



Working to Protect Native Species and Their Habitats

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Via Fax and First-Class Mail

Comments on the Rawlins RMP DEIS ACEC analysis

Dear Field Manager Storzer:

The following are the comments of Biodiversity Conservation Alliance, The Wilderness Society, Center for Native Ecosystems, Wyoming Outdoor Council, and Wyoming Wilderness Association on the Rawlins RMP proposed Areas of Critical Environmental Concern. Please address these comments as part of your Rawlins RMP NEPA process.

The Draft RMP does not comply with BLM's obligations under the Federal Land Policy and Management Act (FLPMA) to prioritize designation and protect ACECs, because it does not designate ACECs where necessary and appropriate and does not include sufficient protective management prescriptions for proposed ACECs. In particular, there are a number of ACECs in the Western Heritage Alternative submitted to BLM prior to the issuance of the Rawlins RMP DEIS which meet relevance and importance criteria, yet were not considered for designation at all, or only partially considered for designation, in the DEIS. BLM should take this opportunity to designate appropriate and warranted ACECs, and set out protective management prescriptions in the Proposed RMP/Final EIS.

The Federal Land Policy and Management Act (FLPMA) obligates the BLM to "give priority to the designation and protection of areas of critical environmental concern [ACECs]." 43 U.S.C. § 1712(c)(3). ACECs are areas "where special management is required (when such areas are developed or used or where no development is required) to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources, or other natural systems or processes." 43 U.S.C. § 1702(a).

BLM's ACEC Manual (1613) provides additional detail on the criteria to be considered in ACEC designation, as discussed in the applicable regulations, as well. *See*, Manual 1613, Section .1 (Characteristics of ACECs); 43 C.F.R. § 8200. An area must possess relevance (such that it has significant value(s) in historic, cultural or scenic values, fish & wildlife resources, other natural systems/processes, or natural hazards) and importance (such that it has special significance and distinctiveness by being more than locally significant or especially rare, fragile or vulnerable). In addition, the area must require special management attention to protect the relevant and important values (where current management is not sufficient to protect these values or where the needed management action is considered unusual or unique), which is addressed in special protective management

prescriptions. An ACEC is to be as large as is necessary to protect the important and relevant values. Manual 1613, Section .22.B.2 (Size of area to receive special management attention). For potential ACECs, management prescriptions are to be “fully developed” in the RMP. Manual 1613, Section .22 (Develop Management Prescriptions for Potential ACECs).

The Manual also sets out more specific requirements for how consideration of ACECs should be conducted during the land use planning process. Manual 1613 specifically requires that each area recommended for consideration as an ACEC, including from external nominations, be considered by BLM, through collection of data on relevance and importance, evaluation by an interdisciplinary team and then, if they are not to be designated, the analysis supporting the conclusion “must be incorporated into the plan and associated environmental document.” Manual 1613, Section .21 (Identifying Potential ACECs). However, the treatment of proposed ACECs in the Draft RMP/EIS does not comply with BLM’s obligations.

For importance criteria, BLM’s ACEC Report correctly states that to meet importance criteria “generally requires qualities of more than local significance and special worth, consequence, meaning, distinctiveness, or cause for concern, especially compared to any similar resource, or qualities or circumstances that make it fragile, sensitive, rare, irreplaceable, exemplary, unique, endangered, threatened, or vulnerable to adverse change.” ACEC Report at 1, *and see* BLM Manual 1613.1. BLM Manual 1613 further clarifies the disjunctive nature, by stating “one or more of the following” for the various categories of importance criteria. BLM Manual 1613.1. However, in its analysis of relevance and importance for ACECs, BLM systematically ignores the disjunctive nature of this statement, and disqualifies a number of strong candidates for ACEC status for failure to meet one of the criteria for “importance,” when these areas clearly meet other importance criteria.

The comments of Hollis Marriott of February 19, 2003 on the Great Divide RMP (“Marriott Scoping Comments”) directly address relevance and importance criteria for proposed ACEC sites in the Rawlins RMP revision. Marriott Scoping Comments at 13. reference and request that BLM respond to them in detail in the next round of the NEPA process.

BLM has specifically failed to designate ACECs to protect lands with wilderness characteristics and should designate an ACEC to protect the greater Adobe Town and Wild Cow Creek areas.

As discussed in detail in comments previous submitted (and incorporated herein by reference), we believe that BLM’s abandonment of its authority to designate any additional Wilderness Study Areas is invalid and will ultimately be overturned in pending litigation¹; and, therefore, does not prevent BLM from designating new WSAs.²

However, even the agency has contended that BLM retains the ability to value wilderness character and protect it, including through ACEC designations. The Instruction Memoranda (IMs) Nos. 2003-274 and 2003-275, which formalize BLM’s policies concerning wilderness study and consideration of wilderness

¹ The recent withdrawal of court approval of the consent decree and the subsequent withdrawal by the State of Utah and the Department of Interior of the settlement as a consent decree at all, casts serious doubt upon BLM’s current policy not to consider designating new WSAs.

² Because the State of Utah and the Department of Interior have withdrawn their settlement and do not intend to seek a new consent decree, there is currently no binding consent decree and the BLM has not even issued any updated guidance seeking to continue applying this misguided, and illegal, policy. Consequently, IM Nos. 2003-274 and 2003-275, which are explicitly based on an April 2003 settlement that no longer exists, are arguably invalid and do not apply to restrict BLM from designating new WSAs.

characteristics contemplate that BLM can continue to inventory for and protect land “with wilderness characteristics,” which are identified as naturalness or providing opportunities for solitude or primitive recreation, and specifically reference ACEC designation. Similarly, in a February 12, 2004, letter to William Meadows, President of The Wilderness Society (copy attached for your reference), Assistant Secretaries of the Interior Rebecca Watson and Lynn Scarlett stated that “through the land use planning process, BLM **uses the ACEC designation** or other management prescriptions **to protect wilderness characteristics** or important natural or cultural resources.” (emphasis added).

As we highlighted in our comments, BLM has acknowledged the threats to lands with wilderness characteristics. BLM notes that the citizen-proposed wilderness areas around Adobe Town (also referred to as the “Adobe Town fringe”) and Ferris Mountains have been determined by the agency to possess wilderness characteristics. DEIS at 2-5. In addition, the Wild Cow Creek citizens’ proposed wilderness also possesses roadless characteristics (implicitly acknowledged by BLM) as well as wilderness characteristics contested by the agency. However, BLM has failed to protect the wilderness values of the broader Adobe Town area by designating it as an ACEC or through other protective management designations and prescriptions.

Courts have confirmed the BLM’s obligations to consider the value of wilderness characteristics and the potential impacts of decisions on this resource when making land use planning decisions. In a recent decision, a federal court found that BLM’s failure to re-inventory lands for wilderness values and to consider the potential impact of decisions regarding management of a grazing allotment violated its obligations under NEPA and FLPMA, then enjoined any implementation of the decision until the agency reinventoried the lands at issue and prepared an environmental document taking into account the impacts of its decisions on wilderness values. In Oregon Natural Desert Association v. Rasmussen, CV 05-1616-AS, Findings and Recommendations (D.Or). April 20, 2006 – **Attached**); Order (D.Or). December 12, 2006 – **Attached**), the Oregon Natural Desert Association (ONDA) had submitted an updated inventory of wilderness values, but BLM declined to “revisit” its previous inventory or to consider the potential damage to wilderness values from the proposed grazing management decisions. The court found that BLM had violated NEPA by failing to consider significant new information on wilderness values and potential impacts on wilderness values, and had also failed to meet its obligations under FLPMA by failing to engage in a continuing inventory of wilderness values. The court concluded:

The court finds BLM did not meet its obligation under NEPA simply by reviewing and critiquing ONDA's work product. **It was obligated under NEPA to consider whether there were changes in or additions to the wilderness values** within the East-West Gulch, **and whether the proposed action in that area might negatively impact those wilderness values**, if they exist. The court finds BLM did not meet that obligation by relying on the one-time inventory review conducted in 1992. **Such reliance is not consistent with its statutory obligation to engage in a continuing inventory so as to be current on changing conditions and wilderness values.** 43 U.S.C. § 1711(a).

BLM's issuance of the East-West Gulch Projects EA and the accompanying Finding of No Substantial Impact (FONSI) in the absence of current information on wilderness values was arbitrary and capricious, and, therefore, was in violation of NEPA and the APA. (emphasis added)

BLM is similarly obligated to both consider additions to wilderness values and evaluate the potential impacts on those wilderness values from its management decisions in the Rawlins RMP.

In the most recent ruling on the Utah Settlement challenge (State of Utah v. Norton, Case No. 2:96-CV-0870, Order and Opinion (D.Utah September 20, 2006)), Judge Benson found against the Conservation Groups for a number of reasons, including agreeing with the legal interpretation of FLPMA put forth by the State of Utah and the BLM (a finding we continue to dispute). However, the ruling also justifies the court's interpretation by finding that the agency can provide virtually the same protection for lands with wilderness characteristics through administrative decisions as it can through designation of new WSAs, with the only material difference being that, while the agency can alter its own management decisions, only Congress can change a WSA designation. The court stated: "Both Utah and the BLM acknowledge that the BLM has the discretion to manage lands in a manner that is **similar to the non-impairment standard** by emphasizing the protection of wilderness characteristics as a priority over other potential uses." Order and Opinion, p. 41 (emphasis added - excerpt **Attached**).

In a subsequent briefing to the U.S. Court of Appeals for the 10th Circuit, the Department of the Interior and the BLM reiterated that "the settlement does not preclude BLM from **inventorying public lands for wilderness-associated characteristics**" and that "the land management decision obtained through FLPMA § 202 process may **resemble management under FLPMA § 603's non-impairment standard**." In discussing how BLM will manage lands with wilderness characteristics, the brief refers to the "BLM's discretion under FLPMA § 202 to **preserve their wilderness-associated characteristics**." Brief of the Federal Appellees, State of Utah v. Kempthorne, Case No. 06-4240 (February 26, 2007), pp. 40, 43 (emphases added - excerpt **Attached**). Similarly, the Rawlins Field Office can and should protect lands with wilderness characteristics from the damage likely to result from ongoing oil and gas development (including by imposing best management practices on already leased lands and by committing to no future leasing) and uncontrolled ORV use, both of which are likely to occur if these activities are permitted to occur on lands with wilderness characteristics.

The importance of protecting the Adobe Town area has and continues to be highlighted throughout the BLM's revision of the Rawlins RMP. BCA, with the endorsement of seven other conservation groups, has petitioned the Wyoming Environmental Quality Council (EQC) to designate the entire over 180,000 acres of the Adobe Town area as "Very Rare or Uncommon." (Docket No. 07-1101; Petition **Attached**). Very Rare or Uncommon status is given to "those areas of the state which are very rare or uncommon and have particular historical, archaeological, wildlife, surface geological, botanical or scenic value." W.S. § 35-11-112(a)(v). The EQC unanimously voted to approve a full hearing for the petition, signaling that it met all the criteria for consideration. Further evidencing its serious consideration of the Petition, the EQC will be conducting a fly-over tour, followed by a ground tour of the Adobe Town area (<http://deq.state.wy.us/eqc/index.asp>). Governor Freudenthal has repeatedly expressed his desire that the values of the greater Adobe Town area be protected. Further, the AFL-CIO has evidenced its support for protecting this area, including in a November 10, 2006, petition to withdraw all of this area from future oil and gas leasing. Wyoming Game and Fish Department recommended that Wilderness Study Areas should be granted ACEC status as a safety net in case of Congressional release (WGFD 2005, p. 26-27).

As detailed in our previous comments and in the attached Petition, the Adobe Town area possesses significant geological formations, abundant fossil resources, historical and prehistoric sites and features, rare and sensitive (including crucial) wildlife habitats, and scenic values comparable to or eclipsing existing national park units. These values include:

- the incredible formations in the escarpments of the Adobe Town and Skull Creek Rims, Haystacks, and Willow Creek Rim, which also contain fossilized wood and other paleontological resources
- rich concentration of archaeological sites from 12,000 years of occupation
- raptor nest sites, sage grouse lek sites, and big game crucial winter ranges

- unparalleled scenery

Based on the above and other resources and values detailed in our previous comments and the attached Petition, the Adobe Town area meets the relevance and importance criteria for ACEC designation. This conclusion is supported by other independent surveys, including:

- *Inventory of Significant Geologic Areas in the Wyoming Basin Natural Region* (McGrew et al. 1974), compiled under contract with the National Park Service, in which the authors noted that “The greatest natural value of this area is that it is still a ‘howling wilderness.’” (at p. 187).
- *Potential Natural Landmarks in the Wyoming Basin* (Knight et al. 1976), which rated the area as having the highest rating for ecological and geological values, a rating that reflects “high degree of national significance, recommended without reservation.” at pp. 216-218.
- A 1979 assessment by the National Park Service and the Heritage Conservation and Recreation Service, which identified the resources of the Washakie Basin as possessing nationally significant and threatened natural-ecological-geological features and listed the basin as a possibility for new study and potential inclusion as a national park, underscoring the outstanding natural attributes of the area.

The Adobe Town area requires special management attention to protect its values as well. Geological, paleontological and cultural resources are irreplaceable. Raptor nest sites, sage grouse lek sites, and big game crucial winter ranges are exceptionally sensitive because even temporary disturbances can lead to nest failure (for the birds) or displacement of big game onto marginal ranges where they may not be able to survive. Aggressive oil and gas development, off-road vehicle use or other intrusive activities will damage the naturalness of the landscape and related infrastructure will impair its scenic values.

Since an ACEC is to be as large as is necessary to protect the important and relevant values. Manual 1613, Section .22.B.2 (Size of area to receive special management attention), the ACEC for the Adobe Town area should include the approximately 180,000 acres detailed in the attached Petition.

Recommendations: BLM should designate the greater Adobe Town area (i.e., the Adobe Town citizens’ proposed wilderness, 180,900 acres) as an ACEC to protect its wilderness characteristics, as well as its many other vulnerable and irreplaceable values, detailed above. BLM should also consider designating other ACECs to protect lands with wilderness characteristics, particularly the Wild Cow Creek citizens’ proposed wilderness. These ACECs should include management prescriptions, such as closure to future oil and gas leasing (and/or stringent conditions of approval for already leased lands, as well as commitments to no future leasing) and limiting motor vehicles to designated roads, that will protect wilderness characteristics.

Powder Rim Proposed ACEC

BLM correctly notes that Powder Rim meets or exceeds many of the relevance criteria for ACEC designation. An additional relevance criterion not noted by BLM under the category of “fish and wildlife resource” is the fact that the Powder Rim offers year-round core habitat for the Petition Herd, one of only two desert elk herds in Wyoming. An addition relevance criterion under “historic, cultural, or scenic value” not noted in the ACEC Report are the presence of Native American petroglyphs in the area, which also merit special protection. Also, under “natural system,” BLM Sensitive Species including the ferruginous hawk, greater sage grouse have been documented in this area.

BLM’s “importance” analysis contains several important mistakes which invalidate the analysis. There are several juniper obligate songbirds found in this potential ACEC rated “S1” (critically imperiled statewide) including the western scrub jay, juniper titmouse, bushtit, and Scott’s oriole (Keinath et al.

2003). Plants rated as 'S1' present in the Powder Rim proposed ACEC include *Penstemon gibbensii*, *Androstaphyllum breviflorum*, *Atriplex wolfii*, *Boechnera selbyi*, *Erigeron compactus* var. *consimilis*, and *Populus deltoides* var. *wislizenii*. Marriott Scooping Comments, Cherokee/Powder Rim appendix. The presence of these species in the juniper woodlands of the Powder Rim gives the area statewide importance (which is more than local importance), meaning that the Powder Rim absolutely meets the "importance" criteria for juniper obligate songbirds, even though juniper habitats may be abundant outside Wyoming. Secondly, the Powder Rim contains 2 of only 3 known Gibben's penstemon populations in the state. This plant is rated G1/S1 (critically imperiled at the global and state levels, Keinath et al. 2003), making this sensitive resource a globally important one, absolutely meeting the "importance" criteria for ACEC designation. Of note, all species rated 'G1,' including Gibben's penstemon, were recently petitioned for listing under the ESA.³ Third, the presence of one of only two desert elk herds in Wyoming, which spend all year in desert environments without migrating to conifer-dominated montane habitats (the other being the Steamboat Mountain herd), makes the Powder Rim meet the "importance" criteria for ACEC designation.

Furthermore, the area contains elk crucial winter range and raptor nesting areas, two categories of habitat that BLM correctly concluded meet the relevance and importance criteria for the Jep Canyon ACEC. ACEC Report at 7-8. Both elk crucial winter range and raptor nesting areas clearly fall under "fish and wildlife" attributes for relevance and fragile, sensitive, irreplaceable, and vulnerable to adverse change importance criteria. In addition, the Powder Rim features a substantial triple overlap of crucial winter range for elk, mule deer, and pronghorn, the largest such triple overlap within the 11 million acres of the Rawlins Field Office boundary, thereby also satisfying the importance criterion of "rare."

Recommendations for Powder Rim as an ACEC are supported by the Wyoming Game and Fish Department (WGFD 2005, p. 28-9):

Due to the unique vegetation types and its high value to wildlife, we recommend the Powder Rim area be designated as a SMA in this plan or, more appropriately, an ACEC. Telemetry studies have documented mule deer migrating all the way from Atlantic Rim to winter on Powder Rim, and elk move into this area from Colorado. Evaluation of this area as an ACEC should be included in Alternatives 3 and 4 of this plan.

Given the broad support for protecting this area as an ACEC due to its outstandingly high and fragile wildlife values, BLM must at least consider ACEC designation, and should in fact designate the Powder Rim as such in the new RMP.

Mountain Plover ACECs

BLM erroneously concluded that mountain plover proposed ACECs in the Western Heritage Alternative do not meet relevance and importance criteria. BLM argues that mountain plover nesting concentration areas nominated for ACEC status do not meet the relevance criteria for designation, arguing that they do not constitute a "fish and wildlife resource." ACEC Report at 37. BLM states that these areas are not essential for maintaining species diversity, that plover nesting habitat is abundant elsewhere in the planning area, and that current management protection measures in the planning area are adequate to protect mountain plover nesting habitat. BLM's assertion that plover nesting habitat is widespread is unsupported. According to plover expert Dr. Stephen Dinsmore, "There have been no detailed surveys of Mountain Plover habitat within this region, and specific factors that contribute to quality nesting

³ See http://www.denverpost.com/headlines/ci_6521226, site last checked 8/3/07.

habitat for this species are unknown.” Comments of S. Dinsmore on the Great Divide RMP revision, Feb. 3, 2003. Indeed, these nesting concentration areas meet relevance criteria precisely because they represent the best plover nesting habitat in a field office dominated by shrubsteppe vegetation types unsuitable for nesting plover due to this bird’s preference for very low vegetation or even bare ground as a prerequisite for nesting.

Subsequently, Regan Plumb of the University of Wyoming Cooperative Fish and Wildlife Research Unit undertook a survey of mountain plover breeding habitat in the region (Plumb 2004), and found plover nesting concentration areas with substantial numbers of breeding plovers to be limited to a handful of localities (which were subsequently nominated for ACEC status under the Western Heritage Alternative). This study shows that the nesting concentration areas subsequently nominated for ACEC status have special worth in terms of containing the largest concentrations of nesting plovers in the region, thereby satisfying importance criteria for ACEC designation. In addition, the scientific importance of the Mexican Flats nesting concentration area for repeated scientific study by Fritz Knopf, Plumb, and others is well-known and further contributes to the importance of this proposed ACEC.

In addition, BLM never disputes that plover nesting areas are not fragile or sensitive, merely noting that they are no more fragile or sensitive than other mountain plover nesting habitat. ACEC Report at 38. Here, BLM applies a false standard; if all plover nesting areas are fragile or sensitive, then all plover nesting habitat necessarily meets importance criteria for ACEC designation.

Current management protection measures are not adequate to protect mountain plover habitat. While it was once believed that the roads and wellpads inherent to oil and gas production were compatible with maintaining nesting habitat for mountain plovers because plovers were found to nest in close proximity to these features (Ellison-Manning and White 2001a,b), the nesting population of plovers in Utah (which exclusively occupied an area that was subjected to full-field development) was subsequently extirpated. Thus, in the final analysis, nesting in close proximity to oil and gas development is correlated with loss of the breeding population. Proposed protection measures in the Rawlins RMP Draft EIS (particularly no surface occupancy for plover nesting areas) should provide the level of protection needed to maintain mountain plover populations if (and only if) these measures are approved in the ROD for the Rawlins RMP. Thus, ACEC measures should incorporate the recommendations of Dinsmore and BCA et al. in Rawlins RMP NEPA comments to put plover nesting concentration areas under NSO stipulations.

Ferris Dunes/Blowout Penstemon Proposed ACEC

BLM defines its blowout penstemon ACEC based on the presence of the Threatened blowout penstemon and sensitive parabolic dune communities. DEIS at 2-53. These parabolic dune communities extend far more broadly than the 4,020 acres proposed for consideration by BLM DEIS at 2-54. For the Great Divide Basin, Maxell (1973) found that scurfpea and ricegrass communities in the sand dunes contained the greatest kangaroo rat concentrations, and drew the following conclusion: “Kangaroo rats were almost exclusively restricted to the sand dunes and adjacent areas in the Basin” (p. 86). The vegetated sand dunes, active sand dunes, and graminoid-dominated “vernal pond” wetlands in this area all are rated “highest priority” for conservation by the Wyoming Gap study (USGS 1996). Off-road travel for “necessary tasks” should not be allowed, as most of this area is reasonably close to a road.

The unique and isolated biota found in sand dune habitats and the fragility of these communities also dictate that the protected area be as large as possible. Bury and Luckenback (1983, p. 218) observed that “[d]unes often lack adjacent or nearby colonization sources and much of the biota may be endemic,” and made the following recommendations for the conservation of sand dune communities:

“A paradigm for the management of desert dune systems should follow the recommendations of Whitcomb et al. (1976), who urge that ecological preserves be kept as large as possible because (1) large areas have low extinction rates and high immigration rates; (2) some taxa require very large areas for survival; (3) preservation of entire ecological communities, with all trophic levels represented, requires large areas; (4) large preserves are a better buffer against human disturbance; (5) large areas are necessary to minimize the predation, parasitism, and competition exerted by species abundant in the disturbed area surrounding reserves; (6) the failures of small reserves have been adequately documented; and (7) because fragmentation is irreversible, a conservative preservation strategy needs to be adopted” (p.219).

The BLM is considering only 4,120 acres of the Ferris Dunes Proposed ACEC in the DEIS. *See* DEIS at 3-84, “Blowout Penstemon Area.” Under “Impacts Common to All Alternatives,” BLM states that “surface disturbing activities would be allowed in blowout penstemon potential habitat, which would indirectly affect the future expansion of the population.” DEIS at 4-148. Surprisingly, there is no alternative that would withdraw this area from future mineral leasing or even emplace NSO stipulations (*see* DEIS at 2-53), even though mineral development is possible the greatest threat to blowout penstemon in this area. The U.S. Fish and Wildlife Service has noted, “these [dunes] areas are particularly vulnerable to disturbance of the vegetation cover caused by a high density of roads or wells....Due to the unique and important nature of these areas and the difficulty in achieving appropriate compensation, the Service recommends avoidance of these areas” (Long 2002). Although these comments were directed at the potential of coalbed methane development in the Sand Hills, they apply equally to conventional oil and gas development in the Ferris Dunes. Furthermore,

Surface disturbance associated with lands and realty management, livestock grazing management, and minerals management that occurs within the Blowout Penstemon Area has the potential to disturb and degrade blowout penstemon potential habitat. This could in turn reduce species recruitment and the amount of area available for expansion of the population.

DEIS at 4-149. Even under the most protective alternatives, “surface disturbing and disruptive activities would still affect the future expansion of the population....” DEIS at 4-150. It is absolutely unacceptable that the BLM has considered no alternative that would prevent such a limitation on the population’s future expansion. The blowout penstemon is one of the rarest plants in Wyoming, and possibly one of the rarest plants in North America. Its presence on the Endangered Species list should make the BLM’s Number One priority the recovery and expansion of this species. The fact that these impacts are common to all alternatives is indicative of the fact that the BLM has failed to consider a sufficiently broad range of alternatives.

High Savery Dam

The High Savery Dam site clearly would meet the relevance and importance criteria if big game crucial ranges are present. The High Savery Dam caused major degradation to the resources present in this area, to the point which we would recommend that BLM move this area to the bottom of the priority list for potential ACECs.

Stratton Sagebrush Steppe

We concur that the Stratton Sagebrush Steppe location meets relevance and importance criteria for its scientific value, but high-altitude sagebrush shrubsteppe is more widespread in the planning area than mountain plover nesting habitat, so it is unclear why BLM concluded that the much rarer mountain plover

nesting habitat did not meet importance criteria. NSO stipulations were considered for the Stratton Sagebrush Steppe ACEC (DEIS at 2-42); this is one of the few ACECs where such measures, advisable for all ACECs, are considered.

Shirley Mountains Proposed ACEC

BLM has an affirmative responsibility to protect the Cave Creek Cave itself (not just the resident bat population) under the Federal Cave and Natural Resources Protection Act. In explicably, all alternatives except Alternative 1 would shrink the existing Shirley Mountain Caves SRMA from its present 24,400 acres down to a mere 240-520 acre postage stamp for ACEC consideration. DEIS at 2-48. What is the subterranean extent of the cave system that is the subject of this ACEC nomination? Do all of the underground passages underlie the 240-acre or 520-acre surface area of the proposed ACECs? Have all of the cave passages even been mapped yet? If the answer to any of these questions is “no,” then BLM needs to expand the land area considered for ACEC protection in this case.

Cave systems could be negatively impacted by seismic oil and gas operations (both vibroseis and shot-hole) and drilling. For this reason, in order to meet the management goals of this ACEC, the area should be under special NSO stipulations that also do not allow the wellbore to penetrate the ACEC in or above the strata where the caves occur. In addition, exploratory activity needs to be limited to passive seismic or aerial (“electroseis”) seismic activities, to prevent ground-shaking activities that could cause the collapse of caves or damage to subterranean features such as stalactites and stalagmites.

Jep Canyon ACEC

BLM correctly concludes that the crucial elk winter range and raptor nesting sites in Jep Canyon meet the “relevance and importance” criteria for ACEC designation because they are a wildlife resource that is fragile, sensitive, and vulnerable to adverse change. ACEC Report at 6-7. This ACEC has been designated since the approval of the 1990 Great Divide RMP, and BLM has managed it in accordance with federal law and policy over the past 17 years. The decision to designate this area as an ACEC was a decision that falls within the authority of BLM to create, and indeed this ACEC is considered for continued designation in the Rawlins RMP DEIS. DEIS at 2-39. The wildlife and ecosystem values of this area are less than those found in other proposed ACECs, such as the Powder Rim and Ferris Dunes proposed ACECs, but nonetheless we recommend that this area be retained as an ACEC. In order to meet the management goals established for this area, elk crucial range and areas within 1 mile of raptor nest sites need to be leased only with No Surface Occupancy stipulations in order to protect these sensitive resources regardless of whether this area is managed as an ACEC or a wildlife habitat management area. It is important to note that elk in similar habitats have been shown to avoid areas within 0.6 mile of roads and wellpads in summer and within 1.2 miles of roads and wellpads in winter (Powell 2003, Powell and Lindzey 2004, Sawyer and Neilson 2005).

Sand Hills ACEC

We concur with BLM’s finding that the Sand Hills ACEC meets relevance and importance criteria, and concur with the agency’s proposal to retain and expand the ACEC to include the JO Ranch, a historic property, as well as buffer areas. DEIS at 2-36. Due to the fragility of sand dune vegetation communities, the sand dune portions of this ACEC should be placed under NSO stipulations at minimum to prevent surface disturbing activities which might cause very long term damage to the dune system.

In addition, the sand dunes area should be closed completely to motor vehicles. This area has had a great deal of problems with illegal off-road vehicle use off existing roads, and BLM’s current management (vehicles restricted to existing roads) has failed to prevent resource damage resulting from off-road travel in this area. Simply limiting vehicle use to designated roads and trails is not a meaningful departure from

past management, which has not worked due to a lack of compliance from a significant proportion of motorized recreationists. Complete closure of this limited area to motorized use (including existing two-tracks) would prevent access for illegal use, which is provided currently by two-tracks open to motorized use. Having tried restricting vehicles to the existing routes, and due to the failure of this management option, BLM should try closing the area off as the minimum management needed to protect the sensitive resources of the area. It is noteworthy that BLM has yet to consider this reasonable alternative management scheme in any of the RMP alternatives in order to minimize environmental impacts pursuant to NEPA.

Shamrock Hills ACEC

BLM has found this area to meet relevance and importance criteria based on the importance of raptor nesting concentrations in this area. To what extent are raptors still using this area for nesting? How many nest sites remain active, and for what species? If this area remains an important concentration area for nesting birds of prey, then it should be retained in ACEC status. There is no reason to remove the requirement for plans of operations of 5 acres or less in this ACEC (DEIS at 2-41); indeed, the presence of either an ACEC or raptor concentration area would prevent the legal use of Categorical Exclusions for APD approval because the rebuttable presumption of no significant impacts would necessarily be contradicted. This provision should be modified to match current management in the final decision. BLM should consider NSO provisions for energy development in this unit regardless of ultimate choice of designation, and we recommend that BLM apply this level of protection to the area.

Chain Lakes Proposed ACEC

We support the establishment of this ACEC (DEIS at 2-42), and urge the BLM to consider No Surface Occupancy limitations on mineral development, as provided in the Western Heritage Alternative. This alternative for ACEC management is not currently considered in any of the 4 alternatives in the DEIS, yet remains a fully reasonable alternative.

Laramie Plains Lakes Proposed ACEC

We support establishment of this proposed ACEC, and the provisions for its protection as outlined in Alternative 3. DEIS at 2-49.

Upper Muddy Creek Watershed/Grizzly Proposed ACEC

There is no question that this potential ACEC meets relevance and importance criteria. It also covers a major portion of the Wild Cow Creek citizens' proposed wilderness, which also is eligible for protection under ACEC designation. Notably, the Colorado River fishes that are the focus of the ACEC are present not only in Muddy Creek but also in Wild Cow Creek. The southwest quadrant of the proposed ACEC should be expanded to encompass all of the Wild Cow Creek citizens' proposed wilderness; the wildlife values in this area are significantly higher than the wildlife values in the more westerly quadrant of the proposed ACEC (DEIS at Map 2-11), and contains much crucial winter habitat for elk, one of the management goals for the area. DEIS at 2-53. We endorse most of the management prescriptions of Alternative 4 for this area; in addition, at minimum the lands of the Wild Cow Creek citizens' proposed wilderness, big game crucial ranges, and areas within 3 miles of sage grouse leks should be placed under No Surface Occupancy leasing stipulations. WGFD recommended that this entire unit be placed under NSO stipulations⁴, and there is no legitimate reason why BLM could not do so for all new leases.

White-tailed Prairie Dog Complexes Proposed ACECs

⁴ Bill Wichers, WGFD comments of March 11, 2005 on the Great Divide RMP revision, pages 35-6.

We submitted comments on the DEIS in March 2005 which included extensive sections on the BLM's handling of our white-tailed prairie dog ACEC nominations. Since then, the only responsive document that the BLM has issued is the revised Evaluation of Relevance and Importance Criteria for Existing and Proposed ACECs – BLM Rawlins Field Office (August 2006) report. We did not detect any changes to the evaluation for the White-tailed Prairie Dog Areas in the revised report. Therefore, all of the original concerns that we raised in our March 2005 comments still apply.

Since our previous comments were submitted, much new information has come to light which the BLM must take a “hard look” at before issuing the final RMP.

For example, the Wyoming Game and Fish Department's comments on the DEIS stated:

The preferred alternative 4 is not significantly different than Alternative 1 (No action). The current no action policy by BLM likely resulted in the WTPD being petitioned for listing under the ESA....Resource development remains the biggest threat to this species and Wyoming BLM manages the majority of the lands, which this species occupies....We recommend alternative 3 (resource protection) for the entire section. In addition, all 8 WTPD complexes should be mapped by BLM following Biggins et al. (1993) so that BLM may manage and protect this invaluable keystone species (pp. 37-38).

Since we submitted comments in 2005, the White-tailed Prairie Dog Conservation Assessment was edited and approved by the Western Association of Fish and Wildlife Agencies (January 2006). Below are relevant excerpts (emphasis added) from the final, approved version which stress the necessity that the BLM manage oil and gas drilling in white-tailed prairie dog habitat. The four state wildlife agencies that manage white-tailed prairie dogs (including the Wyoming Game and Fish Department), and WAFWA, their umbrella group, have endorsed these positions. The BLM should ensure that it is in conformance with the management recommended here, and that it thoroughly considers the expert advice of the Wyoming Game and Fish Department.

Loss of habitat due to oil/gas development under current Bureau of Land Management policies may be a significant threat. (p. iv)

Oil and gas development is occurring at an unprecedented rate and because much of this development is occurring on BLM lands, the BLM should incorporate WTPD management into Land Use Plans. The WTPD Working Group recommends that the BLM add the WTPD to their list of sensitive species to insure long-term, effective management of this species. Many BLM Field Offices currently do not consider this species in oil and gas development unless it is associated with black-footed ferret reintroduction efforts. Because of this, the BLM does not address WTPD species-specific needs, but addresses the WTPD as black-footed ferret habitat. In addition, they do not address maintaining habitat for expansion or shifts in occurrence outside of currently mapped colonies. The BLM also addresses impacts at a colony level rather than a complex or landscape level. Finally, RMPs do not address the impacts of road development and the potential for an increase in shooting/direct take of WTPDs as a result of oil and gas development. The WTPD Working Group recommends that the BLM should clearly designate where WTPD habitat protection will be a priority. The Working Group also recommends that BLM WTPD management emphasis be shifted

from black-footed ferret management to management of WTPDs as a sensitive species. (p. 50)

Identifying suitable habitat and dispersal corridors among suitable habitat will help evaluate the long-term viability of populations, probability of dispersal among populations, and areas important for conservation. Critical areas identified during these analyses must be incorporated into Land Use Plans (e.g. RMPs) with conservation actions focusing on protecting unoccupied and occupied habitat, protecting corridors for immigration and emigration, and allowing maintenance and expansion of WTPD colonies and complexes. (p. 51)

Oil and gas development must be designed to minimize adverse impacts on existing WTPD colonies/complexes, and areas identified for expansion of colonies/complexes. To assess impacts at proposed sites, WTPD occupied and potential habitat should be documented prior to development. A minimal analysis should include mapping of WTPD suitable and occupied habitat, use of GIS to determine spatial distribution of these areas, estimate of local population densities, and evaluation of dispersal potential between suitable habitat patches within each complex (e.g. between colonies). Baseline information will help determine whether the loss of occupied and suitable habitat due to resource extraction activities could be compensated for by better managing other suitable habitat within a proposed project site and/or avoiding suitable and occupied habitat entirely by allowing development only in habitat not suitable for WTPD occupation. In addition, project design of oil and gas facilities in and adjacent to occupied and suitable habitat should include location of wells and roads outside of these areas, consideration of directional drilling when wells are proposed within suitable and occupied habitat, timing restrictions of vehicle travel to periods when WTPDs are less active, and regulation of vehicle traffic type. Finally, because knowledge of the effects of resource extraction on WTPD populations is limited, monitoring at sites before, during, and after development should be required. (p. 52)

On federal lands, impacts due to shooting, oil and gas development, livestock grazing, road development, poisoning, and mineral extraction are not addressed by current regulations. (p. 62)

State wildlife agencies and the BLM should cooperate on the development of new RMPs to address the conservation of WTPDs and their habitat with regard to oil and gas development, livestock grazing, poisoning, shooting, and road development. Special protection for large WTPD complexes should be employed by designating them as ACECs or “special management areas” on public lands. (p. 63)

Oil/gas exploration and extraction

This impact has the potential to rise to the level of a threat to the continued existence of the species, and therefore has the potential to justify listing under the ESA in the foreseeable future.

Oil and gas exploration is occurring at a phenomenal rate on public lands. Since the BLM manages 55% of the land in the WTPD predicted range, significant impacts are possible, primarily during development of oil and gas fields with close well spacing and associated roads. As previously stated in this Conservation Assessment, recent data from Colorado, Wyoming, and Utah indicate that WTPD complexes shift on a landscape scale, possibly

in response to plague or other factors not currently identified. Therefore all suitable habitat within and adjacent to complexes must be protected from direct habitat loss on a landscape scale if expansion opportunities are to be retained. Current BLM policies do not adequately protect WTPDs during oil and gas development. With the increased amount of leasing and oil and gas development in the WTPD range (77% of the WTPD gross range in Wyoming has the potential to be impacted by oil and gas development) this could lead to the need for listing the species under the ESA. Revision of BLM Land Use Plans to control leasing and development in WTPD complexes to address prairie dog management needs and maximize habitat potential must be initiated on a state-by-state basis to prevent further, more drastic actions, including listing the WTPD under the ESA. (p. 67)

The BLM must also consider the WTPD in their Land Use Plans. (p. 69)

CONCLUSION

After careful analysis of the information presented in this Conservation Assessment, the WTPD Working Group of the 12-state PDCT believes that while active management and development of conservation strategies for the species and its habitat is needed, justification does not exist for listing the WTPD as threatened under the ESA at the current time. However, the threat posed by oil and gas exploration and extraction may justify listing unless it is addressed on public lands managed by the BLM. It is critical that the BLM, through its Land Use Plans, manage oil and gas leasing and development in WTPD complexes to maximize prairie dog habitat potential. Land Use Plans must be revised on a state-by-state basis and WTPD protection should be initiated in order to prevent further, more drastic actions, possibly including listing the WTPD under the ESA. (pp. 70-71)

The BLM is revising RMPs in much of the white-tailed prairie dog's range, and is handling our ACEC nominations inconsistently, which makes the agency vulnerable to an "arbitrary and capricious" claim.

The Vernal DEIS covers our white-tailed prairie dog ACEC nominations for Coyote Basin, which is a black-footed ferret reintroduction site, just as Shirley Basin is. Every alternative except the No Action would designate the Coyote Basin area as both an ACEC and a Research Natural Area. The BLM has proposed ACEC/RNA designation under all alternatives because "it would provide positive benefits in the form of preservation of essential habitat for remaining prairie dog populations in the planning area" (Vernal RMP DEIS p. 4-205). The BLM also stated that the designation "would provide essential habitat for the potential reintroduction of the black-footed ferret. The white-tailed prairie dog provides forage for the black-footed ferret and is considered necessary for its successful recovery in the project area" (Vernal RMP DEIS p. 4-205).

The Little Snake DEIS (January 2007) covers our white-tailed prairie dog ACEC nomination for the Little Snake complex, which has also been approved for black-footed ferret reintroduction. The alternative that includes designation of this ACEC would include No Surface Occupancy stipulations for the entire ACEC.

We incorporate by reference the comments of March 17, 2005 of Dr. Stephen Dinsmore on the Rawlins RMP DEIS concerning mountain plovers into these comments by reference. Dr. Dinsmore stated "there is strong evidence of a link between the plover and prairie dogs. As such,

I recommend that all areas occupied by prairie dogs be specifically withdrawn from consideration for development.” Dinsmore DEIS comments at 2. A no surface occupancy buffer of ¼ mile was recommended by Dinsmore in earlier comments. Scoping comments of S. Dinsmore on the Great Divide RMP revision, Feb. 2, 2003. This recommendation is not reflected as a management option under any alternative; the provisions of Alternative 3 come closest. The Rawlins RMP should designate our nominated ACECs and apply NSO stipulations throughout each. We recommend that a ¼ mile buffer be used as the NSO boundary.

Since we submitted our previous comments, the U.S. Fish and Wildlife Service has admitted that its finding on our white-tailed prairie dog Endangered Species Act listing petition was illegally manipulated by political appointee Julie MacDonald, and that the Service will move ahead with a 12-month finding on our petition, which indicates that the Service does have substantial information that Endangered Species Act protection for the white-tailed prairie dog may be warranted:

White-tailed prairie dog 90-day petition finding: The field office drafted a positive 90-day finding on a petition to list the white-tailed prairie dog. The finding concluded the information in the petition was substantial and warranted further review of the species’ status. MacDonald revised the document to be a “not-substantial” finding and the Service published the document with her edits. The Service plans to withdraw the “not substantial” 90-day finding and complete the 12-month finding when funds are available. (U.S. Fish and Wildlife Service Q’s & A’s: Reviews of Endangered Species Decisions, July 20, 2007, p. 2. Available online at: <http://www.fws.gov/endangered/news/macdonald/ESA.Review.Q&A.FINAL.pdf>)

Under the Freedom of Information Act, we obtained the 90-day finding as it appeared before MacDonald’s edits, and the Service originally found that the petition and the Conservation Assessment by the states:

clearly identify current and projected threats to the species including mortality and habitat loss, fragmentation, and degradation. We believe further evaluation of the extent of leasing and current and projected oil and gas development is necessary to complete a thorough assessment of the direct, indirect, and cumulative effects of oil and gas development to white-tailed prairie dogs and their habitat. Further evaluation also is necessary to determine if such development is currently or is likely to result in significant impacts to the species either singly or in combination with other factors such as plague. (p. 26 of version showing sections deleted by MacDonald)

The Rawlins RMP represents the most significant opportunity the BLM has to demonstrate adequate regulatory mechanisms for the white-tailed prairie dog, and the DEIS completely fails to deliver. According to the figures in the WAFWA-approved Conservation Assessment, the eight nominated white-tailed prairie dog complexes in the Rawlins Field Office account for 54% of the estimated occupied white-tailed prairie dog habitat in Wyoming, and 30% of estimated occupied white-tailed prairie dog habitat rangewide. Considering ACEC designation under only one alternative (which is not the preferred) and proposing to only limit ORV use and apply no other special management to these areas, including the most successful black-footed ferret reintroduction site within the white-tailed prairie dog’s range, demonstrates that Endangered Species Act protection will be necessary for the white-tailed prairie dog.

Conclusions

Thank you for the opportunity to comment on BLM's ACEC implementation through the Rawlins RMP EIS process. The original Great Divide RMP left 97% of the Rawlins Field Office open to oil and gas leasing (and therefore subsequent development). This proportion is far too great to provide the multiple-use management which BLM is directed to apply under federal law. Please incorporate our recommendations in full in the interest of moving the Rawlins RMP toward a balance between industrial development and the conservation of open spaces, treasured landscapes, and sensitive wildlife. We will look forward to receiving your response to these comments.

Sincerely yours,

/s/

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