



June 28, 2013

Mr. Jim Sparks
Field Manager
Billings Field Office
5001 Southgate Drive
Billings, MT 59101

RE: BILLINGS/POMPEY'S PILLAR DRAFT ENVIRONMENTAL IMPACT STATEMENT/RESOURCE MANAGEMENT PLAN

Dear Mr. Sparks:

On behalf of the Montana Petroleum Association (MPA), Public Lands Advocacy (PLA) and Western Energy Alliance, following are comments in response to the Notice of Availability of the Draft Billings/Pompey's Resource Management Plan (RMP) and Draft Environmental Impact Statement (DEIS) published in the Federal Register March 29, 2013. The signatories to these comments are all non-profit trade groups who represent the many facets of the petroleum industry. Our member companies have valid existing leases, current oil and gas production, and plans for future leasing, exploration, and production activities in the areas that will be directly impacted by the proposed decisions in the Draft Billings/Pompey's RMP.

INADEQUATE REVIEW PERIOD

We object that BLM denied our request for an extension of the review period. BLM has failed to afford interested parties adequate time to fully digest and provide coherent and substantive comments by limiting the review period to a 90-day window during which comments are due on three major draft RMPs. It is unrealistic for BLM to expect the heavily affected oil and gas industry, not to mention the general public, to have the ability to conduct an adequate review when they have been provided a very narrow window in which to review these three enormous documents. We believe BLM is making a rush to judgment without appropriate and accurate consideration of the impacts associated with the management considerations contained in the DEIS.

DEIS INADEQUACIES

The structure of Billings/Pompey's Pillar DEIS makes it extremely difficult for reviewers to track BLM's proposed management options because they are inconsistent among chapters while at the same time spread out among the various chapter sections in piecemeal fashion. Even the basic descriptions of the alternatives and their priorities are missing. One is forced to wade through countless pages of resource descriptions for each alternative in separate sections, forcing the reader to jump from one section to another to understand the proposed management. Moreover, the

pervasive inconsistencies throughout the documents make it impossible for reviewers to comprehend the changes in resource uses and management proposed by BLM under each alternative. We strongly recommend that BLM adopt a revised format for subsequent planning documents that provides resource and decision-related information in an easy to follow, consistent format.

FAILURE TO COMPLY WITH NEPA

The purpose of analysis under the National Environmental Policy Act (NEPA) as well as BLM's planning process is for BLM to publically disclose the potential impacts of various management strategies under consideration by the agency. Specifically, the CEQ NEPA regulations at 40 CFR §1502.9(a) directs the agency to *"make every effort to disclose and discuss at appropriate points in the draft statement all major points of view on the environmental impacts of the alternatives including the proposed action."* While BLM may have tried to explain its management scenarios by alternative in the DEIS, it has omitted any useful explanation of potential impacts associated with each of the alternatives selected for detailed review in the document as they relate to the Billings/Pompey's Pillar areas in any consistent manner. The regulation at 40 CFR § 1502.14, requires presentation of the *"environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decisionmaker and the public."* Additionally, the regulation at § 1502.16 requires a *"scientific and analytic basis for comparisons"* of the information provided in accordance with § 1502.14 necessary to support the comparisons. The BLM's planning regulations similarly require the BLM to estimate the physical, biological, economic, and social impacts associated with each alternative in the RMP EIS. 43 CFR § 1610.4-6 Absent a sufficient and consistent description of the potential environmental impacts associated with each alternative directly pertaining to the Billings planning area, BLM has failed to meet both of the *"twin purposes"* of NEPA, understanding potential impacts and public disclosure of said impacts. See *Baltimore Gas & Electric v. Natural Resources Defense Council*, 462 U.S. 87, 97 (1983). For this reason alone, the BLM must prepare a revised draft environmental impact statement. 40 C.F.R. § 1502.9(a)

We find BLM's use of Greater Sage-grouse data not directly applicable to the planning area highly problematic and outside the requirements of NEPA. While we recognize NEPA allows for the best available science to be used during planning, the fact that none of the data referenced by BLM applies to the lands and habitat under the jurisdiction of Billings Field Office cannot be utilized as the basis for decisions, particularly given that they are based upon data derived from intensively developed natural gas fields that are completely uncharacteristic to the planning area.

Further, BLM has failed to explain its rationale for selecting the Preferred Alternative. It is inadequate for BLM to simply identify a preferred alternative without providing detailed analysis that supports WHY such an alternative is in the best interest of the agency and public. According to the BLM's Land Use Planning Manual and Land Use Planning Handbook, II.A.7, pg. 22 (Rel. 1-1693 03/11/05), BLM must identify how the Preferred Alternative best meets the multiple use and sustained yield requirements of FLPMA. This lack of meaningful analysis constitutes a fatal flaw in the DEIS. Therefore, in accordance with 40 CFR 1502.0(a), we find the DEIS *"inadequate as to preclude meaningful analysis"* and recommend the agency prepare and circulate a revised draft

which provides the analysis necessary to support each of the management alternatives, including the preferred alternative.

INADEQUATE MAPPING PROTOCOLS

Another significant problem with the BLM's planning documentation is the 1-Km resolution datasets and 1:2,000,000 scale maps used in the BLM planning process. While this scale of maps may be a viable tool for multi-state or sub-continental planning efforts, it becomes totally meaningless at field office or even county level. With respect to the Greater Sage-grouse, datasets and mapping at these scales grossly mischaracterize historic and potential habitat by including non-habitat as well as overlooking microhabitat characteristics, especially in diverse and fragmented landscapes. Likewise, threats to sage grouse are also entirely overestimated when using sub-continental scale mapping, such as that used in the planning effort. It is ironic that when BLM requires maps from industry, they must be at a 1:24,000 scale rather than the scale BLM believes is appropriate for a much larger planning effort.

Most of the conventional literature regarding sage-grouse starts with the assertion that ~60% of historic range has been lost. This is based on work done by Schroeder et al in 2004, and has become the cornerstone of mainstream sage-grouse research. It too is at a 1:2,000,000 scale and provides the basis for much of the US Fish and Wildlife Service (FWS) and BLM policy regarding sage-grouse. Of great concern, however, is the fact that this scale provides wholly unsuitable data when conducting any analysis or planning at FO level.

The most recent paper by Knick et al concluded that sage-grouse lek abandonment will occur with as little as 3% human disturbance with a 3-mile radius of a lek. Unfortunately, their methods apply cumulative human impacts over the past 100 years to a static snapshot of lek status (active or abandoned). In other words, no consideration was given to the timing of the human disturbance with respect to the status of a lek in question. It is assumed that any lek abandonment was due to cumulative human impacts. This approach is unacceptable and our comments address these concerns.

ENERGY DEVELOPMENT IS A LEGITIMATE USE OF PUBLIC LANDS

Under the Federal Land Policy and Management Act (FLPMA), BLM is required to manage the public lands on the basis of multiple use and sustained yield. 43 USC § 1701(a)(7) (2006) “ ‘*Multiple use management*’ is a concept that describes the complicated task of achieving a balance among the many competing uses on public lands, ‘*including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and [uses serving] natural scenic, scientific and historical values.*’ ” Norton v. Southern Utah Wilderness Alliance, 542 U.S. at 58 (quoting 43 U.S.C. § 1702(c)). “*Of course not all uses are compatible.*” Id. We recognize the difficult task the BLM faces to manage public lands in the planning for multiple use. However, oil and gas development is a crucial part of the BLM's multiple use mandate and the agency must ensure that oil and gas development is not arbitrarily limited in the RMP.

FLPMA clearly identified mineral exploration and development as a principal or major use of the public lands. (43 U.S.C. § 1702(l)) To that end, FLPMA requires the BLM to foster and develop mineral activities, not stifle and prohibit such development. It does not appear this was one of BLM's goals when preparing the Billings/Pompey's Pillar DEIS. Rather, it appears the BLM is intent upon limiting what it considers to be a damaging presence on the federal lands. The BLM must reconsider its view of oil and gas development when preparing the final EIS/RMP.

In addition to FLPMA, § 363 of the Energy Policy Act of 2005 (EPAAct) requires federal land management agencies to ensure that lease stipulations are applied consistently and to ensure that the least restrictive stipulations are utilized to protect the resource values to be addressed. The DEIS also ignores established BLM policy which requires that "*the least restrictive stipulation that effectively accomplished the resource objectives or uses for a given alternative should be used.*" Moreover, BLM has failed to demonstrate that less restrictive measures were considered but found insufficient to protect the resources identified. A statement that there are conflicting resource values or uses does not justify the application of severe NSO restrictions.

In April 2003, the BLM directed field offices to comply with four Energy Policy and Conservation Act (EPCA) planning integration principles:

- 1) *Environmental protection and energy production are both desirable and necessary objectives of sound land management and are not to be considered mutually exclusive priorities.*
- 2) *The BLM must ensure appropriate accessibility to energy resources necessary for the nation's security while recognizing that special and unique non-energy resources can be preserved.*
- 3) *Sound planning will weigh relative resource values, consistent with the FLPMA.*
- 4) *All resource impacts, including those associated with energy development and transmission will be mitigated to prevent unnecessary or undue degradation (BLM 2003a)."*

Under EPCA BLM is required to identify impediments to oil and gas development. It was the intent of Congress that access to energy resources be improved as indicated in the Energy Policy Act and Conservation Act of 2000 and the Energy Policy Act of 2005. BLM recognized the intent of the both Phases I and II of the EPCA review when it issued Instruction Memorandum 2003-233, Integration of the Energy Policy and Conservation Act (EPCA) Inventory Results, into the Land Use Planning Process. Consequently, BLM Field Offices are now required to review all current oil and gas lease stipulations to make sure their intent is clearly stated and that stipulations utilized are the least restrictive necessary to accomplish the desired protection. Moreover, the IM directs that stipulations not necessary to accomplish the desired resource protection be modified or eliminated during the planning process.

Since the purpose of integrating the EPCA results into planning is intended to determine whether existing resource protection measures are inadequate, adequate or excessive, we recommend the BILLINGS BLM reevaluate its management decisions accordingly and make requisite changes to the FEIS. If BLM decides not to reevaluate its decision, we specifically request a response from BLM in the Final EIS explaining why this was not done.

It seems BLM intends to adopt a new policy whereby multiple use activities, including oil and gas development, will be held subservient to other resource values considered in the planning process,

echoing the obsolete belief that oil and gas development destroys air, water and fish/wildlife habitat. This is clearly the misguided basis for much of the document and the most of the alternatives, particularly the preferred alternative. Therefore, since the purpose of integrating the EPCA results into planning is intended to determine whether existing resource protection measures are inadequate, adequate or excessive, it is even more crucial that the BFO reevaluate its management decisions accordingly and make requisite changes to the FEIS. Discussion of the specific requirements of a resource to be safeguarded, along with a discussion of the perceived conflicts between it and oil and gas activities must be provided along with an analysis of available mitigation measures. Clearly, an examination of less restrictive measures must be a fundamental element of a balanced analysis and documented accordingly in the FEIS.

We also point out that documentation of the need for change is required by BLM's 1601 Planning Handbook at § VI, *Determining if New Decisions are Required*, Part D, *Documenting the Determination to Modify, or Not to Modify, Decisions or NEPA Analysis*, which directs that **"it is important to document decisions to modify or not modify the land use plan or NEPA analysis when these decisions are reached as part of the formal land use plan evaluation process"** (Section v). *(Emphasis added)* We ask BLM to explain its rationale to exclude this requirement from the DEIS in final EIS.

When finalizing the Billings/Pompey's Pillar RMP, we urge BLM to ensure its compliance with the FLPMA, EAct, EPCA, and its own guidance and handbook by reducing rather than increasing impediments to federal oil and gas leasing and development. As currently presented, the BLM has failed to comply with this policy because it is proposing huge new impediments to domestic energy development.

DEIS SPECIFIC COMMENTS

Following are document specific comments to aid BLM in ensuring a comprehensive and defensible revision to the current DEIS.

ADAPTIVE MANAGEMENT

Page 2-6, 2.3.4, Adaptive Management – *"The Department of the Interior Office of Environmental Policy and Compliance issued ESM03-6, which provides initial guidance to all agencies on the implementation of adaptive management practices for NEPA compliance. The Interior Department Manual 516 DM 4.16 defines adaptive management as "a system of management practices based on clearly identified outcomes, monitoring to determine if management actions are meeting outcomes and, if not, facilitating management change that would best ensure that outcomes are met or re-evaluate the outcomes."*

COMMENT: BLM has failed to explicitly describe the process of Adaptive Management it intends to use. While industry supports the goal of adaptive management, it will not be successful without the development of science-based monitoring protocols to assess and validate the effectiveness of federal land management actions, particularly with respect to regulating oil and gas development, such as lease stipulations and conditions of approval (COA) and to adjust management decisions in response to this monitoring. We recognize that adaptive management, if done properly, can assist

land managers through monitoring to validate whether the assumptions underlying mitigation measures are met and allow needed modifications to be made accordingly. BLM needs to clearly articulate its adaptive management policies in the planning documents. Simply referencing that it may be used is inadequate.

VALID EXISTING RIGHTS

Page 1-20, Planning Criteria – *“The RMP will recognize the existence of valid existing rights”*

Page 2-8, BMP, *“The purpose of the BMPs is to (1) reserve for the BLM the right to modify the operations of surface disrupting and/or disruptive activities as part of the statutory requirements for environmental protection, and (2) inform a potential lessee, permittee, or operator of the requirements that must be met when using BLM-administered public lands” ...“Mitigation measures would be applied on a case-by- case basis during activity level planning if an evaluation of the project area indicates the presence of important wildlife species seasonal wildlife habitat or other resource concern.”*

COMMENT: As evidenced by the second statement as well as similar statements in several other DEIS sections subsequently addressed in these comments, this Planning Criterion appears to afford mere lip service to the goal of recognizing and preserving valid existing rights as specified in the first statement above, particularly when taken together with the numerous statements regarding mitigation and BMPs. We remind BLM that according to the FLPMA, the MLA and BLM's Planning Handbook, BLM does not have the authority to impose highly restrictive stipulations on leases after they have been issued. In sum, BLM cannot deprive operators of their rights to develop their leases in accordance with the terms under which they were issued. BLM is limited to negotiating with holders of valid existing rights to comply with newly developed restrictions.

With BLM's limited management authority under FLPMA, neither BMPs nor COAs can change the scope of existing lease stipulations. Nevertheless, it is BLM's apparent view that it has authority to apply similar restrictions on existing leases through the use of BMPs or permit COAs, possibly even prohibiting surface occupancy. We strongly recommend that BLM revise the proposed management strategies indicated to acknowledge the concrete limitations on management of existing leases established by existing statute and BLM policy by preparing a revised DEIS that fully recognizes its management limitations as dictated by FLPMA. In addition, BLM must acknowledge that when a lease is issued, it constitutes a valid existing right which cannot be unilaterally changed through the use of COAs or BMPs, including surface and timing restrictions beyond those identified in 43 CFR 3101.1.

COMPENSATORY MITIGATION

Page 2-9, *“Mitigation measures and conservation actions are Best Management Practices (BMPs), operating procedures, or design features that have been developed to avoid, minimize, rectify, reduce, or compensate for potentially significant adverse environmental impacts associated with surface disturbing or disruptive activities.”* [Emphasis Added.]

Page 2-10, *“Even after avoiding and minimizing impacts, projects that will cause adverse impacts to resources typically require some type of compensatory mitigation”.*

Page 2-68, Table 2-6.1, Management Common to All Alternatives, *“Utilize appropriate offsite compensatory mitigation to reduce impacts to wildlife habitat. This would be necessary if (1) all onsite mitigation has been accomplished and adverse effects have not been mitigated; or (2) onsite mitigation is not feasible. Off –site mitigation would be applied as close to the affected area as possible and for the same or similar impacted species or habitats.”*

COMMENT: We emphatically oppose the inclusion of compensatory mitigation under all alternatives and ask BLM to explain how it can be justified given the plethora of protective requirements with which industry must already comply to effectively reduce or eliminate impacts associated with oil and gas activities on public lands. It also ignores the principle of avoiding unnecessary and undue impacts, which is the cornerstone of federal land use policy. Industry is already obligated to conduct multiple resource surveys on behalf of BLM as well as to comply with numerous BMPs, COAs, restrictive regulatory thresholds, NEPA analyses, along with a host of additional federal requirements. We find it unconscionable that BLM intends to dig even deeper while failing to even disclose basic criteria, circumstances and the amounts when compensatory mitigation may be required. No clarification as to what constitutes a purported unacceptable level of change is provided in the DEIS. Further, what recourse will an operator have if it is believed such a requirement is excessive?

We have no doubt that without specific guidance, resource specialists will be disposed to require compensatory mitigation whenever it suits them, without regard for operator-committed mitigation measures. The fact that a lease has been issued by BLM is clear evidence that a certain level of impact is acceptable as dictated by the stipulations attached. When the operator proposes an activity, it must comply with these stipulations. FLPMA, MLA, the regulations at 43 CFR 3101.1-2, as well as BLM's 1624 Manual, directs that new stipulations cannot be applied to existing leases; this includes COAs or other measures that exceed the terms of a lease. Specifically, once a lease has been issued, BLM does not have the authority to prevent development unless the lease terms prohibit surface occupancy or development would result in *“unnecessary or undue degradation,”* which could not be mitigated. Under 43 CFR 3101.2, guidance is provided detailing what authority the agency has to modify the parameters of the stipulations in order not to compromise valid existing lease rights granted by the lease.

BLM has previously cited as its authority to address the mitigation of impacts from FLPMA §102(a)(8), *“...the public lands [will] be managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource and archeological values...”* However, we remind BLM that FLPMA §102(a)(12) further directs that *“the public lands [will] be managed in a manner which recognizes the Nation's need for domestic sources of minerals, food, timber, and fiber from the public lands including implementation of the Mining and Minerals Policy Act of 1970 (84 Stat. 1876, 30 U.S.C. 21a) as it pertains to the public lands.”* [Emphasis added] Moreover, while FLPMA §302(b) states *“the use, occupancy and development of public lands must be regulated by the Secretary through easements, permits, leases, licenses, or other instruments,”* the agency must also fully acknowledge the rest of this section which clearly

directs that *"these instruments include, but are not limited to, long-term leases to permit individuals to utilize public lands for habitation, cultivation, and the development of small trade or manufacturing concerns."*

Compensatory mitigation directly conflicts with EPCA language which requires BLM to evaluate the extent and nature of any restrictions or impediments to the development of resources including: (B) post-lease restrictions, or delays on development for conditions of approval, applications for permits to drill, or processing of environmental permits. [See EPCA Phase II, page xxi]. We view this new requirement as a strategy for BLM to capitalize on industry's historic willingness to work with the agency to ensure mutually beneficial energy projects can move forward.

In proposing a program of compensatory mitigation, BLM has obviously failed to acknowledge the extent of industry participation in and funding for partnership programs such as habitat improvement projects, public land restoration programs, which, in nearly all cases, were entered into on a voluntary basis. Additionally, industry routinely pays for wildlife studies and inventories, such as wetlands, cultural, wildlife, and threatened and endangered species resources as well as project level NEPA documents. In light of the fact that BLM appears intent upon ignoring industry support and participation in partnership programs, direct support for resource surveys and NEPA documents that are properly BLM's responsibility, this new policy will likely severely curtail industry participation in partnership programs.

BLM is essentially establishing a new rule to require compensatory mitigation in areas it sees fit without consideration of lease rights. Moreover, it is evident that current commitments to operators with respect to APDs, rights-of-way or other projects could be modified as a result of this new policy. Contrary to FLPMA, such mitigation places more importance on aesthetic resource values over other uses, such as minerals and other commodity development. BLM must recognize that it is required to fully consider the need for mineral development along with the need for protection of other resource values and that in some cases the need for mineral development may actually outweigh the need for the protection of other resource values. As such, BLM must comport with EPCA. Namely, *"public land managers [have a responsibility] to identify areas of high oil and gas potential and to evaluate the effectiveness of mitigation stipulations and conditions of approval in balancing responsible development of resources with the protection of other valuable resources in the area."* [pg xxiii]

The industry coalition recommends that BLM eliminate "compensatory mitigation" from the Billings/Pompey's Pillar RMP because it is bad policy, punitive, subjective and will likely lead to litigation.

ALTERNATIVES

The DEIS fails to clearly identify the management goals and objectives for each alternative. While Table 2-6 describes the proposed actions under each alternative and Table 2-7 identifies the purported environmental consequences by alternative, the reader is left to guess BLM's what the overall objectives are for each alternative. This omission needs to be addressed when preparing the revised draft planning documents.

2.4.4 - Alternatives Considered But Eliminated From Detailed Analysis

COMMENT: We support BLM's decision to eliminate the "Conservation Groups Alternative" from the analysis because the "proposed actions and alternatives submitted by these organizations were determined to be substantially similar to those actions and habitat areas considered within the range of alternatives in this RMP" (DEIS at 2-16). The groups' proposal to add additional conservation measures for greater sage-grouse beyond those identified in A Report on National Greater Sage-Grouse Conservation Measures produced by the Sage-grouse National Technical Team ("NTT Report") and designate two additional habitat types is unreasonable as the restrictions in the NTT Report are already overly-restrictive and, in our view, their need is unsubstantiated.

Preferred Alternative

We object to implementation of the Preferred Alternative because it would restrict future oil and gas resource exploration and development without proper analysis and justification. Moreover, Alternative D fails to acknowledge BLM's obligation to manage lands for multiple-use, including mineral development, as required by FLPMA. It also fails to comply with EAct and EPCA, which require the BLM to use the least restrictive lease stipulations to protect sensitive resource values.

The basis for BLM's highly restrictive management approach appears to be predicated upon the need to protect the Greater Sage-grouse. Unfortunately, BLM has relied upon scientific data which is flawed for a number of reasons, not the least of which is the inappropriate reliance upon general scientific conventions based upon male lek attendance, but also because it is too general to be extrapolated to the planning area, and because it is based upon development scenarios that are unlikely to occur within Montana. Moreover, recent findings scheduled for publication in the near future irrefutably demonstrate that sage-grouse are not extirpated by oil and gas activities and that with reasonable mitigation measures, such as limited NSO perimeters around active leks along with other reasonable mitigation as well as interim and final reclamation procedures, sage-grouse return to previously disturbed areas.

Lack of Support Documentation

Page 2-27, 2.5.1.1, Resource Uses and Support – [Under Alternative A] Fluid minerals are available for leasing on 264,534 acres of the BLM administered federal mineral estate with standard lease terms. Fluid minerals are available for leasing on 369,048 acres of the BLM administered federal mineral estate with major and moderate constraints. Fluid minerals are not available for leasing on 39,730 acres of the BLM administered federal mineral estate.

COMMENT: The DEIS fails to provide any information or documentation regarding the purported inadequacies of current management of the BFO. We recognize that the RMP needs to be revisited on a somewhat regular schedule. However, all proposed changes need to be clearly articulated in the planning DEIS to illustrate why any changes may be necessary. BLM has not explained why certain changes in management have been proposed and no information supporting such changes is provided in the DEIS

The DEIS indicates on page 1 of Chapter 1, *"The planning area ...includes 434,154 surface acres of public land and 1,835,484 acres of federal mineral estate in Montana and 4,298 acres of public land in Big Horn County, Wyoming."* How is BLM currently managing the remaining 1.6 million acre mineral estate referred to in chapter 1 under Alternative A? It is important for planning documents to describe current and future management of the entire federal mineral estate.

AIR RESOURCE MANAGEMENT PLAN - APPENDIX

BLM's proposed management routinely exceeds its authority by attempting to control air emissions and air quality despite the regulatory boundaries included in the Clean Air Act (CAA). Under the CAA, only the Environmental Protection Agency (EPA) and its delegates have sole authority for such regulation.

Emissions Inventories

BLM intends to use the emission estimates used in the current document and plans to gather future emissions information for use in inappropriate model evaluations. For example, BLM proposes to require industry to calculate potential emissions to determine the applicability of the state's permitting program.

COMMENT: Industry already provides estimated annual actual emissions to the state for fee purposes. To determine valid modeling results, which conservatively estimate impacts, there must be a clear understanding of the emissions data and an accurate accounting of these emission estimates. The DEIS specifies BLM will implement significant mitigation measures on individual facilities based upon the results of the modeling. Without being allowed to review the emission calculations that will be used in future modeling, what options does industry have for public participation?

We are concerned because BLM typically overestimates emissions. An example of this is BLM's greenhouse gas (GHG) emission estimates. BLM projected emissions higher than actually recorded because existing federal regulations which oblige the use of numerous measures to reduce GHGs were ignored. Despite this oversight and BLM's resultant overestimated emissions, BLM was unable to find any significant impacts from the oil and gas industry. Nonetheless, we strongly recommend that BLM defer to reliable scientific methods to correctly project potential impacts.

AREMOD Modeling

AERMOD modeling was conducted and it was determined, even with this conservative analysis, that there will be no violations of the National Ambient Air Quality Standards (NAAQS).

COMMENT: BLM chose to analyze the PSD increments, which are the amount of pollution an area is allowed to increase. It is also important to note that PSD increment analysis does NOT apply in this scenario. This analysis is wholly inappropriate and is being misused. On page 4-16, BLM attempts to make a clarification to this analysis by stating, *"The following PSD analysis is not a regulatory*

analysis; its purpose is to provide context for evaluating potential air quality impacts.” However, what is the purpose of attempting to provide “context” when the context being provided is inaccurate and inappropriate?

While the numbers documented in the DEIS show exceedances of PSD increments, this type of analysis is inappropriate for even evaluating air quality impacts. Therefore, we recommend it be removed from the document. We also point out that air quality management falls within the jurisdiction of the MDEQ, not BLM, making it only MDEQ’s responsibility to implement the PSD permitting program for major sources. It is irresponsible for BLM to apply its flawed analysis on a wide scale using conservative estimates in an attempt to frighten the public into believing these could be real impacts. It is crucial for BLM to modify its approach in the revised planning documents.

Future Modeling Photochemical Grid Modeling

Page 4-21, *“Future photochemical grid modeling (PGM) results will inform BLM air quality management actions, as described in the ARMP in Appendix T.”*

COMMENT: The PGM and emission inventory projects are being conducted outside of the accepted regulatory process. Moreover, there is no indication that BLM will afford the public an opportunity to comment on these future actions. We are extremely concerned that the oil and gas industry will be impacted by the results of these emission inventories and modeling exercises in the form of excessive mitigation measures being imposed on lease agreements for individual operations. While the DEIS indicates BLM will collaborate with AQTW and MDEQ on modeling protocol development for the future modeling; there is no mention of seeking industry involvement in this process. We strongly urge BLM to involve the affected parties, in particular the oil and gas industry, in future modeling efforts.

While not clearly documented, it appears that BLM intends to use its 2011 emission inventory to extrapolate figures to 2015 to aid in BLM’s “*understanding*” of what new sources are or will be in existence. We acknowledge that it is reasonable to expect additional sources by 2015. However, any emissions estimates must take into account the amount of electrification occurring. Additionally, gas sales on the upstream side of industry are expected to increase significantly as pipeline availability increases. For example, within the last year industry has electrified hundreds of oil and gas wells and, as a result, no longer has natural gas lifting engines or gasoline-fired recycle pump engines. Furthermore, more gas is being sold from sites as the natural gas pipeline/processing infrastructure has been expanding, thus BLM’s “*actual*” flaring data is NOT representative and are, therefore, unacceptable for use in extrapolating for future predictions. The DEIS also failed to take into account the reduction in emissions associated with the New Source Performance Standards (NSPS)¹ and the National Emission Standards for Hazardous Air Pollutants (NESHAP)¹ also known as Maximum Achievable Control Technology (MACT) standards. Implementation of these regulations will also reduce emissions in the planning area. This lack of attention to these rules leads to apprehension regarding BLM’s commitment to accurately estimate emissions, and thus ambient impacts.

¹ 40 CFR 60, *et seq.* and 40 CFR 63, *et seq.*

Monitoring

Page 4-20, *“Due to the relatively low density of expected oil and gas activity in the planning area, criteria air pollutant concentrations are expected to remain low throughout the area.”... “A qualitative description of potential air quality impacts is provided below for each of the criteria air pollutants...”*

COMMENT: Based upon monitoring data from Birney and Billings, MT, the qualitative analysis demonstrates expected compliance with the NAAQS. MDEQ is also operating a new air quality monitoring station in Lewistown, MT. This site will confirm the area's compliance with the NAAQS. Therefore, we strongly object to the agency's use of any newly created *“mitigation design value.”* Since MDEQ already has an approved program along with the requisite expertise to handle the calculations of an appropriate design value, why does BLM feel compelled to develop a separate program? Moreover, the Clean Air Act has already established extensive actions based on actual monitoring data. Clearly, BLM should only use approved design values prior to implementing mitigation measures on sources in the planning area.

Mitigation Measures

Page 4-22, *BLM acknowledges that the planning area is an area of “good” air quality and states that it intends to use both monitoring and modeling data to “identify mitigation measures to address unacceptable impacts”*

COMMENT: We are disturbed that BLM has not defined *“good”* air quality or what *“unacceptable impacts”* would entail. As such, it is impossible to provide comments in any meaningful fashion when these terms are undefined and the information used to make these decisions has not and, apparently, will not be publically vetted.

Page 4-23, *“The adaptive management strategy for oil and gas resources provides the flexibility to respond to changing conditions that could not have been predicted during RMP development. The strategy also allows for the use of new technology and methods that may minimize or reduce impacts.”*

COMMENT: As discussed earlier in these comments, this is an unacceptable and vaguely defined strategy. It leaves a great deal of uncertainty for the industry in planning development when there is no guarantee, even after they have followed all air quality regulations applied through MDEQ to comply with both the Federal and State Clean Air Act(s), that there will not be additional mitigation measures placed on individual minor sources.

The DEIS identifies a number of initial mitigations that BLM will implement upon completion of the planning documents. Several of the measures relate to fugitive emissions control. While the industry agrees fugitives must be controlled, MDEQ requirements for reasonable precautions (Administrative Rule of Montana 17.8.308)² fully meets the objectives for these measures because it

² While this is a Montana rule, it is federally enforceable via the State Implementation Plan (SIP).

is already required for all sources and allows the facility flexibility in choosing measures used to comply. Therefore, BLM's additional measures are unnecessary and need to be eliminated.

Page 4-11, *"Emissions inventory estimates were determined based on state and federal emission standards with one exception. Emission estimates for diesel drill rig engines are based on the use of Tier 4 non-road engine standards, which would be required by BLM as an initial mitigation measure."*

COMMENT: The State of Montana has sole jurisdiction to administer the EPA-approved air quality program. Furthermore, it has already been demonstrated that no exceedances regarding air quality in the planning area are projected, with the possible exception of localized areas near the oil refineries in the Billings and Laurel areas which is isolated to SO₂. Since SO₂ emissions throughout the planning area are considered negligible (as referenced in the DEIS), there are no real concerns regarding impacts associated with SO₂. As a result, the requirement to implement Tier 4 engines is unwarranted and costly and would unjustifiably exceed current statutory requirements.

There is discussion in the initial mitigation measures that sources will be required to consolidate facilities to reduce fugitive emissions. These consolidation determinations are both redundant and overly restrictive for the control of fugitive emissions because current regulatory requirements already fully address this issue. No additional requirements are needed from BLM.

We object that BLM intends to exceed both federal and state regulations by requiring compliance with a New Source Performance Standard (NSPS)³ on sources for which that rule is not applicable. What is BLM's justification for exceeding established programs? The NSPS standards were applied nationally only after considerable research and public participation. This new requirement must not be arbitrarily applied as proposed, rather it should be eliminated from this and future planning documents.

While the *"Monitoring-Based Mitigation"* process is seemingly a very deliberate process to determine cause or contribution, the potential enhanced mitigation measures proposed are nothing short of excessive in light of that fact that BLM's determination is based upon a single source contribution of a single exceedance at a monitor. A single exceedance, even if the data is valid, does not constitute a violation of the standard and may not even be indicative of a trend or pattern. The potential enhanced mitigation measures themselves are uncompromising and in only one case may the possibility exist that BLM will take into account technical and economic feasibility. Also, the DEIS states that BLM can decide upon any additional measures it chooses. Once again, this is done with no involvement from the public or the regulated industry and is based simply upon a single exceedance at a monitor. The *"Determination of Enhanced Mitigation Measures after Photochemical Grid Modeling Completion"* section determines potential enhanced mitigation measure implementation based on reaching 85% of the design value. However, it does not state any process in determining to which facilities such measures would apply.

³ 40 CFR 60, *et seq.*

AIR QUALITY RELATED VALUES (AQRV) ANALYSIS

Page 4-23 - The DEIS discusses the fact that AQRV analysis will be fully conducted using the PGM modeling results.

COMMENT: We object that BLM does not intend to afford industry an opportunity for involvement in this analysis and are concerned that potential mitigation measures will be implemented based upon the outcome of a flawed or inappropriate analysis.

RIGHTS OF WAY

Page 2-21, Rights-of-Way, Table 2-1 indicates that BLM intends to increase ROW exclusions areas from 44,014 acres under Alternative A to 48,258 acres under Alternative D. ROW Avoidance Areas will be increased from 24,203 acres under Alternative A to 349,358 acres under Alternative D.

Page 4-247, 4.2.7.1.1 Impacts from Lands and Realty Common to All Alternatives, "Habitat loss, degradation, fragmentation, and species displacement from linear features (e.g., power-lines, roads, and pipelines) and other permitted facilities (e.g., communication sites) would occur..."

COMMENT: The DEIS fails to provide sufficient discussion, documentation or justification for the proposed prohibitions of ROW on immense portions of the planning area. This information is a key requirement of NEPA and its omission constitutes a significant flaw in the analysis because it fails to consider the impacts such a decision would have on future oil and gas development, transportation, along with other activities which require ROW. Moreover, the statement that habitat loss can result from pipelines obviously fails to take into account that pipeline construction is a temporary impact and that all surface disturbance is fully reclaimed to BLM standards.

SOILS

Page 2-54, Table 2-6.1 – Alternative A states, "Mitigate impacts on slopes >30% for oil and gas leasing and development (CSU);" Alternative D states, "Mitigate impacts on slopes >25% for oil and gas leasing and development (CSU)."

COMMENT: The DEIS fails to provide documentation of any justification for the proposed increase in restrictions on slopes. For example, has it been documented that current activities have resulted in adverse impacts which would justify this change? If BLM has no evidence demonstrating that current measures are not successful, the proposed change is unwarranted and must be eliminated.

Page 4-279, 4.2.7.6.1 Alternative D - "Under Alternative D, oil and gas activities would be allowed with a CSU stipulation on slopes less than 30 percent. CSU stipulations impose fewer protections to wildlife compared to NSO stipulations, therefore providing fewer protections to wildlife resources. Impacts to wildlife resources by the use of rangeland health standards and BMPs to manage authorized surface disturbing activities including those on fragile and unstable soils would be the same as Alternative C."

COMMENT: What is BLM's rationale for the above statement that CSU stipulations would result in fewer protections to wildlife, given the fact that rangeland health standards and BMPs will be used on a site-specific basis to manage authorized surface disturbing activities?

Page 4-57 - The RFD projects 3-4 federal wells per year. Short-term surface disturbance would affect 17.2 acres/year and long-term surface disturbance would impact 74.2 acres/year during 2010 to 2014. These impacts would increase to 21.6 acres/ year short term and 10.8 acres/year long term. The total projected acres of disturbance over 20 years would be: 2,158 acres of surface disturbance with 1,106.5 acres reclaimed from 80 wells over 20 years.

COMMENT: Why is the projected short-term disturbance less than long- term disturbance? This is confusing because construction activities require more short-term surface disturbance than most long-term production activities. Please clarify.

Given the fact that BLM expects only 3 or 4 federal wells per year and the associated long-term disturbance is so low, what is BLM's justification for blanketing the majority of the planning area with no surface occupancy stipulations coupled with other restrictive stipulations and mitigation requirements?

WATER

Page 4-89, 4.2.5.4.2, Impacts from Water – *“Fluid mineral development generally impacts water resources by increasing NPS, including increased erosion and sedimentation from surface disturbance and unnatural drainage patterns associated with roads.”*

COMMENT: This statement is provocative and ignores that existing stipulations and practices already require full protection of water resources. In fact, the DEIS describes BMPs to be utilized to avoid these very impacts in Appendix B, which specifically outlines *Erosion and Sediment Control Practices*, along with a host of other measures, designed to protect all aspects of water quality. Therefore, this statement is inappropriate because it fails to acknowledge the routine use of stipulations and other site-specific mitigation measures along with site-specific BMPs. We recommend this inflammatory statement be removed from the discussion of impacts.

CULTURAL RESOURCES

Cultural resource sites vary widely in quality of preservation, size, density relative to a geographic area, contemporary cultural importance, and scientific value. While recognizing that prehistoric and historic sites are a finite resource, their management must also be afforded a level of flexibility and discretion as dictated by site analysis. Therefore, the mitigation measures employed to protect discrete sites must vary according to their scientific or contemporary cultural significance. Some prior general knowledge as to how these mitigation measures might be employed is vital to planning purposes for other land uses.

Page 4-339, Discretionary Mitigation Measures – The DEIS indicates that impacts will be mitigated according to the process outlined in Sec. 106 of the National Historic Preservation Act and other

relevant State and federal statutes. In the event of inadvertent discoveries, the document directs that the surface disturbing activities will be forced to cease until data recovery efforts from the site are completed.

COMMENT: We support BLM's apparent intent to allow for flexible management of cultural resource impacts through consultation and site specific mitigation. Flexibility according to unique circumstances is key to protecting cultural resources while still allowing access to natural resources. In the event that data recovery is needed for inadvertent discoveries, we urge BLM to act expeditiously to complete its review process in order to avoid unnecessary delays in the ability of lease holders to develop the resource within their lease acreage.

Allocation to Use Categories and Surface Use Stipulations – The DEIS indicates that inventoried sites will be allocated to one or more of a variety of use categories according to established BLM protocols. Those sites allocated to the Conservation for Future Use, Public Use, Scientific Use, and Traditional Use (including designated Traditional Cultural Properties, or TCPs) will carry a stipulation of No Surface Occupancy (NSO). A buffer of ½ mile is indicated for TCPs.

COMMENT: Regulatory consistency is imperative for operational planning purposes; and while the document identifies a specific buffer for TCPs, the other NSO stipulations are much too vague to accurately assess. Experience shows that typical surface use restriction language delineates a specific buffer zone around sites according to use allocation, which we may or may not assess to be appropriate, but until such information is made available it is difficult to appropriately analyze. We recommend this information be included in a revised DEIS.

PALEONTOLOGICAL RESOURCES

Similar to cultural, paleontological resources also widely vary in both density and scientific value. While many fossil remains are widespread and well-studied, others may be rare and poorly understood. Numerous resources undoubtedly remain undiscovered and may be of high scientific value. Management of this resource concurrently with others requires the ability to assess the fossil resources which may be discovered and to make common sense discretionary management decisions accordingly.

Surface Use Stipulations for Designated Paleontological Sites – *The DEIS indicates that an NSO stipulation will be enforced for Designated or Recorded Paleontological Sites.*

COMMENT: The DEIS fails to specify what constitutes a "Recorded Paleontological Site" that would require an NSO stipulation. For instance, would this stipulation apply to known sites that do not contain vertebrate fossils, or non-vertebrate/plant remains that are common and of lower scientific interest? More specificity is needed to accurately assess this NSO requirement.

Potential Fossil Yield Categories and Associated Inventories – The DEIS indicates that areas classified under the Potential Fossil Yield (PFY) Categories 3 or higher (Moderate to Very High) would require a paleontological inventory, assessment, and possible mitigation requirements prior to surface disturbing activities.

COMMENT: PFY Category 3 is defined as either “*moderate*” potential or “*unknown*” potential (Classes 3a or 3b). We urge BLM to specify that this requirement applies only to Class 3a, or “*moderate*” potential in the revised DEIS. If this is not fully defined, it is entirely likely that any area with a PFY Classification of “*unknown*” could require an unwarranted costly and time consuming paleontological inventory prior to operations. If it is found that a paleontological inventory is in fact needed, BLM needs to assure in the DEIS that it will complete the process expeditiously to avoid unnecessary project delays.

VISUAL RESOURCES

Pages 2-91/92, Table 2-6.1, Visual Resource Management (VRM) Classification – The DEIS allocates acreages to VRM classifications I (landscape to retain its natural character) to IV (allows significant modification to the visual characteristics of the landscape). A Conditional Surface Use (CSU) stipulation would be applied to VRM classes II-IV that would require locating, painting, or otherwise camouflaging any structures or surface disturbance to blend in with the environment.

COMMENT: Why has BLM proposed the use of the same stipulation to VRM Classes III or IV (which allow for moderate or considerable modification of the landscape) as for Class II resources (which are intended retain the natural character of the landscape through low modification thresholds)? If the same stipulation is to be applied, what is BLM’s rationale for the two separate VRM allocations? BLM needs to rewrite its surface use stipulations to reflect the difference among the various VRM classes in a revised DEIS to ensure appropriate mitigation will be utilized.

FISH, WILDLIFE, AND SPECIAL STATUS SPECIES

In many instances, the species habitat delineations in the DEIS are inconsistent with those identified by the Montana Department of Fish, Wildlife & Parks (FWP). We ask BLM to explain these discrepancies in a revised planning document, particularly due to the fact that the State manages most of the species for which habitat is identified. Such discrepancies are highly problematic for operators who work on both State and private lands that may be adjacent to public lands because two separate processes could be required for the same project if it crosses jurisdictional boundaries. We strongly recommend that BLM work closely with State agencies to eliminate the discrepancies in wildlife data and spatial representations utilized by BLM in the draft planning documents.

NSO Stipulations, Timing Limitations, and other Restrictions in Alternative B

COMMENT: The restrictions for surface-disturbing activities, NSO stipulations, and timing limitations on future oil and gas leasing with respect to several wildlife and plant species under Alternative B are unreasonable and unjustified. Incorporating any of the restrictions in Alternative B into the preferred alternative would unnecessarily preclude, prevent, and delay oil and gas development and other responsible multiple users from economic activities on millions of acres throughout the planning area.

Species and Habitat Maps

COMMENT: While the NSO, CSU, and TLS for fish and wildlife species may have been aggregated in maps regarding oil and gas “leasing standard stipulations” and “major moderate constraints,” BLM failed to separately map the habitat areas with associated management restrictions for all species’ habitat for which lease stipulations be imposed. In other BLM RMPs, it is routine to map habitat areas that may or may not include restrictions and management prescriptions separately from maps that illustrate the overall restrictions on future fluid mineral leasing. We recommend that BLM provide individual maps depicting each of the various habitats, along with associated land-use restrictions and special management areas, for all species that are discussed in the DEIS.

Mitigation Trust Account

Appendix C, page C-37, “The creation of a “Mitigation Trust Account” when impacts cannot be avoided, minimized, or effectively mitigated through other means. If approved by the BLM, the proponent may contribute funding to maintain habitat function based on the estimated cost of habitat treatments or other mitigation needed to maintain the functions of impacted habitats.”

COMMENT: We have mixed reactions to the creation of a “Mitigation Trust Account” as discussed under the proposed wildlife CSU stipulations. BLM needs to provide additional details about the scope, proposed use, per dollar mitigation ratio that would be sought, potential limitations, and general utility of such a fund. Further, it is necessary for BLM to clearly define the regulatory assurances that will be provided to a project proponent that contributes to the mitigation trust account in circumstances when impacts cannot be avoided, minimized, or effectively mitigated through other means. Without a clear definition of these assurances, as well as the per dollar mitigation ratio, operators may not consider contributing to the trust account even when impacts cannot be otherwise avoided, minimized, or effectively mitigated.

Black-Tailed & White-Tailed Prairie Dogs

Page 2-32, Alternative D – “NSO – Oil and gas leasing, development and exploration, and geothermal operations would be prohibited within 0.25 mile of black-tailed or white-tailed prairie dog colonies, active within the past 10 years.”

COMMENT: BLM has failed to justify or provide any scientific documentation supporting the management restrictions for the black-tailed and white-tailed prairie dogs in the DEIS, particularly the NSO stipulation within ¼ mile of habitat. These stipulations do not correspond with the U.S. Fish and Wildlife Service’s (FWS) recent listing determinations for the species and its conclusions about the impact of oil and gas development on their habitat.

In 2009, the FWS determined that the listing of the black-tailed prairie dog under the Endangered Species Act (ESA) was not warranted and that “*increasing trends in the species’ occupied habitat since the early 1960s indicates that the presence or threatened reduction of habitat due to energy development is not a limiting factor for the species in Wyoming or elsewhere throughout its range*” 74 FR 63353. In addition, FWS found that the “*prairie dog occupancy has apparently increased*

within oil and gas development areas in Wyoming (Sorensen et al. 2009, pp. 5– 6)” 76 FR 27782. Accordingly, the proposed NSO stipulation for oil and gas leasing within ¼ mile of black-tailed prairie dog is completely unjustified because it fails to correspond to the FWS' findings and must be eliminated.

In 2010, the FWS also determined that the listing of the white-tailed prairie dog under the ESA was not warranted and that *“due to its widespread distribution and extent of development, oil and gas activities will have the greatest potential to impact the white-tailed prairie dog. However, large populations persist in many of these areas.”* Accordingly, the proposed NSO stipulation for oil and gas leasing within occupied prairie dog towns is unjustified because it fails to correspond to the FWS' findings. We strongly recommend that BLM eliminate the NSO stipulation for both the black-tailed and white-tailed prairie dogs in a revised DEIS. At a maximum, BLM should consider a CSU stipulation for oil and gas development in these areas.

BLM has failed to establish why a colony is considered to be *“active”* if it has been used in the past ten years. Without a clear explanation for the ten year *“active”* definition, this restriction is unreasonable and arbitrary. For example, if a colony was used nine and half years prior to a proposed surface disturbance and has not been used since, it is reasonable to assume that the nest either has been abandoned or no longer contains the resource values to attract prairie dogs. Yet it will still be considered *“active”* by BLM and would trigger the stipulations and restrictions identified in Chapter 2, even though the area may never have an *“active”* colony again.

BLM has not identified which colonies within the planning area have been active within the past ten years. In order to demonstrate that habitat can be maintained so that prairie dogs are not precluded from using colonies, operators must have a clear understanding of the location of active colonies and adequate justification that they have been in fact active sometime in the recent past. BLM needs to provide maps which identify active and inactive colonies in the revised DEIS.

In addition, the language in Chapter 2 regarding the definition of *“active”* prairie dog colonies is inconsistent with Appendix C, which states that *“Prairie dog habitat is defined as the maximum extent of areas occupied by prairie dogs at any time during the last 20 years”* (DEIS at C-170). This inconsistency must be corrected in the revised DEIS.

BLM needs to clearly explain and justify the methodology it used to define a colony as *“active”* in order to use the ten-year timeline in surface use restrictions for future oil and gas leases. If BLM ultimately decides that the standard by which a colony will be considered active is use within the last ten years or some other period of time, the agency must explicitly explain that colony sites which have been inactive within the past ten years or some other period of time will not be subject to the surface disturbing and disruptive activities and lease stipulations identified in Chapter 2. BLM must also clearly identify and map both active and inactive prairie dog colonies in the revised DEIS.

We also remind BLM that NSO stipulations for prairie dogs would be applicable only to future leases and cannot be imposed on existing leases simply because a plan revision has been prepared. Further, restrictions on surface-disturbing and disruptive activities inconsistent with the original terms of the lease cannot be enforced.

Appendix C, Alternative B, Page C-65 and C-95, *“Exception: An exception may be granted by the AO for activities that are not detrimental to the prairie dog, associated species, or their habitats. A survey for black-footed ferrets may be required if suitable habitat exists for this species.”*

COMMENT: BLM has failed to define activities that may be considered *“not detrimental”* to the prairie dog, associated species, or their habitats in its description of exception criteria for NSO and CSU stipulations. Without this explanation, BLM may unreasonably deny exceptions for activities that may not be detrimental, including certain oil and gas activities. BLM must recognize that oil and gas development and the construction of associated infrastructure may be considered to be *“not detrimental”* to the prairie dog, associated, species, or their habitats due to the employment of best management practices, including efforts to limit surface disturbance, as well FWS’ conclusions about the impacts of development and persistence of prairie dog towns (see above).

Black-footed Ferret

Page 2-74, Alternative D - *“Surface occupancy and use for oil and gas leasing, development, and exploration and geothermal operations would be prohibited within ¼ mile of black-footed ferret habitat (NSO).”*

COMMENT: We have been unable to determine in the DEIS whether the recommended ¼ mile NSO buffer around black-footed ferret habitat has been suggested by the FWS or developed by BLM. Therefore, it is impossible to determine if BLM has properly consulted with FWS in the development and subsequent utilization of this stipulation. In addition, BLM has failed to provide maps detailing black-footed ferret habitat.

BLM needs to disclose in a revised DEIS the scientific justification for the proposed NSO stipulation, either through a reference to a recommendation by FWS or by some other justification. We also encourage BLM to regularly work and consult with FWS to determine if portions of the stipulated area are no longer critical to the black-footed ferret and may be modified. BLM must also clearly identify and map black-footed ferret habitat in a revised DEIS.

Page 2-43, All alternatives – *“Prior to surface disturbance, potential black-footed ferret habitat (prairie dog colonies and complexes 80 acres or more in size and not designated as black-footed ferret reintroduction sites) would be examined to determine the absence or presence of black-footed ferrets (CSU). The findings of this examination could result in some restrictions to the operator’s plans or could even preclude use and occupancy that would be in violation of the Endangered Species Act of 1973.”*

COMMENT: BLM has failed to provide detail regarding the types of restrictions that could be placed on operator’s plans based on the examination described above. In order for affected public lands users in the planning area to fully understand the impact of this management prescription; a revised DEIS must contain an adequate description of the type of restrictions that could result due to the findings of this examination.

Mountain Plover

Page 2-43, Alternative D – “NSO – mountain plover habitat within ¼ mile”.

COMMENT: BLM has provided no justification for the management restrictions for the mountain plover in the DEIS, particularly the NSO stipulation within ¼ mile of plover habitat. These stipulations do not correspond with the FWS’ recent listing determinations for the species and its conclusions about the impact of oil and gas development on their habitat.

In May 2011, the FWS determined that listing the mountain plover under the ESA was not warranted, estimating that “*the current mountain plover breeding population to be over 20,000 birds, more than double the estimate cited in [its] 2002 proposal.*” In addition, the Service concluded that “*despite the prevalence of energy development activities throughout the range of the mountain plover, there is little evidence as to whether, or to what extent, the overall effects of energy development are detrimental to mountain plover (Andres and Stone 2009, p. 25). Although oil and gas field development modifies and fragments nesting, brood rearing, and foraging habitats, mountain plover continue to use these areas*” (Smith and Keinath 2004, p. 36; Carr, in review) 76 FR 27782. Applying NSO stipulations to mountain plover habitat in the planning area does not correspond with the FWS’ listing determination for the species and is not justified through any peer-reviewed science since that decision was made. As such, imposition of an NSO stipulation for oil and gas leasing in areas with mountain plover habitat is completely arbitrary; and we recommend that the BLM eliminate this stipulation from the revised DEIS.

Moreover, we are unable to locate in the DEIS any scientific justification that an additional ¼ buffer around mountain plover habitat, on top of already designating habitat areas as NSO, is necessary to protect the species during nesting season. In addition, the proposed areas where NSO stipulations will apply in the planning area are wildly inconsistent throughout the EIS. Language in Chapter 2, which requires an NSO stipulation for areas within ¼ mile of mountain plover habitat, is inconsistent with language in Chapter 4 and Appendix H, which state that “*Surface use is prohibited within 1/4 mile of active mountain plover nest sites*” (DEIS at 4-441 and H-25). Further, Appendix C makes no mention of the ¼ mile area within habitat, stating only “*Surface occupancy and use is prohibited within mountain plover habitat*” (DEIS at C-165). These broad inconsistencies must be corrected in a revised DEIS.

Additionally, any stipulation applied for mountain plover would appropriately be applied only to active nests, rather than all habitat areas. Applying a stipulation to oil and gas leasing should come with a reasonable assumption that the area is actually occupied by the species.

Page 3-84, “*The mountain plover is associated with shortgrass prairie/grasslands (especially those that are heavily grazed and are on level or gently sloping areas), and they regularly occupy prairie dog towns.*”

COMMENT: It appears that BLM attempts to justify many of the management restrictions for mountain plover in the DEIS, including NSO stipulations for future oil and gas leases, due to its close association and shared habitat with the white-tailed and black-tailed prairie dog.

However, as discussed previously in these comments, FWS determined in 2009 that the listing of the black-tailed prairie dog under the ESA was not warranted. Accordingly, the proposed NSO stipulation for oil and gas leasing within occupied prairie dog towns is unjustified and fails to correspond with the FWS' findings and must be removed.

Page 2-43, Alternative D – *“TL – April 1 through July 31 within 1/4 mile of habitat.”*

COMMENT: We are unable to locate in the DEIS any scientific justification that an additional ¼ buffer around mountain plover habitat, on top of already designating habitat areas as NSO, is necessary to protect the species during nesting season. Given that FWS determined list of the plover was not warranted and absent scientific documentation regarding the need for this stipulation, it must be removed from a revised DEIS.

Page 2-43, Alternative D – *“Note: NSO would apply to permanent or long-term action. TL would apply to temporary or short-term disturbances.”*

COMMENT: We recommend that BLM explicitly state in a revised DEIS that oil and gas drilling and production facilities are temporary or short-term disturbances that would receive TL stipulations rather than NSO.

Peregrine Falcons

Page 2-43, Alternative D - *“NSO – ½ mile of peregrine falcon nesting sites.”*

COMMENT: This buffer significantly exceeds the FWS's recommendation for oil and gas activities around nests, which calls for a 200 meter (660 feet) buffer. Accordingly, the ½ mile buffer is arbitrary and has not been justified in the DEIS. FWS' NSO recommendations for special status eagles and raptors are more than adequate and should be relied upon by BLM for peregrine falcons. Accordingly, the buffers in the revised DEIS need to be modified to comport with the FWS' recommendation of 200 meters (660 feet) around nests.

Bald Eagles

Page 2-43, Alternative D – *“NSO – within ½ mile of active and alternate eagle nests (for territories occupied within the last five years) unless the activity complies with Montana bald eagle management guidelines.”*

COMMENT: The DEIS contains no scientific documentation to justify designating NSO within ½ mile of the active nests of bald eagles. The species was recently removed from the threatened and endangered list, yet these buffers significantly exceed the FWS's recommended guideline for oil and

gas activities around nests, which calls for 200 meter (660 feet) buffer. Accordingly, BLM's ½ mile buffer is unreasonable. We recommend BLM's management be consistent with FWS guidelines.

What is the scientific documentation which justifies a nest is to be considered "active" if it has been used in the past five years? Without a clear explanation for the five season "active" definition, this restriction is unreasonable and arbitrary. For example, if a nest was used in the past four years prior to a proposed surface disturbance and has not been used since, it is reasonable to assume that the nest either has been abandoned or no longer contains the resource values to attract bald eagles. Yet it will still be considered "active" by BLM and would trigger the stipulations and restrictions identified in Chapter 2, even though the nest may never be "active" again.

In addition, BLM has failed to identify which nests within the planning area have been active within the past five years. In order to demonstrate that habitat can be maintained so that bald eagles are not precluded from using nest sites, operators must have a well-defined understanding of the location of active nests and adequate justification that they have been in fact active sometime in the recent past. Further, BLM needs to provide maps detailing active or inactive nests for bald eagles in revising planning documents.

We also remind BLM that any NSO stipulations for bald eagles that may be applicable for future leases may not be imposed on valid existing leases simply because a plan revision has been prepared. Further, restrictions on surface-disturbing and disruptive activities that are inconsistent with the original lease terms will violate valid existing lease rights.

Ferruginous Hawks

Page 2-43, Alternative D – *"NSO – within ½ mile of ferruginous hawk nest sites which have been active within the past 2 years."*

COMMENT: The DEIS fails to scientifically document the need for this buffer to significantly exceed the FWS's recommended 200 meter (660 feet) buffer around active hawk nests. Accordingly, the buffers in the revised DEIS need to be modified to comport with FWS guidelines.

We also remind BLM that any NSO stipulations ferruginous hawks that may be applicable for future leases may not be imposed on valid existing leases simply because a plan revision has been prepared. Further, restrictions on surface-disturbing and disruptive activities that are inconsistent with the original lease terms may violate valid existing lease rights.

Raptors

Page 2-47, Alternative D – *"TL – March 1 to August 1 within ½ mile of raptor nest sites which have been active the past 7 years; NSO - within ½ mile of raptor nest sites which have been active in the past 7 years."*

COMMENT: Once again, this buffer significantly exceeds the FWS' recommendation for oil and gas activities around nests, which calls for 200 meter (660 feet) buffers. Accordingly, we urge the BLM to adopt the guidance provided by the FWS.

We also remind BLM that any NSO stipulations for raptors that may be applicable for future leases may not be imposed on valid existing leases simply because a plan amendment has been prepared. Further, restrictions on surface-disturbing and disruptive activities that are inconsistent with the original lease terms may violate valid existing lease rights.

BLM must clearly explain and justify the methodology used to define a nest as "active" in order to use the seven-year timeline in surface use restrictions for future oil and gas leases. If BLM ultimately decides that the standard by which a nest will be considered "active" is used within the last seven years or some other period of time, the agency must explicitly state that nest sites that have been inactive within the past seven years or some other period of time will not be subject to the surface disturbing and disruptive activities and lease stipulations identified in Chapter 2. BLM must also clearly identify and map all active and inactive raptor nests in the revised DEIS.

In addition, the DEIS fails to identify on a map which nests within the planning area have been active within the past seven years. In order to demonstrate that habitat can be maintained so that falcons or special status raptors are not precluded from using nest sites, operators must have a clear understanding of the location of active nests and adequate justification that they have been in fact active sometime in the recent past. Therefore, BLM needs to provide a map of active or inactive nests for prairie falcons and special status raptors.

Big Game

Chapter 3, 3.7.3.1 Big Game

COMMENT: The proposed restrictions on oil and gas development do not correspond to the current status of big game populations in the planning area. In Chapter 3, BLM explains the relative stability of most species in the planning area, despite a wide-ranging array of threats (DEIS at 3-66 and 3-67). Nevertheless, BLM proposes to apply many unwarranted restrictions on future oil and gas development in big game habitat, including parturition areas and winter range. Most notably, the Preferred Alternative seasonally prohibits surface occupancy on 258,592 acres of big game winter range and would apply CSU stipulations on another 266,819 acres. Given the stability of big game populations, what is BLM's scientific justification for these stipulations? We strongly recommend that BLM reconsider its proposal to impose the proposed stipulations for big game and develop more practical stipulations that correspond with current population figures, along with valid existing lease rights, and balance responsible multiple use-development with protection and conservation of species' and their the habitat.

BLM must also recognize that it cannot impose new timing restrictions on existing leases simply because a plan revision has been prepared. Restrictions on surface-disturbing and disruptive activities that are inconsistent with the original lease terms may violate valid existing lease rights.

Page C-183, Appendix C, Alternative D – *“Surface use is prohibited from December 1 through May 15 within CAPS SCORE 2 areas of big game winter range habitat.”*

Page C-135, Appendix C, Alternative D – *“In CAPS SCORE 1 –Big Game Winter Range, the operator may be required to conduct inventories for the presence of big game in the project area prior to conducting any operations.”*

COMMENT: While Chapter 4 includes a brief explanation of the differences between CAPS SCORE 1 (moderate value) and CAPS score 2 (high value) winter range, the stipulations in Appendix C or Chapter 2 fail to correspond to Map 15, which only indicates those areas that have ‘high’ and ‘moderate’ values for big game winter range. We recommend that BLM make consistent the stipulations in Appendix C and Map 15 in a revised DEIS by indicating that the high value habitat represents CAPS SCORE 2 and moderate value habitat represents CAPS SCORE 1 in Map 15.

In addition, while Appendix C indicates the stipulations that will apply to CAPS SCORE 1 and CAPS SCORE 2 areas, Chapter 2 does not. This must be corrected in a revised DEIS.

Page 2-46, Alternative D – *“TL – December 1 to March 31 within big game winter range.”*

COMMENT: The period for which timing limitations will apply is inconsistent in Chapter 2 and Appendix C. While Chapter 2 states that TL stipulations will apply from December 1 to March 31, Appendix C states that TL stipulations will apply from December 1 to May 15. Again, the stipulations are inconsistent among the chapters and the appendices in the DEIS and must be corrected in a revised DEIS.

Page 2-45, Alternative D – *“TL – April 1 to July 1 within established big game parturition habitat; CSU – within big game parturition habitat.”*

COMMENT: BLM failed to provide maps of big game parturition habitat in the DEIS. As such, we are unable to determine the actual impact timing limitations in these areas will have on future oil and gas development in the planning area. BLM must provide individual maps of these areas in a revised DEIS.

Page 2-72, Alternative D – *“There would be no net increase in permanent roads built in areas where open road densities are 1 mi/mi² or less in big game winter range habitat (Maps 15-20) and parturition ranges, unless not possible due to conflicts with valid existing rights. All practicable measures would be taken to assure that important habitats with low road densities remain in that condition.”*

COMMENT: We object to this stipulation because it represents another layer of constraints in addition to an already highly restrictive set of management principles for big game as proposed. This stipulation could prevent, preclude, or deny new oil and gas development across in several areas within the planning area. While most roads constructed for oil and gas development are temporary (they are ultimately reclaimed), semi-permanent roads may be necessary to provide

access to certain infrastructure. In order to build a road or roads that result in a no net increase in permanent roads, an existing road or roads would have to be reclaimed by the project proponent. In some cases, the project proponent may not be in a position to reclaim someone else's existing road or may not have any roads to reclaim at all. Therefore, this restriction presents a number of problems that may compromise the project proponent's ability to responsibly develop and produce energy supplies

Accordingly, we recommend that BLM reconsider the 'no net gain' in permanent roads and develop a management principle that minimizes permanent road construction but does not preclude oil and gas development in areas with higher road densities. In addition, BLM has not provided exemption, modification, or waiver criteria for this stipulation in the DEIS. We strongly recommend that BLM at include those criteria in the revised DEIS.

Big Horn Sheep

Page 2-46, Alternative D – *“Surface occupancy and use for oil and gas exploration (including geophysical exploration) and development would be prohibited within designated bighorn sheep lambing and winter range areas (NSO).”*

COMMENT: We are puzzled why BLM has opted to designate bighorn sheep lambing areas as NSO in the preferred alternative, rather than applying seasonal timing limitations. BLM has provided no scientific evidence that a year-round NSO stipulation is necessary, nor has it indicated that these areas require further protection than the seasonal prohibition of use. Accordingly, we recommend that the preferred alternative for lambing areas reflect a TL rather than NSO stipulation in the revised DEIS.

BLM's proposal to prohibit geophysical exploration in big horn sheep habitat is unfounded and inconsistent with BLM Manual 3150 (L)(.11), Onshore Oil and Gas Geophysical Exploration Surface Management Requirements, which classifies geophysical activities as a “casual use”. Casual use is defined in the Manual as *“Activities that do not cause any appreciable disturbance or damage to the public land or resources or existing improvements on that land are considered casual use.”* In fact, the Manual clearly recommends that exploration in closed areas as well as in areas subject to no surface occupancy stipulations be allowed because *“geophysical data collected from areas closed for oil and gas development may provide additional insights into the interpretation of data collected in other areas that are open to development.”* We recommend that BLM revise its management approach for geophysical activities in all sections of the DEIS to comport with established Bureau policy.

Fisheries

Page 2-47, Alternative D – *“NSO – within ¼ mile of designated reservoirs with fisheries.”*

Page 2-47, Alternative D – *“NSO – within ½ mile of Class I (Blue Ribbon) streams.”*

COMMENT: What is BLM's justification for the requirement of an NSO stipulation for future oil and gas leases within ¼ miles of reservoirs with fisheries and ½ mile within Class I streams? Moreover,

BLM has failed to adequately demonstrate how or why oil and gas development within these distances would negatively impact water quality or fisheries in Chapters 3 or 4. Historic BLM buffers for oil and gas development around stream and river channels and banks have been limited to 300 to 500 feet and have proven to be a reliable mitigation measure to protect fish and water resources. Furthermore, BLM would allow oil and gas leasing with a CSU stipulation within 300 feet of riparian and wetland areas in this DEIS (p. 2-47). It is irrational to assume that a 300 foot CSU buffer as applied to riparian and wetland areas would not provide the same level of protection to reservoirs and streams. Additionally, BLM has not mapped these reservoirs and apparently does not know the actual acreage that will be impacted by the ¼ mile buffer around reservoirs (DEIS at 4-441).

We strongly believe a 300 foot CSU buffer is adequate for reservoirs and Class I streams. We, therefore, ask why BLM doesn't allow oil and gas leases to be offered with a CSU stipulation in and within 300 feet of designated reservoirs and streams, instead of an NSO stipulation within ¼ miles and ½ miles?

Sprague's Pipit

Page C-188, Appendix C, Alternative D – *“Surface use is prohibited from April 15 through July 15 in Sprague's Pipit Habitat.”*

COMMENT: BLM does not indicate which of the habitats identified in Map 25 will be designated as TL in the DEIS. Map 25 indicates that Sprague's Pipit distribution is found in optimal, medium, low, and unsuitable habitat areas, but Appendix C and Chapter 2 only state that TL stipulations will apply simply to 'habitat.' BLM must clearly explain which of these habitat areas will be subject to TL stipulations in the revised DEIS.

Special Status Plants

Page C-143, Appendix C, Alternative B – *“A field inspection will be conducted for special status plant species by the lessee prior to any surface disturbance.”*

COMMENT: We object that no exceptions, waivers, or modifications have been considered for required field inspections for special status plants. If the project proponent or BLM already has knowledge that a lease no longer contains special status plant species or lacks the resource values that are typical of their habitat, an additional field inspection would be unnecessary. BLM needs to retain the flexibility to grant exceptions waivers, and modifications to this stipulation and exempt the operator from conducting a superfluous field inspection.

We also remind BLM that any CSU stipulations that may be applicable for future leases may not be imposed on valid existing leases simply because a plan revision has been prepared. Legally, restrictions on surface-disturbing and disruptive activities that are inconsistent with the original lease stipulations may violate valid existing rights.

GREATER SAGE-GROUSE

The NTT Report is not supported by the Western Association of Fish and Wildlife Agencies (WAFWA) as BLM's sole source of Sage-grouse management direction. In a letter sent to the Interior Secretary on May 16, 2013 WAFWA member states made it clear that they never endorsed the sole use of the NTT or any other scientific publication to determine appropriate management of Sage-grouse habitat. Rather, they believe that a variety of peer-reviewed publications which collectively provide the best available science for sage-grouse should have been used by BLM as the basis for conserving the Sage-grouse, thereby avoiding a listing under the Endangered Species Act (ESA). WAFWA went on to recommend that management and regulatory mechanisms be based upon the best available science which would provide the best strategy for near- and long-term management of sage-grouse and provides the best opportunity for precluding the need to list the species under the ESA.

Additionally, the Northwest Mining Association (NWMA) recently published a report "*BLM's NTT Report: Best Available Science or a Tool to Support a Pre-Determined Outcome?*" alleging that BLM failed to use best available science, ignored existing regulatory tools and adopted a pre-decisional Greater Sage-Grouse Conservation Policy. We share this view. The NWMA report questions the appropriateness of the NTT Report, because the FWS' "*warranted-but precluded*" determination was based upon the conservation measures already contained in BLM Manual 6840 - Special Status Species Management. Moreover, FWS concluded that BLM needed to properly and consistently implement Manual 6840 in its Resource Management Plans and provide sufficient monitoring data to demonstrate the effectiveness of the resulting conservation measures.

Another major fundamental concern the signatories to this letter wish to raise is the inherent flaw in BLM's basic assumptions, due in part to the flawed recommendations contained in the NTT report, which fail to recognize that the level of disturbance associated with a well is not a constant throughout its life. The highest level of surface disturbance associated with oil and gas development occurs primarily during the construction, drilling and completion phases, which can last a little as a day or two up to a few months, depending upon the time it takes to complete the well. Once a well goes into production, these activities subside dramatically and only regular monitoring and maintenance of the well are required. Shortly after well completion, the operator typically begins interim reclamation actions designed to partially restore any impacted habitat. This partial reclamation will remain in effect until the well has been depleted. Upon conclusion of production activity, the operator will then move forward with plugging and abandonment procedures, which also includes final reclamation that will ultimately result in full restoration of the site and its return to productive habitat.

Chapter 2 – Alternatives

Page 2-44/45 - Table 2-5 Lease Terms and Stipulations

COMMENT: Table 2-5 presents several different classifications of sage-grouse lease terms and stipulations. The information contained in Appendix C (Alternative D) is completely inconsistent with that presented in Table 2-5. For example,

- Table 2-5 discusses timing limitation stipulations for greater sage-grouse winter range within 2 miles of a lek from December 1 to March 1. However, Appendix C (Alternative D – Page C-184) states *“Surface use is prohibited within sage grouse winter range from December 1 through March 1. Sage grouse winter ranges not identified, due to lack of inventories, are delineated by a 3 mile buffer from lek sites.”* Such inconsistencies make it impossible to provide reasoned comments on BLM’s proposed action. Please clarify. The admission that BLM has been unable to rely upon an existing inventory which clearly identifies sage-grouse winter ranges relates to the very concern raised at the beginning of these comments. BLM does not currently possess the data required to make land management decisions.
- Table 2-5 discusses timing limitation stipulations for greater sage grouse nesting habitat within 3 miles of a lek from March 1 to June 15; and for *“now oil and gas leases”* in greater sage-grouse habitat. However, Appendix C (Appendix D – Page C-189) states *“Sage Grouse Nest Areas (Restoration Areas and General Habitat Areas) - surface use is prohibited from March 1 through June 30 within 3 miles of sage grouse leks. This stipulation does not apply to operation and maintenance of production facilities.”* Is it June 15 or June 30? Does this also mean to apply only to *“new oil and gas leases”* as alluded to in Table 2-5?

Appendix H, *“includes numerous recommendations and best management practices (BMPs) or potential conditions of approval (COA’s)”*

COMMENT: *Appendix H is referenced in Chapter 2 as a footnote to Table 2-5 for “new oil and gas leases,”* but the relationship between those measures and the stipulations set forth in Chapter 2 is vague. Please clarify how the applicability of such measures (as discussed in Appendix H) would be determined. For example, Page H-33 includes a possible protection measure prescribing sage-grouse nesting habitat avoidance on areas within 4.0 miles of a lek from April 1 – June 30. How would this measure be considered relative to the restrictions included in Table 2-5?

Page 2-68 (Table 2-6.1) - *“Conditions of Approval (COAs) would be applied to all Applications for Permit to Drill (APDs) for Special Status Species.”*

COMMENT: How does this apply to the stipulations presented in Table 2-5 and to the information presented in Appendix AB and Appendix H? Please clarify in more detail and whether these COA’s would extend to only new *“oil and gas leases”*.

Chapter 3 – Affected Environment

Chapter 3 provides information on the current condition of resources, resource uses, and programs in the Billings Field Office decision area that could be affected by the revised RMP alternatives described in Chapter 2. This chapter is organized into Resources, Resource Uses, Special Area Designations, and Social and Economic. Each of these sections is further divided into resources or program areas. This is the organization prescribed in the BLM guidance (USDI-BLM 2005). Existing conditions described herein are used as the baseline against which impacts of the different alternatives are analyzed and compared in Chapter 4.

COMMENT: We strongly object to current management being used as the baseline for determining potential environmental consequences when compared to other alternatives. Alternative A is far from a baseline because it reflects already implemented prescriptive management decisions and restrictive lease stipulations. We question why BLM did not determine the effectiveness of the measures currently in place based upon the baseline data collected before current management was implemented. In so doing, BLM would get a picture of how current management is actually working. Clearly, BLM is utilizing this methodology to arbitrarily "raise the bar" in order to rationalize future management options that are in reality unjustifiable.

Throughout the Affected Environment discussion regarding sage-grouse, much of the information presented is based on studies of Sage Grouse Management Zone 1 (MZ1), which includes northeastern Wyoming and far western North and South Dakota. This broader scale may or may not be directly applicable to the Billings/Pompey's Pillar planning area. The discussion should be refined to the Billings/Pompey's Pillar planning area consistent with the direction provided on Page 3-1. Individual comments along this same vein are made below reflecting this concern as it applies to specific topics. Although analysis of MZ1 (or MZ2) would be appropriate as a study area for analysis of cumulative impacts to sage-grouse (see comments directed to Cumulative Effects below), potential direct and indirect impacts to sage-grouse and sage-grouse habitat resulting from the RMP should address conditions and potential direct and indirect impacts specific to the Billings/Pompey's Pillar planning area.

Page 3-85 (Table 3-29)

COMMENT: Table 3-29 lists the number of acres of total occupied sage-grouse habitat in the planning area, broken down by land ownership. The figures are derived from data compiled by the Montana Department of Fish, Wildlife & Parks habitat maps. Has BLM independently verified the accuracy of the mapping and evaluated the criteria used to identify and map occupied sage-grouse habitat?

Page 3-86, *"The Billings Field Office is bisected by two greater sage-grouse management zones; the Great Plains Management Zone (MZ1) and the Wyoming Basins Management Zone (MZ2). Most of the planning area lies within MZ1; however, the majority of the sage-grouse habitat lies within the extreme northern portion of MZ2 (See Figure 3-10). The following discussion of the landscape context of the planning area related to greater sage-grouse describes MZ1 since that is where the majority of the planning area is located and issues and descriptions of MZ1 are mostly the same as those that would be described for the northern portion of MZ2 found in the planning area."*

COMMENT: It is obscure how the management directives in the planning area relate to the designations of Management Zone 1 (MZ1) and Management Zone 2 (MZ2). If the issues and descriptions are mostly the same for MZ1 and MZ2, what is the purpose of separating MZ1 and MZ2 into different management zones? The text on pages 3-86 and 3-87 describes the ecology and flora of MZ1 but does not address the flora of MZ2, in which the majority of sage-grouse habitat in the planning area is located. Because the management zones are separated on the basis of floristic

provinces, it would be expected that the flora would differ between the two zones. How does the differing flora in MZ1 and MZ2 affect proposed management of sage-grouse in the planning area? The text on page 88 and 89 continue to expand on the ecological characteristics of MZ1 in relation to fire ecology and grazing effects on sage-brush habitat, noting how MZ1 differs from other management zones. Similarly, effects of energy development in MZ1 are addressed in detail, but the relationship of the effects of energy development in MZ1 to the planning area in general and MZ2 in particular are not addressed. Please correct this.

Page 3-87, *"Greater sage-grouse populations have declined in portions of the MZ1 through wholesale loss of habitat as well as through impacts to birds on the remaining habitat through disturbance and direct mortality."*

COMMENT: What is the source of this information and to which parts of the Billings/Pompey's Pillar planning area does this statement apply? What are the sources of direct mortality in the Billings/Pompey's Pillar planning area (or outside of the planning area) that have caused declines sage-grouse in populations? At the population level it is very difficult to ascribe population declines to direct mortality. Populations are cyclic and influenced by many factors including weather.

The report by Samson et al (2004) is simply a general discussion of birds associated with prairie grassland habitats in the Great Plains. Although the past and current effects of management in parts of MZ1 are addressed in this RMP/EIS, the influence of these factors on sage-grouse in the Billings/Pompey's Pillar planning area (specifically) is unclear. What is the status of sage-grouse populations in Billings/Pompey's Pillar planning area? The draft RMP/EIS seems to equate Sage-Grouse MZ1 with the planning area (even though it states sage grouse habitat within the planning areas lies in MZ2), but does not present a rationale for how the MZ2 planning area is similar or dissimilar to the MZ1 planning area. Much of the discussion hinges on information gathered on a broader scale, which may or may not have direct applicability to the Billings/Pompey's Pillar planning area (i.e., MZ1 includes populations and subpopulations of sage-grouse in both northeastern Wyoming or far western North and South Dakota). Please clarify the above, and provide a more robust discussion of the Billings/Pompey's Pillar planning area specifically.

Page 3-87, *"The most pervasive and extensive change to the sagebrush ecosystems in MZ1 is the conversion of nearly 60% of native habitats to agriculture (Samson et al. 2004)."*

COMMENT: The publication of Samson et al (2004) does not address sagebrush ecosystems in Sage-Grouse MZ1. This paper addresses prairie grasslands in the Great Plains, which represents a much larger area. Nor does Samson et al (2004) differentiate between prairie grasslands and sagebrush steppe.

It is necessary for BLM to clearly present information on (quantify) the amount of sagebrush habitat that has been converted to agricultural uses within the Billings/Pompey's Pillar planning area specifically. The DEIS seems to equate Sage-Grouse MZ1 with the Billings/Pompey's Pillar planning area, but does not present a rationale for how MZ1 is similar or dissimilar to the planning area. As discussed above, MZ1 includes populations and subpopulations of sage-grouse in both northeastern Wyoming or far western North and South Dakota.

Page 3-88, *"Individual species have different thresholds of fragmentation tolerance; greater sage-grouse have large spatial requirements and eventually disappear from landscapes that no longer contain large patches of habitat while smaller birds like Sprague's pipit can persist in landscapes with smaller patches of habitat because their spatial requirements are smaller."*

COMMENT: BLM fails to provide any citation for its information regarding patch size thresholds for sage-grouse. This concept has important management implications and patch size thresholds for sage-grouse must be identified in order to avoid habitat fragmentation impacts. We recommend this information be included in revised planning documents.

Page 3-89, *"Perhaps the most pervasive change associated with grazing management in sage-grouse habitats throughout the MZ is the construction of fencing and water developments (Knick, et al. 2011). Barbed wire fences contribute to direct mortality of sage-grouse through fence collisions (Stevens 2011) and water developments may contribute to increased occurrence of West Nile Virus in greater sage-grouse (Walker and Naugle 2011). Water developments are particularly prevalent in the north central portion of the MZ. Additional habitat modifications associated with grazing management include mechanical and chemical treatments to increase grass production, often by removing sagebrush (Knick, et al. 2011)."*

COMMENT: While the DEIS addresses grazing in MZ1, there is no specific discussion of grazing and the associated range condition within sage-grouse habitats in the Billings planning area. Water developments and associated West Nile virus are addressed for MZ1 but again, no mention is made of whether or how West Nile virus has affected sage-grouse in the Billings planning area, specifically. Absent information related directly to the BFO, this statement is unfounded. The revised planning documents must directly discuss how grazing and West Nile virus have impacted the planning area.

Page 3-89, *"Currently, nearly 16% of the MZ is within 3km of oil and gas wells, a distance where ecological effect is likely to occur (Knick et al 2011)."*

COMMENT: Energy development in MZ1 is addressed; however, energy development in MZ2 and in particular the Billings/Pompey's Pillar planning area is not addressed in similar detail. What percentage of Billings/Pompey's Pillar planning area (MZ2) is within 3km of oil and gas wells and how would that affect proposed sage-grouse management in this specific planning area? Absent information related directly to the BFO, this statement is unjustifiable. The revised planning document must discuss directly the proximity of oil and gas wells to sage-grouse habitat and leks.

Page 3-89, *"Much of the current oil and gas development is occurring on private lands with little or no mitigation efforts, which elevates ecological and conservation importance of sage-grouse habitat on public lands."*

COMMENT: What is the source of information that there are little or no mitigation efforts on private land? Does this statement apply to MZ1 or directly to the Billings/Pompey's Pillar planning area? How does current oil and gas development in the planning area compare with respect to

private versus public land? This statement fails to recognize the initiatives and advances in technology that been developed in response to elevated concerns over the conservation status of sage-grouse and must be modified in the revised planning documents.

Ramey et al (2011) identify the following advances in technology that avoid and reduce potential effects of oil and gas development on sage-grouse:

- Directional drilling to reduce surface disturbance by drilling multiple wells from one drilling pad;
- Steerable downhole motors and horizontal well bores that can drill as many as many as 20 boreholes from one pad and greatly increase the effective radius of production from one well pad;
- More efficient drill bits that reduce drilling times and rates of failure;
- Lightweight modular drilling rigs which deploy more easily and require a smaller foot print; and
- Slim-hole drilling, micro-holes and coiled tubing which reduce waste volumes, surface disturbance, and noise.

COMMENT: The listing of sage-grouse as a candidate species under the ESA and its “*warranted but precluded*” status has increased awareness of the conservation status and conservation efforts and has led to Wyoming, Montana, and other states to develop statewide conservation strategies to protect sage-grouse and their habitat. As such, the RMP/EIS should reference and discuss how such efforts would interface with proposed BLM restrictions. The following are some of the initiatives that have been developed in response to sage-grouse conservation concerns:

- The Wyoming Governor issued Executive Order 2011-5 that establishes guidelines for managing Greater Sage-Grouse Core Area Protection.
- The Montana Governor issued Executive Order No. 2-2013 establishing a Greater Sage-grouse Habitat Conservation Advisory Council which is mandated to gather information, furnish advice, and provide recommendations to the Governor on policies and actions for a state-wide strategy to preclude the need to list the Greater Sage-grouse under the ESA.
- The FWS, in 2013, issued the Conservation Objectives Team Report, which provides state, federal, local, and private entities with permitting or land management authority information to support conservation actions for sage-grouse.
- The Sage-Grouse National Technical Team (2011) produced A Report on National Greater Sage-Grouse Conservation Measures, which addresses the latest science and best biological judgment to assist in making management decisions.
- WAFWA completed the Greater Sage-Grouse Comprehensive Conservation Strategy (2006), which identifies the critical need to develop associations among local, state, provincial, tribal, and federal agencies, non-governmental organizations, and individual citizens to design and implement cooperative actions to support robust populations of sage-grouse and the landscapes upon which they depend.
- A joint report (The History and Current Conditions of the Greater Sage-Grouse in Regions with Energy Development -2007) by U.S. Department of Energy, Interstate Oil and Gas Compact Commission and ALL Consulting provides a historical overview of the sage-grouse to help clarify its regional significance; identifies current conservation plans of important stakeholders; and discusses current and historical management approaches.

- The Natural Resource Conservation Service (NRCS) with the Western Governors Association published *Conserving the Greater Sage-Grouse: Examples of Partnerships and Strategies of Work Across the West*, which illustrates the depth of commitment and cooperation that is taking place across the West to conserve the sage-grouse.
- In 2010, the NRCS and numerous conservation partners (local, state and federal agencies, Tribes, non-governmental organizations) in the Western US established the Sage Grouse Initiative to work towards sustaining working ranches and conserve Greater sage-grouse populations in the West using existing voluntary conservation programs.

In addition, the DEIS should have referenced and directly considered information such as the joint report of the Department of Energy, Interstate Oil and Gas Compact Commission and All Consulting (2007), which states:

“The oil and gas industry is a vital component for the successful conservation of sage-grouse. To date, this particular industry has had active members with sage-grouse workgroups and is involved in surveying and monitoring efforts within sage-grouse habitats, such as the Cedar Creek Anticline or Powder River Basin. In certain areas, the oil and gas industry has been responsible for generating sage-grouse distribution density data, as well as other wildlife species, in localities that previously lacked data. The industry is beginning to take a more active role in the conservation and protection of the bird by funding study-based projects.”

Page 3-90, *“The cumulative and interactive impact of multiple disturbances and habitat loss has influenced the current distribution of greater sage-grouse in MZ1. The cumulative extent of human caused changes, the human footprint, on sage-grouse habitat in MZ1 is highest at the northern edge of the MZ but occurs throughout the MZ (Leu and Hanser 2011) (Figure 3-16). Population centers for greater sage-grouse in MZ1 (Doherty et al 2011) generally correspond to areas lacking high human footprint and some of these areas have been designated as core areas by Montana Fish, Wildlife, and Parks (Montana Fish, Wildlife, and Parks 2010). Greater sage-grouse range in MZ1 is very similar to portions of range where sage-grouse have been extirpated i.e., areas with high human footprints, mostly because of abundance and distribution of sagebrush in the MZ (Wisdom et al 2011) suggesting that sage-grouse in MZ1 are more vulnerable to declines than other portions of sage-grouse range.”*

COMMENT: As previously noted, the above discussion relates to MZ1 not MZ 2, where the majority of sage-grouse habitat in the Billings planning area is located. Does this statement apply to MZ2? What is the data for MZ2 that would support this assertion?

If Sage-Grouse MZ1 is “very” similar to overall portions of the range in which sage-grouse have been extirpated, mostly because of the abundance and distribution of sagebrush, please explain why were the seven sage-grouse management zones delineated based on floristic provinces? Presumably, they differed based on floristic characteristics of which sagebrush is a major component. Suggesting that sage-grouse are more vulnerable to declines in MZ1 because of the abundance and distribution of sagebrush does not appear to have a scientific basis.

Based on human effects to sagebrush habitat, it would appear that MZ1 would be the least likely to experience extirpation of sage-grouse. The following statement from Page 3-81 would support the contention that sage-grouse in MZ1 are the least likely to experience impacts from the "human foot print," *"Current estimates suggest that about 16 percent of the management zone is within 6.9 kilometers of urban development, although Sage-Grouse Management Zone 1 generally has lower rates of population increases compared to other management zones (Knick et al 2011)."* How does the vulnerability to extirpation in MZ2 relate to BLM's contention in the DEIS that sage-grouse in MZ1 are more vulnerable to extirpation?

The above-cited quotation is the same for the MCFO, HiLine, and Billings/Pompey's Pillar planning areas. It appears that the draft RMP/EISs relied on the same information in MZ1 to formulate management actions; however, none of these documents relates sage-grouse populations and habitat in MZ1 or MZ2 to population and habitat conditions in their respective planning areas. Is there an assumption that all of the planning areas have the same factors driving sage-grouse management and the same environmental conditions and constraints affecting the ecology of sage-grouse regardless of management zone and planning area?

Chapter 4 – Environmental Consequences

COMMENT: Under Executive Order No. 2-2013, Montana Governor Bullock mandated the establishment of a Greater Sage-grouse Habitat Conservation Advisory Council with a stated purpose "to gather information, furnish advice, and provide to the Governor recommendations on policies and actions for a state-wide strategy to preclude the need to list the Greater Sage-grouse under the Endangered Species Act (ESA), by no later than January 31, 2014."

Will this advisory council supplant the Montana Sage Grouse Working Group (and/or local working groups) or will these groups continue to address sage-grouse management? In addition, please clarify BLM's anticipated role in recognizing and/or adopting recommendations of the advisory council as part of revisions to the draft RMP/EIS.

COMMENT: The sheer length and disorganization of Chapter 4 (e.g., weaving among alternatives, topic areas, cumulative effects, etc.) makes it virtually impossible to discern the crux of issues related to sage-grouse populations in the Billings/Pompey's Pillar planning area. What are the potential impacts to sage grouse populations within the Billings/Pompey's Pillar planning area due to each of the Alternatives examined as a function of proposing different land classifications and various NSO/CSU restrictions associated with those classifications? It is evident that the population status of sage-grouse in the planning is not well known. Are current populations increasing, decreasing or remaining stable? Without a clear description of the existing sage-grouse resource within the planning area, it is impossible to assess the predicted effects of various management alternatives on sage-grouse populations. Is the preferred alternative expected to result in populations that are larger, smaller, or remain at current level? How would this differ among alternatives?

Page 4-3, 4.1.1.3 Assumptions for Analysis

COMMENT: The DEIS fails to discuss the assumed relationship of sage-grouse and sage-grouse habitat in MZ1 (as discussed throughout Chapter 3) compared to the Billings/Pompey's Pillar planning area. Most of the cited references that address effects of oil and gas development on sage-grouse have been conducted in the southeast Montana and Wyoming in the area of MZ1 where intensive development has been ongoing for decades.

Ramey et al (2011) report that: *“Current stipulations and regulations for oil and gas development in sage-grouse habitat are largely based on studies from the Jonah Gas Field and Pinedale Anticline. These and other intensive developments were permitted decades ago, using older, more invasive technologies and methods. The density of wells is high, due to the previous practice of drilling many vertical wells to tap the resource (before the use of directional and horizontal drilling of multiple wells from a single surface location became widespread), and prior to concerns over sage-grouse conservation. These fields and their effect on sage-grouse are not necessarily representative of sage-grouse responses to less-intensive energy development. Recent environmental regulations and newer technologies have lessened effects to sage-grouse.”*

In addition, Taylor et al (2007) analyzed six oil and gas development areas in Wyoming with various degrees and ages of activity to determine sage-grouse population trends relative to intensity and timing of oil and gas development. They report that:

- Sage-grouse population trends are consistent among populations regardless of the scope or age of energy development fields, and that population trends in the six development areas mirror trends state-wide;
- Application of the BLM standard sage-grouse stipulations appear to be effective in reducing the impact of oil and gas development on male-lek attendance;
- Male lek attendance in areas that are not impacted by oil and gas development is generally better than areas that are impacted;
- Displacement from impacted leks to non-impacted leks may be occurring; research is needed to assess displacement and its implications for developing sage-grouse conservation strategies;
- Lek abandonment was most often associated with two conditions, including high density well development at forty-acre spacing (sixteen wells per square mile), and regardless of well spacing when development activity occurred within a the quarter-mile lek buffer;
- Extirpation of sage-grouse has not occurred in any of the study areas;
- Long-term fluctuations in sage-grouse population trends in Wyoming reflect processes such as precipitation regimes rather than energy development activity; however, energy development can exacerbate fluctuations in sage-grouse population trends over the short-term.

Page 4-281, 4.2.7.6.4 Impacts from Wildlife Habitat and Special Status Species:

“Under Alternative D, the acreage designated for greater sage-grouse PPAs would be the same as Alternative C. Within PPAs, oil and gas leasing, development, and geophysical activities, as well as surface disturbance and disruptive activities would be similar to Alternative B. (Alt. B is Closed to

leasing and Alternative D is an NSO). This action would minimize surface disturbing and disruptive activities associated with fluid mineral development."

"The Greater Sage-Grouse PPA area would not be designated as an ACEC. However, the area would be managed with the same protections as described and provided for in the Greater Sage-Grouse PPA areas which would result in the same as described in that section (see above paragraph for a description of direct, indirect, and cumulative impacts)."

"Refer to the "Impacts from Livestock Grazing" section for a summary of impacts from the designation of grazing allotments in PPAs as management Category I allotments."

"Refer to Section 4.3.1.2, Fluid Minerals, for a summary of acres affected by Oil and Gas Stipulations by Alternative and Development Potential. Table 2-5, summarizes "Lease Terms and Stipulations by Alternative."

"Renewable Energy and ROWs in PPAs, RAs, and General Sage Grouse Habitat are designated avoidance areas under Alternative, with the same impacts as Alternative C."

COMMENT: The terminologies used in all sub-headings in Chapter 4 are perplexing. For instance - *"Impacts from Wildlife Habitat and Special Status Species"*— impacts on what? In reality, the true question is actually a reverse of that and should read *"Impacts on Wildlife Habitat..."* The revised planning documents need to expressly specify what the impact of each Alternative (and associated sage-grouse classifications, stipulations/management prescriptions and acreages) is on sage-grouse populations and habitat in the Billings/Pompey's Pillar planning area.

COMMENT: Why are Appendix AA (Monitoring of Sage-Grouse and Sagebrush Habitats) and Appendix AB (Mitigation Measures and Conservation Actions for Greater Sage-grouse Habitat) not included or referenced in this subsection?

Page 4-284, 4.2.7.7 Cumulative Impacts

COMMENT: Chapter 3 and the impact discussion in Chapter 4 addressing predicted impacts to sage-grouse, appears to rely solely upon on research conducted in MZ1, an area that encompasses sage-grouse habitats in large areas of Montana, Wyoming, and the Dakotas. In so doing, the DEIS fails to address the cumulative effects of land management on sage-grouse projected to occur within the Billings/Pompey's Pillar planning area. Rather it relies on the broad discussion of MZ1 and MZ2. Moreover, this section repeats much of the material addressed in Chapter 3.

MZ1 is extensively referred to in Chapter 3; however, BLM fails to address the relationship of sage-grouse and their habitat in MZ1 to the BLM planning area. From the text in the DEIS, it appears that MZ1 is thought to be important for sage-grouse management; however, there is no reference to MZ1 in the cumulative effects section. Why does Chapter 3 have a section dedicated to MZ1 but impacts of the proposed Billings/Pompey's Pillar management actions are not addressed relative to MZ1?

The section on cumulative impacts would be an ideal place to address the relationship among planning and management activities in MZ1 and MZ2 and the Billings planning area. At a minimum, the Billings DEIS needs to address the potential cumulative effects of the proposed planning activities in the Miles City and Hi Line planning areas as they relate to the Billings/Pompey's Pillar planning area.

The potential cumulative effects discussion fails to address the effects of livestock grazing on private and public land on sage-grouse and other wildlife. The MCFO DEIS (page 4-60) states:

“Determining season-of-use and livestock numbers for grazing permits on a case-by-case basis would not necessarily result in high quality sage-grouse habitat. The reduction in grass height caused by livestock grazing in sage-grouse nesting and brood-rearing areas has been shown to negatively impact nesting success when residual herbaceous cover was reduced below approximately 7 inches needed for predator avoidance (Gregg et al 1994). Livestock grazing would potentially reduce suitability of breeding and brood-rearing habitat, which would impact sage-grouse populations (USFWS 2010a).”

While grazing may have the potential to affect sage-grouse habitat; the DEIS fails to discuss how sage-grouse habitat and displacement of sage-grouse have been affected by grazing practices in the planning area or even the broader region of MZ1 and MZ2. The revised planning documents must evaluate the cumulative effects of livestock grazing on public and private land on sage-grouse and their habitat.

Page 4-286, *“With regard to existing stipulations applied by the BLM (Walker et al 2007a), research has demonstrated that the 0.4km (0.25 miles) NSO stipulation is insufficient to conserve breeding sage grouse populations in fully developed gas fields because this buffer distance leaves 98 percent of the landscape within 3.3 km (2 miles) open to full-scale development.”*

COMMENT: This statement is based upon the assumption that all oil and gas activities would involve “full-scale” development. “Full-scale” development needs to be identified in terms of well density and other disturbance factors. Is all future development in the planning area expected to be full-scale – full-scale in terms of the Pinedale Anticline or Jonah? These development areas are profound anomalies within the context of typical development throughout most of the Rocky Mountain region and we strongly object that they are being used as a baseline for examining potential development in other areas, particularly those in the Billings FO. The revised planning documents must base their analysis upon what has typically occurred within THIS planning area.

Appendix AB

Page AB-9, *“In cases where Federal oil and gas leases have been issued without adequate stipulations for the protection of sage-grouse or their habitats being provided in the applicable RMP decision, as revised or amended, include mitigation measures and conservation actions as permit Conditions of Approval (COAs) when approving exploration and development activities through completion of the environmental record of review (43 CFR 3162.5), including appropriate documentation of compliance with NEPA.”*

COMMENT: Please explain in more detail how COAs would correspond with the annotation made in Table 2-5 "Lease Terms and Stipulations by Alternatives" that it applies to "New Oil and Gas Leases". Based on the paragraph above, it appears that COAs may apply to current lease areas as well as "new oil and gas leases"? Please explain in more detail how the information in Appendix AB corresponds to the specified lease terms and conditions, and what this would mean to lessees/producers. We also recommend that BLM clearly articulate how it intends to ensure such COA's would be administered to preserve valid existing lease rights.

Draft Montana DEIS Comparisons - Proposed Sage Grouse Habitat Management

This section includes questions generated from a comparative review of the HiLine, MCFO, and Billings/Pompey's Pillar DEISs, with a particular focus on the various management restrictions within sage-grouse habitat. Tables 1 and 2 serve as summaries of main sage-grouse management parameters and management prescriptions included in each of the three referenced RMP/EIS documents and serve as reference points for several specific comments presented below:

**Table 1
Sage-Grouse Management Parameters on BLM-Administered Land**

| Planning Area | BLM Sage Grouse Habitat | Estimated # of Leks | BLM Sage-Grouse Habitat Acreages | | |
|--------------------------------|-------------------------|---|---|---|---|
| | | | General Habitat Acres | Protection-Priority Areas | Restoration Areas / Source Population Area |
| Miles City Field Office | 2.5 Million acres | <ul style="list-style-type: none"> • 386 leks of unconfirmed status, • 455 confirmed active leks, • 33 extirpated leks, and • 19 confirmed inactive leks. | BLM Oil/Gas Lease ⁽¹⁾ : <ul style="list-style-type: none"> • 800,000 acres BLM Surface: <ul style="list-style-type: none"> • 400,000 acres | BLM Oil/Gas Lease: <ul style="list-style-type: none"> • 1,403,000 acres BLM Surface: <ul style="list-style-type: none"> • 792,000 acres | BLM Oil/Gas Lease: <ul style="list-style-type: none"> • 289,000 acres* BLM Surface: <ul style="list-style-type: none"> • 109,300 acres* * Of these totals, 8,000 acres of Oil/Gas Lease and Surface are part of the Source Population Area. |
| HiLine | Unknown ⁽²⁾ | <ul style="list-style-type: none"> • 154 leks | BLM Administered Federal Mineral Estate (BLM-FME) ⁽¹⁾ : <ul style="list-style-type: none"> • unknown acres⁽²⁾ BLM Surface: <ul style="list-style-type: none"> • unknown acres⁽²⁾ | <i>Grassland Bird/Greater Sage Grouse Priority Area:</i> BLM-FME: <ul style="list-style-type: none"> • 1,028,661 BLM Surface: <ul style="list-style-type: none"> • 930,265 acres <i>Sage Grouse Priority Protection Area:</i> BLM-FME: <ul style="list-style-type: none"> • 318,143 | BLM-FME: <ul style="list-style-type: none"> • Unknown acres (3) BLM Surface: <ul style="list-style-type: none"> • 46,786 acres |

| Planning Area | BLM Sage Grouse Habitat | Estimated # of Leks | BLM Sage-Grouse Habitat Acreages | | |
|--|---------------------------------|--|--|---|---|
| | | | General Habitat Acres | Protection-Priority Areas | Restoration Areas / Source Population Area |
| | | | | acres BLM Surface: • 298,772 acres | |
| Billings/ Pompey's Pillar | 336,479 Acres ⁽⁴⁾ | <ul style="list-style-type: none"> • 19 active leks on BLM Surface (8 inactive) • 30 lek sites are on FME. | BLM-FME: <ul style="list-style-type: none"> • 116,452 acres BLM Surface: <ul style="list-style-type: none"> • 78,575 acres | BLM-FME: <ul style="list-style-type: none"> • 191,543 acres BLM Surface: <ul style="list-style-type: none"> • 154,140 acres | BLM-FME: <ul style="list-style-type: none"> • 63,437 acres BLM Surface: <ul style="list-style-type: none"> • 45,555 acres |

⁽¹⁾ See comment below for questions concerning "Oil and Gas Lease" and Federal Mineral Estate" terminologies.

⁽²⁾ See comment below for a question concerning total BLM acres of sage-grouse habitat within the HiLine Planning Area

⁽³⁾ See comment below for a question concerning total BLM acres of "Federal Mineral Estate" within Restoration Areas (HiLine RMP/EIS)

⁽⁴⁾ See comment below regarding the total acreage reported in Chapter 3, Page 3-85 (Table 3-29) of the Billings/Pompey's Pillar RMP/EIS.

**Table 2
Management Prescriptions for Three BLM Planning Areas in Montana**

| Planning Area | BLM Sage-Grouse Habitat Categories | | | |
|-------------------------------------|---|--|---|-------------------|
| | General Habitat Acres | Nesting/Brood Rearing | Protection-Priority and Source Population | Restoration Areas |
| Miles City ⁽¹⁾ | Surface-disturbing activities would be avoided within 2 miles of leks CSU stipulations within 2 miles of leks Low-voltage power lines buried within 2 miles of leks | Surface-disturbing activities would be avoided within 4 miles of leks. Timing restrictions (BMP Appendix) | NSO | CSU stipulations |

| Planning Area | BLM Sage-Grouse Habitat Categories | | | |
|--------------------------|---|---|---|---|
| | General Habitat Acres | Nesting/Brood Rearing | Protection-Priority and Source Population | Restoration Areas |
| HiLine ⁽²⁾ | NSO within 1 mile of leks | CSU stipulations | NSO | --- |
| Billings/Pompey’s Pillar | <p>CSU stipulations</p> <p>NSO on “new oil and gas leases” within 0.6 miles of a lek.</p> <p>Timing restrictions within 3 miles of leks (March 1 – June 15)</p> | <p>Timing restrictions within 3 miles of leks (Mar.1 – June 15)</p> <p>CSU stipulations</p> <p>Geophysical exploration allowed on existing roads</p> <p>Timing-restrictions (Mar1. –June 15) within 4 miles of leks</p> | NSO | <p>NSO on “new oil and gas leases” within 0.6 miles of a lek.</p> <p>Timing restrictions within 3 miles of leks (Mar.1 – June 15)</p> <p>CSU stipulations</p> <p>Geophysical exploration allowed on existing roads</p> <p>Timing-restrictions (Mar1. –June 15) within 4 miles of leks</p> |

⁽¹⁾ Miles City indicates that sage-grouse protection areas will not be designated as ACECs and no compensation for impacts would be required in sage-grouse impacts (which may conflict with CSU stipulations)

⁽²⁾ Hi Line also has NSO restrictions in sage-grouse wintering areas from Dec. 1 – March 31.

Comment: As summarized in **Table 1** above, when discussing specific acreages of sage-grouse habitat that would fall under various management restrictions (based on the respective Preferred Alternatives), the Billings/Pompey’s Pillar DEIS and the HiLine DEIS reference BLM Administered “Federal Mineral Estate” and “Surface” under each main sage-grouse management classifications (e.g., General Habitat, Priority Protection Area, Restoration Area). However, the MCFO DEIS references “Oil and Gas Lease” and “Surface” as the two main categories of BLM administration. Please clarify the questions below:

- Are the categories of “Federal Mineral Estate” and “Oil and Gas Lease” intended to represent the same classification? If not, please explain any difference. If yes, please clarify terminologies among all Montana BLM RMP/EISs to aid the public (and potential operators) in consistently interpreting the proposed sage-grouse habitat restrictions.

- Are all proposed surface management restrictions applied equally regardless of whether the BLM Administered Lands in question are “Surface or “Federal Mineral Estate” and/or “Oil and Gas Lease”?
- Is it assumed that if a particular “Surface” acreage is under BLM Management then the mineral estate within that same acreage is also under BLM Administered “Federal Mineral Estate” and/or “Oil and Gas Lease” as well?

Comment: Are the 2.5 million acres reported as sage-grouse habitat under BLM Administration (within the MCFO planning area) a summation of the “Oil and Gas Lease” acreages reported for the three main management categories reported in MCFO DEIS Table 2.22? See summary in **Table 1** above (General Habitat Acres [800,000 acres], Protection-Priority Areas [1,403,000 acres] and Restoration Areas and Source Population Area [289,000 acres]).

Comment: Three appendices within the MCFO DEIS address management practices to avoid, minimize, and compensate for losses to sage-grouse habitat (i.e., BMPs Appendix, Minerals Appendix, and Fish and Wildlife Appendix). These appendices list specific practices and restrictions that apply to oil and gas development in sage-grouse habitat but do not specify which practices are stipulations that must be met for leasing and development. It is difficult to determine what an oil and gas operator will have to comply with relative to actions in sage-grouse habitat. **Table 2** (below) summarizes what appear to be the primary management restrictions, but they have been summarized from various sections of the DEIS and may not be comprehensive. The MCFO DEIS (and the HiLine and Billings/Pompey's Pillar DEISs accordingly) must identify required stipulations and guidelines (are these the same as BMPs?) in a comprehensive table within either DEIS Chapter 2 or 3.

Comment: Two of the three DEISs indicate that CSU stipulations will be developed for activities in various sage-grouse habitats; however, it is unclear in the MCFO DEIS how CSU stipulations will be developed. By comparison, the HiLine DEIS identifies how CSU stipulations will be developed in Appendix E.5 and the Billings Pompey's Pillar DEIS describes the development of CSU stipulations in Appendix C. Both the HiLine and Billings / Pompey's Pillar DEISs indicate that the proponent must prepare a plan to maintain the functionality of sage-grouse habitat to assist in identifying CSU stipulations. How will CSU stipulations be identified in the MCFO planning area?

Comment: Please clarify the total acreage of BLM-Administered acreage of sage-grouse habitat within the Billings/Pompey's Pillar planning area. Chapter 3, Page 3-85 (Table 3-29), reports a total of 336,479 acres. However the total appears to be 371,432 acres when summing the acreages presented in Chapter 2, Page 2-19 (Table 2-1). Please clarify.

Comment: Please clarify and/or provide the total BLM acres of “Federal Mineral Estate” that would be included within the “Restoration Areas” category for the HiLine planning area. This information appears to be missing in the HiLine DEIS.

Comment: Please clearly depict what management restrictions/prescriptions would be required for the two proposed ACECs within the HiLine planning area; specifically the Grassland Bird/Greater Sage-Grouse Priority Areas ACEC (461,220 acres) and Greater Sage-Grouse Protection Priority Area

ACEC (930,265 acres). Jointly the two ACECs comprise over 1.39 million acres and represent a extensive land area.

Comment: To understand the effects of proposed sage-grouse management in the planning areas for the three BLM field offices, the sage-grouse resource (i.e., populations and habitat) that would be affected by various management directives need to be identified. The DEISs for the three planning areas do not present sage-grouse estimates for population sizes (see **Table 1**) so other metrics that represent the sage-grouse resource which will be subject to the proposed management directives need to be presented. To better understand the sage-grouse resource that would be subject to the management prescriptions identified in the three DEISs, we request the that following information be clearly stated in each DEIS's *Chapter 3 – Existing Environment*:

- Acres of various classes of sage-grouse habitat within each planning area on BLM-administered lands; and
- Number of leks on BLM-administered lands in the planning area.

Comment: As shown in **Table 2** above, the planning prescriptions for surface occupancy and controlled surface use for the three planning areas (MCFO, HiLine, and Billings/Pompey's Pillar) are variable which raises questions of how NSO restrictions were determined. Based on review of the three draft planning documents, it appears that all three relied on same data sources to address impacts of oil and gas development on sage-grouse. All planning areas have similar sage-grouse habitat conditions (i.e., all are in Sage-Grouse Management Zone 1), and all are anticipating some level of oil and gas development. It is unclear how different NSO restrictions around leks were developed. NSO restrictions around leks vary among the planning areas, with buffers around leks being 0.6, 1, 2, and 3 miles. Why are these NSO restrictions different for the three planning areas when they all relied on similar sources to define potential impacts associated with oil and gas development? Does sage-grouse vulnerability to impact or population viability differ among BLM planning areas?

Additional Literature Cited

Ramey, R., L. Brown, and F. Blackgoat. 2011. Oil and gas development and greater sage-grouse (*Centrocercus urophasianus*); A review of threats and mitigation measures. *The Journal of Energy Development*: 35(1); 49-77.

Taylor, R., M. Dzialak, L. Hayden-Wing. 2007. Greater sage-grouse populations and energy development in Wyoming. Accessed March 2013 at <http://bogc.dnrc.mt.gov/reports.asp>

CONCLUSION

We recognize that BLM endeavored to add to the project of revising several resource management plans proposed management decisions related to the Greater Sage-grouse in a very short time frame. As a result of the monumental task, BLM has failed to adequately to properly prepare the DEIS as described above in our comments. In addition to failing to meet the requirements of NEPA, BLM has used Greater Sage-grouse data to develop its plan alternatives that is both not applicable to the Billings FO and/or at such a scale that makes it impossible to make accurate and reasonable

land use decisions. Moreover, BLM has failed to provide maps of important wildlife habitat areas discussed in the DEIS. And, the absence of clear descriptions of how BLM intends to proceed with implementing a host of measures associated with its proposed management is another significant and fatal flaw in the analysis. Therefore, as stated at the beginning of this comment letter, we formally ask for a redraft of the DEIS to be published for comment and review before BLM finalizes the DEIS and issues a ROD.

Please do not hesitate to contact us if you have any questions regarding our comments. We appreciate the opportunity to provide them to BLM, despite the fact that an inadequate period for review was provided.

Sincerely,



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Claire M. Moseley
Public Lands
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J. Spencer Kimball
Western Energy
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Cc: The Honorable Max Baucus
The Honorable John Tester
The Honorable Steve Daines
The Honorable Sally Jewel, Secretary of Interior
Neil Kornze – Acting BLM Director
Jamie Connell – Acting BLM Deputy Director
Kate Kitchell – Acting Montana BLM State Director