Local Governments  
**Protester:** Constance Brooks

**Issue Excerpt Text:**

The FEIS notes that the ecological inventory data are more than 20 years old and that BLM has not evaluated all of the allotments with respect to rangeland health. The FEIS states that only 67% of the allotments have been evaluated for compliance with rangeland health standards and that of those 16% did not meet one or more of the standards. FEIS 3-33. Comments elsewhere suggest that 60% of the allotments in the planning area will not meet range health standards. A27- 440. BLM response does not refute the assessment with respect to health of sagebrush communities and role of livestock grazing. Thus, it is impossible to evaluate the effects of various management provisions on livestock grazing program, due to outdated and incomplete data.

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**Issue Number:** PP-WY-Pinedale-08-0011-28  
**Organization:** Western Watersheds Project  
**Protester:** Jonathan Ratner

**Issue Excerpt Text:**

The RMP failed to adjust stocking rates to account for the increase in livestock weights, birth rates/times

and forage consumption that has occurred since the adjudication of the allotments following range surveys in the 1950's and 1960's. Thus, the data on which BLM bases its stocking rates in the RMP is out of date and should have been updated for this RMP by reducing stocking rates accordingly (50%).

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**Issue Number:** PP-WY-Pinedale-08-0011-35  
**Organization:** Western Watersheds Project  
**Protester:** Jonathan Ratner

**Issue Excerpt Text:**

In order to develop a reasonable range of alternatives and analyze the impacts that each alternative will have, it is essential to know the baseline conditions of the planning area. Yet, BLM has not presented baseline inventories and evaluations of the impacts that livestock grazing has had, and continues to have, on ecosystems and specific ecosystem components such as soils, microbiotic crusts, fish and wildlife, and native vegetation.

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**Issue Number:** PP-WY-Pinedale-08-0011-61  
**Organization:** Western Watersheds Project  
**Protester:** Jonathan Ratner

**Issue Excerpt Text:**

The RMP maintains the status quo by continuing

with the same authorized use level and grazed areas. By failing to adequately assess on-the-ground conditions and the impacts of current livestock grazing in the resource management planning process, the BLM has maintained the status quo by

default. As a result, the RMP does not constitute a reasoned and informed decision in the public interest, with respect to whether the land within the planning area can continue to endure livestock grazing.

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### **Summary**

The BLM did not use adequate baseline data with respect to grazing and grazing impacts.

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### **Response**

The best available data and information was used in preparation of the PRMP/FEIS. Baseline data regarding livestock grazing is described in Section 3.6.2 of the PRMP/FEIS including information on season of use (p. 3-29 to 3-31). Baseline data on rangeland conditions is contained in Section 3.6.4 (p. 3-33 to 3-35). Appendix 20 (A20-1 to A20-12) presents specific information about range allotments in the planning area and rangeland standards assessments for the allotments. Appendix 21 (A21-1 to A21-5) includes acres and Animal Unit Months by land status by allotment in the planning area. Baseline data on soils, fish and wildlife habitat, and vegetation are contained in Chapter 3 of the PRMP/FEIS (Sections 3.11, 3.13, and 3.18 respectively).

Livestock grazing decisions at the planning level are broad allocations. The discussions of impacts to other resources, including the current impacts described in the analysis of the No Action Alternative, are sufficient to support these types of decisions. According to BLM policy as described in the FEIS, Section 2.5.5 (p. 2-116 to 2-117), decisions regarding authorized livestock use, levels, and the terms and conditions under which they are managed is an implementation decision (H-1610-1, Appendix C, p. 15). The BLM assesses the condition of rangeland health, conducts monitoring and inventories, and evaluates this data on a periodic basis, normally on an allotment and/or watershed basis. After appropriate NEPA analysis, changes to livestock management deemed necessary to meet or progress towards meeting management objectives are implemented through a formal decision-making process in accordance with 43 CFR § 4160. These decisions determine the appropriate levels of use by livestock at the allotment scale, in conformance with the RMP, to meet resource objectives and maintain or enhance land health.

In light of this process for making subsequent site-specific grazing decisions, the baseline information disclosed in the FEIS is sufficient to support the administrative record for this RMP and the broad-scale decisions concerning grazing that are made at the planning level. For additional information, please refer to the general response for "Baseline Data".

### **Baseline Data–Water**

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**Issue Number:** PP-WY-PINEDALE-08-0002-11

**Organization:** SDSBT

**Protester:** Linda J. Cooper

**Issue Excerpt Text:**

In each set of its comments, as noted earlier, SDSBT

made the case that the northern part of the PPRMP area has been neglected. SDSBT has stressed at every stage of this process that there is essentially no reliable and relevant information regarding either the underlying aquifers, or surface water hydrology to inform leasing and development and planning

decisions on the scale embodied in proposed Eagle Prospect Noble Basin Development Plan and the PPRMP-Preferred Alternative 4.

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**Issue Number:** PP-WY-PINEDALE-08-0002-14

**Organization:** SDSBT

**Protester:** Linda J. Cooper

**Issue Excerpt Text:**

In the PPRMP disclaimer, 4.1.2 Availability of Data and Incomplete Information Chapter 4, Introduction 4-2, hydrogeology is in fact identified as a topic where incomplete information is available. Yet in the recently signed Pinedale Anticline ROD there is mention of a Hydrogeological Model completed in 2007. SDSBT finds this inconsistency puzzling in as much as the BLM would have to have data in order to create even a theoretical model. And if that data and

that model only represent the Green River/ Colorado River system hydrogeology, then it again reinforces our assertion that without water data from the region north of the Rim that is also in the PPRMP area, the designation of "available for traditional leasing" is inappropriate for water intensive deep drilling energy extraction.

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**Issue Number:** PP-WY-PINEDALE-08-0002-3

**Organization:** SDSBT

**Protester:** Linda J. Cooper

**Issue Excerpt Text:**

SDSBT specifically protests the complete absence of both surface water and hydrogeological information to inform planning, leasing and development decisions, especially in the Bondurant Basin and more generally in the entire Hoback River Basin.

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***Summary***

The BLM did not use adequate baseline data with respect to water.

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***Response***

The best available information and data were used in preparation of the Pinedale PRMP/FEIS. Baseline data on surface water in the planning area is contained in Section 3.15.1 (p. 3-120 to 3-123) and includes information on watershed, surface water supply and use, surface water quality, surface water rights, floodplains, and overall watershed stream health. Baseline data on groundwater in the planning area is contained in Section 3.15.2 of the PRMP/FEIS (p. 3-123 to 3-124) and includes information on groundwater supply and use as well as groundwater quality. The northern part of the planning area is specifically mentioned on page 3-123. The discussion in the PRMP/FEIS is general, however, and applies to the entire planning area.

The hydrogeological model completed for the Anticline Supplemental EIS process (referred to in the SDSBT protest) addresses specific actions in the Anticline portion of the planning area and cannot be extrapolated to the entire Pinedale RMP planning area. This level of detailed analysis is beyond the scope of a general land use plan. As appropriate, similar hydrogeologic studies may be undertaken for future projects in other parts of the planning area.

For additional information, please refer to the general response for "Baseline Data."

**Baseline Data–Sage-grouse**

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**Issue Number:** PP-WY-PINEDALE-08-0002-27

**Organization:** SDSBT

**Protester:** Linda J. Cooper

**Issue Excerpt Text:**

they [BLM] might have as well investigated the Sage-grouse presence in the BLM lands adjacent to Hoback Ranches as well as within the Ranches. But as the Map 23-6 shows, the northern portion of the plan area is not included on the Sage-grouse Map.

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### **Summary**

The BLM did not present accurate baseline data on Sage-grouse in the northern portion of the planning area.

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### **Response**

The BLM gets its baseline data on wildlife populations from the Wyoming Game and Fish Department (WGFD). In the case of Sage-grouse, all known active leks or portions of the 2-mile seasonal stipulation area that fall on BLM-administered public lands or mineral estate, are depicted on map 2-36 in the PRMP/FEIS. If a lek is not shown on the map, it is either not associated with BLM-administered public lands, or it is not known to the WGFD and the BLM. No active Sage-grouse leks are known to exist within or adjacent to the Hoback Ranches area other than those included on map 2-36.

For additional information, please refer to the general response for "Baseline Data."

### **Baseline Data–White-Tailed Prairie Dogs**

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**Issue Number:** PP-WY-PINEDALE-08-0004-30  
**Organization:** Biodiversity Conservation Alliance  
**Protester:** Erik Molvar

**Issue Excerpt Text:**

Populations of white-tailed prairie dogs in the Pinedale Field Office are in deep trouble, having decreased from 1407 hectares of occupied colonies in 2001 to just 71 hectares in 2004. Attachment 13. This

study, which provides detailed baseline information on prairie dogs in the Pinedale Field Office and was performed under contract with the BLM, was nonetheless ignored for the purposes of the Pinedale RMP EIS, and is not referenced therein. Baseline information in the FEIS consisted of 4 sentences with no specific information on population size and trend, even though these data are clearly available to (and in possession of) BLM.

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### **Summary**

The BLM did not use adequate baseline data with respect to prairie dogs. The BLM should have incorporated information from the study that was performed under contract for them.

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### **Response**

The BLM used the best available data and information in preparation of the Proposed RMP. As stated, however, in Section 4.1.2 (p. 4-2) of the PRMP/FEIS, incomplete information exists on the location and size of white-tailed prairie dog towns. Most of the data on white-tailed prairie dogs described in the PRMP/FEIS is the result of monitoring of existing oil and gas projects in the planning area (Section 4.17.4, P. 4-242).

The "Attachment 13" referenced in the protester's letter ("the study") was not submitted to the BLM as part of the protest. No attachments were submitted; nevertheless, the BLM believes that this may refer to the 2006 Ecosystem Research Group Report (ERG). The ERG Report does not include white-tailed prairie dog population size and trend information. In 2006 the ERG Report conducted an analysis of all the wildlife data collected from within the Pinedale Anticline



Project Area (PAPA) boundaries from 2001 until 2005. The ERG Report concluded that they were unable to estimate the prairie dog population size because the white-tailed prairie dog colonies are only delineated every 3 years, and that prairie dog towns expand and contract based on vegetation availability, drought conditions, disease, etc.

For additional information, please refer to the general response for "Baseline Data."

### **Baseline Data-Weeds and Invasives**

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**Issue Number:** PP-WY-Pinedale-08-0011-52  
**Organization:** Western Watersheds Project  
**Protester:** Jonathan Ratner

The RMP fails to present any baseline or other inventory data on weeds and invasives, in particular, the most significant vectors spreading weeds: livestock grazing, oil and gas, roads and OHVs.

**Issue Excerpt Text:**

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***Summary***

The BLM did not use adequate baseline data with respect to weeds and invasives.

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***Response***

Baseline data on noxious weeds and invasive plant species is included in Section 3.13.3 of the PRMP/FEIS (p. 3-115 to 3-116). Specific reference is made to the presence of weeds in areas of disturbance including along roads, in areas of oil and gas development, and in heavily grazed areas. The impacts on the spread of weeds from these types of activities are more thoroughly described in the vegetation section of chapter 4 (Section 4.13.3, p. 4-181 to 4-186).

For additional information, please refer to the general response for "Baseline Data."

### **Baseline Data-Biological Crusts**

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**Issue Number:** PP-WY-Pinedale-08-0011-49  
**Organization:** Western Watersheds Project  
**Protester:** Jonathan Ratner

**Issue Excerpt Text:**  
The RMP provides no inventory or baseline information on biological crusts within the planning area, and barely acknowledges that crusts are present.

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***Summary***

The BLM did not use adequate baseline data with respect to biological crusts.

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***Response***

Soil surveys and ecologic site descriptions are provided by Natural Resources Conservation Service (NRCS). The BLM's standard is to use NRCS data, recognizing this agency's special expertise and responsibility. As NRCS develops and updates the surveys and site descriptions, the BLM will use that information. Baseline information on soils, including biological soil crusts and specific soils that may need special protection, is presented in Section 3.11 of the PRMP/FEIS (p. 3-98 to 3-100). Site-specific impacts to biological soil crusts would be covered

in implementation level NEPA analysis (e.g., term permit renewals, special recreation permits, realty actions, tenure adjustments).

For additional information, please refer to the general response for "Baseline Data."

## *Impact Analysis*

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### *Summary*

The BLM has failed to provide an adequate analysis of the impacts related to particular resources/uses. See the topics that follow regarding specific resources/uses raised by protesters.

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### *Response*

The Pinedale PRMP/FEIS assesses and discloses the environmental consequences of the Proposed Plan and alternatives in chapter 4. As required by 40 CFR § 1502.16, the following were provided in the PRMP/FEIS: a discussion of the environmental impacts of the alternatives including the proposed action; any adverse environmental effects which cannot be avoided should the proposal be implemented, the relationship between short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and any irreversible or irretrievable commitments of resources which would be involved in the proposal should it be implemented.

The PRMP/FEIS presented the decisionmaker with sufficiently detailed information to aid in determining whether to proceed with the Proposed Plan or make a reasoned choice among the other alternatives in a manner such that the public would have an understanding of the environmental consequences associated with the alternatives. Land use plan-level analyses are typically broad and qualitative rather than quantitative or focused on site-specific actions and, therefore, a more quantified or detailed and specific analysis would be required only if the scope of the decision was a discrete or specific action.

The BLM will conduct subsequent NEPA analyses for site-specific project and implementation-level actions, such as for oil and gas field development, realty actions, allotment management plans, and public land use authorizations, or other ground disturbing activities proposed (Section 2.3.18, p. 2-20). These activity plan-level analyses will tier to the RMP analysis and expand the environmental analysis when more specific information is known. In addition, as required by NEPA, the public will be offered the opportunity to participate in the NEPA process for these specific implementation actions.

## **Impact Analysis-Air Quality**

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**Issue Number:** PP-WY-PINEDALE-08-0003-12

**Organization:**

**Protester:** Ronald P. Walker

**Issue Excerpt Text:**

Chapter 4, Section 4.19.3, page 4-227: The third paragraph admits that "a quantitative relationship between expected [calculated] air emissions and

subsequent potential cumulative impacts on ozone and air quality values of visibility and atmospheric deposition is unknown, [and thus it is impossible] to quantify potential impacts on these air quality values from the sources in the ROJ These cannot be quantified because of the complex nature of the formation of ozone, the complexity of visibility impairment and atmospheric deposition in the

atmosphere."This statement is a declaration that the scientific understanding necessary for the protection of nearby federally protected Class I airsheds from pollution and of local citizens from ozone injury by oil & gas development is inadequate. It is therefore irresponsible and very likely illegal for BLM to proceed with its plan to develop the region for oil and gas until demonstrably adequate understanding is in hand.

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**Issue Number:** PP-WY-PINEDALE-08-0012-11  
**Organization:** Upper Green River Valley Coalition  
**Protester:** Linda Baker

**Issue Excerpt Text:**

BLM's failure to use current, scientific data, and failure to acknowledge both the existing and pending, serious human health threat from ozone created as a result of BLM-approved activities does not meet NEPA requirements for "professional integrity" in the discussions and analyses in this final environmental impact statement.

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**Issue Number:** PP-WY-PINEDALE-08-0012-13  
**Organization:** Upper Green River Valley Coalition  
**Protester:** Linda Baker

**Issue Excerpt Text:**

As currently written, the Pinedale PRMP FEIS provides no analysis of potential impacts from ozone pollution. The emissions of particulate matter (PM 10 and PM 2.5), nitrogen oxides (NOx), sulfur dioxide (SO<sub>2</sub>), volatile organic compounds (VOC) and hazardous air pollutants (HAP) are estimated (A19-25), but ozone formation and pollution is not addressed, even though it is a criteria pollutant under the Clean Air Act. This is unacceptable and does not meet the requirements of NEPA.

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**Issue Number:** PP-WY-PINEDALE-08-0012-5  
**Organization:** Upper Green River Valley Coalition  
**Protester:** Linda Baker

**Issue Excerpt Text:**

The Air Emissions Estimates in the PRMP FEIS Qualitative Analysis are Not an Acceptable Replacement for a Quantitative Assessment. In a number of previous NEPA documents, BLM has analyzed air quality impact of proposed natural gas projects in the Pinedale PFO, including the Jonah Infill (3100 wells); Pinedale Anticline SEIS project (4,399 wells), initial Pinedale Anticline project (700 wells); South Piney project (210 wells), and Fontenelle Infill project (2,392 wells). BLM has also had access to NEPA analysis of other natural gas projects within the affected region that contribute to air quality impacts, such as the Moxa Arch Infill project (3,261 wells) and the Normally Pressured Lance Project (85 wells). Together, impact analyses for these projects cover over 14,000 natural gas wells, many more than the PRMP FEIS emission estimates for 8,383 wells (A19-15). It is certainly possible and appropriate for BLM to refer to this assemblage of relevant data to provide an informed, rational and scientifically-based quantitative analysis of the impacts of 8,383 potential natural gas wells.

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**Issue Number:** PP-WY-PINEDALE-08-0012-7  
**Organization:** Upper Green River Valley Coalition  
**Protester:** Linda Baker

**Issue Excerpt Text:**

With the use of a subjective qualitative analysis, it is not possible to measure projected emission estimates against standards, criteria or regulations, or to determine whether BLM would comply with the Clean Air Act, or local, state, tribal and federal standards if the emission estimates are "for reference purposes" only (A19-1). BLM must use existing, relevant data and professional expertise, in an objective, scientific quantitative analysis based on an RFD scenario to assess and demonstrate projected emissions' compliance with federal and state standards, criteria and regulations. Without these, BLM is in violation of the National Environmental Policy Act, and must revise and improve its air quality impact analysis in the RMP ROD.

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## ***Summary***

The BLM has failed to provide an adequate analysis of the impacts related to air quality specifically with respect to ozone pollution. The qualitative analysis of air emissions is not an acceptable replacement for a quantitative analysis.

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## ***Response***

The potential impacts on air quality from BLM management actions are included in Section 4.2

of the PRMP/FEIS (p. 4-5 to 4-8). Potential impacts to human health from ozone pollution are described in the "Impacts on Quality of Life" parts of Section 4.10 (Alternative 1, p. 4-141; Alternative 2 p. 148; Alternative 3, p. 4-154; Alternative 4, p.4-160).

Per an agreement with the air quality stakeholders (including the Wyoming Department of Environmental Quality and the Environmental Protection Agency), a qualitative methodology was used to identify air emissions and determine related impacts. The emission comparison approach provides a sound basis for comparing base-year air quality emissions with those expected to be produced from implementation of the Pinedale RMP. Emissions calculations were based on the best available engineering data and assumptions; air, visibility, and emission inventory procedures; and professional and scientific judgment. At the land use planning-level, it is difficult to analyze for ambient air concentrations for any air quality constituent without specific data regarding the location and the source types. For this reason, the BLM believes that it is more appropriate to quantify air quality related values, including ozone concentrations, at the project level. A more quantitative approach or dispersion modeling requires specific knowledge of sources, emission rates, and locations in order to provide reliable and reasonable results.

All of the projects mentioned in the protests where the BLM has performed ozone modeling are project-specific EISs. In each of these projects, ozone impacts were quantifiable. A site-specific air quality impact analysis will be conducted during site-specific NEPA analysis on a case-by-case basis and may include dispersion modeling where that is deemed to be appropriate and necessary.

For additional information, please refer to the general response for "Impact Analysis."

## Impact Analysis-Water

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**Issue Number:** PP-WY-PINEDALE-08-0002-13

**Organization:** SDSBT

**Protester:** Linda J. Cooper

**Issue Excerpt Text:**

Deep drilling, use of vast quantities of water, and use of chemical injections (fracking fluids) to develop natural gas has the potential to damage residential and agricultural water supplies as well as water quality, directly affecting the local communities of Hoback Ranches and Bondurant, not to mention the Columbia River/Snake River system. This document omits impacts to this water system, yet designates the area as a traditional leasing/ development area.

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**Issue Number:** PP-WY-PINEDALE-08-0002-21

**Organization:** SDSBT

**Protester:** Linda J. Cooper

**Issue Excerpt Text:**

2008 PPRMP still omits impacts on water resources needed to support both residential water requirements, and proposed coal bed methane/natural gas development in this area on the north side of the Rim.

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**Issue Number:** PP-WY-PINEDALE-08-0002-5

**Organization:** SDSBT

**Protester:** Linda J. Cooper

**Issue Excerpt Text:**

3) completely omits water supply from its impact analysis;

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**Issue Number:** PP-WY-PINEDALE-08-0002-7

**Organization:** SDSBT

**Protester:** Linda J. Cooper

**Issue Excerpt Text:**

and 5) in Table 2-34, 2-189, Impacts on Watershed and Water \ Quality the use of chemical injection ("fracking fluids") as a water quality issue is also omitted.

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**Issue Number:** PP-WY-PINEDALE-08-0009-12

**Organization:** Trout Unlimited

**Protester:** Cathy Purves

**Issue Excerpt Text:**

Drilling for CBNG involves significant water

resources (considerably more than more than conventional gas drilling) and very little discussion has been included in this PRMP/FEIS regarding the

impact that CBNG activity would have on water resources, groundwater, and depletion expectations.

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### **Summary**

The BLM has failed to provide an adequate analysis of the impacts related to water quality and quantity.

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### **Response**

Impacts to surface water and groundwater are described in Section 4.15 of the PRMP/FEIS (p. 4-198 to 4-207). The BLM discloses that the potential increase in the number of additional water and mineral production wells over the life of this plan would increase the chance of exposure to aquifer contamination and aquifer mixing (p. 4-199). As stated, groundwater could be affected by multiple factors, including industrial, domestic, or agricultural activities through withdrawal, injection (including chemical injection), or mixing of materials from different geologic layers or the surface. Withdrawal of groundwater could affect local groundwater flow patterns and create changes in the quality or quantity of the remaining groundwater (p. 4-200). The discussion of potential impacts to groundwater in the PRMP/FEIS is general and meant to be inclusive of the entire planning area.

With respect to Coal Bed Natural Gas (CBNG), the PRMP/FEIS acknowledges that although the potential for CBNG is low, dewatering of coal beds or other geological formations could affect both quantity and quality of groundwater because large areas would be potentially dewatered and the produced water would be either re-injected or otherwise managed (p. 4-201).

Proper well sanitation, drilling, and completion methods could reduce potential impacts to surface water and groundwater but not eliminate them (p. 4-201). Appendix 3 provides a number of BMPs and operating standards that would be applied to well drilling permits, including reclamation of streams to meet Properly Functioning Condition standards; erosion control to prevent sedimentation of streams; stormwater pollution prevention plans; and the use of check valves, backflow preventers, or other devices to prevent contamination of water wells (p. A3-18 to A3-19). These BMPs and operating standards would be applied through the Application for Permit to Drill process and would be determined before drilling of the well begins.

For additional information, please refer to the general response for "Impact Analysis."

### **Impact Analysis–Fisheries**

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**Issue Number:** PP-WY-PINEDALE-08-0009-15  
**Organization:** Trout Unlimited  
**Protester:** Cathy Purves

**Issue Excerpt Text:**

The BLM needs to include a discussion of the impacts that threatened or sensitive fish species might be subjected to in light of oil and gas development

adjacent to or directly on rivers, streams or tributaries that contain these species.

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**Issue Number:** PP-WY-PINEDALE-08-0009-3  
**Organization:** Trout Unlimited  
**Protester:** Cathy Purves

**Issue Excerpt Text:**

The PRMP/FEIS fails to acknowledge the impacts to fisheries from a watershed perspective during the discussion of impacts common to all alternatives (FEIS, Ch. 4; 4.15.3, p. 4-199). In fact, the discussion includes almost all other impacts from high water flows or additional water and mineral wells but those impacts do not include any analysis to a fisheries resource should contamination occur in the streams, rivers, or groundwater zones.

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**Issue Number:** PP-WY-PINEDALE-08-0009-5

**Organization:** Trout Unlimited

**Protester:** Cathy Purves

**Issue Excerpt Text:**

It is anticipated that the substantial water withdrawals that will occur with the development of more than 7,000 wells under the Preferred Alternative (or any of

the alternatives for that matter) will place a burden on surface and groundwater in the watershed basins within this planning area. Substantial impacts to surface water resources will most likely occur under any of the Alternatives. In fact, within the BLM's Pinedale Anticline Planning Area FSEIS (p.2-64), the BLM describes substantial impacts anticipated to surface water resources under BLM's preferred alternative, including doubling surface disturbance in six hydrologic subbasins and an astonishing increase of 20 percent expected in annual sediment yields. This will undoubtedly impact the Colorado River system as well, with the potential for creating downstream impacts to species of fish that are listed as endangered (Bluehead sucker, Flannelmouth sucker, and Roundtail Chub) and/or sensitive (Colorado River cutthroat trout).

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***Summary***

The BLM has failed to provide an adequate analysis of the impacts related to fisheries, including impacts to threatened and sensitive fish species.

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***Response***

Impacts to fisheries are described in Section 4.17 of the PRMP/FEIS (p. 4-213 to 4-248). As stated in Section 4.17 (p. 4-225), since any impact on natural water resources is also an impact on fisheries, impacts on fisheries can also be inferred from Section 4.15 of the PRMP/FEIS (p.4-198 to 4-207). Potential impacts to fisheries associated with the Proposed RMP and alternatives include but are not limited to sedimentation, water depletion, contamination, habitat fragmentation due to passage elimination, loss of aquatic and riparian vegetation, and water quality degradation.

The BLM has considered the impacts to fisheries from a watershed perspective. The BLM states that the health of fisheries within the planning area is directly related to the overall health and functional capabilities of riparian resources which, in turn, are a reflection of watershed health (p. 4-224). Any activities that affect the ecological condition of the watershed and its vegetative cover would directly affect the aquatic environment. Any substantial disturbance to soils or changes in vegetative cover would have an effect on watershed health and water quality and would, therefore, have an effect on associated fisheries.

With respect to the Colorado River system, the BLM has determined that mineral development would likely deplete water from the Colorado River system affecting fisheries locally or downstream from the planning area. The BLM recognizes that these depletions may affect, but are not likely to adversely affect, Colorado River sensitive species (p. 4-222). A thorough consideration of these impacts will be handled through required site-specific environmental analysis for implementation actions (Section 2.3.18, p. 2-20).

For additional information, please refer to the general response for "Impact Analysis."

## Impact Analysis-White-Tailed Prairie Dogs

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**Issue Number:** PP-WY-PINEDALE-08-0004-31  
**Organization:** Biodiversity Conservation Alliance  
**Protester:** Erik Molvar

and the planning area could face extirpation of the white-tailed prairie dog if mitigation efforts fail.

**Issue Excerpt Text:**

BLM's impact analysis of impacts on white-tailed prairie dogs consists of two sentences: Most of the known occurrences of white-tailed prairie dog occur within the Jonah and Anticline Fields. The impacts of intense development have not been studied to date,

FEIS at 4-228, emphasis added. This isn't the "hard look" required by NEPA, it is no look at all. And given the BLM's own admission that extirpation is a possibility throughout the field office, much stronger mitigation measures should have been emplaced to ensure that this BLM Sensitive Species is not lost.

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### *Summary*

The BLM has failed to provide an adequate analysis of the impacts related to prairie dogs.

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### *Response*

As stated in Section 4.1.2 (p. 4-2) of the PRMP/FEIS, incomplete information exists on the location and size of white-tailed prairie dog towns. Most of the data on white-tailed prairie dogs described in the PRMP/FEIS is the result of monitoring of existing oil and gas projects in the planning area (Section 4.17.4, P. 4-242). Project-specific NEPA documents, such as the Pinedale Anticline Project Area (PAPA) SEIS Record of Decision, have included a wildlife monitoring and mitigation matrix that requires adaptive management policies to be implemented if monitoring data shows a decline in white-tailed prairie dog population numbers over 3 years. Monitoring at the Jonah Infill Project indicates that extirpation of white-tailed prairie dogs has not occurred at the current level of development.

Given the existing data in the Pinedale planning area on the known occurrences of white-tailed prairie dog towns, the level of impact analysis in the PRMP/FEIS is appropriate. Mitigation measures and provisions to protect white-tailed prairie dogs are described for Intensively Developed Fields, Traditional Leasing Areas, and Unavailable Areas in Section 2.5.5 (p. 2-143 to 2-144) and Appendix 3 (p. A3-23) of the PRMP/FEIS. Objective 4 Intensively Developed Fields (p. 2-143) states that oil and gas operations would be subject to stipulations and mitigations provided in Appendix 3. These objectives, combined with the mitigation measures like those used in the PAPA SEIS ROD, ensure that development in Intensively Developed Fields will require mitigation techniques to be employed to prevent extirpation of white-tailed prairie dogs in the planning area.

For additional information, please refer to the general response for "Impact Analysis."

## Impact Analysis–Economic Impacts

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**Issue Number:** PP-WY-PINEDALE-08-0006-72  
**Organization:** Coalition of Local Governments  
**Protester:** Constance Brooks

The RMP appears to make decisions intended to effect a taking of these existing leases or to create regulatory obstacles to their development, without fully disclosing the economic loss to the communities and lessees, if these leases cannot be developed.

**Issue Excerpt Text:**

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## Summary

The BLM has failed to provide an adequate analysis of the economic impacts of reduced development of oil and gas leases due to restrictions contained in the PRMP.

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## Response

Socioeconomic impacts and the method of analysis are described in Section 4.10 of the PRMP/FEIS (p. 4-113 to 4-160). For each alternative, the PRMP/FEIS describes the impacts on Wyoming and U.S. natural gas production, regional housing, regional income, tax revenues, local government expenditures, population, housing, community stability and connectiveness, quality of life, and other social and community services. Under Alternative 4, the Proposed RMP, the pace of oil and gas development and production and, therefore, the socioeconomic impacts, are expected to be very similar to Alternative 1, the current management situation (Section 4.10.9, p. 4-155 to 4-160).

For additional information, please refer to the general response for "Impact Analysis." Also please refer to the response for "Valid Existing Rights" under Leasable Minerals regarding the development of existing leases.

## Impact Analysis-Grazing

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**Issue Number:** PP-WY-Pinedale-08-0011-12  
**Organization:** Western Watersheds Project  
**Protester:** Jonathan Ratner

**Issue Excerpt Text:**

The RMP fails to provide an adequate discussion of impacts to various resources, including a failure to incorporate best available information into the analysis. WWP highlighted this issue in its comments on the Draft RMP/EIS with respect to riparian area management, biological crusts, livestock grazing, off-road vehicle use, fire frequency, invasive species, loss of ecosystem resiliency in the face of climate change and other issues. Dozens of scientific papers and government reports were cited. The RMP ignored this information and the PRMP continues to provide no explanation for the omission of relevant scientific research on topics critical to the management of the public lands, or for that matter, research that has documented the impacts of livestock grazing and OHVs to forests, riparian areas, soils and wildlife that was published decades ago and remains accurate today.

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**Issue Number:** PP-WY-Pinedale-08-0011-17  
**Organization:** Western Watersheds Project  
**Protester:** Jonathan Ratner

**Issue Excerpt Text:**

BLM further ignores the impact that livestock grazing has had, and will continue to have under the Proposed RMP, on native vegetation and fire regimes.

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**Issue Number:** PP-WY-Pinedale-08-0011-22  
**Organization:** Western Watersheds Project  
**Protester:** Jonathan Ratner

**Issue Excerpt Text:**

The RMP does not disclose the role livestock play in decreasing the native grasses and frequency of low intensity ground fires that control conifer recruitment and alter forest stands, increase fire intensity and loss of habitat for wildlife.

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**Issue Number:** PP-WY-Pinedale-08-0011-25  
**Organization:** Western Watersheds Project  
**Protester:** Jonathan Ratner

**Issue Excerpt Text:**

Livestock access to stream and riparian areas has many impacts which are not discussed or reviewed in the RMP.

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**Issue Number:** PP-WY-Pinedale-08-0011-30  
**Organization:** Western Watersheds Project  
**Protester:** Jonathan Ratner



**Issue Excerpt Text:**

BLM continues to ignore the effects of livestock grazing and the epidemic proportions of the spread of weeds in the affected environment, alternatives, and environmental consequences sections of the document. BLM did not analyze the actual causes of the spread of invasive species within the planning area. There was no mention of the effects of livestock grazing on invasives or the effectiveness of current control methods.

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**Issue Number:** PP-WY-Pinedale-08-0011-35

**Organization:** Western Watersheds Project

**Protester:** Jonathan Ratner

**Issue Excerpt Text:**

In order to develop a reasonable range of alternatives and analyze the impacts that each alternative will have, it is essential to know the baseline conditions of the planning area. Yet, BLM has not presented baseline inventories and evaluations of the impacts that livestock grazing has had, and continues to have, on ecosystems and specific ecosystem components such as soils, microbiotic crusts, fish and wildlife, and native vegetation.

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**Issue Number:** PP-WY-Pinedale-08-0011-61

**Organization:** Western Watersheds Project

**Protester:** Jonathan Ratner

**Issue Excerpt Text:**

The RMP maintains the status quo by continuing with the same authorized use level and grazed areas. By failing to adequately assess on-the-ground conditions and the impacts of current livestock grazing in the resource management planning process, the BLM has maintained the status quo by default. As a result, the RMP does not constitute a reasoned and informed decision in the public interest, with respect to whether the land within the planning area can continue to endure livestock grazing.

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**Issue Number:** PP-WY-Pinedale-08-0011-76

**Organization:** Western Watersheds Project

**Protester:** Jonathan Ratner

**Issue Excerpt Text:**

There was no analysis of the role of livestock in degradation of water quality, or the role of range improvements in degradation of water quality and quantity, loss of wetlands and impacts to wildlife in the RMP.

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**Issue Number:** PP-WY-Pinedale-08-0011-81

**Organization:** Western Watersheds Project

**Protester:** Jonathan Ratner

**Issue Excerpt Text:**

In the RMP, BLM ignores impacts to T&E species from livestock grazing which can directly alter habitats for T&E, Wyoming and BLM-sensitive species and Conservation Agreement species.

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***Summary***

The BLM has failed to provide an adequate analysis of the impacts that result from grazing related activities. In particular, there is no consideration of impacts to stream, wetland and riparian habitats; biological crusts; fire, fire intensity, and fire regimes; invasive species; water quality; native vegetation; weeds; wildlife habitat; and threatened and endangered species and their habitats.

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***Response***

The PRMP/FEIS assesses and discloses the environmental impacts associated with livestock grazing for all alternatives in Chapter 4 of the PRMP/FEIS (p. 4-1 to 4-299). Impacts from livestock grazing on water quality and watershed resources can be found in Section 4.15 (p. 4-198 to 4-207). Impacts on soil resources can be found in Section 4.11 (p. 4-161 to 4-169). Impacts on wildland fire and fuels can be found in Section 4.16 (p. 4-208 to 4-212). Impacts on native vegetation and the spread and introduction of weeds can be found in Section 4.13 (p. 4-180 to 4-193). Impacts on fish and wildlife habitat and threatened and endangered species can be found in Section 4.17 (p. 4-213 to 4-248).

According to BLM policy as described in the PRMP/FEIS, Section 2.5.5 (p. 2-116 and 2-117), decisions regarding authorized livestock use, levels, and the terms and conditions under which they are managed are implementation decisions (H-1610-1, Appendix C). The BLM assesses the condition of rangeland health, conducts monitoring and inventories, and evaluates this data on a periodic basis, normally on an allotment and/or watershed basis. Changes to livestock management deemed necessary to meet or progress toward meeting management objectives are implemented through a formal decision-making process in accordance with 43 CFR § 4160. These activity plan-level analyses will tier to the RMP analysis and build on the environmental analysis when specific actions are proposed.

For additional information, please refer to the general response for "Impact Analysis" and the response for "Response to Comments".

### **Impact Analysis-Off-Highway Vehicles**

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**Issue Number:** PP-WY-Pinedale-08-0011-12  
**Organization:** Western Watersheds Project  
**Protester:** Jonathan Ratner

**Issue Excerpt Text:**

The RMP fails to provide an adequate discussion of impacts to various resources, including a failure to incorporate best available information into the analysis. WWP highlighted this issue in its comments on the Draft RMP/EIS with respect to riparian area management, biological crusts, livestock grazing, off-road vehicle use, fire frequency, invasive species,

loss of ecosystem resiliency in the face of climate change and other issues. Dozens of scientific papers and government reports were cited. The RMP ignored this information and the PRMP continues to provide no explanation for the omission of relevant scientific research on topics critical to the management of the public lands, or for that matter, research that has documented the impacts of livestock grazing and OHVs to forests, riparian areas, soils and wildlife that was published decades ago and remains accurate today.

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### ***Summary***

The BLM has failed to provide an adequate analysis of the impacts that result from OHV-related activities. In particular, there is no consideration of impacts to: riparian habitats, biological crusts, fire frequency, forests, invasive species, native vegetation, weeds, and wildlife.

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### ***Response***

The PRMP/FEIS assesses and discloses the environmental impacts associated with OHV use for all alternatives in Chapter 4 of the PRMP/FEIS (p. 4-1 to 4-299). Impacts from livestock grazing on water quality and watershed resources can be found in Section 4.15 (p. 4-198 to 4-207). Impacts on soil resources can be found in Section 4.11 (p. 4-161 to 4-169). Impacts on wild land fire and fuels can be found in Section 4.16 (p. 4-208 to 4-212). Impacts on native vegetation and the spread and introduction of weeds can be found in Section 4.13 (p. 4-180 to 4-193). Impacts on fish and wildlife habitat and threatened and endangered species can be found in Section 4.17 (p. 4-213 to 4-248).

The Proposed RMP would provide no open OHV areas where cross-country OHV use is allowed. The majority of the planning area would be limited to either existing or designated roads or trails. Any OHV use would also be limited seasonally to minimize harassment of wildlife and disruption of wildlife habitats (Table 2-28, p. 2-162; Section 2.5.5, p. 2-130 to 2-

133). Analysis of individual roads for each geographic area would be conducted through travel management planning to be conducted within 5 years of finalization of the RMP (Section 2.5.5, p. 2-131; Appendix 17, p. A17-1 to A17-3). The BLM will conduct subsequent NEPA analyses as part of this travel management planning. The travel management plan will tier to the RMP analysis and build on the environmental analysis.

For additional information, please refer to the general response for "Impact Analysis."

### *Cumulative Impact Analysis*

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#### ***Summary***

The PRMP/FEIS does not adequately address cumulative impacts. See the topics that follow regarding specific issues raised by protesters.

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#### ***Response***

The scope and nature of the specific proposed action drives what level of analysis must be done to comply with the requirements of the NEPA. Environmental analyses of Resource Management Plans are used to evaluate broad policies and provide an analytical foundation for subsequent project-specific NEPA documents. The cumulative analysis in the Pinedale PRMP/FEIS considered the present effects of past actions, to the extent that they are relevant, and present and reasonably foreseeable (not highly speculative) Federal and non-Federal actions, taking into account the relationship between the proposed action and these reasonably foreseeable actions. This structure determined the level of analysis performed and presented in the PRMP/FEIS. As a consequence, the cumulative analysis in Section 4.19 of the PRMP/FEIS is very different from the analysis that would be presented in an environmental document analyzing the authorization of a specific activity or permit. The BLM has complied fully with the requirements of 40 CFR § 1508.7 and prepared a cumulative impact analysis to the extent possible based on the broad nature and scope of the proposed management options under consideration at the RMP stage.

### **Cumulative Impacts–Sage-grouse**

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**Issue Number:** PP-WY-Pinedale-08-0010-12

**Organization:** Western Resource Advocates

**Protester:** Daniel Heilig

**Issue Excerpt Text:**

The Pinedale RMP fails to analyze or discuss the West Nile virus threat to Sage-grouse combined with all the other stressors identified by USFWS.

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**Issue Number:** PP-WY-Pinedale-08-0010-9

**Organization:** Western Resource Advocates

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**Protester:** Daniel Heilig

**Issue Excerpt Text:**

Second, the RMP's discussion of cumulative impacts (Pinedale RMP at 4.19) completely ignores the significant and growing threat of West Nile Virus, a relatively new and insidious threat to Sage-grouse that has potential to significantly impact the species across its range.

## *Summary*

The PRMP/FEIS does not adequately address West Nile virus in its discussion of cumulative impacts with respect to Sage-grouse.

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## *Response*

Despite concerns over impacts of the West Nile virus on Sage-grouse, actual prevalence of the virus in wild populations remains unknown (Walker et al. 2007). Although the *C. tarsalis* mosquito which carries the West Nile virus have been documented in Sublette County, the impacts of the virus on Sage-grouse in the future will depend on temperature, rainfall, and changes in vector distribution. Temperature strongly affects physiological and ecological processes that influence West Nile virus transmission, and outbreaks are typically associated with prolonged periods of above-average temperature and drought (Walker et al. 2007). Due to the climate of the planning area, the spread of the West Nile virus and impacts to Sage-grouse in the planning area are speculative at this time and, therefore, was not included in the scope of the cumulative impact analysis in the PRMP/FEIS.

The BLM understands the potential threat to sage grouse from the West Nile virus and has made reference to it in the impact analysis for wildlife and fish in the PRMP/FEIS (Section 4.17, p. 4-213 to 4-248). To prevent the spread of the West Nile virus, the PRMP/FEIS specifically addresses management of water disposal pits (Section 4.17.7, p. 4-245). This provision will be included in appendix 3 as part of the Record of Decision for the Pinedale RMP.

For additional information, please refer to the general response for "Cumulative Impacts."

## *References*

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**Issue Number:** PP-WY-PINEDALE-08-0005-44

**Organization:** Theodore Roosevelt Conservation Partnership

**Protester:** Thomas R. Wilmoth

**Issue Excerpt Text:**

Although the RMP/FEIS repeatedly references various Memoranda of Understanding, Memoranda

of Agreement, and other intra- and inter-agency commitments, the base documents are not disclosed in the RMP/FEIS, and no reference to their locations appears. The BLM must include these materials in the RMP and make them available to the public, so it may ascertain precisely what BLM intends to do under the proposed RMP.

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## *Summary*

Memoranda of Understanding, Memoranda of Agreement, and other intra- and inter-agency commitments that are referenced in the PRMP/FEIS are not disclosed in the document and no reference to their location appears.

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## *Response*

The protesting party does not provide enough information for the BLM to respond specifically to this issue. Memorandums of Agreement (MOA) and Memorandums of Understanding (MOU) are documents written between parties to cooperatively work together on an agreed-upon

project or meet an agreed-upon objective. Generally, MOUs and MOAs are developed between the BLM and its partners to take action to manage public lands and are, therefore, not typically appropriate to be included in RMP/EISs.

### *Response to Comments*

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**Issue Number:** PP-WY-PINEDALE-08-0004-15  
**Organization:** Biodiversity Conservation Alliance  
**Protester:** Erik Molvar

**Issue Excerpt Text:**

A Blueprint for Sage-grouse Conservation and Recovery by Dr. Clait Braun, arguably the world's leading expert on Sage-grouse conservation provides recommendation for Sage-grouse conservation, was submitted to the BLM during the planning process but was ignored by BLM. See Attachment 1. Dr. Braun's recommendations constituted a reasonable alternative based on the best available science that would place a moratorium on the construction of well, roads, and other infrastructure for the important nesting habitat that occurs within 3 miles of a Sage-grouse lek. Conservation groups requested similar measures throughout the NEPA process under the Responsible Energy Development Alternative. Yet

BLM never considered the implementation of Dr. Braun's recommendations (or the RED's) in any of its own alternatives, in the absence of an analysis showing these alternatives to be unreasonable. This violates NEPA's range of alternatives requirement.

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**Issue Number:** PP-WY-Pinedale-08-0011-70  
**Organization:** Western Watersheds Project  
**Protester:** Jonathan Ratner

**Issue Excerpt Text:**

WWP provided extensive information on grazing systems, utilization rates, the need for rest and other criteria for livestock grazing in its comments on the Draft RMP/EIS. These are fully incorporated into this protest. BLM ignored this information, and has ignored the role of livestock and range management on the environment.

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### *Summary*

The BLM failed to adequately respond to comments on the DEIS and/or has ignored information submitted during the planning process.

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### *Response*

The BLM complied with the NEPA regulations at 40 CFR § 1503.4 by performing a detailed comment analysis which assessed and considered all substantive comments received on the DRMP/DEIS. All 99,836 letters received on the Pinedale DRMP/DEIS were compiled, reviewed, and analyzed to determine whether the comments submitted were substantive. The systematic process used by the Interdisciplinary (ID) Team for identification of substantive comments is described in appendix 27 (page A27-2 through A27-3).

For all substantive comments raised, the ID Team determined if the comment warranted adding or modifying the analyses by making factual corrections or explained why the comment did not warrant any action. Many of the comments were especially voluminous, providing extensive information on issues such as the role of livestock and range management on the environment, cultural resources, and historic properties, OHV and motorized areas and routes, habitat fragmentation, Sage-grouse management, and oil and gas development. Some of the information and suggestions provided were not pertinent to an RMP-level document. Such comments would be more appropriate for use on a site-specific basis. The BLM summarized the salient points or issues raised by each comment letter and, then, provided substantive and meaningful responses, including the BLM's basis or rationale for its assumptions and methodology used.

Appendix 27 lists the comments that the BLM received on the DRMP/DEIS as well as the BLM's responses to those comments, including instances where the BLM made changes to the DRMP/DEIS.

### *Consistency with Local and State Plans and Policies*

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**Issue Number:** PP-WY-PINEDALE-08-0006-17

**Organization:** Coalition of Local Governments

**Protester:** Constance Brooks

**Issue Excerpt Text:**

There are a number of ongoing evaluations or actions where local governments should be considered but are omitted. For instance, with respect to the impacts of undertakings on cultural resources, BLM incorrectly states that there is no law requiring involvement of local governments. FEIS A27-121-122. BLM manual which incorporates 36 C.F.R. Part 800.1 (c)(2)(I), provides that local governments will be consulted with respect to all undertakings.

Local governments, which include extensive range management experience, recommend monitoring the grazing allotment upland areas more than once every 10 years, but this was dismissed by BLM. A27-627. The BLM did not coordinate with local governments on travel management decisions made in the RMP with respect to meeting recreation or transportation needs. Section §2.3.17 will not cover travel decisions made in the RMP, because coordination is limited to new activities not decisions made in the RMP. App.27-414. The conservation districts also demoted in wildlife habitat issues to "affected parties." e.g. FEIS 2-146. BLM declined to add predator control to management of wildlife, even though state and local predator boards are also government entities. A27-606.

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**Issue Number:** PP-WY-PINEDALE-08-0006-4

**Organization:** Coalition of Local Governments

**Protester:** Constance Brooks

**Issue Excerpt Text:**

FLPMA requires that BLM make every effort to change the RMP to accommodate local and state

government plans, programs and policies. 43 U.S.C. §1712(c)(9). H-1601-1, ill-7, I-4. The proposed RMP excludes local governments from post-RMP implementation in areas where they have jurisdiction, including water quality and conservation, RMP 2-137, monitoring, 2-20. In many places, the RMP demotes local governments to "interested party" while treating state agencies, like WGFD and WDEQ as partners. See e.g. FEIS 2-38, 2-33, 2-40, 2-78 (referring to coordination with WGFD but excluding local governments); 2-136 (refers to coordination with DEQ and stakeholders); A27-414 (local governments and public entitled to comment on transportation planning); The failure to consider local government policies and plans also meant that the FEIS did not address the impacts of the proposed RMP on local economies, land use policies, or land rights within the counties or determine why consistency was not possible. The affected local governments have policies promoting all forms of recreation, including OHV. The RMP does not provide for any open OHV recreation areas, even though BLM has the discretion to do so. The local governments have strong policies promoting protection of access and county roads, but again the RMP provides for year-long and seasonal closures on roads and trails without regard to the local government policies or interests. The failure to follow road closure and travel management planning procedures contradicts the plans and policies of LC and SC, both of which are delegated jurisdiction over all public roads and transportation authority pursuant to Wyoming law. Similarly, the assignment of VRM Class II to certain public lands and affected private lands interferes with authorized land uses in Lincoln and Sublette Counties, such as agriculture and range improvement projects, rights-of-way for telecommunication and power lines, as well as drilling and development activities on existing leases.

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### *Summary*

The proposed RMP fails to consider local and State government plans and policies, specifically with respect to travel management and VRM decisions. Further, local governments have been excluded from post-RMP implementation in areas where they have jurisdiction (e.g. water quality).

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## ***Response***

The BLM land use plans must be consistent with the purposes, policies, and programs of the FLPMA and other Federal laws and regulations applicable to public lands (see 43 CFR 1610.3-2 (a)). The BLM land use plans and amendments must also be consistent with officially approved or adopted resource-related plans of Indian tribes, other Federal agencies, and State and local governments to the extent that these resource-related plans comport with FLPMA and other Federal laws and regulations.

The BLM has worked closely with State and local governments during preparation of the Pinedale PRMP/FEIS. The PRMP/FEIS lists the cooperating agencies actively involved in the planning process in Section 5.1.1 (p. 5-2 to 5-3). The BLM works to find a balance among uses and needs as reflected in these local government plans and has done so in the preparation of the Pinedale PRMP/FEIS.

The BLM coordinates with cooperating agencies commensurate with each agency's recognized jurisdiction or expertise. In areas where the State of Wyoming has clear jurisdiction, such as wildlife populations, air quality, and water quality, the BLM has worked closely with those State agencies. The Pinedale Field Office is currently working on a blanket Memorandum of Understanding with local governments to ensure the involvement of the local governments in future projects.

The BLM coordinated with local governments in the travel management decisions. The Pinedale Field Office followed national BLM policy in reaching the OHV recommendations. The BLM has determined that no areas in the Pinedale planning area are suitable for unregulated, off-road OHV travel. Further, the BLM does not propose seasonal closures or any management actions for county roads. The seasonal closures referenced in the PRMP/FEIS apply only to BLM roads.

The Pinedale RMP only directs management of public lands and resources administered by the BLM within the Pinedale Field Office. The VRM management classes, therefore, do not apply to any private lands (Section 3.14.3, p. 3-119). In the case of split estate lands, the application of VRM management class objectives apply to the development of the mineral estate as they would to Federal mineral estate on Federal surface lands, providing the stipulations do not adversely affect the surface owner's land use or actions. Exceptions to surface development restrictions could be granted if requested or agreed to by the surface owner (Section 2.3.6, p. 2-11).

## ***Effectiveness of Mitigation Measures***

**Issue Number:** PP-WY-Pinedale-08-0011-91

**Organization:** Western Watersheds Project

**Protester:** Jonathan Ratner

### **Issue Excerpt Text:**

NEPA requires that the BLM discuss mitigation measures in an EIS. 40 C.F.R. §§ 1502.14, 1502.16. In general, in order to show that mitigation will reduce environmental impacts to an insignificant level, the BLM must discuss the mitigation measures "in sufficient detail to ensure that environmental

consequences have been fairly evaluated." *Communities, Inc. v. Busey*, 956 F.2d 619,626 (6th Cir. 1992). Simply identifying mitigation measures, without analyzing the effectiveness of the measures, violates NEPA. Agencies must "analyze the mitigation measures in detail [and] explain how effective the measures would be . . . A mere listing of mitigation measures is insufficient to qualify as the reasoned discussion required by NEPA." *Nw. Indian Cemetery Protective Ass'n v. Peterson*, 764 F.2d

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### **Summary**

The PRMP/FEIS fails to discuss the effectiveness of mitigation measures.

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### **Response**

The BLM addresses mitigation measures in Appendix 3 of the PRMP/FEIS. These mitigation measures may be applied as appropriate to specific projects authorized under the RMP. Future activities authorized under the RMP will be subject to an appropriate level of additional site-specific environmental analysis, including an evaluation of appropriate mitigation measures and their effectiveness.

The effectiveness of mitigation measures would be revealed through future monitoring when mitigation is applied to a specific project. Per 40 CFR 1505.2(c), a monitoring and evaluation strategy for any mitigation will be adopted and summarized in the Record of Decision for the Pinedale RMP. A monitoring and evaluation strategy would apply to all activities that occur throughout the planning area (Appendix 11, p. A11-1 to A11-7). As described in the PRMP/FEIS (Section 2.3.17, p. 2-18), reasons for adopting a monitoring and evaluation strategy include (1) enhancing the ability to achieve plan goals; (2) getting the most out of the NEPA/planning process; (3) providing plan flexibility; and (4) validating impact predictions, ensuring mitigation is effective, and able to adapt for unintended consequences.

### ***Need for a Supplemental Environmental Impact Statement***

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**Issue Number:** PP-WY-PINEDALE-08-0008-15  
**Organization:** Independent Petroleum Association of Mountain States  
**Protester:** Kathleen M. Sgamma

**Issue Excerpt Text:**

However, the large increase of unavailable acreage for oil and gas leasing in the proposed alternative (Section 2.5.2 page 2-50 - 2-51) without the opportunity for public comment should be corrected by a supplemental process. The three categories of areas for oil and gas leasing is a good concept, but was not analyzed in the draft in the same framework as in the PRMP /FEIS. The large increase in land unavailable for leasing jumped from about 172,500 in the draft to over 440,000 in the PRMP /FEIS. This large increase in unavailable acreage, the inadequate analysis of the effect on oil and gas resources, and the new leasing area categories warrant a supplement. Therefore, we are requesting a supplemental EIS before a ROD is issued.

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**Issue Number:** PP-WY-PINEDALE-08-0008-3  
**Organization:** Independent Petroleum Association of Mountain States

**Protester:** Kathleen M. Sgamma

**Issue Excerpt Text:**

IPAMS believes that the substantial changes made from the Draft to the Proposed Pinedale Resource Management Plan and Final Environmental Impact Statement (PRMP /FEIS) are significant enough to warrant a supplement in accordance with 40 CFR 1508.27(a) and (b). The BLM imposes restrictions that leave in place significant natural gas resources while minimizing the amount of resources impacted by those same restrictions. Specifically, the analysis in the EIS is based on only a maximum of 20 trillion cubic feet of natural gas, yet there is a known resource of 25 Tcf in the Pinedale Anticline and 12 Tcf in the Jonah field, to say nothing of the rest of the prospective areas in the PPA. In addition, the areas unavailable for oil gas development were expanded from 156,900 acres to 439,470 acres, an increase of almost 200 percent, of which about one-third of the acreage is considered moderate to very high hydrocarbon potential. Therefore, the analysis is flawed and minimizes the amount of natural gas resources made off-limits by the management decisions in the PRMP /FEIS. IPAMS believes a



supplemental EIS is necessary to correct the deficiencies of the PRMP/EIS.

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**Issue Number:** PP-WY-Pinedale-08-0010-19  
**Organization:** Western Resource Advocates  
**Protester:** Daniel Heilig

**Issue Excerpt Text:**

Consequently, in accordance with the authorities discussed above, BLM must prepare a revised Final EIS that addresses the [Sage-grouse] information, policies, and issues omitted in the FEIS.

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***Summary***

Changes from the Draft to the Proposed Pinedale RMP and Final EIS are significant enough to warrant a supplement in accordance with 40 CFR 1508.27(a) and (b). Specifically, the changes concern oil and gas information and decisions as well as Sage-grouse information and policies.

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***Response***

A supplemental EIS, as defined under the CEQ regulations, 40 CFR 1502.9, is not warranted. The BLM made no substantial changes to the DRMP/DEIS that are relevant to environmental concerns (i.e. changes that would result in significant effects outside the range of effects analyzed in the draft). Also, no significant new circumstances or information was identified that would substantially affect the BLM's decision or its impact analysis.

The proposed arrangement of oil and gas management areas is well within the range of alternatives addressed in the DEIS (see Alternative 3, p. 2-73 to 2-109)). Further, recommendations from current research regarding Sage-grouse management were analyzed in Alternative 3 of the DEIS (Section 2.5.4, p. 2-98 to 2-99).

For additional information, please refer to the responses for "Projections for Oil and Gas" and "WY Sage-grouse Executive Order."

***Federal Land Policy and Management Act***  
***Unnecessary or Undue Degradation***

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**Issue Number:** PP-WY-PINEDALE-08-0004-37  
**Organization:** Biodiversity Conservation Alliance  
**Protester:** Erik Molvar

**Issue Excerpt Text:**

A limit on wellpad surface density should apply to the planning area to prevent unnecessary or undue degradation pursuant to FLPMA; such a well density stand, which should not exceed 160-acre surface spacing, could readily accommodate full-field development at any conceivable downhole spacing and provide full recovery of the resource while still allowing some habitat values on the surface. The current Plan allows unnecessary and undue degradation due to excessive well densities, particularly as embodied by the Jonah Infill project. As directional drilling has been shown to be effective in both the Pinedale Anticline and Jonah Fields, with

up to 32 wells drilled per wellpad, denser surface spacings are completely unnecessary.

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**Issue Number:** PP-WY-PINEDALE-08-0005-17  
**Organization:** Theodore Roosevelt Conservation Partnership  
**Protester:** Thomas R. Wilmoth

**Issue Excerpt Text:**

The RMP/FEIS totally ignores the conclusions of the science and affords Sage-grouse virtually no protections whatsoever in IDFs. Those afforded in TLAs and Unavailable Areas (e.g., 2 mile seasonal timing buffers and 0.25 mile surface use buffers) have been proven totally ineffective and have been rejected by WGFD, FWS and virtually every biologist analyzing the issue. By continuing to adhere to debunked management strategies, BLM is violating its obligation under FLPMA to avoid

unnecessary and undue degradation of the public lands and resources. Continued destruction of Sage-grouse and their habitats is, moreover, leading to irrecoverable declines in the population. Facilitating and hastening the loss of this renowned game bird is not consistent with FLPMA's sustained yield management mandate.

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**Issue Number:** PP-WY-PINEDALE-08-0005-7  
**Organization:** Theodore Roosevelt Conservation Partnership  
**Protester:** Thomas R. Wilmoth

**Issue Excerpt Text:**

The proposed RMP fails to adhere to FLPMA's directive to manage public lands "under principles of multiple use and sustained yield." 43 U.S.C. § 1732(a); see also 43 U.S.C. § 1701(a)(8) (listing purposes and values that should be considered in the management of public lands). FLPMA also provides that "[i]n managing the public lands the [Secretary of Interior] shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands." 43 U.S.C. § 1732(b). Despite a litany of adverse impacts projected for wildlife, especially big game and Sage-grouse, in the planning area, the proposed RMP fails to impose measures adequate to address these impacts. As a result, the proposed RMP, if adopted, would violate FLPMA's key principles.

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**Issue Number:** PP-WY-Pinedale-08-0011-96  
**Organization:** Western Watersheds Project  
**Protester:** Jonathan Ratner

**Issue Excerpt Text:**

FLPMA requires that: "In managing the public lands

the [Secretary of Interior] shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands." 43 U.S.C. § 1732(b). In this context, because the imperative language "shall" is used, "Congress [leaves] the Secretary no discretion" in how to administer FLPMA. *Natural Resources Def. Council v. Jamison*, 815 F.Supp. 454,468 (D.D.C. 1992). BLM's duty to prevent unnecessary or undue degradation (UUD) under FLPMA is mandatory, and BLM must, at a minimum, demonstrate compliance with the UUD standard. See *Sierra Club v. Hodel*, 848 F.2d 1068, 1075 (10th Cir. 1988) (the UUD standards provides the "law to apply" and "imposes a definite standard on the BLM"). This has not been done.

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**Issue Number:** PP-WY-PINEDALE-08-0012-29  
**Organization:** Upper Green River Valley Coalition  
**Protester:** Linda Baker

**Issue Excerpt Text:**

The PRMP FEIS makes it clear that implementation of Alternative 4 will lead to a number of severe environmental impacts. The BLM likes to refer to these as "significant" impacts, but by any measure they are prohibited "undue" impacts under the terms of the FLPMA. 43 U.S.C. § 1732(b) (BLM is required to take "any action" that is necessary to prevent unnecessary or undue degradation of the public lands.) This is especially true since as discussed above in detail, the BLM has almost complete authority to specify the time, place, and manner of oil and gas development. Almost none of these impacts are unavoidable, and consequently they are undue.

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## *Summary*

Management under the Proposed RMP would cause unnecessary or undue degradation due to excessive well densities, inadequate Sage-grouse protections, and inadequate big game protections in violation of FLPMA.

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## *Response*

Congress recognized that through the BLM's multiple-use mandate, there would be conflicting uses and impacts on the public land. The BLM does not consider activities that comply with applicable statutes, regulations and policy—and include appropriate mitigation measures and operating standards—to cause unnecessary or undue degradation. Moreover, unnecessary and undue degradation is a management standard that does not apply to BLM planning decisions for public lands.

## *Inventory Mandate*

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**Issue Number:** PP-WY-Pinedale-08-0011-41

**Organization:** Western Watersheds Project

**Protester:** Jonathan Ratner

### **Issue Excerpt Text:**

The RMP fails to demonstrate that the BLM has complied with its continuing inventory mandate, for several key resources, including the wilderness resource, native vegetation, riparian areas, microbiotic crusts, weeds, invasives, OHV and livestock-damaged areas. FLPMA requires the BLM to "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)." 43 D.S.C. § 1711(a). The "inventory shall be kept current so as to reflect

changes in condition and to identify new and emerging resource and other values." Id. (emphasis added). See also 43 C.F.R. § 1610.4-3 (requiring District or Area Manager to "arrange for resource, environmental, social, economic and institutional data and information to be collected" and stating that "[i]nventory data and information shall be collected in a manner that aids application in the planning process, including subsequent monitoring requirements"); Public Rangelands Improvement Act, 43 D.S.C. §§ 1901-1908, 1903(a) (Secretary "shall update, develop (where necessary) and maintain on a continuing basis thereafter, an inventory of range conditions and record of trends of range conditions on the public rangelands")

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## ***Summary***

The BLM has failed to comply with its continuing inventory mandate under FLPMA, for several key resources, including the wilderness resource, native vegetation, riparian areas, microbiotic crusts, weeds, invasives, and OHV and livestock-damaged areas.

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## ***Response***

Section 201 Inventory and Identification of FLPMA (43 U.S.C. 1711(a)) states: "The Secretary shall prepare and maintain on a continuing basis an inventory of all public lands and their resources 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." Section 202 Land Use Planning of FLPMA states "In the development and revision of land use plans, the Secretary shall... rely, to the extent it is available, on the inventory of the public lands, their resources, and other values" (43 U.S.C 1712(c)(4)).

The BLM has a baseline inventory of information for the Pinedale planning area that was prepared during the development of the existing Pinedale RMP (1988), which has been updated on a continuing basis. The inventories that have been updated for the current RMP revision process include, but are not limited to Sage-grouse lek and winter use areas; riparian functioning condition and trend; prairie dog town location and extent; big game migration routes and migration bottleneck areas; information from the Wyoming Air Resources Monitoring System (WARMS) air quality monitoring stations; pygmy rabbit survey information; cultural resource locations, type, and eligibility for the National Register of Historic Places; grazing allotments that meet or fail to fully meet the Standards for Healthy Rangelands; and number, location, and extent of oil and gas wells and associated road and pipeline right-of-ways. The interdisciplinary team (Table 5-3, p. 5-10) that developed the analysis in the PRMP/FEIS reviewed and

incorporated all relevant and current data and information available. Such information is cited in the References Chapter of the PRMP/FEIS (p. L-1 to L-21). Additional relevant information that came in during the comment period on the DRMP/DEIS was incorporated into the PRMP/FEIS such as the distribution of sensitive species.

Regarding the specific resources that are in question by the protesting party:

**Wilderness Resources.** The BLM has long acknowledged that FLPMA Section 603 (43 U.S.C. § 1782) requiring a one-time wilderness review has expired. All current inventory of public lands is authorized by FLPMA Section 201 (43 U.S.C. § 1711). The BLM does periodically, and on a continuing basis, monitor existing WSAs in accordance with the Interim Management Policy, but has no authority to create new ones.

**Native Vegetation.** Section 3.13 of the PRMP/FEIS includes a description of the vegetation in the planning area, including native vegetation (p. 3-105 to 3-115). Vegetation information is obtained from the Wyoming Geographical Analysis Program (GAP) study; special status species information is from the Wyoming Natural Diversity Database with field checks by BLM staff.

**Riparian Areas.** Section 3.13 of the PRMP/FEIS includes a description of the vegetation in the planning area, including riparian communities (p. 3-106). Riparian vegetation information is obtained from the Wyoming Geographical Analysis Program (GAP) study.

**Microbiotic Crusts.** Soil surveys and ecologic site descriptions are provided by Natural Resources Conservation Service (NRCS). The BLM's standard is to use NRCS data, recognizing this agency's special expertise and responsibility. As NRCS develops and updates the surveys and site descriptions, the BLM uses that information. Baseline information on soils, including biological soil crusts and specific soils that may need special protection, is presented in Section 3.11 of the PRMP/FEIS (p. 3-98 to 3-100).

**Weeds and Invasive Plants.** Baseline data on noxious weeds and invasive plant species is included in Section 3.13.3 of the PRMP/FEIS (p. 3-115 to 3-116). Presence of weeds is documented by the Sublette County Weed and Pest. As BLM staff identify weeds, they share the information with Weed and Pest and coordinate treatment.

**OHV Damaged Areas.** Section 3.12.3 of the PRMP/FEIS (p. 3-102 to 3-104) includes OHV use descriptions and trends in the planning area as well as a discussion of OHV use/resource conflicts. Areas in the planning area that experience high levels of OHV use are identified. Any OHV damage is noted by BLM field employees when they see it, generally, while they are in the field doing other tasks.

**Livestock Damaged Areas.** The BLM assesses the condition of rangeland health, conducts monitoring and inventories, and evaluates this data on a periodic basis, normally on an allotment and/or watershed basis. Baseline data on rangeland conditions is contained in Section 3.6.4 (p. 3-33 to 3-35). Appendix 20, Table A20-2 (p. A20-7) presents specific information about rangeland standards assessments for the allotments.

The BLM has provided an adequate inventory of the resources of the public lands in full compliance with FLPMA. Using the inventories of the various resources, the BLM is able to

protect and manage the public lands within the Pinedale planning area in full compliance with its statutory directives.

### *Multiple-Use Mandate*

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**Issue Number:** PP-WY-PINEDALE-08-0005-25

**Organization:** Theodore Roosevelt Conservation Partnership

**Protester:** Thomas R. Wilmoth

**Issue Excerpt Text:**

In sum, BLM candidly acknowledges "[w]ildlife habitat would generally be protected only if a mineral commodity is not present for extraction." RMP/FEIS at 4-247. This is not multiple use management as required by FLPMA. BLM can and must do more to protect wildlife in the planning area.

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**Issue Number:** PP-WY-PINEDALE-08-0005-7

**Organization:** Theodore Roosevelt Conservation Partnership

**Protester:** Thomas R. Wilmoth

**Issue Excerpt Text:**

the proposed RMP fails to adhere to FLPMA's directive to manage public lands "under principles of multiple use and sustained yield." 43 U.S.C. § 1732(a); see also 43 U.S.C. § 1701(a)(8) (listing purposes and values that should be considered in the management of public lands). FLPMA also provides that "[i]n managing the public lands the [Secretary of Interior] shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue

degradation of the lands." 43 U.S.C. § 1732(b).

Despite a litany of adverse impacts projected for wildlife, especially big game and Sage-grouse, in the planning area, the proposed RMP fails to impose measures adequate to address these impacts. As a result, the proposed RMP, if adopted, would violate FLPMA's key principles.

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**Issue Number:** PP-WY-PINEDALE-08-0012-44

**Organization:** Upper Green River Valley Coalition

**Protester:** Linda Baker

**Issue Excerpt Text:**

When the multiple use mandate as defined by FLPMA is considered, it is apparent that the BLM has an obligation to fully protect the resources on its lands in the Pinedale Field Office. It must ensure the long-term needs of the American people are met, it need not provide for all resource uses on all areas of the public lands, and it must ensure there is no permanent impairment of the productivity of the land and quality of the environment. Under these obligations, we believe it is apparent that the BLM must protect migration corridors, crucial winter range, air quality, and water quality; and that the pygmy rabbit, greater sage grouse, and prairie dogs receive the maximum protection possible.

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### *Summary*

The proposed RMP does not reflect the multiple-use mandate of the FLPMA, prioritizing oil and gas development over all other land uses to the detriment of sensitive landscapes and wildlife.

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### *Response*

The FLPMA (Section 103(c)) defines "multiple use" as the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people. Accordingly, the BLM is responsible for the complicated task of striking a balance among the many competing uses to which public lands can be put. The BLM's multiple-use mandate does not require that all uses be allowed on all areas of the public lands. The purpose of the mandate is to require the BLM to evaluate and choose an appropriate balance of resource uses which involves tradeoffs between competing uses.

The BLM's planning process has allowed consideration of a range of alternatives in the DRMP/DEIS and PRMP/FEIS to ensure that a balanced approach was recommended. The

Proposed Plan includes responsible mineral development carried out through the implementation and enforcement of stipulations, required operating standards, conditions of approval, best management practices, and other site-specific mitigation measures, as well as through adherence to applicable laws and regulations. In addition, the Proposed Plan provides for large areas to be unavailable for future new oil and gas leasing (see pages 2-117 through 2-120). The BLM developed the Pinedale Proposed Plan with involvement from the public and cooperators that provides a balanced multiple-use management strategy to address the protection of resources while allowing for utilization of renewable and nonrenewable resources on the public lands in the Pinedale Field Office.

## **Areas of Critical Environmental Concern**

### **Elimination of Areas of Critical Environmental Concern**

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**Issue Number:** PP-WY-PINEDALE-08-0009-20

**Organization:** Trout Unlimited

**Protester:** Cathy Purves

**Issue Excerpt Text:**

Trout Unlimited (TU) requests further substantiation as to the reasoning behind the elimination of some ACEC's while others with the same relevance and value criteria merited a designation. It seems unreasonable and impossible for the BLM to make the statement that some streams that contain CRCT populations are important while others are not, regardless of purity. This species is a federally and state sensitive species. In deciding to not include North Cottonwood Creek, Rock Creek Expansion, South Beaver Watershed, Beaver Creek Expansion,

and South Cottonwood Creek as ACEC's because they did not meet the importance criteria though all contain populations of CRCT, including conservation populations in the La Barge Creek watershed, the BLM falls flat in their justification. TU would like to see an explanation including scientific conclusions as to why the BLM made these conclusions. If streams containing CRCT, as indicated in Appendix 4 (Table A4-1. Evaluation of ACEC Relevance and Importance Criteria. Page A4-2), and the BLM in their Evaluation Reports (Pinedale DEIS) refer to the trout as "irreplaceable" and "crucial to the health of the species and in preventing its listing under the ESA", TU wonders why this rationale to eliminate these unique areas persists.

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### ***Summary***

Further evidence is needed as to why some ACECs were eliminated while others with the same relevance and value criteria merited a designation.

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### ***Response***

To clarify, the Beaver Creek and Rock Creek ACECs are existing ACEC designations that the BLM has decided to retain. These existing ACECs meet the relevance and importance criteria for more than Colorado River cutthroat trout (CRCT) fisheries values. Beaver Creek meets the relevance and importance criteria for fisheries and wildlife values. The Rock Creek ACEC meets the relevance and importance criteria for scenic, fisheries, and wildlife values.

The proposed ACECs that are in question (Beaver Creek Expansion, North Cottonwood Creek, Rock Creek Expansion, South Beaver Watershed and South Cottonwood Creek) all meet the relevance criteria for fisheries values (CRCT), but do not meet the importance criteria (Appendix 4, Table A4-1, p. A4-2 to A4-3) and, therefore, are not eligible for designation as ACECs (CFR 1610.7-2; BLM Manual 1613). The BLM's preferred management approach for CRCT is to manage that species and its habitat throughout the planning area as a whole, rather than only

special designations and management areas (Appendix 4, Table A4-1, p. A4-2 to A4-3). The Proposed RMP includes planning area wide management actions for the benefit of CRCT in Section 2.5.5 (p. 2-145).

### *Areas of Critical Environmental Concern for Sage-grouse*

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**Issue Number:** PP-WY-Pinedale-08-0010-27  
**Organization:** Western Resource Advocates  
**Protester:** Daniel Heilig

**Issue Excerpt Text:**

Audubon Society, with Wyoming Outdoor Council, et al., submitted written comments (dated April 19, 2008) to the Pinedale BLM recommending that an ACEC or ACECs be designated in the planning area to protect greater Sage-grouse. Audubon's recommendation was offered in response to a notice published in the Federal Register soliciting additional comments on this subject. See 73 Fed.Reg. 9585 (February 21, 2008). Audubon's comments set forth compelling rationale and justification for the designation of one or more ACECs to advance Sage-grouse conservation, an action that is wholly consistent with BLM's National Sage-grouse Habitat Conservation Strategy and Sensitive Species Policy. Unfortunately, it appears those comments were

largely, if not entirely, ignored. So far as we have been able to determine, the only mention in the RMP/FEIS concerning ACEC designation for Sage-grouse is a single reference in Table A4-1 showing that a proposal was considered (and rejected) for Sage-grouse winter concentration area ACECs.

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**Issue Number:** PP-WY-Pinedale-08-0010-29  
**Organization:** Western Resource Advocates  
**Protester:** Daniel Heilig

**Issue Excerpt Text:**

The Federal Land Policy and Management Act (FLPMA) is explicit that in the development and revision of an RMP the BLM is to give "priority" to the "designation" of ACECs. 43 U.S.C. § 1712(c)(3). Audubon believes the BLM must faithfully ensure compliance with this command. BLM must give priority to designating ACECs; it cannot just "consider" them or "analyze" them.

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### *Summary*

The FLPMA requires that the BLM "give priority to the designation and protection" of ACECs. The recommendation for one or more ACECs for Sage-grouse was largely ignored.

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### *Response*

There is no requirement to carry forward all potential ACECs into the preferred alternative in an RMP. The BLM's ACEC Manual (M-1613) only requires that all potential ACECs be carried forward as recommended for designation into at least one alternative in the DRMP/DEIS. Alternative 3 in the Pinedale PRMP/FEIS analyzed the designation of all potential ACECs (Section 2.5.4, p. 2-104 to 2-109). The BLM Manual 1613.23 states that after completing the analysis of the effects of each alternative, the manager selects the preferred plan alternative which best meets the planning criteria and the guidance applicable to the area. The preferred alternative reflects the BLM's proposal for designation and management of ACECs. The BLM has discretion in the selection of ACECs for the various alternatives. The rationale for designation of individual ACECs carried forward into the Proposed Plan will be further explained in the Record of Decision.

The BLM will protect relevant and important values for Sage-grouse where ACECs are not designated under the Proposed Plan (Section 2.5.5, p. 2-139 to 2-141; Appendix 3, p. A3-25 to A3-26). These values will be managed for all areas as provided for in the Record of Decision for the Pinedale RMP.

## *Air Resources*

### *Regulatory Authority for Air Quality*

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**Issue Number:** PP-WY-PINEDALE-08-0002-23

**Organization:** SDSBT

**Protester:** Linda J. Cooper

**Issue Excerpt Text:**

The PPRMP FEIS acknowledges greater air quality impacts associated with Alternative 4 than Alternative 3. (See F-25, Figure 4-1.) Yet the BLM chooses the more polluting Alternative that would adversely affect public health without accepting responsibility for the future pollution its plan would create. This approach is not any more acceptable than BLM's deference to EPA and the State of Wyoming regulatory authority. BLM has undertaken the preparation of a Plan that declines responsibility for the impacts it acknowledges its Plan would cause, and even denies it has the authority for the mitigation it proposes to reduce impacts. See V 01.2 Appendix 19 Page 28-30 Mitigation Options.

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**Issue Number:** PP-WY-PINEDALE-08-0008-33

**Organization:** Independent Petroleum Association of Mountain States

**Protester:** Kathleen M. Sgamma

**Issue Excerpt Text:**

On page 2-110, the PRMP /FEIS states that BLM would work cooperatively with Wyoming Department of Environmental Quality - Air Quality Division (WDEQ-AQD) to develop a memorandum of understanding (MOU) on lease stipulations and conditions of approval (COA), with respect to air quality emissions. On the same page, the BLM lists two management objectives: 1) maintain

concentrations of criteria pollutants associated with management actions in compliance with applicable state and federal AAQS; and 2) maintain concentrations of PSD pollutants associated with management actions in compliance with the applicable increment. Compliance with NAAQS and PSD increments is the jurisdiction of the WDEQ, not the BLM. This language should be removed in the RMP /Record of Decision (ROD).

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**Issue Number:** PP-WY-PINEDALE-08-0012-16

**Organization:** Upper Green River Valley Coalition

**Protester:** Linda Baker

**Issue Excerpt Text:**

While the state clearly has primacy, BLM places an inordinate amount of weight on that fact, pointedly listing state responsibilities while overlooking its own: "the WDEQ-AQD has the primary authority and responsibility to review permit applications and to require emission permits, fees, and control devices, before construction and/or operation." (A19-6 &7) BLM tries to deflect responsibility for air quality mitigation by hiding behind WDEQ-AQD's primary authority: "BLM has no authority to require any application of these [mitigation] measures... ." (A19-29) WDEQ's primary authority does not cancel out BLM's responsibilities, just as BLM's authority to approve APDs does not cancel out WDEQ's authority to approve and regulate new emission sources. These agencies must work together to provide for and achieve compliance with the Clean Air Act and related regulations, standards, and plans.

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### *Summary*

The Proposed RMP fails to clearly depict the regulatory authority of the BLM, the State of Wyoming, and the Environmental Protection Agency (EPA) with respect to air quality, including the authority for air quality mitigation.

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### *Response*

The Pinedale PRMP/FEIS appropriately identifies the authority of the air quality regulatory agencies and the relationship the BLM has with them in Section 2.3.1 (p. 2-8). As stated, the State of Wyoming has primacy with regard to air quality. Adhering to Wyoming Department of Environmental Quality (WDEQ) standards is required by law.



Since this is an RMP, it is not possible to anticipate specific projects and specific air quality mitigation needs at this time. Accordingly, mitigation will be considered if and when specific projects are proposed. Special requirements to alleviate air quality impacts would be included on a case-by-case basis in future use authorizations (including lease stipulations for new leases) within the scope of the BLM's authority. The BLM has worked closely with the WDEQ and the EPA throughout the development of this RMP and commits to continue that close working relationship in the development of specific projects in the future. For additional information please refer to the response for "Valid Existing Rights" and "Application of Mitigation Measures" under Leasable Minerals.

Appendix 19, Table A19-16 (p. A19-29 to A19-30) includes general air quality mitigation measures that should be considered and applied in the planning area as appropriate. This appendix will be revised as part of the Pinedale RMP Record of Decision to clarify that these measures may be implemented through voluntary means or may be required by the BLM or WDEQ/Air Quality Division (p. A19-29).

### *Compliance with Clean Air Act*

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**Issue Number:** PP-WY-Pinedale-08-0011-86

**Organization:** Western Watersheds Project

**Protester:** Jonathan Ratner

**Issue Excerpt Text:**

Currently, the amount of oil and gas development is causing major impacts to air quality with exceedances of the ozone standard and huge quantities of VOC's and HAP's (both unmonitored) to be emitted. The RMP expects a more than doubling of wells but provides no defensible information as to how air quality standards will not be violated.

The BLM Must "Provide for Compliance" with the Clean Air Act and Related Regulations, Standards, and Plans. The FLPMA requires that BLM land use plans shall "provide for compliance with applicable pollution control laws, including State and Federal air, water, noise, or other pollution standards or implementation plans." 43 U.S.C. § 1712(c)(8). As currently written, the Pinedale PRMP FEIS does not meet this requirement. BLM acknowledges that "ozone levels approach the 84 ppb standard" (A19-9) in the Resource Area, levels which already technically exceed the new 75 ppb EPA standard. BLM cannot ignore this factual admission that air quality in the PFO Resource Area will soon procedurally exceed federal standards without mitigation, nor fail to address its responsibilities under FLPMA and the CAA.

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**Issue Number:** PP-WY-PINEDALE-08-0012-15

**Organization:** Upper Green River Valley Coalition

**Protester:** Linda Baker

**Issue Excerpt Text:**

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### *Summary*

The Proposed RMP does not provide for compliance with the Clean Air Act with respect to ozone standards

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### *Response*

As stated, the State of Wyoming has primacy with regard to implementation of the Clean Air Act. In accordance with FLPMA, any activities authorized by the BLM are required to comply with substantive environmental laws, including the Clean Air Act. The Wyoming Department of Environmental Quality (WDEQ) is in the process of revising its air quality standards with regard to ozone. The BLM is currently working in conjunction with WDEQ on the development of mitigation measures to comply with the new ozone standard.

Please refer to the response for "Impact Analysis-Air Quality" for information on the air quality impact analysis required for an RMP. Because the PRMP does not actually authorize any oil and gas development, any proposed project would be subject to additional analysis of possible air effects before approval. When a well is proposed for development, a site-specific environmental analysis must be done as part of the permitting process to determine the specific impacts. No development of a new or modified source of air pollutants would be allowed to proceed unless it could be demonstrated that the proposed source or facility will not prevent attainment or maintenance of any State or Federal ambient air quality standard, including ozone. Please refer to the response for "Regulatory Authority for Air Quality" for additional information on mitigation.

### *Air Quality Modeling and Data Used*

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**Issue Number:** PP-WY-PINEDALE-08-0003-5

**Organization:**

**Protester:** Ronald P. Walker

**Issue Excerpt Text:**

The treatment of the data is misleading. Wind direction and frequency averaging creates a false statistical representation of actual behavior and masks important month-to-month behavior critical to assessment of transport of gas field pollutants into the surrounding federally protected Class I airsheds (see Appendix I, pp 15-18). Chapter 3, Section 3.2.3, page 3-5: Ambient background concentrations of specified pollutants is non-representative of the Pinedale region. CO data collected from Yellowstone National Park is too far removed from the Pinedale region to be considered representative, largely due to complex wind behavior over complex mountain terrain between the two locations.

Data collected on NO<sub>x</sub> is admitted to be based upon a partial year and therefore cannot be justified as representative; also, the data location is not in a reliably representative location for the region due to complex wind behavior.

Data collected on ozone is admitted to be based upon a partial year and therefore cannot be justified as representative; Furthermore, violations of EPA ozone standards in the winter of 2008 and studies of those violations demonstrate that this pollutant's presence is due to gas development now underway.

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**Issue Number:** PP-WY-PINEDALE-08-0003-7

**Organization:**

**Protester:** Ronald P. Walker

**Issue Excerpt Text:**

Data collected on PM<sub>10</sub> is admitted to be based upon

a partial year and therefore cannot be justified as representative.

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**Issue Number:** PP-WY-Pinedale-08-0011-89

**Organization:** Western Watersheds Project

**Protester:** Jonathan Ratner

**Issue Excerpt Text:**

Air resources (4-5) use 2001, prior to the majority of the PAPA-Jonah development as baseline despite more current data. This violates NEPA.

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**Issue Number:** PP-WY-PINEDALE-08-0012-8

**Organization:** Upper Green River Valley Coalition

**Protester:** Linda Baker

**Issue Excerpt Text:**

BLM has failed to ensure the scientific integrity and accuracy of air quality monitoring data collected within the Resource Area and used to determine compliance with state and federal standards. BLM states in the PRMP FEIS Section 1.4.2 Planning Criteria (1-10) that, "where practicable and timely for the planning effort, current scientific information... will be considered." However, BLM did not use current, scientific data, but outdated, 2005 data in the FEIS to assert that background concentrations of the criteria pollutant ozone are in compliance with NAAQS (AI9-10). BLM states that existing air quality is "in compliance with state and federal ambient air quality standards" (3-10), however the most current, scientific air quality monitoring conducted by the WDEQ AQD shows that the Pinedale area technically exceeds NAAQS for ozone (O<sub>3</sub>) (Attachment 5). This information was available to BLM during the writing of the FEIS in May of 2008, but BLM chose not to cite it in the PRMP FEIS despite BLM's and DOI's guidance on the use of current scientific analysis.

## *Summary*

The Final EIS uses inappropriate data regarding air quality and air pollutants. The Final EIS also uses improper methods to analyze the air quality data.

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## *Response*

Per BLM policy, and working in cooperation with the air quality stakeholders, the ambient air quality data used in the Pinedale planning process were obtained from the Wyoming Department of Environmental Quality (WDEQ). Given the State's regulatory authority, the BLM defers to the WDEQ for the establishment of ambient air quality background values. Refer to the response for "Regulatory Authority for Air Quality" for additional information. Although some of the data are not for complete years (several are for 50 weeks), the WDEQ considers these data to be sufficient.

Air quality stakeholders, including WDEQ, agreed to use 2001 as the base year for air quality data because it allowed for an evaluation of the incremental changes to air quality from the onset of the planning process. All alternatives in the PRMP/FEIS used 2001 data as a baseline to allow for comparison of air quality impacts between all alternatives.

Per agreement with the air quality stakeholders (including WDEQ and EPA), a qualitative methodology was used to identify air emissions and determine relative impacts. Refer to the response for "Impact Analysis-Air Quality" for additional information on the qualitative air quality impact analysis in the PRMP/FEIS. The PRMP does not actually authorize any development that will result in air quality impacts. Any proposed project would be subject to additional analysis of possible air effects before approval. When a project is proposed with potential air quality impacts, a site-specific environmental analysis must be done as part of the permitting process. No development of a new or modified source of air pollutants would be allowed to proceed unless it could be demonstrated that the proposed source or facility will not prevent attainment or maintenance of any State or Federal ambient air quality standard.

## *Climate Change*

### *Analysis of Climate Change*

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**Issue Number:** PP-WY-PINEDALE-08-0009-22

**Organization:** Trout Unlimited

**Protester:** Cathy Purves

**Issue Excerpt Text:**

Chapter 4 under the Cumulative Impacts discussion (Section 4.19, page 4-279) TU was disappointed to see so little discussion with respect to climate change. Two paragraphs dedicated to generalities is unacceptable with the amount of data and information available on climate change and its impacts to waters, air, fisheries, wildlife, vegetation, and ecosystems. In fact, there was no mention of the recent directive issued by the five federal agencies that direct the BLM to include climate change discussions and work as it relates to water program

management (see August 22, 2008 Memorandum titled: "Federal Agency Cooperation on Adaptation of Water-Related Programs to the Impacts of Climate Change" from US EPA, USDOJ, USDOA, US Dept. of Commerce, and US Dept. of Defense).

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**Issue Number:** PP-WY-Pinedale-08-0011-100

**Organization:** Western Watersheds Project

**Protester:** Jonathan Ratner

**Issue Excerpt Text:**

Clearly the FEIS must contain a description of the effects of climate change on existing conditions such as the prevalence of exotic plant species, the availability of water, the health of riparian areas, zones of soil erosion or vulnerability to erosion all

provide critical baseline information necessary to BLM's ability to determine whether the resources can withstand any of the proposed alternatives. Without this basic foundational information about the existing health of the land, it is impossible to make any informed decision about the level, location, and kind of activities it can support in the future. BLM should have discussed all of these predicted effects of climate in Chapter 3's assessment of existing conditions and in Chapter 4's discussion of the impacts of the various alternatives.

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**Issue Number:** PP-WY-Pinedale-08-0011-103

**Organization:** Western Watersheds Project

**Protester:** Jonathan Ratner

**Issue Excerpt Text:**

Secretarial Order No. 3226 specifically requires BLM to consider and analyze potential climate change impacts when undertaking long-range planning exercises, when setting priorities for scientific research and investigations, when developing multi-year management plans, and/or when making major decisions regarding the potential utilization of resources under the Department's purview.

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**Issue Number:** PP-WY-Pinedale-08-0011-105

**Organization:** Western Watersheds Project

**Protester:** Jonathan Ratner

**Issue Excerpt Text:**

As noted above, no analysis of potential climate change impacts was provided in the plan and EIS. BLM simply ignored the Secretarial Order.

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**Issue Number:** PP-WY-Pinedale-08-0011-98

**Organization:** Western Watersheds Project

**Protester:** Jonathan Ratner

**Issue Excerpt Text:**

The RMP provides no estimate of how much temperatures will increase in the Field Office, or even in the region generally, or how that increase may

affect natural resources such as water, vegetation, wildlife, or any other resource managed by BLM. Nor does the RMP provide any real quantitative analysis of the extent to which activities which occur there, such as oil and gas development, livestock use and ORV use, may contribute to the release of greenhouse gases that cause climate change. Inexplicably, the RMP makes no attempt to utilize existing studies as the basis for any further information about how climate change-with expected warmer weather-may affect the resources of the Pinedale Field Office.

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**Issue Number:** PP-WY-PINEDALE-08-0012-18

**Organization:** Upper Green River Valley Coalition

**Protester:** Linda Baker

**Issue Excerpt Text:**

The Pinedale PRMP FEIS currently has little to say about climate change implications specific to the PFO, with the briefest analysis that states: "Several activities occur within the planning area that may generate GHG emissions. Oil and gas development, large fires, and recreation using combustion engines can potentially generate CO<sub>2</sub> and methane." (3-11) This is insufficient to meet the requirements of NEPA given the increasing and almost universal recognition of the significance of this issue.

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**Issue Number:** PP-WY-PINEDALE-08-0012-20

**Organization:** Upper Green River Valley Coalition

**Protester:** Linda Baker

**Issue Excerpt Text:**

We would note that BLM is under direction from the Secretary of the Interior to "consider and analyze potential climate change impacts" when developing RMPs. This directive applies specifically to oil and gas development activities. And of course, NEPA requires that BLM consider all environmentally significant issues in its PRMP FEIS, and there is no doubt that global warming is such an issue.

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## ***Summary***

The analysis of potential climate change impacts provided in the PRMP/FEIS is inadequate.

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## ***Response***

Information relating to climate and global climate change are described in Section 3.2.5 of the PRMP/FEIS (p. 3-10 to 3-11). In addition, the impacts of climate change are discussed at a level of detail appropriate to landscape-level analysis in Section 4.19.3 of the Pinedale PRMP/FEIS (p.

4-279), given the lack of scientific tools designed to predict climate change at regional or local scales. This lack of scientific tools designed to predict climate change on regional or local scales limits the ability to quantify potential future impacts. Currently, the BLM does not have an established mechanism to accurately predict the effect of resource management-level decisions from this planning effort on global climate change. Further, the EPA has not developed a regulatory protocol or set of emission standards regarding global climate change. When these protocols and standards are available, the BLM will analyze potential effects on global climate change in the NEPA documentation prepared for site-specific projects. The BLM will conduct subsequent NEPA analyses, including site-specific project and implementation action levels, such as those for oil and gas field development and allotment management.

In compliance with the NEPA, the public will have the opportunity to participate in the environmental analysis process for actions implementing the Proposed Plan. As the emergence of more recent studies on climate change become available, the existing analysis presented in the Pinedale PRMP/FEIS will be evaluated to determine its validity in light of new climate change information and details about subsequent proposed actions in the planning area.

### **Fish, Wildlife, Plants, Special Status Species**

#### **Wyoming Sage-grouse Executive Order**

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**Issue Number:** PP-WY-PINEDALE-08-0004-19  
**Organization:** Biodiversity Conservation Alliance  
**Protester:** Erik Molvar

**Issue Excerpt Text:**

The Pinedale RMP Fails to Maintain Consistency with the State Sage-grouse Executive Order. Notably, nowhere does the Pinedale RMP incorporate the conservation policy outlined in Governor Freudenthal's Sage-grouse core area policy, formalized by Executive Order last summer. Attachments 7 and 8. It is clear from the maps accompanying the Executive Order that significant portions of designated Core Areas fall within the Pinedale Field Office.

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**Issue Number:** PP-WY-PINEDALE-08-0005-28  
**Organization:** Theodore Roosevelt Conservation Partnership  
**Protester:** Thomas R. Wilmoth

**Issue Excerpt Text:**

Recognizing the special status of Sage-grouse and the need to conserve the species more effectively, Governor Freudenthal last month adopted Executive Order 2008-2. That Order explains the significance of the greater Sage-grouse in Wyoming, as well as the legal, social and economic ramifications of a decision to list the greater Sage-grouse as threatened or endangered under the ESA. The Order calls for State agencies to focus on the enhancement and maintenance of grouse populations within identified Core Population Areas ("CPA"), which overlay many

of the proposed lease parcels. The Order further calls on agencies to limit new development to that which will not conflict with grouse conservation. Finally, the Order requires State agencies to "work collaboratively with [FWS], [BLM], U.S. Forest Service, and other federal agencies to ensure, to the greatest extent possible, a uniform and consistent application of this Executive Order to maintain and enhance Greater Sage-grouse habitats and populations."

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**Issue Number:** PP-WY-PINEDALE-08-0005-31  
**Organization:** Theodore Roosevelt Conservation Partnership  
**Protester:** Thomas R. Wilmoth

**Issue Excerpt Text:**

The designation of [Sage-grouse] CPAs throughout the planning area [Executive Order 2008-2] clearly constitute "changes in conditions" that "identify new and emerging resource and other values." 43 U.S.C. § 1711(a). The RMP should not be approved until BLM's inventory has been updated to address these values and the FEIS revised to consider impacts of the proposed RMP on these values.

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**Issue Number:** PP-WY-Pinedale-08-0010-14  
**Organization:** Western Resource Advocates  
**Protester:** Daniel Heilig

**Issue Excerpt Text:**

So far as we can determine, the Pinedale RMP does not consider the Executive Order [Order 2008-2 -

GREATER SAGE-GROUSE CORE AREA PROTECTION] at all. It seems to be completely silent on the whether compliance with the Executive Order can be achieved consistent with Federal laws. Absent this consideration, the Pinedale RMP does not meet the requirements of FLPMA. The BLM should explicitly consider and evaluate the Executive Order, and unless it is inconsistent with Federal law, the RMP should adopt and abide by the provisions of the Executive Order.

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**Issue Number:** PP-WY-PINEDALE-08-0012-31  
**Organization:** Upper Green River Valley Coalition  
**Protester:** Linda Baker

**Issue Excerpt Text:**

Proposed Protections For The Greater Sage-grouse Do Not Meet The Requirements Of The State of

Wyoming's Executive Order Regarding Sage-grouse Management. The BLM outlines the management that would be applied to the greater Sage-grouse on Map 2-36 and on A3-25 of the PRMP FEIS. The provisions will: Prohibit or restrict surface disturbance and occupancy within 1/4 miles of an occupied lek and a 2-mile seasonal stipulation to protect nesting and brood rearing habitat. Prohibit or restrict surface disturbing or disruptive activities in delineated Sage-grouse winter concentration areas from November 15-March 14. Avoid permanent high-profile structures within 0.25 miles of an occupied Sage-grouse lek. We do not feel these provisions are sufficient to comply with Executive Order (EO) 2008-2, Greater Sage-grouse Core Area Protection, issued by the Governor of Wyoming on August 1, 2008.

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***Summary***

The PRMP/FEIS fails to provide management of Sage-grouse and Sage-grouse habitats consistent with Wyoming State Sage-grouse Executive Order (2008-2).

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***Response***

The Pinedale PRMP/FEIS used the best available information, research, and data such as the BLM National Sage-grouse Habitat Conservation Strategy (2004) and the Wyoming Greater Sage-grouse Conservation Plan (2003). Because Governor Freudenthal's Executive Order 2008-2 was issued on August 1, 2008, during final production and printing of the Final EIS, it was not possible to reference it in the document. The Pinedale Field Office has since reviewed the Executive order which is directed toward State agencies and management of State lands and recognizes valid existing rights and the terms associated with existing oil and gas leases. The BLM is currently working with the State of Wyoming on implementation of Executive Order 2008-2.

The BLM is committed to conservation of Sage-grouse and its habitat. The BLM has reviewed the available scientific literature regarding Sage-grouse and has incorporated protective measures for Sage-grouse and Sage-grouse habitats into the Pinedale PRMP to the extent possible. The BLM has legal commitments to holders of valid existing oil and gas leases. It is not possible to establish large, undeveloped buffers around Sage-grouse leks in areas where operators hold valid existing oil and gas leases that are not encumbered by lease stipulations. The Proposed RMP provides, on a landscape scale, undisturbed habitats in the Unavailable for Leasing areas to maintain viable populations in the planning area during the period that the Intensively Developed Fields are being developed and produced. The Proposed RMP is intended to maintain these undeveloped areas as functioning Sage-grouse habitats. Review of Wyoming Game and Fish Department maps show that the proposed Unavailable Areas in the Pinedale planning area roughly correspond to the Governor's Core Population Areas

([http://gf.state.wy.us/wildlife/wildlife\\_management/sagegrouse/gov\\_sagegrousecoreareas\\_v2final.pdf](http://gf.state.wy.us/wildlife/wildlife_management/sagegrouse/gov_sagegrousecoreareas_v2final.pdf)).

Because the RMP does not authorize any specific activities, consistency with Executive order 2008-2 depends upon how future activities are implemented. Future activities conducted pursuant to the RMP will be subject to an appropriate level of additional site-specific environmental analysis, including an evaluation of appropriate mitigation measures for the management of Sage-grouse and Sage-grouse habitats.

### *Kemmerer Field Office Sage-grouse Management*

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**Issue Number:** PP-WY-PINEDALE-08-0005-22

**Organization:** Theodore Roosevelt Conservation Partnership

**Protester:** Thomas R. Wilmoth

uniformity of action between its offices is critical to successful wildlife management - particularly in the context of managing Sage-grouse habitat at the landscape level.

**Issue Excerpt Text:**

The Kemmerer planning area, notably, is immediately adjacent to the Pinedale planning area. The RMP/FEIS notes that "BLM land management plans and activities in adjacent planning areas" have "the greatest likelihood to generate potential cumulative impacts when added to activities associated with the Pinedale RMP alternatives[.]" FEIS 4-272. Because cumulative impacts are most likely to result from impacts in adjacent planning areas, like Kemmerer, it is even more important to coordinate management actions uniformly among planning areas. Indeed, BLM has explained that

**Issue Number:** PP-WY-PINEDALE-08-0012-33

**Organization:** Upper Green River Valley Coalition

**Protester:** Linda Baker

**Issue Excerpt Text:**

While the proposed Pinedale RMP does not comply with the Wyoming Governor's Executive Order 2008-2, and we explain in this protest how it must modify its efforts in order to comply with state policies, it must as a bare minimal start not diminish protections according to arbitrary bureaucratic boundaries between Field Office areas [Kemmerer FO].

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### *Summary*

The PRMP/FEIS fails to provide management of Sage-grouse and Sage-grouse habitats consistent with the adjacent Kemmerer planning area.

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### *Response*

The Sage-grouse management strategies that are being proposed in the Kemmerer Field Office were analyzed in the range of alternatives in the Pinedale PRMP/FEIS. Unlike the Kemmerer RMP, however, the Pinedale RMP is proposing large areas unavailable for oil and gas leasing. The BLM believes that these areas will provide effective protection of Sage-grouse and Sage-grouse habitat in the planning area to offset impacts due to oil and gas development. The BLM believes that the approach used in Pinedale better fits the existing local management situation by balancing intensively developed gas fields with lands unavailable for leasing.

Because the RMP does not authorize any specific activities which may impact Sage-grouse, any impacts that may occur will depend upon how future activities are implemented. Future activities conducted pursuant to the RMP will be subject to an appropriate level of additional site-specific environmental analysis, including an evaluation of appropriate mitigation measures for Sage-grouse and Sage-grouse habitat.

## *Sage-grouse Recommendations Western State Wildlife Agencies*

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**Issue Number:** PP-WY-PINEDALE-08-0007-3

**Organization:** National Wildlife Federation

**Protester:** Kathleen C. Zimmerman

**Issue Excerpt Text:**

Pursuant to 43 C.F.R. § 1610.5-2, NWF asks that you administratively review the document and amend the

PPRMP to include mitigation measures for all Sage-grouse habitat within the planning area consistent with recent recommendations issued by western state wildlife agencies. See Memorandum on Multi-State Sage-grouse Coordination and Research-Based Recommendations (January 29, 2008) [copy attached as Exhibit A].

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### *Summary*

The PRMP/FEIS fails to incorporate the recommendations of the Memorandum on Multi-State Sage-grouse Coordination and Research-Based Recommendations (January 29, 2008).

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### *Response*

The BLM reviewed the Multi-State Sage-grouse Coordination and Research-Based Recommendations during the final stages of preparation of the Proposed RMP. The general recommendations of the Memo presented concepts and strategies supported by peer-reviewed literature that, when implemented in combination with other conservation measures, will likely allow Sage-grouse populations to persist. The Memo suggests that the BLM provide for habitat protection, conservation, and restoration, as appropriate, for Sage-grouse and other sagebrush-dependent species of conservation concern, consistent with NEPA and other applicable laws, regulations, directives, and policies. The major components of the Memo were considered in the planning process and the formulation of the alternatives in the PRMP/FEIS (Chapter 2, p. 2-98 to 2-99; Table 2-1, p. 2-2). The Proposed RMP complies with the recommendations of the Memo.

## *BLM National Sage-grouse Habitat Conservation Strategy*

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**Issue Number:** PP-WY-Pinedale-08-0010-23

**Organization:** Western Resource Advocates

**Protester:** Daniel Heilig

**Issue Excerpt Text:**

BLM's National Sage-grouse Habitat Conservation Strategy requires consideration of alternatives that place greater emphasis on Sage-grouse conservation. Propelled by mounting evidence showing a dramatic decline of the health of the species, the Washington Office of the BLM in November 2004, issued its National Sage-grouse Habitat Conservation Strategy. See BLM Instruction Memorandum No. 2005-024, November 16, 2004. Acknowledging "the BLM manages more Sage-grouse habitat than any other entity and as a result has a key role in the conservation of the species and its habitat" the

agency proclaimed, "one of BLM's highest priorities is to implement the National Sage-grouse Strategy on BLM-managed lands... All State Directors and Field Managers will take appropriate actions to ensure immediate implementation." See BLM 1M 2005-024. So far as Audubon can tell, the Pinedale RMP does not even mention the Conservation Strategy.

A core element of the Strategy is the development of alternatives that must identify and evaluate reasonable, feasible and effective options for conserving sagebrush habitats and associated species in accordance with BLM's multiple-use mandate in FLPMA. Under the Strategy, at least one alternative is supposed to "maximize conservation of sagebrush habitat through objectives, land use plan decisions and management direction."

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## *Summary*

The PRMP/FEIS fails to consider at least one alternative that would place greater emphasis on Sage-grouse conservation consistent with the BLM's National Sage-grouse Habitat Conservation Strategy.

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## *Response*

The BLM's National Sage-grouse Habitat Conservation Strategy Guidance for Addressing Sagebrush Habitat Conservation in BLM Land Use Plans (November 2004) requires that RMPs describe and analyze at least one alternative that maximizes conservation of sagebrush habitat (emphasizing special status species habitat) through objectives, land use plan decisions, and management direction. This alternative may or may not be designated as the Preferred Alternative.

In preparation of the Proposed RMP, an alternative was considered that would place greater emphasis on sagebrush habitat conservation (Alternative 3, Section 2.5.4, p. 2-97 to 2-103). Alternative 3 would provide a prohibition on surface disturbance or human presence within 1 mile of active leks from March 1 through May 15; prohibit all surface occupancy in suitable nesting habitats within 3 miles of active leks; prohibit disruptive activities in all winter concentration areas regardless of season; prohibit structures greater than 15 feet in height within 2 miles of leks; and limit well-pad densities to one per 640-acre section where compatible with lease rights. Further, as required by the BLM's National Sage-grouse Habitat Conservation Strategy guidance, different levels of sagebrush habitat conservation were evaluated in the range of alternatives in the PRMP/FEIS (Alternative 1, p. 2-42 to 2-45; Alternative 2, p. 2-69 to 2-72; Alternative 4, p. 2-139 to 2-147).

## *Protection of Sensitive Species-White-Tailed Prairie Dogs*

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**Issue Number:** PP-WY-PINEDALE-08-0004-31  
**Organization:** Biodiversity Conservation Alliance  
**Protester:** Erik Molvar

### **Issue Excerpt Text:**

BLM's impact analysis of impacts on white-tailed prairie dogs consists of two sentences: Most of the known occurrences of white-tailed prairie dog occur within the Jonah and Anticline Fields. The impacts of intense development have not been studied to date, and the planning area could face extirpation of the white-tailed prairie dog if mitigation efforts fail. FEIS at 4-228, emphasis added. This isn't the "hard look" required by NEPA, it is no look at all. And given the BLM's own admission that extirpation is a possibility throughout the field office, much stronger mitigation measures should have been enacted to ensure that this BLM Sensitive Species is not lost.

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**Issue Number:** PP-WY-PINEDALE-08-0004-33  
**Organization:** Biodiversity Conservation Alliance  
**Protester:** Erik Molvar

### **Issue Excerpt Text:**

This conclusion indicates that present management for this species [Prairie Dog] (based on discretionary avoidance of colonies during oil and gas development) is insufficient to preclude major impacts inconsistent with BLM Sensitive Species policy. BLM Handbook H-6840.06. It is clear from the BLM's concession that extirpation across the field office is a possibility that the agency is violating its Sensitive Species policy in a way that is arbitrary and capricious pursuant to the APA.

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## *Summary*

The management for prairie dogs in the Proposed RMP is inconsistent with the BLM's Sensitive Species Policy.

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## *Response*

An objective of the BLM's Sensitive Species Policy is that the BLM actions not contribute to the need to federally list species, such as the white-tailed prairie dog as threatened or endangered under the Endangered Species Act (BLM Manual 6840.06 (rel. 6-121(1/19/01))). The RMP does not authorize any specific activities that could contribute to this need. Therefore, future impacts to white-tailed prairie dog populations would depend upon how future activities are implemented. Future activities conducted pursuant to the RMP would first be subject to consideration of an appropriate level of additional site-specific environmental analysis. That analysis would include an evaluation of any appropriate project specific mitigation measures in an attempt to ensure adherence to all regulations and BLM policies. The BLM has considered that with the application of appropriate management actions and conservation measures (Section 2.5.5, p. 2-143 to 2-144; Appendix 3, p. A3-21 to A3-23) and any additional project specific mitigation, future actions would not contribute to the need for white-tailed prairie dog to become listed as threatened or endangered under the Endangered Species Act.

For additional information please refer to the response for "Impact Analysis-Prairie Dogs."

## *Protection of Sensitive Species-Sage-grouse*

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**Issue Number:** PP-WY-PINEDALE-08-0004-18  
**Organization:** Biodiversity Conservation Alliance  
**Protester:** Erik Molvar

### **Issue Excerpt Text:**

Under the Proposed RMP, Traditional Leasing Areas and even Unavailable Areas would apply the current quarter-mile NSO buffer around leks, and would add a significantly weakened Timing Limitation Stipulation in which surface disturbing activities would be "avoided" rather than prohibited during the course of the nesting season. This language change represents a shift from nondiscretionary standards to discretionary guidelines, meaning that the BLM will be free to permit industrial activities in the most sensitive breeding habitats during the sensitive nesting season, compounding the impacts of industrializing these sensitive habitats. This represents a significant reduction in protections for Sage-grouse in affected areas.

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**Issue Number:** PP-WY-PINEDALE-08-0007-6  
**Organization:** National Wildlife Federation  
**Protester:** Kathleen C. Zimmerman

### **Issue Excerpt Text:**

BLM itself has designated the Greater Sage-grouse as

a "sensitive" species (footnote 2). In doing so, the agency made a commitment to use "all methods and procedures which are necessary to improve the condition of special status species and their habitats to a point where their special status recognition is no longer warranted." BLM Manual 6840 at .01. The PPRMP fails to meet these commitments. Indeed, BLM admits that under all alternatives discussed in the FEIS: It is likely that Sage-grouse populations in the planning area will continue to decline at an unknown rate.

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**Issue Number:** PP-WY-Pinedale-08-0010-37  
**Organization:** Western Resource Advocates  
**Protester:** Daniel Heilig

### **Issue Excerpt Text:**

How can BLM sensibly reconcile its obligation to use "all methods and procedures" to protect sensitive species and their habitats with the following conclusion from the RMP/FEIS: Well densities exceeding one well per 699 acres are likely to lead to declines in male Sage-grouse lek attendance. (internal citations omitted). Overall declines in male lek attendance approached 100% when the distance from leks to drilling rigs, producing wells, and main haul roads decreased, in conjunction with an increase in

the number of wells within 5 km and the total length of main haul roads within 3 km (attributed to traffic volume and vehicle activity during the strutting

period) of the lek. (Holloran 2005).Pinedale RMP at 4-221.

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### **Summary**

The management for Sage-grouse in the Proposed RMP is inconsistent with the BLM's Sensitive Species Policy.

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### **Response**

The BLM believes that the Pinedale PRMP makes unprecedented strides to maintain protected population areas for species such as Sage-grouse, maintain the species diversity that currently occurs, and provide source populations to re-inhabit areas where populations have declined.

As stated on p. 2-118 Objective 3 (Unavailable Areas), as existing oil and gas leases expire in Unavailable Areas, they would not be re-offered for lease except as necessary to provide drainage protection (as indicated below). In addition, the Unavailable Areas will largely remain intact even when drainage protection becomes an issue by only providing development within a ½-mile NSO area. The Traditional Leasing and Unavailable Areas are all subject to timing limitations, CSU and NSO stipulations, and COAs; the use of the term “avoid” as opposed to “prohibited” allows the BLM to consider discrete, typically emergency-related actions to be considered for exception to timing limitations. The use of larger landscape-scale Unavailable Areas, BMPs, and mitigation strategies outlined in appendixes 3, 12, and 18 are meant to prevent planning area-wide declines of Sage-grouse and other species that are impacted by the Intensively Developed fields or other multiple-use related actions.

The BLM's Sensitive Species Policy dictates that BLM actions do not contribute to the need to designate certain sensitive species, including the Greater Sage-grouse, as threatened or endangered under the Endangered Species Act (BLM Manual 6840.06 (rel. 6-121(1/19/01))). Because the RMP does not authorize any specific activities, impacts to Sage-grouse populations depend upon how future activities are implemented. Future activities conducted pursuant to the RMP will be subject to an appropriate level of additional site-specific environmental analysis, including an evaluation of appropriate mitigation measures. The BLM believes that with the application of mitigation measures combined with unavailable lands, future actions would not be likely to lead to the Sage-grouse being listed as threatened or endangered.

### ***Big Game Migration Corridors***

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**Issue Number:** PP-WY-PINEDALE-08-0008-44  
**Organization:** Independent Petroleum Association of Mountain States  
**Protester:** Kathleen M. Sgamma

**Issue Excerpt Text:**

Protests the BLM's management of big game migration corridors in the Proposed Pinedale RMP. IPAMS particularly objects to the fact that the BLM did not disclose the location or size of alleged big

game migration routes in the Draft Environmental Impact Statement for the Pinedale Resource Management Plan. 72 Fed. Reg. 7670 (Feb. 16, 2007) (BLM Notice of Availability); 72 Fed. Reg. 7652 (Feb. 16, 2007) (EPA Notice of Availability). Rather, the alleged migration routes are mapped for the very first time in the Proposed Pinedale RMP in Map 3-16. The BLM should have included a map of the big game migration boundary in the Draft EIS. No information regarding how these routes were

identified is included in the Proposed Pinedale RMP and accompanying EIS. Because the location and extent of the migration corridors were not disclosed in the Draft Environmental Impact Statement for the Pinedale Resource Management Plan, IPAMS and its members were not provided an opportunity to comment upon or understand how significantly their operations could be impacted by the BLM's proposed management objective.

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**Issue Number:** PP-WY-PINEDALE-08-0008-46  
**Organization:** Independent Petroleum Association of Mountain States  
**Protester:** Kathleen M. Sgamma

**Issue Excerpt Text:**

The location and extent of the migration corridors is concerning as several appear to encompass huge portions of active existing oil and gas fields, including the Big Piney-LaBarge and the Pinedale Anticline Fields that would be recognized as an Intensively Developed Field under the BLM's Proposed RMP.

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**Issue Number:** PP-WY-PINEDALE-08-0008-47  
**Organization:** Independent Petroleum Association of Mountain States  
**Protester:** Kathleen M. Sgamma

**Issue Excerpt Text:**

The BLM's proposed management of the previously undefined migration corridors within the Traditional Leasing Areas is also extremely ambiguous as the BLM simply indicates that "Big game migration routes would be protected." See Proposed Pinedale RMP, pg. 2-142. This management approach is extremely concerning as several entire leases are encompassed by the new mapped areas. Will, the BLM simply prohibit any oil and gas activities within these areas? Will the BLM simply prohibit future development on these leases? This seems to be the case as the BLM also states on page that big game migration bottleneck areas would be available for oil and gas leasing, but only with NSO restrictions. See Proposed Pinedale RMP, pg. 2-142. The BLM should provide information regarding how the migration corridors were identified and develop more detailed proposed management objectives for the migration corridors.

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***Summary***

The location and size of big game migration routes were not disclosed in the Draft EIS for the Pinedale Resource Management Plan; therefore, the public was not provided an opportunity to comment on or understand the impacts of this proposed management objective. Further, the proposed management of these routes is ambiguous.

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***Response***

The existence, importance, and management options for maintaining the integrity of big game migration routes were discussed in the Pinedale Draft EIS (Section 3.17.1, p. 3-116 to 3-117; Section 2.5.5, p. 2-147). However, quality maps depicting migration routes were not available at the time the DEIS was produced. Map information became available and was presented in the Final EIS (Map 3-16).

Migration routes in the Pinedale planning area are extensive due to the planning area's position between mountain summer ranges and lower-elevation winter ranges for several species of big game (pronghorn, mule deer, and elk). Because of the extensive nature of these areas, the seasonal variability of their use, and their importance in connecting big game habitats, it was not possible to formulate specific management actions that would be applicable to all types and locations of migration routes. Instead, the BLM considered management actions, such as reducing leasing availability and placing limitations on surface disturbance, on known big game migration bottlenecks, such as found at Trapper's Point and near the CCC Ponds. For the larger migration routes in the planning area, however, the PRMP allows for maximum management flexibility. Each proposed project that could impact big game migration will be

evaluated on its own merits and mitigation applied, if necessary to maintain the integrity of big game migration across the planning area.

### *Migratory Birds*

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**Issue Number:** PP-WY-Pinedale-08-0011-18

**Organization:** Western Watersheds Project

**Protester:** Jonathan Ratner

**Issue Excerpt Text:**

Migratory birds are not addressed. Migratory birds are not addressed in violation of NEPA, FLPMA and Executive Order 13186 requiring a memorandum of understanding with the Fish and Wildlife Service and

to consider the effects that planned or authorized activities will have on migratory birds and their habitats and to consider migratory birds in their land use planning efforts. No analysis was presented considering effects of livestock grazing and trampling, ORVs and other uses, habitat fragmentation from vegetation treatments and infrastructure, including range improvements.

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### *Summary*

Migratory birds are not addressed in violation of NEPA, FLPMA and Executive Order 13186.

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### *Response*

The BLM signed Instruction Memorandum (IM) 2008-050 on December 18, 2007. The purpose of this IM is to provide interim guidance to meet the BLM's responsibilities under the Migratory Bird Treaty Act and Executive Order 13186. This interim guidance establishes a consistent approach for addressing migratory bird populations and habitats when adopting, revising, or amending land use plans until a national Memorandum of Understanding (MOU) with the U.S. Fish and Wildlife Service (FWS) is established.

In terms of land use planning-level guidance, the IM requires that RMPs include migratory bird species of concern in the affected environment discussion. It also requires that goals, objectives, and management actions/use restrictions concerning migratory birds and major habitat types be incorporated into the alternatives analysis. In addition, an RMP must evaluate the effects of authorized actions on migratory birds and their habitats and identify best management practices to avoid or minimize these impacts.

The Pinedale PRMP/FEIS meets the requirements of IM 2008-050. It includes objectives and management actions to protect migratory birds and migratory bird habitat for all alternatives (p. 2-8 to 2-182). Actions particular to the Proposed RMP can be found in section 2.5.5 (p. 2-145 to 147). Raptors as a species of special concern in the planning area have been emphasized because they are high trophic-level predators, which are good indicators of habitat quality (Section 4.17, p. 4-213 to 4-248). Impacts to migratory birds and their habitats are addressed in section 4.17 (4-213 to 4-248).

The BLM is committed to avoiding or minimizing, to the extent practicable, adverse impacts to migratory birds and the major habitat types that support them (Section 2.5.5, p. 2-145 to 2-147). Future activities conducted pursuant to the RMP will be subject to an appropriate level of additional site-specific environmental analysis, including an evaluation of appropriate mitigation measures and working to align with conservation priorities of the State of Wyoming, the

InterMountain West Joint Venture, and the priorities of the Coordinated Plan for Bird Conservation in Central and Western Wyoming. The BLM is and will continue to be a partner in the implementation of the Coordinated Plan for Bird Conservation in Central and Western Wyoming (see <http://iwjv.org/Images/WYPlan2005.pdf>).

### ***Public Comment on Endangered Species Act Consultation***

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**Issue Number:** PP-WY-Pinedale-08-0011-79  
**Organization:** Western Watersheds Project  
**Protester:** Jonathan Ratner

**Issue Excerpt Text:**

Consultation must occur before a decision is made and any modifications of the selected alternative must

be disclosed to the public and the public given an opportunity to comment on the modifications, in accordance with NEPA. At a minimum, the biological assessments and biological opinion(s) should have been made available to the public in the Final EIS so that the public could review and provide comments on them. See 40 C.F.R. § 1502.25(a).

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### ***Summary***

The public was not allowed the opportunity to comment on the biological assessment or biological opinion(s) as part of the FEIS.

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### ***Response***

The BLM has complied with Section 7 of the Endangered Species Act (ESA) and CEQ regulations (40 CFR 1502.25). Section 7(c) of the ESA requires Federal agencies, under certain circumstances, to consult with the U.S. Fish and Wildlife Service (FWS) or the National Marine Fisheries Service to ensure that their actions are not likely to jeopardize the continued existence of any listed species.

As described in Section 5.1 of the PRMP/FEIS (p.5-2), the BLM prepared a biological assessment and provided it to the FWS as part of the Section 7 consultation process. In addition, a draft copy of the biological assessment was made available to the public on the Pinedale RMP website. The BLM used the same information and biological data to prepare both the biological assessment and the environmental analysis in the DRMP/DEIS and PRMP/FEIS, affording the public an opportunity to review and comment on the BLM's analysis of endangered and threatened species and their habitat.

The Biological Opinion is the formal opinion of the FWS as to whether a Federal action is likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat. As discussed above, the BLM has conducted Section 7 consultation with the FWS which will issue a Biological Opinion. The BLM, in turn, will include a copy of the Biological Opinion in the Pinedale RMP Record of Decision, and all resulting terms and conditions will be incorporated into the BLM's decision appropriately.

### **Lands, Realty**

#### ***Right-of-Way Avoidance & Exclusion Areas in Intensively Developed Fields***

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**Issue Number:** PP-WY-PINEDALE-08-0008-36  
**Organization:** Independent Petroleum Association

of Mountain States  
**Protester:** Kathleen M. Sgamma

**Issue Excerpt Text:**

IPAMS protests the Right-of-Way (ROW) avoidance areas created by the BLM's PRMP /FEIS, Alternative 4. See Proposed Pinedale RMP, pg. 2-117, Map 2-32. The BLM has not adequately explained or justified the right-of-way (ROW) avoidance area in the Pinedale Resource Area. IPAMS' members own numerous oil and gas leases in the resource area and their ability to develop those leases could be significantly impacted if the BLM inappropriately limits their ability to access said leases. The BLM must be willing to work with oil and gas lessees and operators to design access routes to proposed oil and gas development projects. Unless the BLM allows reasonable access to oil and gas leases, development of much needed energy supplies will be impossible.

In particular, IPAMS protests the creation of ROW avoidance areas within Intensively Developed Fields.

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**Issue Number:** PP-WY-PINEDALE-08-0008-38  
**Organization:** Independent Petroleum Association of Mountain States  
**Protester:** Kathleen M. Sgamma

**Issue Excerpt Text:**

The BLM's proposed ROW avoidance areas encompass a significant portion of the Intensively Developed Fields including the Big Piney-LaBarge Field, the Jonah Field, and the Pinedale Anticline Field. Compare Proposed Pinedale RMP Map 2-32 and Map 2-9. It is illogical and inappropriate to designate these fields as Intensively Developed Fields and then to potentially restrict development through a ROW avoidance areas.

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***Summary***

The BLM has not adequately explained or justified the right-of-way (ROW) avoidance areas within Intensively Developed Fields (IDFs).

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***Response***

Even in Intensively Developed Fields, the BLM has determined that there are some important resources that should be avoided or excluded from ROWs. Examples of these resources include raptor nest sites, Sage-grouse leks, sensitive and erosive soils, sensitive plant species, big game migration routes, important cultural resources, and Native American sacred sites. Table 2-27 in the PRMP/FEIS (p. 2-160) includes a list of ROW avoidance and exclusion areas by alternative. The rationales for avoidance and exclusion areas are described in chapter 4 for each affected resource. The BLM believes that it is reasonable and appropriate, even in Intensively Developed Fields, to avoid sensitive resources to the extent possible.

***Administratively Unavailable - Withdrawal***

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**Issue Number:** PP-WY-PINEDALE-08-0006-15  
**Organization:** Coalition of Local Governments  
**Protester:** Constance Brooks

**Issue Excerpt Text:**

The proposed RMP closes more than 441,100 acres to mineral leasing by classifying the public lands as "administratively unavailable." FEIS 2-51; 123,127,155,174,184. FLPMA requires BLM to use withdrawal procedures when it makes an area-wide or programmatic decision to close public lands to mineral leasing under the Mineral Leasing Act (MLA). 43 U.S.C. § 1714. Land classification decisions made in an RMP are discretionary, 43 U.S.C. §1712(e), but the withdrawal procedures are

not. BLM's discretion to deny an individual lease does not authorize broad scale or programmatic closures without following the withdrawal procedures. BLM has the authority to close the public lands to mineral leasing but it must follow the withdrawal procedures defined in FLPMA. The RMP's use of administratively unavailable classification is not the substantial equivalent of a withdrawal. There is no secretarial review and action, there is no report to Congress detailing the impacts on energy security, the local economy, and the viewpoints of the local governments, and there is no report by a certified engineer documenting the value of the minerals foregone. 43 U.S.C. §1714(c)(1)-(12). The RMP decision is not recorded on BLM

plat books as closed to mineral development. FLPMA requires each of these elements for mineral withdrawals and the failure to follow the law biases the closure by not disclosing the impacts.

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**Issue Number:** PP-WY-PINEDALE-08-0006-73

**Organization:** Coalition of Local Governments

**Protester:** Constance Brooks

**Issue Excerpt Text:**

If BLM determines to close a large area to mineral development, it must follow the withdrawal procedures set forth in FLPMA. While the land use planning process is public, it does not address the 12 subjects that a public land withdrawal report must, nor does it have the secretarial level review that a public land order has. As demonstrated below, BLM does not have the discretion to pick and choose whether to follow the withdrawal procedures, because Section 204 uses the verb "shall." The Section 202( e) uses the verb "may" with respect to management decisions made in an RMP. Binding legal precedent in the State of Wyoming holds that BLM must comply with FLPMA withdrawal procedures, and that each of the affected areas is greater than 5,000 acres. In short, the RMP must be modified to note that any closure will take effect after the withdrawal is effective and then BLM must proceed to complete these procedures.

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**Issue Number:** PP-WY-PINEDALE-08-0008-18

**Organization:** Independent Petroleum Association of Mountain States

**Protester:** Kathleen M. Sgamma

**Issue Excerpt Text:**

In addition, IPAMS protests the BLM's withdrawal of key portions of the Pinedale Resource Area without complying with the formal requirement mandated by FLPMA.

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**Issue Number:** PP-WY-PINEDALE-08-0008-20

**Organization:** Independent Petroleum Association of Mountain States

**Protester:** Kathleen M. Sgamma

**Issue Excerpt Text:**

The BLM's decision to withdraw large areas of the Pinedale Field Office from future leasing in order to protect other resources clearly constitutes a withdrawal under FLPMA. Under the Proposed RMP, BLM would release over 44,000 acres to future oil and gas leasing. Because such a decision constitutes a withdrawal the Department of the Interior will be required to comply with the procedural provisions of Section 204 FLPMA. 43 U.S.C. § 1714 (2006).

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***Summary***

Decisions removing lands from mineral leasing are withdrawals. Establishing withdrawals of more than 5,000 acres is contrary to law and secretarial policy.

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***Response***

As defined by FLPMA § 103(j), the term "withdrawal" means withholding an area of Federal land from settlement, sale, location, or entry under some or all of the general land laws for the purpose of limiting activities under those laws in order to maintain other public values in the area or reserving the area for a particular public purpose or program; or transferring jurisdiction over an area of Federal land . . . from one department, bureau or agency to another department, bureau or agency (43 U.S.C. § 1702(j)).

The terms "settlement," "sale," "location," or "entry" are all terms contemplating transfer of title to the lands in question, particularly the patenting, or potential patenting, of lands out of Federal ownership into the hands of private parties based on the provisions of the General Mining Law of 1872 as amended, the various Homestead Acts, and other general land law. It is inapplicable to mineral leasing occurring under the Mineral Leasing Act of 1920. A Federal mineral lease sale is not a "sale" of public land under Section 203 of FLPMA, and a closure to leasing is not a "withdrawal" as described in Section 204 of FLPMA. Therefore, the BLM was not required to



complete the procedures associated with a withdrawal when it decided to make 439,470 acres in the Pinedale planning area unavailable for oil and gas leasing in the Pinedale PRMP/FEIS.

## *Leasable Minerals*

### *Projections for Oil and Gas*

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**Issue Number:** PP-WY-PINEDALE-08-0002-9

**Organization:** SDSBT

**Protester:** Linda J. Cooper

**Issue Excerpt Text:**

The estimates of potential coal bed natural gas, (Map 4-2) and especially the estimates for conventional natural gas as represented in Map 4-1 that as stated in the PPRMP itself are based on a 2000 ENSR and Booze Allen Hamilton Report See Page 3-37 and geologic research of the 1980s that are overstated. SDSBT, the State of Wyoming, and the US Geological Survey have both pointed this out in separate analyses provided to the relevant federal officials months ago. To be more specific, the BLM has demonstrated a consistent tendency to overstate potential energy resources. The SDSBT rebuttal to the BLM estimates for the Wyoming Range follows. SDSBT's independent estimate was comparable to the State of Wyoming's own estimate for the Wyoming Range, and both were much less than that of the BLM.

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**Issue Number:** PP-WY-PINEDALE-08-0003-10

**Organization:**

**Protester:** Ronald P. Walker

**Issue Excerpt Text:**

Chapter 4, Section 4.10.5, page 4-124: Estimates of well gas production are likely in error in that they are understated. This is important because emissions from wells are in linear proportion to production and therefore will also be underestimated for modeling input.

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**Issue Number:** PP-WY-Pinedale-08-0011-87

**Organization:** Western Watersheds Project

**Protester:** Jonathan Ratner

**Issue Excerpt Text:**

Over the life of the plan the RMP expects 7,136 wells but fails to explain how currently permitted wells would equal that total without any additional wells approved over the next 15 years. This is absurd. Even if no new expansions of PAPA or Jonah occurred there will be much more development in other areas. The prediction of 7,136 is not reasonable given the reservoirs in the field office and the trajectory of prices.

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## *Summary*

The Proposed RMP does not accurately portray the potential for future oil and gas development in the planning area (i.e. the oil and gas RFD).

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## *Response*

The Pinedale oil and gas RFD is based on the known geology of the planning area and information gathered from oil and gas leaseholders during the planning process. The Pinedale RFD was completed by qualified petroleum geologists in the BLM Reservoir Management Group (p. 4-124) and prepared in accordance with the BLM Instruction Memorandum 2004-089, A Policy for Reasonably Foreseeable Development (RFD) Scenario for Oil and Gas. An RFD is based on a review of geological factors that control the potential for oil and gas resource occurrence and past and present technological factors that control the type and level of oil and gas activity. The RFD also considers petroleum engineering principles and practices and economics associated with discovering and producing oil and gas. The RFD can range from speculative estimates in unexplored frontier areas to estimates with higher levels of confidence in maturely developed producing areas. The Pinedale Mineral Occurrence and Potential

Development Report (January 2003) contains more information on the development of the RFD ([http://www.blm.gov/rmp/wy/pinedale/documents\\_PMO.html](http://www.blm.gov/rmp/wy/pinedale/documents_PMO.html)). To clarify, drilling of approved wells in the Pinedale Anticline Project Area is anticipated to continue past the evaluated life of the RMP.

For additional information refer to the response to "Treatment of the RFD Scenario".

### *Treatment of Reasonably Foreseeable Development Scenario*

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**Issue Number:** PP-WY-PINEDALE-08-0001-3  
**Organization:** EnCana Oil & Gas (USA) Inc.  
**Protester:** Constance D. Heath

**Issue Excerpt Text:**

EnCana objects to the RFD Scenario as currently drafted and incorporated into the Proposed Pinedale RMP because EnCana is concerned the RFD Scenario will be misconstrued as a cap or potential limitation on the level of oil and gas development that can be authorized within the Pinedale Planning Area.

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**Issue Number:** PP-WY-PINEDALE-08-0001-7  
**Organization:** EnCana Oil & Gas (USA) Inc.  
**Protester:** Constance D. Heath

**Issue Excerpt Text:**

On pages 2-11 and 2-12 of the Proposed Pinedale RMP, the BLM describes the RFD Scenario as a prediction of the future mineral development within the planning area. The Proposed Pinedale RMP appropriately states that: "The RFD is a projection of the number of wells and well pads that could potentially be developed under the various alternatives. It is included in the EIS for analysis purposes and is not a cap on the number of wells that would ultimately be developed." See Proposed Pinedale RMP, pg. 2-12. However, the document goes on to state inappropriately that "[t]he actual number of wells could exceed the RFD if the associated surface disturbance and impacts to other resources did not exceed the analysis thresholds."

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**Issue Number:** PP-WY-PINEDALE-08-0001-9  
**Organization:** EnCana Oil & Gas (USA) Inc.

**Protester:** Constance D. Heath

**Issue Excerpt Text:**

Further, throughout the Proposed Pinedale RMP, the BLM refers to the RFD Scenario as the amount of oil and gas development that would occur within the planning area. Such statements are inappropriate as they tend again to suggest the RFD Scenario is a cap on development.

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**Issue Number:** PP-WY-PINEDALE-08-0008-23  
**Organization:** Independent Petroleum Association of Mountain States  
**Protester:** Kathleen M. Sgamma

**Issue Excerpt Text:**

IPAMS objects to the RFD Scenario as currently drafted and incorporated into the PRMP /FEIS because IPAMS is concerned the RFD Scenario will be construed as a cap or potential limitation on the level of oil and gas development that can be authorized within the Pinedale Field Office.

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**Issue Number:** PP-WY-PINEDALE-08-0008-26  
**Organization:** Independent Petroleum Association of Mountain States  
**Protester:** Kathleen M. Sgamma

**Issue Excerpt Text:**

It is particularly important for the BLM to clarify that the RFD Scenario is not a limitation on future development within the Pinedale Field Office because existing development together with recently approved and currently proposed oil and gas projects within the Pinedale Field Office could surpass the BLM's RFD Scenario.

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### *Summary*

As described in the Proposed RMP, the RFD Scenario could be misconstrued as a cap or potential limitation on the level of oil and gas development that can be authorized within the Pinedale Planning Area.

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## ***Response***

As stated in the Management Guidelines Common to All Alternatives in the PRMP/FEIS (Section 2.3, p. 2-11 to 2-12), the RFD predicts future mineral development within the planning area. The RFD is a projection of the number of wells and well pads that could potentially be developed under the various alternatives. It is included in the RMP/EIS for analysis purposes only and is not a cap on the number of wells that would ultimately be developed. The actual number of wells could exceed the RFD scenario if the associated surface disturbance and impacts to other resources did not exceed the analysis threshold in the PRMP/FEIS. However, if the impacts from future oil and gas development were to exceed the impacts analyzed in the PRMP/FEIS, then additional NEPA analysis may be appropriate.

## ***Valid Existing Rights***

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**Issue Number:** PP-WY-PINEDALE-08-0001-23

**Organization:** EnCana Oil & Gas (USA) Inc.

**Protester:** Constance D. Heath

**Issue Excerpt Text:**

Finally, the BLM should make it clear that the mitigation measures contained in Appendix 3 cannot be required on existing leases. Once the BLM has issued a federal oil and gas lease without "no surface occupancy" stipulations, and in the absence of a nondiscretionary statutory prohibition against development, the BLM cannot completely deny development on the leasehold. See, e.g., National Wildlife Federation, et al., 150 IBLA 385,403 (1999). Only Congress has the right to completely prohibit development once a lease has been issued. Western Colorado Congress, 130 IBLA 244, 248 (1994). Further, the BLM cannot adjust valid and existing rights. Congress made it clear when it enacted FLPMA that nothing therein, or in the land use plans developed thereunder, was intended to terminate, modify, or alter any valid or existing property rights. See 43 U.S.C. § 1701 (2006).

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**Issue Number:** PP-WY-PINEDALE-08-0005-20

**Organization:** Theodore Roosevelt Conservation Partnership

**Protester:** Thomas R. Wilmoth

**Issue Excerpt Text:**

FEIS 27-547 (emphasis supplied). This analysis overstates the leaseholders' rights.

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**Issue Number:** PP-WY-PINEDALE-08-0008-12

**Organization:** Independent Petroleum Association of Mountain States

**Protester:** Kathleen M. Sgamma

**Issue Excerpt Text:**

Finally, the BLM should make it clear that the

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mitigation measures contained in Appendix 3 cannot be required on existing leases. Once the BLM has issued a federal oil and gas lease without no surface occupancy stipulations, and in the absence of a nondiscretionary statutory prohibition against development, the BLM cannot completely deny development on the leasehold.

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**Issue Number:** PP-WY-PINEDALE-08-0008-40

**Organization:** Independent Petroleum Association of Mountain States

**Protester:** Kathleen M. Sgamma

**Issue Excerpt Text:**

Further, the creation of the ROW exclusion and avoidance areas does not appear to reflect or acknowledge oil and gas lessees' valid and existing lease rights or their rights as the operator of Federal Oil and Gas Units. While the issuance of the oil and gas leases does not guarantee access to the leasehold, a federal lessee is entitled to use such part of the surface as may be necessary to produce the leased substance.

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**Issue Number:** PP-WY-PINEDALE-08-0008-48

**Organization:** Independent Petroleum Association of Mountain States

**Protester:** Kathleen M. Sgamma

**Issue Excerpt Text:**

Most importantly, the BLM should make it clear that existing lease rights will not be adversely impacted by the BLM's management of the migration corridors. Once the BLM has issued a federal oil and gas lease without NSO stipulations, and in the absence of a nondiscretionary statutory prohibition against development, the BLM cannot completely deny development on the leasehold.

**Issue Number:** PP-WY-PINEDALE-08-0008-58  
**Organization:** Independent Petroleum Association of Mountain States  
**Protester:** Kathleen M. Sgamma

**Issue Excerpt Text:**

The FEIS goes on to state that "based on site- or project-specific environmental analysis, conditions of approval (COA) could be applied at the APD and Sundry Notice stage, and at subsequent development stages, to mitigate potential impacts from oil and gas operations within existing lease areas, providing the leaseholder's right to develop the lease remains intact." FEIS at 2-11. COAs or other restrictions cannot unreasonably impair leaseholders' valid existing rights to develop their leases. 43 C.F.R. 3101.1-2.

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**Issue Number:** PP-WY-PINEDALE-08-0012-27  
**Organization:** Upper Green River Valley Coalition  
**Protester:** Linda Baker

**Issue Excerpt Text:**

BLM certainly has the authority, and indeed an obligation, to fully protect the natural environment in the Pinedale Field Office, even in areas that have been leased. The BLM should provide a clear, unequivocal statement in the PRMP FEIS of the degree to which it has retained rights under the standard lease form and specify precisely the means by which it will exercise those retained rights so as to meet management objectives and legal obligations, not to mention its obligation to "protect the public interest in the administration of the public domain" recognized by the Supreme Court in *Boesche*.

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**Issue Number:** PP-WY-PINEDALE-08-0013-3  
**Organization:** Questar  
**Protester:** J. Paul Matheny

**Issue Excerpt Text:**

On page 4-49, the PRMP contains the following

language: "Surface use restrictions, including timing limitation stipulations (TLS), NSO stipulations, and controlled surface use (CSU) stipulations, as well as unavailable for leasing designations, cannot be retroactively applied to valid, existing oil and gas leases or to valid, existing use authorizations (e.g., Application for Permit to Drill [APD]). Post lease actions/authorizations (e.g., APDs, road/pipeline ROWs), however, could be encumbered by TLS and CSU restrictions on a case-by-case basis, as required through project-specific NEPA analysis or other environmental review." The second sentence unnecessarily qualifies the clear and correct statement of governing law contained in the first sentence. Unfortunately, past history shows that the BLM often applies Conditions of Approval (COAs) to operations that far exceed the terms of the existing lease. Therefore, it is critical for the agency to clarify that it has the discretion to modify proposed actions on existing, un stipulated leases subject only to the voluntary agreement of the holder of valid existing rights. It is entirely inappropriate for BLM to use COAs to restrict the rights granted by existing leases.

For instance, the BLM needs to clarify that the mitigation measures contained in Appendix 3 cannot be required on existing leases. Once the BLM has issued a federal oil and gas lease without no surface occupancy stipulations, and in the absence of a nondiscretionary statutory prohibition against development, the BLM cannot completely deny development on the leasehold. See, e.g., *National Wildlife Federation, et al.*, 150 IBLA 385, 403 (1999). Only Congress has the right to completely prohibit development once a lease has been issued. *Western Colorado Congress*, 130 IBLA 244, 248 (1994). Further, the BLM cannot adjust valid and existing rights. Congress made it clear when it enacted FLPMA that nothing therein, or in the land use plans developed there under, was intended to terminate, modify, or alter any valid or existing property rights. See 43 U.S.C. § 1701 (2006).

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***Summary***

The PRMP/FEIS fails to accurately reflect oil and gas lessees' valid existing lease rights. The BLM should clarify the degree to which it has retained rights under the standard lease form and specify the means by which it will exercise those retained rights to meet management objectives. Further, the BLM should clarify the application of mitigation measures contained in appendix 3 on existing leases.

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## ***Response***

As stated in the General Planning Criteria for the PRMP/FEIS (Section 1.4.2, p. 1-10), all decisions in the revised Pinedale RMP are subject to valid existing rights. In the Management Guidance Common to All Alternatives (Section 2.3.6, p. 2-11), the BLM further clarifies this by stating that existing oil and gas and other mineral lease rights would be honored.

When an oil and gas lease is issued, it constitutes a valid existing right; the BLM cannot unilaterally change the terms and conditions of the lease. Existing leases would not be affected by new closures and/or areas administratively unavailable for lease, and restrictions could not be added to existing leases. Surface use and timing restrictions resulting from this RMP cannot be applied to existing leases. Existing leases would not be terminated until the lease expires. However, based on site- or project-specific environmental analysis, conditions of approval (COA) could be applied at the APD and Sundry Notice stage and at subsequent development stages to mitigate potential impacts from oil and gas operations within existing lease areas, providing the leaseholder's right to develop the lease remains intact (Section 2.3.6, p. 2-11).

Appendix 3 contains mitigation measures and operating standards that could be applied as stipulations to new leases, as appropriate, or as COA at the APD and Sundry Notice stages for existing leases. The mitigation measures and operating standards are designed to protect resources such as soils and vegetation, wildlife habitat, or cultural and historic properties. The use and application of specific mitigation measures or operating standards would be made during the environmental analysis process for individual proposals on a case-by-case basis (p. A3-1).

For additional information on appendix 3, please refer to the response for "Application of Mitigation Measures."

## ***Valid Existing Rights and Visual Resource Management***

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**Issue Number:** PP-WY-PINEDALE-08-0006-13

**Organization:** Coalition of Local Governments

**Protester:** Constance Brooks

**Issue Excerpt Text:**

The proposed RMP increases the public land in VRM Class II by almost 400% from 73,430 acres to 239,250 acres, [FEIS 3-119, Map 2-30] without taking into account the underlying land use allocation. BLM policy, DM H -8410-1 - Visual Resource Inventory, and IBLA precedent, Southern Utah Wilderness Alliance, 144 IBLA 79, 85 (1998), require amendment of the VRM Class II allocations to exclude those areas where the existing land uses conflict with the application of VRM Class II restrictions, such as the significant number of existing leases that do not have a Class II visual resource stipulation.

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**Issue Number:** PP-WY-PINEDALE-08-0006-55

**Organization:** Coalition of Local Governments

**Protester:** Constance Brooks

**Issue Excerpt Text:**

The overlay of Class II VRM management violates BLM policy direction which provides that "The approved VRM objectives shall result from, and conform with, the resource allocation decisions made in the RMP's." BLM Manual 8400.0-6A.2. The RMP does not consider the number or location of leases without visual resource stipulations, including Miller Mountain and the Wind River Front. The RMP needs to remove Class II VRM from the areas already leased without a Class II VRM stipulation. See Map 2-38. BLM cannot enforce VRM Class II when it conflicts with the underlying resource allocation, such as existing leases and permits. Southern Utah Wilderness Alliance, 144 IBLA 70,85 (1998) citing DM 8410 V.B.

While BLM revised the VRM Class II classifications to exclude leased areas in the Rawlins RMP, it did not do so for the Pinedale RMP. The RMP merely states that it is appropriate to have long-term goal of protecting visual integrity. A27-161. There is no provision in the RMP not applying Class II VRM

constraints to leases without visual stipulations. The RMP cannot lawfully apply Class II and the RMP must conform to IBLA decisions.

The BLM incorrectly states that the VRM Class II will not affect livestock grazing or other public land uses. A27-122. BLM states there has been no impact in the 50 years on the grazing preference system, without considering that VRM Class II was originally applied to WSAs and not extended to almost a quarter of a million acres. Nor does the BLM response consider the fact that construction of range projects involves surface disturbance and occupancy. Range projects require approval using a cooperative permit and involve the removal of vegetation and excavation of soil, if only to dig in fence posts, bury a pipeline or install a tank. Thus the premise offered

by BLM that VRM Class II has no effect on grazing is just plain wrong.

As the IBLA noted in Southern Utah Wilderness Alliance, 144 IBLA at 79, the operator could not build a drilling pad and road and conform to VRM Class II. The IBLA held that the RMP Class II VRM was invalid and unenforceable.

Similarly, water project construction, including pipelines and reservoirs, may not conform to VRM Class II. Or, to do so will require significant and costly changes. The Kemmerer Field Office has denied rights-of-way or range improvements on the basis that the proposed project will interfere with the historical sense of place or scenery. The VRM Class II designation may well interfere with construction of even beneficial projects (footnote 8).

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## ***Summary***

The RMP assigns Class II Visual Resource Management (VRM) to public lands where the land use allocations conflict with visual restrictions. These classifications contradict BLM visual resource management policy

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## ***Response***

The VRM management classes are based on the visual resource inventory of the landscape as well as management considerations for other uses. The VRM management classes may differ from VRM inventory classes, based on management priorities for land uses (refer to Section 3.14.3 of the PRMP/FEIS). Potentially, the VRM Class II management classifications would influence the type, design, and/or location of proposed development (such as oil and gas exploration and development or grazing management projects). The classification would rarely preclude development but would potentially affect the approach to design, construction and/or maintenance. The BLM Manual H-8431-1 (Visual Resource Contrast Rating) describes procedures for evaluating proposed surface disturbing activities for compliance with the VRM objectives, and techniques used for choice of color selection, earthwork, vegetative manipulation, structures, reclamation/restoration, and linear alignment design considerations that would help facilitate VRM compliant plans. Additional descriptions of best management practices to minimize impacts to VRM II areas are described in appendix 3 (refer to pp. A3-17 through A3-18).

The BLM currently has overlap of oil and gas leases with VRM Class II under the existing Pinedale RMP. New oil and gas leases in areas with VRM Class II are offered with a VRM stipulation that identifies the need for intensive management to meet both the goals of the oil and gas program and the VRM program. In the PRMP/FEIS there are indeed new areas of VRM Class II that overlay high and moderate oil and gas potential and existing leases, as well as livestock grazing leases. The BLM has management opportunities to work with operators to

meet the goals and objectives of both programs through the use of mitigation measures, best management practices, etc., as described above.

For additional information on valid existing rights, please refer to the response for "Valid Existing Rights" under Leasable Minerals.

### *Application of Mitigation Measures*

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**Issue Number:** PP-WY-PINEDALE-08-0001-22

**Organization:** EnCana Oil & Gas (USA) Inc.

**Protester:** Constance D. Heath

**Issue Excerpt Text:**

EnCana also protests the BLM's conflicting description of how the proposed mitigation measures in Appendix 3 would apply to specific future activities. On page A3-1, the BLM states that the mitigation measures "would apply to exploratory oil and gas drilling and other operations" suggesting the requirements are mandatory. See Proposed Pinedale RMP, pg. A3-1 (emphases added). Later on the same page, however, the BLM suggests that mitigation measures "could be applied to surface disturbing activities such as oil and gas development." See Proposed Pinedale RMP, pg. A3-1 (emphases added). The BLM must clarify how and when the mitigation measures in Appendix 3 would apply to future oil and gas activities. The conflicting language in Appendix 3 will cause future uncertainty and appeals for both oil and gas operators and the BLM.

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**Issue Number:** PP-WY-PINEDALE-08-0005-40

**Organization:** Theodore Roosevelt Conservation Partnership

**Protester:** Thomas R. Wilmoth

**Issue Excerpt Text:**

BLM, moreover, has failed to inform the public how mitigation measures will be employed within categories. For example, in IDFs, BLM explains: "BLM-permitted activities would be designed and implemented to minimize impacts in big game partition areas from May 1 to June 30 to the extent practicable." FEIS at 2-141 (emphasis supplied). Likewise BLM explains: "Surface activities would be designed and implemented to minimize impacts in big game crucial winter ranges from November 15 to April 30 (Map 3-20) to the extent practicable." Id. (emphasis supplied). BLM does not explain what it considers practical or, more importantly, the consequences to mule deer of allowing development to proceed when such measures are deemed impractical.

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**Issue Number:** PP-WY-PINEDALE-08-0008-10

**Organization:** Independent Petroleum Association

of Mountain States

**Protester:** Kathleen M. Sgamma

**Issue Excerpt Text:**

IPAMS further specifically protests the BLM's conflicting description of how the proposed mitigation measures in Appendix 3 would be applied to specific future activities. On page A3-1, the BLM states that the mitigation measures "would apply to exploratory oil and gas drilling and other operations" suggesting the requirements are mandatory. See Proposed Pinedale RMP, pg. A3-1 (emphases added). Later on the same page, however, the BLM suggests that that mitigation measures "could be applied to surface disturbing activities such as oil and gas development." See Proposed Pinedale RMP, pg. A3-1 (emphases added). The BLM must clarify how and when the mitigation measures in Appendix 3 would apply to future oil and gas activities.

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**Issue Number:** PP-WY-PINEDALE-08-0008-7

**Organization:** Independent Petroleum Association of Mountain States

**Protester:** Kathleen M. Sgamma

**Issue Excerpt Text:**

A review of Appendix 3 to the Proposed Pinedale RMP indicates that it was developed primarily from the site-specific mitigation measures contained in the Final Supplemental Environmental Impact Statement for the Pinedale Anticline Oil and Gas Exploration and Development Project. See Final Supplemental Environmental Impact Statement for the Pinedale Anticline Oil and Gas Exploration and Development Project, Appd. 4. The BLM should not attempt to impose site-specific mitigation measures from a project-level document into a broad resource area scale document. The BLM should revise the introduction to Appendix 3 to make it clear it contains a list of mitigation measures that can be considered by the agency rather than the list of mitigation measures required by the agency. Doing so will provide the BLM with the maximum flexibility to respond to site specific exploration and development proposals.

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**Issue Number:** PP-WY-PINEDALE-08-0009-10

**Organization:** Trout Unlimited

**Protester:** Cathy Purves

**Issue Excerpt Text:**

In the discussion of mitigation guidelines (Appendix 3 - Mitigation Guidelines and Operating Standards; page A3-1) there is some clarity required under the Exception Process (page A3-3). In describing the

exception process, the PRMP/FEIS describes exceptions that will be considered when implementations of the stipulation or operating standards are in disagreement with the permittee. The third reason described is unclear and needs further explanation.

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***Summary***

The PRMP/FEIS fails to inform the public how the proposed mitigation measures in appendix 3 would apply to specific future activities and to different oil and gas management areas. The mitigation measures and operating standards in appendix 3 are too specific to be included at the RMP scale. Further, the description of the exception process is unclear.

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***Response***

Appendix 3 in the Pinedale PRMP/FEIS contains mitigation measures and operating standards that could be applied as stipulations to new leases, as appropriate, or as COA at the APD and Sundry Notice stages for existing leases, as appropriate. The mitigation measures and operating standards are designed to protect resources such as soils and vegetation, wildlife habitat, or cultural and historic properties. The use and application of specific mitigation measures or operating standards would be made during the environmental review process for individual proposals on a case-by-case basis (p. A3-1). This clarification will be incorporated into the Record of Decision for the Pinedale RMP.

In Intensively Developed Fields (such as Jonah or Pinedale Anticline), drilling and development is generally conducted according to a site-specific EIS and ROD. All mitigation for site-specific projects as determined appropriate in the specific project ROD must conform to the mitigation outlined in Appendix 3 of PRMP/FEIS.

A process is provided for the BLM to evaluate, according to law and policy, exceptions, waivers, and modifications in Appendix 8 of the PRMP/FEIS (A8-1 to A8-5).

***Height Restrictions in Sage-grouse Breeding Habitat***

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**Issue Number:** PP-WY-PINEDALE-08-0008-43  
**Organization:** Independent Petroleum Association of Mountain States  
**Protester:** Kathleen M. Sgamma

**Issue Excerpt Text:**

The PRMP /FEIS also calls for no new structures more than 15 feet in height within 2 miles of breeding habitats. The term "breeding habitat" is extremely broad, covering Sage-grouse nesting and early brood-rearing habitat based on sagebrush height and canopy cover (Glossary page G-21). It is unclear where this habitat is, since Map 2-36, Greater Sage-grouse Nesting and Brood-Rearing Habitat:

Alternative 4, only maps the leks and the NSO and CSU buffers. Does "breeding habitat" cover all areas that meet the sagebrush height and canopy cover standards, or just the areas two-miles around active leks? On page 2-140, the PRMP /FEIS indicates that surface disturbing activities would be avoided in "suitable nesting and early brood-rearing habitat within 2 miles of occupied greater Sage-grouse leks," which implies a different definition of "breeding habitat" than the glossary. IPAMS requests that the BLM define "breeding habitat" in the Glossary be clarified to two miles within a lek, which would also be consistent with Map 2-36.



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## Summary

The proposed height restrictions within 2 miles of Sage-grouse breeding habitats in the Proposed RMP need further clarification.

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## Response

As documented in Section 2.5.5 of the PRMP/FEIS (p. 2-140 to 2-141), the height restriction applies to areas within 1 mile or the visual horizon of Sage-grouse leks, in the Traditional Leasing and Unavailable Areas. The reference to breeding habitat in Alternatives 3 and 4 in Table 2-25 (p. 2-157) are in error and will be corrected.

## Conversion to Intensively Developed Fields

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**Issue Number:** PP-WY-PINEDALE-08-0005-39

**Organization:** Theodore Roosevelt Conservation Partnership

**Protester:** Thomas R. Wilmoth

**Issue Excerpt Text:**

Considering that there are virtually no meaningful protections in IDFs, BLM must clearly state the circumstances under which TLAs may be converted to IDFs. The "criteria" and "considerations" identified by BLM amount to little more than management deferral to a later date. To the extent BLM feels compelled to defer development of more meaningful criteria to a later analysis, that analysis should be conducted in the context of a RMP amendment (as will be the case for conversions of fields not already adjacent to IDFs). Similarly, Unavailable Areas may be converted to TLA or presumably IDF status assuming simply that surface resource values "can be adequately mitigated." FEIS at 2-119. Yet, the RMP/FEIS fails to elaborate on what BLM considers to be adequate or who would be involved in making that determination.

To the extent BLM elects not to elaborate on the terms under which reclassifications may be made, it should at a minimum, engage in additional NEPA analysis to inform the public of the likely consequences of converting TLAs to IDFs or Unavailable Areas to TLAs. Although the RMP/FEIS

makes clear that such conversions may occur, even on a large scale, BLM provides no analysis whatsoever in the RMP/FEIS to evaluate the impacts of such conversion.

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**Issue Number:** PP-WY-PINEDALE-08-0008-17

**Organization:** Independent Petroleum Association of Mountain States

**Protester:** Kathleen M. Sgamma

**Issue Excerpt Text:**

The PRMP /FEIS seems to provide a means for expanding an Intensively Developed Field (IDF) into adjacent areas as new discoveries are made (page 2-51). However, to enlarge an Intensively Developed Field, the expansion area would have to be under a valid oil and gas lease. This is a good concept where IDFs are adjacent to Traditional Leasing Areas. However, large amounts of acreage are adjacent to Unavailable Areas, and therefore, even if a resource is proved up in an adjacent area and meets the expansion criteria listed on page 2-51, the condition of being under lease could not be met unless a lease is in hand at the time of the Record of Decision and is maintained until such time as the expansion criteria are met. Therefore the expansion criteria are too restrictive, even in the case of a significant proved resource, and again, vital energy resources could become off-limits.

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## Summary

The BLM does not clearly state the circumstances under which Traditional Leasing Areas (TLAs) may be converted to Intensively Developed Fields (IDFs) and Unavailable Areas converted to TLAs or IDFs.

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***Response***

Conversion of a TLA to an IDF would require additional environmental analysis and NEPA documentation (Section 2.5.2, p. 2-50 to 2-51; Section 2.5.5, p. 2-118) and a plan amendment for a new IDF not adjacent to an existing IDF (Section 2.5.5, p. 2-118). Conversion of an Unavailable Area to a TLA or an IDF would require additional environmental analysis and NEPA documentation (Section 2.5.2, p. 2-50 to 2-51; Section 2.5.5, p. 2-118) and a plan amendment (Section 2.5.5, p. 2-119).

***Split Estate Lands***

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**Issue Number:** PP-WY-PINEDALE-08-0002-17

**Organization:** SDSBT

**Protester:** Linda J. Cooper

**Issue Excerpt Text:**

There is another major omission: split estate lands, including Hoback Ranches located in the northern part of the plan area, are not addressed in the Plan document.

**Issue Number:** PP-WY-PINEDALE-08-0002-19

**Organization:** SDSBT

**Protester:** Linda J. Cooper

**Issue Excerpt Text:**

This PPRMP, we believe, is in violation of the July 26, 2007 directive and other program planning guidance regarding split estate lands.

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***Summary***

The PRMP/FEIS fails to address split estate and other private lands in violation of IM 2007-165 (July 26, 2007) and program planning guidance.

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***Response***

Split estate issues were addresses in Table 2-1, Public Comments, and elsewhere in the PRMP/FEIS (p. 2-2). The Management Guidance Common to All Alternatives, Section 2.3.6 for minerals management (p. 2-11) states that all BLM-permitted actions on split estate lands would be subject to the same stipulations and management direction in the Proposed RMP as leased Federal mineral estate on Federal surface lands, provided they do not adversely affect the surface owner's land use or action. This is consistent with the BLM's program planning guidance. Exceptions to surface development restrictions could be granted if requested or agreed to by the surface owner. This direction on split estate lands would be applied across the entire planning area.

IM 2007-165 issued on July 26, 2007, includes requirements for the planning process such as outreach to split-estate owners and coordinating with local government officials. Although the DRMP/DEIS was published prior to this guidance being issued, the BLM actions during the planning process were consistent with the IM. Other requirements of the IM regarding notification of surface landowners are applicable at the leasing stage.

## Livestock Grazing

### Lands Available for Livestock Grazing

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**Issue Number:** PP-WY-Pinedale-08-0011-32

**Organization:** Western Watersheds Project

**Protester:** Jonathan Ratner

**Issue Excerpt Text:**

The requirements in BLM's Land Use Planning Handbook (H-1601-1) Appendix C which requires that BLM "Identify lands available or not available for livestock grazing (see 43 CFR 4130.2(a)), considering the following factors: 1. Other uses for

the land; 2. terrain characteristics; 3. soil, vegetation, and watershed characteristics; 4. the presence of undesirable vegetation, including significant invasive weed infestations; and 5. the presence of other resources that may require special management or protection, such as special status species, special recreation management areas (SRMAs), or ACECs." Neither the DEIS, FEIS or RMP provide this analysis.

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### Summary

The requirements that the BLM must follow in identifying lands available or not available for livestock grazing (H-1601-1) were not followed.

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### Response

The factors listed in the Land Use Planning Handbook (H-1601-1) Appendix C were considered in the development of the Proposed RMP. In determining which lands are available or not available to livestock grazing, the BLM considered the impacts of livestock grazing on terrain and soils (Section 4.11, 4-161 to 4-169), vegetation and weed infestations (Section 4.13, p. 4-180 to 4-193), watersheds (Section 4.15, p. 4-198 to 4-207), special status species (Sections 4.13, p. 4-180 to 4-193; and Section 4.16, p. 4-208 to 4-248), and ACECs and other special designations (Section 4.18, p.4-249 to 4-270). Elimination of livestock grazing in the Rock Creek ACEC was considered as part of Alternative 3 (p. 2-105). Through its analysis in the PRMP/FEIS, the BLM considered the compatibility of other uses for the land with livestock grazing.

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### Rangeland Health Standards

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**Issue Number:** PP-WY-PINEDALE-08-0006-11

**Organization:** Coalition of Local Governments

**Protester:** Constance Brooks

**Issue Excerpt Text:**

The proposed RMP calls for reductions in livestock grazing when the allotments do not meet or maintain rangeland health standards, without providing program direction when the failure can also be attributed to other causes. [FEIS 2-116]. The FEIS acknowledges that energy development and wildlife use affect whether the allotment will meet or maintain range health standards but does not provide for changes in energy development or wildlife management to address damage to rangeland health. The absence of this program direction contradicts BLM policy that calls for BLM to make a determination of causation and when the cause is

something other than livestock grazing to consult other program direction. H-4180-1, III-15, E.3. The RMP needs to provide the program direction so that the livestock industry is not forced to carry the entire burden of vegetation changes due to energy development and/or wildlife.

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**Issue Number:** PP-WY-PINEDALE-08-0006-52

**Organization:** Coalition of Local Governments

**Protester:** Constance Brooks

**Issue Excerpt Text:**

The FEIS acknowledges the wildlife use and energy development can contribute to failure to meet or maintain rangeland health standards. [FEIS at 4-41,42]. The RMP nevertheless fails to provide program direction defining the mitigation to address the other causes of the failure to meet range health

standards. Instead, the only enforcement is against the permittee, who has no control over either wildlife use or energy development. A27-178; 4-32-4-33. Thus many permittees may face reductions over the

life of the RMP unless there is some mitigation proposed for cases where the failure is caused by other factors.

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### ***Summary***

The Proposed RMP fails to provide direction or mitigation for instances where grazing allotments fail to meet the Standards and Guidelines for Healthy Rangelands for reasons other than livestock grazing.

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### ***Response***

In accordance with 43 CFR 4180.1(c)(1), if a standards assessment indicates to the authorized officer that the rangeland is failing to achieve standards or that management practices do not conform to the guidelines, then the authorized officer will use monitoring data to identify the significant factors that contribute to failing to achieve that standards or to conform with the guidelines. If the authorized officer determines through standards assessment and monitoring that existing grazing management practices or levels of grazing use on public lands are significant factors in failing to achieve the standards, the authorized officer will, in compliance with applicable laws and with consultation requirements, formulate, propose, and analyze appropriate action to address the failure to meet standards or to conform with the guidelines.

As described in the PRMP/FEIS, Section 2.5.5 (p. 2-116 and 2-117), decisions regarding authorized livestock use, levels, and the terms and conditions under which they are managed are implementation decisions (H-1610-1, Appendix C). The BLM will assess the condition of rangeland health, conduct monitoring and inventories, and evaluate this data on a periodic basis, normally on an allotment and/or watershed basis. If changes to livestock management are deemed necessary to meet or progress toward meeting management objectives they will be implemented through a formal decision-making process in accordance with 43 CFR 4160. As described in the PRMP/FEIS Section 2.5.5 (p. 2-116), these modifications could include many actions, not simply reductions in livestock grazing. For example, season of use, rotation, or infrastructure for livestock management could be modified to address impacts caused by grazing management. When the BLM can document that failure to meet the standards is due to activities other than livestock grazing, mitigation would be applied as appropriate within BLM's authority.

## ***National Trails***

### ***Protection of Lander Cutoff of the Oregon Trail***

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**Issue Number:** PP-WY-PINEDALE-08-0004-35  
**Organization:** Biodiversity Conservation Alliance  
**Protester:** Erik Molvar

**Issue Excerpt Text:**

The BLM proposes VRM Class II measures for lands within 3 miles of the Lander Cutoff of the Oregon Trail. FEIS at 2-111. VRM Class II by itself does not ensure adequate protection for this important

historical resource, because full-field oil and gas development has been permitted in VRM Class II areas in the past (see, e.g., Desolation Flats Natural Gas Project Draft EIS, Rawlins Field Office), and this level of development results in significant degradation to the setting of the contributing trail segments in violation of the National Historic Preservation Act.

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### ***Summary***

The VRM Class II designation in the PRMP/FEIS is not adequate to provide protection of the Lander Cutoff of the Oregon Trail from oil and gas development.

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### ***Response***

The objective of VRM Management Class II is to retain the existing character of the landscape (Section 3.14.3, p. 3-118). The level of change to the characteristic landscape should be low. Management activities may be seen but should not attract the attention of the casual observer. Any changes must repeat the basic elements of form, line, color, and texture found in the predominant natural features of the characteristic landscape. Any proposed development within VRM Class II must meet the management objectives for that class before it can be approved. In areas where VRM Class objectives cannot be met through design techniques and/or best management practices, the BLM has the authority to deny the project.

Using VRM is only one management strategy employed to protect the National Historic Trails and their settings. The PRMP employs no leasing stipulations, no surface occupancy stipulations, OHV closure, visibility assessments, and when appropriate, Programmatic Agreements (Section 2.5.5, p. 2-111 to 2-112). The RMP does not authorize any specific ground disturbing activities. Whether adverse effects to National Historic Trails or their settings occur depends upon how future proposed activities are implemented. Future activities conducted pursuant to the RMP will be subject to an appropriate level of additional site-specific environmental analysis, including an evaluation of appropriate mitigation measures.

### ***Preservation of National Historic Trails***

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**Issue Number:** PP-WY-PINEDALE-08-0008-51  
**Organization:** Independent Petroleum Association of Mountain States  
**Protester:** Kathleen M. Sgamma

**Issue Excerpt Text:**  
in section 2.3.2, page 2-9 it states that the BLM will work with the SHPO and other Historic Trail partners

to identify segments of the national historic trails that are appropriate for preservation. This final LUP should have those segments identified, and not leave that open. Without knowing which segments will have the designated six-mile corridors, it is impossible for companies to analyze the impact on their operations and energy resources.

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### ***Summary***

The PRMP/FEIS fails to identify the segments of the National Historic Trails that are appropriate for preservation.

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### ***Response***

The National Historic Trail system is eligible for National Register of Historic Places inclusion at the national level. The BLM has worked with the Wyoming SHPO and other interested parties to identify the contributing and non-contributing segments of the National Historic Trails. The contributing and non-contributing segments will be depicted in the Record of

Decision for the Pinedale RMP. The BLM works closely with these partners to manage the trails accordingly.

## Recreation, Visitor Services

### Executive Order 13443

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**Issue Number:** PP-WY-PINEDALE-08-0005-33  
**Organization:** Theodore Roosevelt Conservation Partnership  
**Protester:** Thomas R. Wilmoth

**Issue Excerpt Text:**

The RMP/FEIS does not even acknowledge EO 13443. More troubling is the fact that the proposed RMP does not appear to support the goals of EO 13443.

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**Issue Number:** PP-WY-PINEDALE-08-0005-35  
**Organization:** Theodore Roosevelt Conservation Partnership  
**Protester:** Thomas R. Wilmoth

**Issue Excerpt Text:**

BLM predicts substantial additional displacement and declines in game species, including elk, pronghorn antelope, mule deer and Sage-grouse within the planning area, yet the proposed RMP takes little (and in some cases no) action to stave that impact. FEIS at 4-293-298. These declines, and their resulting impact on recreation and hunting opportunities cannot be squared with EO 13443.

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**Issue Number:** PP-WY-PINEDALE-08-0009-18  
**Organization:** Trout Unlimited  
**Protester:** Cathy Purves

**Issue Excerpt Text:**

We request the BLM to include stronger language in the PRMP/FEIS that acknowledges the hunting and angling benefits of ACEC's and to acknowledge the President's Executive Order 13443 (Facilitation of Hunting Heritage and Wildlife Conservation; August 2007) which recognizes the threat oil and gas development has on the hunting opportunities for the public.

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**Issue Number:** PP-WY-Pinedale-08-0010-32  
**Organization:** Western Resource Advocates  
**Protester:** Daniel Heilig

**Issue Excerpt Text:**

There is no indication in the RMP that BLM gave any consideration to EO 13443. Although the proposed RMP/FEIS predicts "because of less interest by younger generations, the number of hunters will decrease" (RMP/FEIS at 4-101) and that "continued fluid mineral development would reduce the satisfaction associated with the hunting experience" (id at 4-103), there's no recognition that declining populations of game animals, including upland game species such as the Greater Sage-grouse, will negatively impact the opportunities for and quality of hunting in the planning area.

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### ***Summary***

The Proposed RMP does not acknowledge or support the goals of the President's Executive Order 13443 (Facilitation of Hunting Heritage and Wildlife Conservation; August 2007).

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### ***Response***

Executive Order 13443 (August 2007), states that Federal agencies shall, consistent with agency missions:

(a) Evaluate the effect of agency actions on trends in hunting participation and, where appropriate to address declining trends, implement actions that expand and enhance hunting opportunities for the public;

(b) Consider the economic and recreational values of hunting in agency actions, as appropriate;

- (c) Manage wildlife and wildlife habitats on public lands in a manner that expands and enhances hunting opportunities, including through the use of hunting in wildlife management planning;
- (d) Work collaboratively with State governments to manage and conserve game species and their habitats in a manner that respects private property rights and State management authority over wildlife resources;
- (e) Establish short- and long-term goals, in cooperation with State and tribal governments, consistent with agency missions, to foster healthy and productive populations of game species and appropriate opportunities for the public to hunt those species;
- (f) Ensure that agency plans and actions consider programs and recommendations of comprehensive planning efforts such as State Wildlife Action Plans, the North American Waterfowl Management Plan, and other range-wide management plans for big game and upland game birds;
- (g) Seek the advice of State and tribal fish and wildlife agencies and, as appropriate, consult with the Sporting Conservation Council and other organizations with respect to the foregoing Federal activities.

The BLM's mission is to manage public lands for balanced multiple use. The term “multiple use” as defined in FLPMA means “the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people.” This direction indicates that not all uses need to be accommodated in all areas. With consideration of the myriad of laws and regulations that influence management of the BLM public lands and the decisions made in previous planning documents that influence opportunities for management actions in the revised RMP, the Pinedale Proposed RMP seeks to protect resource values while allowing for acceptable levels of resource use and mineral development (including hunting).

In accordance with the requirements of Executive Order 13443, the BLM considered hunting opportunities and the management of game species and their habitat as part of the Pinedale PRMP/FEIS. Trends in hunting are discussed in Section 3.9 (p. 3-49 to 3-53). The socioeconomic contributions of hunting to the planning area are discussed in Section 3.10.6 (p. 3-80). The potential effects of agency actions and alternatives on hunting are discussed in Section 4.9 Recreation and Visitor Services (p. 4-101 to 4-112), and Section 4.10 Socioeconomics (p. 4-113 to 4-160). Section 3.18 of the PRMP/FEIS (p. 3-127 to 3-132) describes the presence and trends of game species in the planning area including big game, game birds, small game mammals, and furbearers. Potential impacts to these species that result for agency actions and alternatives are discussed in Section 4.17 (p. 4-213 to 4-248).

The PRMP/FEIS provides opportunity for a wide variety of recreational uses, primarily dispersed uses such as hunting. Although diminished or relocated wildlife populations attributed to a loss of functional habitat or to other oil- and gas-related factors could impact wildlife-dependent recreational activities such as hunting (Section 4.9.3, p. 4-103), the Proposed RMP includes the following management goals: maintain or enhance aquatic and wildlife habitat; maintain functioning big game habitats and migration corridors that allow free movement and use of habitats; and sustain the sagebrush biome on a landscape scale to provide

the amount, continuity, and quality of habitat necessary to maintain viable populations of Sage-grouse and other sagebrush obligate species (Section 2.5.5, p. 2-139).

Many of the management objectives and actions in the Proposed RMP would maintain or even improve opportunities for hunting. For example, managing timber resources to favor the maintenance of forest health and to maintain cover for wildlife would maintain wildlife populations and the number of hunting days (Section 4.9.3, p. 4-102). Management of vegetative resources through fire and prescribed burns could improve range conditions and wildlife habitat, which could benefit recreational activities, especially wildlife viewing and hunting (Section 4.9.3, p. 4-104). In addition, vegetation treatment in livestock grazing areas could improve wildlife habitat and increase wildlife populations and certain wildlife-related Special Designations/Management Areas could enhance or preserve benefits derived from hunting, fishing, and wildlife observation (Section 4.9.3, p. 4-104).

Under the Proposed RMP, spatial and temporal restrictions as well as BMPs would be implemented to protect or improve wildlife and associated habitat (Section 2.5.5, p. 2-139 to 2-145). Leases would be issued with stipulations to protect resource values. These stipulations include protection of recreational resources such as hunting and access. A BLM Outdoor Recreation Planner is involved in the development of these stipulations and in the development of mitigation measures including restoration.

The BLM works collaboratively with the Wyoming Game and Fish Department to manage and conserve game species and their habitat. The Wyoming Game and Fish Department were cooperators on the Pinedale RMP (Section 5.1.1, p. 5-2 to 5-3). The PRMP/FEIS considered programs and recommendations of comprehensive wildlife planning efforts such as Western Association of Fish and Wildlife Agencies.

## Travel Management

### Off-Highway Vehicle Open Areas

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**Issue Number:** PP-WY-PINEDALE-08-0006-10

**Organization:** Coalition of Local Governments

**Protester:** Constance Brooks

**Issue Excerpt Text:**

Rather than defer closure of the existing play areas or open OHV areas, the proposed RMP makes a final decision, thereby limiting these options at the activity plan level.

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**Issue Number:** PP-WY-PINEDALE-08-0006-21

**Organization:** Coalition of Local Governments

**Protester:** Constance Brooks

**Issue Excerpt Text:**

The BLM response incorrectly describes the OHV decisions as "short-term management guidance." A27-417. (footnote 3) The statement that these designations will be revisited in transportation planning is not supported in the RMP, which makes final OHV designations. The only decision left for

the future under transportation planning is designation of roads and trails as part of the travel management network. No rationale is provided for closing the Open OHV areas.

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**Issue Number:** PP-WY-PINEDALE-08-0006-24

**Organization:** Coalition of Local Governments

**Protester:** Constance Brooks

**Issue Excerpt Text:**

No explanation was provided for closing Mt. Airy and Big Piney from Open to Limited. There is one paragraph in Chapter 3 of the FEIS, that refers to erosion. FEIS 3-103-104.

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**Issue Number:** PP-WY-PINEDALE-08-0006-38

**Organization:** Coalition of Local Governments

**Protester:** Constance Brooks

**Issue Excerpt Text:**

The MSA and Chapter 3 of the FEIS acknowledge



that there is increased demand for OHV use. [3-103] The RMP reduces Open OHV use to 0% of current levels, a decision that is not supported by the record. The CLG believes that BLM needs to match demand to specific areas, in order to address current levels for OHV use and anticipated demand. In response, BLM incorrectly describes the limited OHV designation as open, and this is not correct, since these areas are limited to existing or designated roads and are also subject to seasonal closures, they are OHV Limited, not OHV Open.

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**Issue Number:** PP-WY-PINEDALE-08-0006-5  
**Organization:** Coalition of Local Governments  
**Protester:** Constance Brooks

**Issue Excerpt Text:**

The proposed RMP adopts only Limited and Closed ORV designations without following the travel management criteria set out in the handbook, R - 1601-1 rel 1693, IM 2008-014, or the Wyoming

Travel Management Guidelines, Wyo. IM 2005-034. As a result, the proposed RMP eliminates all Open ORV designations without considering the demand for cross-country ORV recreation, the alternative of allowing ORV play areas, or documenting resource degradation and possible mitigation due to previous ORV recreation.

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**Issue Number:** PP-WY-PINEDALE-08-0006-7  
**Organization:** Coalition of Local Governments  
**Protester:** Constance Brooks

**Issue Excerpt Text:**

By not following the planning procedures, the proposed RMP improperly closes the three open ORV areas, depriving Sublette County residents of important recreation opportunities, and further provides for the closure of roads and trails, as needed, without any provision for coordination with the counties or the public of the specific roads and trails to be closed under the seasonal closures.

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***Summary***

No explanation was provided in the Proposed RMP for closing all open OHV areas in the planning area. The Proposed RMP did not consider the demand for recreational OHV use in making the OHV management decisions.

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***Response***

The rationale for the elimination of the OHV open areas in the Pinedale planning area was based on impacts to resource uses and values from cross-country OHV use as described throughout Chapter 4 of the PRMP/FEIS (for example p. 4-15, p. 4-24, p. 4-100, p. 4-165, p. 4-169, p. 4-176, p. 4-183, and p. 4-190). Under the no action alternative, which continues the existing OHV open areas, approximately 26 percent of the public lands in the planning area would be open to all motor vehicle use (Map 2-13). These lands would be subject to cross-country OHV travel, road proliferation, associated damage to vegetation and soils, and degradation of the visual appearance of the landscape. Although this may be of benefit to some OHV enthusiasts, it would generally be detrimental to most other values and uses of the public lands except mineral development (Section 4.12.2, p. 4-176).

A discussion of current OHV use/demand in the planning area is presented in Section 3.12.3 of the PRMP/FEIS (p. 3-102 to 3-104). The impacts of closing OHV open areas on recreation use are discussed in Section 4.9.6 (p. 4-110). As stated, impacts would occur from closing areas to unregulated OHV use, which is a popular recreational activity in the planning area; however, based on the small portion of the planning area that would be closed to all OHV use (2.8 percent), this would likely be a minor impact (Table 2-28, p. 2-162).

## *Deferral of Travel Management Network*

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**Issue Number:** PP-WY-PINEDALE-08-0006-29

**Organization:** Coalition of Local Governments

**Protester:** Constance Brooks

**Issue Excerpt Text:**

If the travel management network plan is not completed in the RMP, BLM must include the following:1) Produce a map of a preliminary road and trail network;2) define short-term management guidance for road and trail access and activities in areas or sub-areas not completed;3) outline additional data needs, and a strategy to collect needed information;4) provide a clear planning sequence, including public collaboration, criteria and constraints for subsequent road and trail selection and identification;5) provide a schedule to complete the area or sub-area road and trail selection process; and6) identify any easements and rights-of-ways (to be issued to the BLM or others) needed to maintain the preliminary or existing road and trail network.H-160I-1, App. C, p. 19. The proposed RMP does not include a map of the preliminary road and trail network, identify additional data needs, provide a schedule or identify easements or rights-of-way necessary to maintain road and trail network.

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**Issue Number:** PP-WY-PINEDALE-08-0006-31

**Organization:** Coalition of Local Governments

**Protester:** Constance Brooks

**Issue Excerpt Text:**

The RMP defers development of a travel management network that will designate roads and trails. [2-65 -2-66]. It also refers to transportation planning, although the RMP makes OHV designations and purports to identify designated roads and trails, although they are not shown on Map 2- 35. It is unclear what more will be done for transportation planning or if the RMP is referring to the travel management network. The response to another comment describes transportation planning as identification of open roads and trails suggests that the RMP equates "transportation planning" with travel management network. A27-413. Thus BLM will not revisit the OHV designations unless compelled to do so.

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**Issue Number:** PP-WY-PINEDALE-08-0006-6

**Organization:** Coalition of Local Governments

**Protester:** Constance Brooks

**Issue Excerpt Text:**

The proposed RMP defers completion of the travel management network, which will designate the roads and trails within the PPA that can actually be driven, but does not provide the required interim information, including (1) a preliminary map of the road network, (2) data needs, (3) a clear planning sequence including public collaboration, (4) criteria for road and trail selection and identification, and (5) easements and rights-of-way needed. R-160I-1, App. C, p. 19.

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### *Summary*

The Proposed RMP defers completion of the travel management network but does not provide the required interim information in the plan.

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### *Response*

In accordance with the BLM Land Use Planning Handbook (H-1610-1, Appendix C, p. 19), if the final travel management network is to be deferred in the RMP, the identification of the uncompleted travel management networks should be delineated in the land use plan. For all action alternatives in the Pinedale RMP, transportation planning would be completed for the entire planning area within 5 years of implementation of the RMP (Section 2.5.3, p. 2-65; Section 2.5.4, p. 2-90; Section 2.5.5, p. 2-131). The following tasks must be completed in the RMP for all areas deferred:

- 1) Produce a map of preliminary road and trail network;

- 2) Define short-term management guidance for road and trail access and activities in areas or sub-areas not completed;
- 3) Outline additional data needs, and a strategy to collect needed information;
- 4) Provide a clear planning sequence, including public collaboration, criteria and constraints for subsequent road and trail selection and identification;
- 5) Provide a schedule to complete the area or sub-area road and trail selection process; and
- 6) Identify any easements and rights-of-ways (to be issued to the BLM or others) needed to maintain the preliminary or existing road and trail network.

The Pinedale RMP includes a map of the preliminary road network on Map A17-2. Short-term management guidance for road and trail access and activities under the Proposed Plan are described in Section 2.5.5 (p. 2-131 to 2-133), Table 2-28 (p. 2-162 to 2-163), and Map 2-35 in the PRMP/FEIS. Until the travel management planning process is completed, travel in the planning area will remain limited to existing roads and trails in those areas that are not open, closed, or seasonally restricted as described in the section above.

Appendix 17, Off-Highway Vehicle Travel Management Planning Schedule (p. A17-1 to A17-3), in the PRMP/FEIS includes the required description of data needs to support travel management planning, an outline of the travel management planning process, and a preliminary schedule for travel management in the Pinedale planning area. As part of the planning process, the BLM has not identified any required easements or rights-of-ways needed to maintain the preliminary or existing road and trail network. This will be investigated further as part of the travel management planning process.

### *Planning Criteria for Off-Highway Vehicle Designations*

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**Issue Number:** PP-WY-PINEDALE-08-0006-25

**Organization:** Coalition of Local Governments

**Protester:** Constance Brooks

**Issue Excerpt Text:**

The RMP is supposed to delineate Travel Management Areas. H-1601-1, App. C, p. 17, D. The handbook directs BLM to consider the following factors when making travel management delineations: a. Consistency with all resource program goals and objectives; b. primary travelers; c. objectives for allowing travel in the area; d. setting characteristics that are to be maintained (including recreation opportunity system and VRM settings); and e. primary means of travel allowed to accomplish the objectives and to maintain the setting characteristics. OHV designations made in the RMP do not consider "all resource program goals and objectives," "the primary travelers," or the setting characteristics. There is no discussion of OHV recreation objectives. The recreation section deals only with the special recreation management

areas, [2-59 - 2-64], and does not mention snowmobile or OHV recreation other than to identify the limits and prohibitions. Chapter 3 refers to the popularity of both forms of recreation but the discussion of current uses is not connected to restrictions adopted in the Preferred Alternative. FEIS 3-102.

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**Issue Number:** PP-WY-PINEDALE-08-0006-36

**Organization:** Coalition of Local Governments

**Protester:** Constance Brooks

**Issue Excerpt Text:**

There is no evidence in the record that BLM actually considered all of the factors, when making the OHV designations. Wyo. Travel Management Guidelines, at 9. For example, BLM did not document or address visitor use, travel and transportation needs in the area, whether the needs and desires of public land users are being met, and impacts on activity and experience opportunities. Out of the 14 criteria listed, the proposed RMP relied solely on wildlife habitat

and reports of erosion, to close the OHV Open areas, Mt. Airy and Big Piney and the General Desert Area. Significantly the General Desert Area is, for the most part, not identified as having crucial wildlife habitat.

Most significantly, the planning record is largely lacking in evidence of OHV caused problems. Identified erosion appears to be limited to specific small areas and the RMP did not consider mitigation.

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### ***Summary***

The BLM failed to consider all factors when making travel management decisions in the Proposed RMP as outlined in the BLM Land Use Planning Handbook (H-1601-1).

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### ***Response***

In delineating travel management areas in the Pinedale planning area, the BLM considered comprehensive trails and travel management guidance in the Land Use Planning Handbook (H1601-1, Appendix C, p. 17). The rationale for the delineation of travel management areas in the Pinedale planning area was based on impacts to and compatibility with resource uses and values such as cultural, paleontology, soil, transportation, recreation, vegetation, and wildlife resources (p. 4-15, p. 4-24, p. 4-100, p. 4-165, p. 4-169, p. 4-176, p. 4-183, p. 4-190, and p. 4-223 to p. 4-224).

### ***Modes of Travel***

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**Issue Number:** PP-WY-PINEDALE-08-0006-27  
**Organization:** Coalition of Local Governments  
**Protester:** Constance Brooks

**Issue Excerpt Text:**  
The RMP also fails to address specific modes of travel, such as bicycle, motorized, types of vehicles. H-1601-1, rel. 1693, App. C, D.2. p. 18.

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### ***Summary***

The RMP fails to address specific modes of travel, such as bicycle and motorized types of vehicles.

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### ***Response***

In accordance with the BLM Land Use Planning Handbook (H-1601-1, Appendix C, p. 18), the BLM considered a full range of possibilities for areas classified as limited such as types of vehicles, seasonal road closures, and seasonal closures for certain modes of travel (Section 2.5.5, p. 2-132). These issues will be evaluated further as part of the travel management planning effort (Appendix 17, A17-1 to A17-3).

### ***Seasonal Road and Trail Closures***

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**Issue Number:** PP-WY-PINEDALE-08-0006-41  
**Organization:** Coalition of Local Governments  
**Protester:** Constance Brooks

**Issue Excerpt Text:**  
FEIS 2-150-152. The proposed RMP uses OHV

designations as a tool to impose seasonal road and trail closures as well, without regard to the requirement that the specific roads and trails be identified. 43 C.F.R. §8364.1 (b)(1) ("Identify the public lands, roads, trails or waterways that are closed to entry or restricted as to use."). See also

Wyo. Travel Guidelines at 12 ("When the Bureau issues an order that closes or restricts the use of public lands, adequate public notification is required. For those orders to be legally enforceable and upheld in court the requirements found in 43 C.F.R. Subpart 8364 must be followed."). The RMP does not identify the roads or trails affected and the closure does not reasonably inform the public of the scope of the closures and impacts on access. The RMP does not provide that permittees of the BLM are exempt, although that is standard policy as well.

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**Issue Number:** PP-WY-PINEDALE-08-0006-43  
**Organization:** Coalition of Local Governments  
**Protester:** Constance Brooks

**Issue Excerpt Text:**

The planning area is subject to seasonal road closures "as needed" and the RMP does not identify those roads and trails, nor does it document the seasons. FEIS 2-132. "Big game crucial winter range (except designated routes on Map 2-35) (November 15 to April 30); Elk feedgrounds (November 15 to April

30); CCC Ponds SRMA (closed year round)." (footnote 6) Because no routes are designated, it is assumed that the RMP authorizes the closure of any road at any time.

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**Issue Number:** PP-WY-PINEDALE-08-0006-46  
**Organization:** Coalition of Local Governments  
**Protester:** Constance Brooks

**Issue Excerpt Text:**

Because BLM has not disclosed the public land network of roads and trails, most of which BLM acknowledges are user-created, and has not consulted with the county regarding which may be public roads under R.S. 2477, it is not possible to know the scope of the closures or their effects on public access. Moreover, because the RMP adopts the closure, BLM will not consult further with the county, thereby forcing this issue into litigation when BLM proceeds to effect closures throughout the PPA that are covered by wildlife winter range. See Maps 3-14 to Maps 3-21 (depicting big game use areas including winter habitat).

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***Summary***

Under the Proposed RMP, the planning area is subject to seasonal road closures "as needed." The Proposed RMP does not identify those roads and trails, nor does it document the seasons and, therefore, the scope of those closures and their effects are unknown.

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***Response***

Although the PRMP/FEIS makes note that seasonal road closures may be used in the future to protect resources and values in certain areas (see Table 2-28, p. 2-163 for a list of those areas), it does not propose any specific seasonal closures for specific roads in the planning area at this time. If and when seasonal closures are ordered, the BLM will follow the regulatory requirements in 43 CFR 8364.1 (b)(1). The BLM does not have the authority to propose seasonal closures or any management actions for county roads. The potential for seasonal closures referenced in the PRMP/FEIS apply only to BLM roads.

***Visual Resource Management***

***VRM Management Class Assignments***

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**Issue Number:** PP-WY-PINEDALE-08-0008-54  
**Organization:** Independent Petroleum Association of Mountain States  
**Protester:** Kathleen M. Sgamma

**Issue Excerpt Text:**

The amount of acreage designated as Class II has

jumped significantly from 73,430 in the Continuing Management Alternative, to 239,520 in the Proposed Alternative (Table 2-29, page 2-164). Correspondingly, the acreage with Class IV designation has fallen significantly from 641,140 to 242,660. There is no explanation or justification for this reclassification.

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### ***Summary***

There is no justification in the Proposed RMP for the classification of lands to VRM management classes.

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### ***Response***

As described in Section 3.14.3 of the Pinedale PRMP/FEIS (p. 3-118), the planning area has been inventoried in accordance with the procedures described within BLM Visual Resource Inventory Handbook H-8410-1 and divided into four Visual Resource Inventory classifications based on scenic quality, visual sensitivity levels, and viewer distance zones. The inventory was objectively conducted early in the planning process (2002) by the BLM Pinedale Field Office interdisciplinary team, including Pinedale Lands and Minerals staff. All participating staff were trained in VRM inventory and management. Visual Resource Inventory classifications I through IV establish visual values with I having greater value than IV.

The Visual Resource Inventory is considered, along with the BLM's allocated resources, in the assignment of Visual Resource Management (VRM) Classes I through IV, which prescribe VRM objectives. All VRM Class boundaries vary in each alternative in the PRMP/FEIS (Map 2-14; Map 2-20; Map 2-22; Map 2-30) to reflect potential management actions in consideration of the visual values defined in the inventory and other resource decisions. The BLM selected Alternative 4 as the Proposed Plan in the FEIS.

### ***Private Land and Visual Resource Management***

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**Issue Number:** PP-WY-PINEDALE-08-0006-76

**Organization:** Coalition of Local Governments

**Protester:** Constance Brooks

**Issue Excerpt Text:**

The FEIS acknowledges that it is inappropriate to apply VRM Class II to private land. Nevertheless,

VRM Class II applies in Wind River Front where there are a lot of private lands and private lands overlying federal mineral estate. Map 2-30. The RMP also extends VRM Class II to private land along the Lander, Sublette Cutoff Trails and several other unnamed trails. See Maps 1-2,2-30. Thus, land uses and projects on private land will be directly affected.

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### ***Summary***

Visual Resource Management (VRM) Class II areas overlay significant areas of private land where BLM lacks jurisdiction.

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### ***Response***

The Pinedale RMP only directs management of public lands and resources administered by the BLM within the Pinedale Field Office. Visual resource management classes do not apply to any private lands (Section 3.14.3, p. 3-119). The maps in the PRMP/FEIS are generalized maps due to the scale of the map required for an area the size of the Resource Management Plan Planning Area; however, they do not reflect the application of VRM classes to private lands (see Map 2-30).

## Water

### *Compliance with Clean Water Act*

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**Issue Number:** PP-WY-Pinedale-08-0011-73

**Organization:** Western Watersheds Project

**Protester:** Jonathan Ratner

**Issue Excerpt Text:**

The RMP does not reveal how many of its water

bodies have been monitored for compliance with water quality criteria, antidegradation and narrative standards, nor the management actions affecting these listed water bodies and the corrective actions to be taken.

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### *Summary*

The RMP does not reveal how many of its water bodies have been monitored for compliance with water quality criteria, antidegradation and narrative standards, or the management actions affecting these listed water bodies and the corrective actions to be taken.

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### *Response*

The State of Wyoming has primacy with regard to implementation of the Clean Water Act. In accordance with FLPMA, any activities authorized by the BLM are required to comply with substantive environmental laws, including the Clean Water Act. Waterbodies monitored for compliance with surface water quality standards are listed in Section 3.15.1 of the PRMP/FEIS (p. 3-121 to 3-122). The Wyoming Department of Environmental Quality (WDEQ) is working in conjunction with Conservation Districts and the BLM in developing and implementing watershed management plans designed to address water quality impaired stream segments. There are no stream segments within the Pinedale planning area that are listed as impaired (Section 3.15.1, p. 3-121 to 3-122).

Please refer to the response for "Impact Analysis-Water" for information on the water quality impact analysis in the PRMP. Because the PRMP does not actually authorize any specific project that impact water quality, any proposed project would be subject to additional analysis of possible water quality effects before approval. When a project is proposed for development, a site-specific analysis must be done as part of the environmental analysis process to determine the specific impacts.

## Wild, Scenic Rivers

### *Existing Water Rights and Diversion Structures*

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**Issue Number:** PP-WY-PINEDALE-08-0006-14

**Organization:** Coalition of Local Governments

**Protester:** Constance Brooks

**Issue Excerpt Text:**

The proposed RMP recommends 8.56 miles of the Upper Green River for scenic classification pursuant to the WSRA, 16 U.S.C. §1276(d). The Pinedale WSRA Report done in 2002 did not identify or discuss the extent of existing water rights and diversion structures either upstream or within the

segments, although this information is required by BLM policy, DM 8351 Wild and Scenic Rivers - Policy and Program Direction for Identification, Evaluation, and Management (1993). Thus, the 2002 WSRA study did not disclose the impacts on existing rights and diversions nor address other required factors, including support or lack of support by local governments. Due to these material omissions, the WSRA study is fundamentally flawed and must be severed from the RMP and redone, particularly to

address the impacts on existing water rights and the potential water uses that might affect designation.

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**Issue Number:** PP-WY-PINEDALE-08-0006-58

**Organization:** Coalition of Local Governments

**Protester:** Constance Brooks

**Issue Excerpt Text:**

The 2002 Pinedale WWSRA Report discusses free-flowing and outstanding and rare values but does not identify existing water rights. Pinedale 2002 WWSRA Report at A3, B2-3; C3-4; D4-5. One of the first issues in eligibility is impact of existing water rights. DM requires analysis of "existing or flowing in natural condition without impoundment, diversion, straightening, rip-rapping, or other modification of the waterway. . . ." 16 U.S.C. §1286(b); DM 8351.31, A, B. The WWSRA scenic classification precludes future construction, diversion, or impoundment of waters and calls for claims to instream flows. DM 8351.51, A, B.

The BLM response was that the report did address these issues, and the FEIS repeats this statement. A27-675; FEIS §4.18.5, 4-268. Significantly, the FEIS response does not refer to a specific page in the 2002 WWSRA Study. Review of the report suggests that BLM is mistaken or BLM is referring to a non-public document that did not exist until after the DEIS was published.

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**Issue Number:** PP-WY-PINEDALE-08-0006-64

**Organization:** Coalition of Local Governments

**Protester:** Constance Brooks

**Issue Excerpt Text:**

There is no discussion of water rights or future development and the impacts on suitability. The report only discusses land uses, not the exercise of upstream water rights or water rights within the segment. Without the facts, BLM could not have reasonably reached the conclusions it did. Since there is no evidence that the planning team actually addressed the existing water rights and the scope of these rights, it could not have made this determination.

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**Issue Number:** PP-WY-PINEDALE-08-0006-65

**Organization:** Coalition of Local Governments

**Protester:** Constance Brooks

**Issue Excerpt Text:**

BLM cannot adopt a river classification that impairs or would impede existing state-recognized water rights, whether developed or not yet developed. BLM management of a river segment classified under the WWSRA prohibits construction of major water projects, DM 8351. 51, A (wild), B (scenic). It also involves claims for instream flows to retain the water within the river, DM 8351.51,A.2.i, B.2.k, C.2.i, which conflict with the valid rights entitling the owners to divert the water upstream. BLM lacks authority to condemn or take water rights, including the development rights afforded under state law. Thus, BLM cannot adopt land use allocations that interfere with the operation of state water rights, because that would effect a regulatory taking of these rights.

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***Summary***

The RMP relies on a 2002 Wild and Scenic Rivers Act (WSRA) study to support its WSRA determination. This study did not follow the requirements that the BLM identify existing water rights and diversion structures and consider them in the eligibility review. Suitability review did not consider water rights and/or future development. The BLM also did not consider the impact of classification on water rights, whether developed or not yet developed.

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***Response***

To be eligible under the WSRA, a river segment must be "free-flowing" and must possess at least one river-related value considered to be "outstandingly remarkable." Free-flowing is defined by Section 16(b) of the WSRA as "existing or flowing in natural condition without impoundment, diversion, straightening, rip-rapping, or other modification of the waterway." The existence of small dams, diversion works, or other minor structures at the time the river segment is being considered will not automatically disqualify it for consideration as a potential addition to the NWSRS. Congress did not intend to require rivers to be "naturally flowing," i.e., flowing



without any upstream manipulation except by nature. The presence of impoundments above and/or below the segment (including those that may regulate the flow regime through the segment), existing minor dams, and diversion structures within the study reach shall not by themselves render a river ineligible. As described in the Pinedale FO Review of Potential Wild and Scenic Rivers in the Pinedale Resource Management Plan Planning Area, December 2002, because of the broad interpretation of the “free-flowing” criteria, all the waterways that cross public lands within the review area were accepted as free-flowing (p. 6).

Consistent with BLM Department Manual 8351 (8351.33), the BLM considered the following factors in determining suitability: status of landownership, minerals (surface and subsurface), use in the area, including the amount of private land involved, and associated or incompatible uses. The BLM conducted a preliminary suitability analysis on all eligible river segments. After the preliminary suitability analysis, the BLM conducted a thorough suitability analysis on 11 river segments (see Attachment C of the Pinedale FO Review of Potential Wild and Scenic Rivers in the Pinedale Resource Management Plan Planning Area, December 2002). Through that analysis the BLM determined that four segments would be carried forward into the Pinedale RMP and recommended them for inclusion in the Wild and Scenic River System (Section 4.18.5, p. 4-268). These recommendations varied by alternative (Table 2-30, p. 2-164).

The Proposed Plan would not impact existing water rights. Under the WSRA, segments recommended for inclusion in the Wild and Scenic River System must be authorized by an Act of Congress or pursuant to an act of the legislature of the state through which they flow. Section 13(d) of the Wild and Scenic River Act states that the jurisdiction of the States over waters of any stream included in a national wild, scenic, or recreational river area shall be unaffected by this Act to the extent that such jurisdiction may be exercised without impairing the purposes of this Act or its administration. Nothing in this Act is an exemption from State water laws. None of the segments proposed for inclusion in the Pinedale PRMP/FEIS have been designated by Congress or the Wyoming legislature.

### *Consultation with Local Governments*

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**Issue Number:** PP-WY-PINEDALE-08-0006-14  
**Organization:** Coalition of Local Governments  
**Protester:** Constance Brooks

**Issue Excerpt Text:**

The proposed RMP recommends 8.56 miles of the Upper Green River for scenic classification pursuant to the WSRA, 16 U.S.C. §1276(d). The Pinedale WSRA Report done in 2002 did not identify or discuss the extent of existing water rights and diversion structures either upstream or within the segments, although this information is required by BLM policy, DM 8351 Wild and Scenic Rivers - Policy and Program Direction for Identification, Evaluation, and Management (1993). Thus, the 2002 WSRA study did not disclose the impacts on existing rights and diversions nor address other required factors, including support or lack of support by local governments. Due to these material omissions, the WSRA study is fundamentally flawed and must

be severed from the RMP and redone, particularly to address the impacts on existing water rights and the potential water uses that might affect designation.

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**Issue Number:** PP-WY-PINEDALE-08-0006-61  
**Organization:** Coalition of Local Governments  
**Protester:** Constance Brooks

**Issue Excerpt Text:**

The FEIS states that it consulted with local governments regarding support for the unit, and considered 2002 WSRA study. A27 -675, A27 -682. This is not accurate nor is it accurate to state that the local governments supported the designation. Merely putting the notice on a BLM web site is not consultation, when notices were not mailed to the local governments seeking their input. More significantly, the WSRA Report only states that BLM met with state agencies more than 10 years before the report was done. Pinedale WSRA at 1. ("Wyoming

BLM staff met with representatives of various Wyoming State agencies, including the governor's office, in January 1991 and June 1993. These meetings were specifically designed to produce a mutual understanding of the WSR review process and of the WSR eligibility criteria and suitability factors BLM uses in the process." ). The state objected to any WSRA classifications, but the report, other than one sentence, does not deal with the objections or the State's reasons. Local governments are not mentioned. Thus it is flatly untrue to state that the WSRA study consulted with state and local governments. The report itself admits that it did not. On this basis alone, the study is fatally flawed and must be redone.

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**Issue Number:** PP-WY-PINEDALE-08-0006-67

**Organization:** Coalition of Local Governments

**Protester:** Constance Brooks

**Issue Excerpt Text:**

CLG and its member local governments: LC, LCD, SC, SCCD, SWC, and SWCCD, have raised objections to the WSRA study throughout the planning process. The proposed classification flatly contradicts Sublette County policy and conflicts with plans and policies of all other CLG members due to the taking of existing water rights. The 2002 WSRA Report did not mention the positions of state and local governments, other than to say the State of Wyoming opposed it. 2002 WSRA Report at D-1.

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***Summary***

The Proposed RMP relies on a 2002 Wild and Scenic Rivers Act (WSRA) study to support its WSRA determination. As part of this study, the BLM did not adequately consult with local and State governments and did not fully disclose the support or lack of support of these local and State governments.

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***Response***

The BLM consulted with local and State governments during preparation of the 2002 WSRA study. As cooperating agencies in the planning process, the study was shared with local and State governments during its preparation. In 2002, when the WSRA study was prepared, a local county commissioner reviewed the draft study. In addition, the State of Wyoming reviewed and commented on the draft study.