



PUBLIC LANDS ADVOCACY



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**RE: HILINE RESOURCE MANAGEMENT PLAN**

Dear Mr. Hockett:

On behalf of the Montana Petroleum Association (MPA), Public Lands Advocacy (PLA), Western Energy Alliance, and Montana Association of Oil, Gas & Coal Counties, following are comments in response to the Notice of Availability of the Draft HiLine Resource Management Plan (RMP) and Draft Environmental Impact Statement (DEIS) published in the *Federal Register* March 8, 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 HiLine RMP.

The Planning Criteria identified in Chapter 1 states that *"Broad-based public participation will be an integral part of the planning and EIS process."* We agree that public participation is an integral part of the planning process. We ask how BLM believes interested parties have been afforded the ability to fully digest and provide coherent and substantive comments within a 90-day window on three major draft RMPs issued in Montana within a three week period. 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.

**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 explained its management scenarios by alternative in the DEIS, it has omitted any useful and consistent explanation of potential impacts

associated with each of the alternatives selected for detailed review in the document. There are countless inconsistencies throughout the documents making it impossible for reviewers to understand the changes in resource uses and management proposed by BLM under each alternative. 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 consistent and sufficient description of the potential environmental impacts associated with each alternative, 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 that 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 actual lands and habitat under the jurisdiction of HiLine Field Office cannot be utilized as the basis for decisions. In fact, we believe the data used was developed based upon intensively developed natural gas fields in Wyoming which are completely analogous to any projected development in the HiLine FO 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**

The 1-Km resolution datasets and 1:2,000,000 scale maps used in the BLM planning process are viable tools for multi-state or sub-continental planning efforts, but they become totally meaningless at field office or even county level. In particular, datasets and mapping sage-grouse habitat 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, in particular for the Greater Sage-grouse. 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 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.

## **DEIS FORMAT**

The format of the HiLine DEIS makes it virtually impossible to fully comprehend BLM's management goals, objectives and alternative options because they are spread out among the chapters in piecemeal fashion. Even the basic descriptions of the alternatives and their priorities are extremely convoluted and virtually impossible to track. 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 inconsistencies found throughout the documents eliminate any possibility that reviewers will understand 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.

Another significant flaw in the DEIS is the conspicuous lack of resource maps, in particular wildlife and plant maps. The lack of maps is especially egregious because it makes it impossible to discern where BLM proposes specific management actions, which is a primary objective of NEPA, as discussed above.

## **THE PLANNING AREA HOLDS IMPORTANT NATURAL GAS RESOURCES**

The HiLine planning area has been demonstrated to contain significant natural gas resources, predominately since 2001. Of the more than 3,600 wells drilled between 1990 and 2005, 93 percent were productive natural gas wells. According to the DEIS, as of 2006 the planning area produced a total of 56.3 billion cubic feet of natural gas, or 61% of Montana's total natural gas production. Clearly, Montana has the ability to provide much needed natural gas resources that will bolster the nation's flagging economy.

An indicator of industry's interest in the HiLine planning area is demonstrated by the fact that a significant portion of the planning area is already under lease for oil and gas resources. However, the DEIS is not clear regarding how many tracts have actually been sold along with the total acreage they encompass. For example,

- Chapter 2, Page 2-38 indicates that *"existing oil and gas leases (803,656 acres) will continue according to the respective stipulations until they expire."*
- Chapter 3, Page 3-275 states *"In February 2011, more than 939,700 acres of federal minerals were leased for oil and gas within the planning area"*
- Chapter 3, Page 3-293 states *"Between 1998 and 2012, approximately 270 federal leases consisting of approximately 254,176 acres were nominated and offered for lease in the planning area. As of December 2012, 1,199 existing federal oil and gas leases covered 804,873 acres, or approximately 19% of the federal oil and gas mineral estate in the planning area."*

Accurate leasing figures along with acreages need to be included in the final planning documents. This another example of the inconsistencies found throughout the planning document that must be remedied.

## **CHAPTER 1 – PURPOSE AND NEED**

While BLM claims to its "multiple-use" mission as directed by the Federal Land Policy and Management Act (FLPMA) in the DEIS, the management alternatives addressed do not support that claim due to the broad restrictions proposed in the preferred and other alternatives. Multiple-use is important to those who rely upon public lands for goods and services that provide essential revenue streams to the state and counties of Montana as well as those whose interests rest primarily upon aesthetic values of the area. It is also critical for this concept to be carried forward in the planning documents. Our comments below address areas where BLM exceeds its management authority, particularly with respect to air quality, unjustifiably surpasses the recommendations of the US Fish and Wildlife Service (FWS) in managing wildlife habitat and proposes to impose unduly restrictive measures on mineral resources.

We also support BLM's identification of fluid minerals as a primary issue for consideration in the planning process and BLM's management vision/goal on Page 16 which states the agency will *"Ensure dependable and environmentally responsible exploration and development of mineral resources and renewable energy consistent with other resource goals."* However, this goal will not be met if the preferred alternative is implemented.

## **VALID EXISTING RIGHTS**

Page 1-14 - *"The RMP will recognize valid existing rights."*

Page 2-39 – *"The existing oil and gas leases (803,656 acres) will continue according to the respective stipulations until they expire...New surface use stipulations (including TLS, CSU, and NSO) cannot be applied to existing oil and gas leases or other existing valid use authorizations such as rights-of-way."*

*Site-specific actions such as APDs and rights-of-way in areas with existing oil and gas leases will be allowed, subject to surface use stipulations and best management practices (Appendix E.2)."*

**COMMENT:** We support BLM's recognition of valid existing lease rights. According to FLPMA, the Mineral Leasing Act (MLA) and BLM's Planning 1600 Handbook, BLM does not have the authority to impose new stipulations on leases after they have been issued. Nor does BLM have authority to impose mitigation measures, such as Conditions of Approval (COA), that exceed the terms and conditions of previously issued leases. In sum, BLM cannot deprive operators of their rights to develop pre-existing leases in accordance with the terms under which they were issued.

## **ENERGY DEVELOPMENT IS A LEGITIMATE USE OF PUBLIC LANDS**

Under 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 challenging task BLM in managing public lands in the HiLine FO 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 unreasonably 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.

## **STATUTORY REQUIREMENTS**

### Energy Policy Act of 2005

Section 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 many of the resource values to be addressed. The DEIS ignores established BLM policy that states "*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 restrictions. 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. Clearly, an examination of less restrictive measures must be a fundamental element of a balanced analysis and documented accordingly in the FEIS.

### Energy Policy and Conservation Act of 2000(EPCA)

In April 2003, field offices were directed to comply with four 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 EPCA and EPAct. 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 dropped using 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 that BLM reevaluate its management decisions accordingly and make requisite changes to the final planning documents

An examination of less restrictive measures must be a fundamental element of a balanced analysis and documented accordingly in the FEIS. Moreover, 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. 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 using the planning process.

BLM asserts it would set aside only 4 percent of the federal mineral as closed to oil and gas leasing. However, this is highly deceptive due to the imposition of No Surface Occupancy (NSO) stipulations on nearly 2 million acres under the Preferred Alternative. This overzealous use of NSO in reality puts most of the FO out of reach for new oil and gas exploration and development and would compromise expansion of existing development.

**ALTERNATIVES**

| <b>Table 2.2<br/>Areas Open and Closed to Oil and Gas Leasing (Acres)</b> |   |                      |                      |                      |  |
|---|---|----------------------|----------------------|----------------------|--|
|   | <i>Alternative A<br/>(Current<br/>Management)</i> | <i>Alternative B</i> | <i>Alternative C</i> | <i>Alternative D</i> | <i>Alternative E<br/>(Preferred<br/>Alternative)</i> |
| Open – NSO  | 282,062   | 258,560              | 1,291,160            | 357,456              | 1,711,378  |
| <i>Leased</i>   | 28,954  | 78,469               | 338,636              | 33,504               | 182,060  |
| <i>Unleased</i>   | 253,108   | 180,091              | 952,524              | 323,952              | 1,529,318  |
| Open – TLS/CSU  | 2,649,241   | 3,291                | 1,681,990            | 2,461,652            | 1,460,097  |
| <i>Leased</i>   | 578,195   | 1,544                | 341,765              | 545,301              | 561,866  |
| <i>Unleased</i>   | 2,071,046   | 1,747                | 1,340,226            | 1,916,351            | 898,230  |
| Open – Standard Terms Only  | 457,849   | 55,962               | 299,713              | 597,668              | 167,274  |
| <i>Leased</i>   | 196,508   | 15,978               | 123,255              | 224,851              | 57,306   |
| <i>Unleased</i>   | 261,341   | 39,983               | 176,458              | 372,817              | 109,967  |
| Closed  | 102,298   | 3,173,637            | 218,586              | 74,674               | 152,702  |
| <i>Leased</i>   | 0   | 707,665              | 0                    | 0                    | 2,424  |
| <i>Unleased</i>   | 102,298   | 2,465,972            | 218,586              | 74,674               | 150,278  |

Page 3, Chapter 1, states “The BLM administers approximately 2,437,000 acres of public land and 4,240,000 acres of federal minerals within the planning area in Blaine, Chouteau, Glacier, Hill, Liberty, Phillips, Toole, and Valley Counties” for a total of 6,677,000 acres subject to BLM management.

**COMMENT:** When the acreage figures in Table 2.2 are tabulated by alternative, it is apparent BLM has only addressed about half of the acreage under its jurisdiction. The leasing categories for each alternative add up to approximately 3,491,450, give or take 1,000 acres. What is BLM’s proposed management for the remaining 3.2 million acres? If this acreage is subject to the management controls of other agencies, why aren’t they identified in the DEIS?

**PREFERRED ALTERNATIVE E**

As illustrated in Table 2.2, BLM has chosen the most restrictive management option as its Preferred Alternative. We oppose BLM’s selection of this alternative because it arbitrarily and over-zealously restricts all multiple-use activities within the planning area. Adoption of Alternative E will have a chilling impact on all public land uses, including oil and gas exploration and development and its associated revenue streams. As custodian of public lands, BLM is obligated to fully consider the impacts its management would have on not just resource values, but also the rural areas which rely upon public lands for their livelihoods as well as the impacts management of federal lands would have on their economies.

BLM has chosen to stifle any future energy and mineral development under not only under Alternative E, but also Alternatives B and C, which would impose huge swaths of NSO or other highly

restrictive stipulations without discussion as to why they are needed to protect the resource and that current management has been proven inadequate. Once again we refer to BLM’s obligation to demonstrate that less restrictive measures were contemplated but found inadequate to protect available resources.

On the whole, the DEIS lacks the analysis required to successfully or scientifically justify these dramatic proposed changes in management. Even though BLM has quantified the impacts this alternative would have on activities, including oil and gas, it fails to adequately describe the need for such changes. It is incumbent upon BLM to clearly and specifically explain why current management strategies have proven inadequate in managing the variety of resource values that exist within the planning area. BLM has failed to provide this information in the DEIS which is why it fails to comply with the requirements of NEPA. We have described in greater detail these deficiencies in our following comments.

- *“The number of new oil and gas wells in the planning area (both federal and non-federal mineral estate) projected under each alternative to be drilled over the next 20 years are shown in Table 4.37. Also, Tables 4.2 and 4.3 at the beginning of Chapter 4 provide a more detailed look at the projected well counts.”*

|                                       | <i>Federal<br/>Mineral Estate</i> | <i>Planning Area<br/>Total</i> |
|---------------------------------------|-----------------------------------|--------------------------------|
| Alternative A (Current Management)    | 1,874                             | 6,014                          |
| Alternative B                         | 647                               | 4,787                          |
| Alternative C                         | 1,617                             | 5,756                          |
| Alternative D                         | 1,894                             | 6,034                          |
| Alternative E (Preferred Alternative) | 1,756                             | 5,896                          |

**COMMENT:** We find it confusing that BLM projects only 118 fewer wells to be drilled under the preferred alternative compared to current management, particularly given the fact that NSO stipulations will be imposed on nearly 2 million acres (over a 600 percent increase) in the planning area. Consequently, one can only assume that BLM’s preferred alternative will effectively preclude any new wells from being drilled outside currently leased acreage. We object to BLM’s plan to stifle new exploration activities, particularly when 25 percent of the federal oil and gas minerals in Montana is already unavailable for exploration and development activities.

Despite the agency’s view that it must protect all sage-grouse habitat from oil and gas activities, it is our contention that much of the data BLM relies upon is outdated and fails to take into account the positive aspects oil and gas activities have on sage grouse habitat. As pointed out later in these comments, the oil and gas industry makes important contributions to the conservation of sage-grouse by funding studies, surveys and monitoring activities which provide crucial, up-to-date scientific data that would otherwise be unavailable. We urge BLM to reconsider its approach in selecting Alternative E as its preferred alternative and to settle upon a more balanced management approach which recognizes the benefits of oil and gas development in efforts to conserve wildlife, such as the sage-grouse.

Page 726, Chapter 4 – *“Although much of the short-term effects to wildlife habitat and populations are mediated by reclamation, those reclaimed areas adjacent to or surrounding long-term habitat disturbance do not necessarily result in reclaimed wildlife habitat. Many species often avoid areas of long-term surface disturbance and disruption resulting in long-term indirect effects. The number of wells anticipated in the high and moderate potential areas are also expected to result in most of these potential areas being within 1,000 meters of an existing well (avoidance zone for big game) based on the number of anticipated wells and the amount of lands currently outside the avoidance zone in each potential area (Table 4.96).”*

**COMMENT:** The paragraph above is specifically attributed to fluid mineral development. There are many measures that BLM has apparently failed to consider which ameliorate such impacts on a broad scale. Concentrated habitat disturbance is typically short-term in nature because they are the result of initial construction activities. Once a well is completed and put into production, interim reclamation can significantly reduce the footprint of the activity and access to the site is substantially reduced. For facilities that require long-term placement, measures to limit their impact can be utilized, such as combining them to a single location, where technically and economically feasible. With respect to the type of reclamation that is undertaken, industry complies with the parameters established by BLM, such as seeding and contour of the site. We object that BLM has chosen to ignore the many measures that can, and are, taken to lessen the impact of activities in wildlife habitat.

## **COMPENSATORY MITIGATION**

Page 164 – *“Even after avoiding and minimizing impacts, projects that will cause adverse impacts to resources typically require some type of compensatory mitigation. Compensatory mitigation refers to the restoration, establishment, enhancement, or in certain circumstances preservation of resources for the purpose of offsetting unavoidable adverse impacts. The BLM will determine the appropriate form and amount of compensatory mitigation required. Methods of compensatory mitigation include restoration, establishment, enhancement and preservation.”*

**COMMENT:** We emphatically oppose the inclusion of compensatory mitigation in the preferred alternative because it cannot 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 impact which is the cornerstone of federal land use policy. Industry is already forced 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 agency and state requirements. We find it unconscionable that BLM states it intends to dig even deeper while failing to even disclose specific 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. The Mineral Leasing Act, 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 gambit for BLM to capitalize on industry's 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 all 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 overzealous 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 HiLine RMP because it is bad policy, punitive, subjective and will likely lead to litigation.

#### **AIR RESOURCE MANAGEMENT PLAN - APPENDIX**

BLM’s proposed management clearly 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

We are disturbed by the emission estimates used in the current document, as well as the intention to obtain further emissions information for use in inappropriate model evaluations. Emissions inventories are calculated in a number of different ways for a number of purposes. For example, BLM intends 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 documents the intent of BLM to implement significant mitigation measures on individual facilities based on 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?

An example of overestimating emissions is BLM’s greenhouse gas (GHG) emission estimates. BLM projects emissions higher than actually recorded because no accounting was given to existing federal regulations that require various measures to be used to reduce GHGs. Nevertheless, no significant impacts were found with overestimated GHG emissions increases from the oil and gas industry. We strongly recommend that BLM defer to reliable scientific methods to correctly project potential impacts.

## MODELING

The DEIS discusses several different levels of modeling that have either been conducted or will be in the future.

### 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). It is worth noting that this modeling was conducted using emission estimates that are actually higher than the Preferred Alternative. BLM went on to analyze the PSD increments. PSD increments are the amount of pollution an area is allowed to increase. It is also notable that PSD increment analysis does NOT apply in this scenario. This analysis is wholly inappropriate and is being misused. On Page 421, 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."

**COMMENT:** The numbers documented in the DEIS show exceedances of PSD increments. The analysis is far from appropriate for evaluating air quality impacts and must be removed from the document. It is the responsibility of MDEQ to implement the PSD permitting program for major sources. It is inappropriate for BLM to apply this analysis on a wide scale using these extreme estimates because they produce false results that some may believe are real potential impacts. This is an unsuitable use of this analysis process and is very misleading to all interested parties. Also, under any and all alternative scenarios, BLM concludes that current levels and any future potential increases in emissions are expected to comply with the NAAQS and MAAQS. We recommend that BLM revise its approach in the revised DEIS and subsequent Record of Decision (ROD).

### Future Modeling Photochemical Grid Modeling and CALPUFF

Page 424 – *"As described in the ARMP in Appendix B, the BLM is actively acquiring needed data to perform PGM, which is expected to be completed after this RMP is complete."*

Page 425 – *"The CALPUFF modeling effort would include estimated emissions from BLM-authorized oil and gas activities. This modeling would be completed prior to publication of the Final RMP/EIS."*

**COMMENT:** Both of these projects are being conducted outside of BLM's jurisdiction. Additionally, there is no indication that BLM will afford the public an opportunity to review and comment upon 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 potential mitigation measures being imposed on lease agreements for individual operations. Again, the DEIS mentions collaboration with AQTW and MDEQ on modeling protocol development for the future modeling; however, there is no mention of seeking industry involvement in this process. There is mention of making results available to the public, but no mention of public participation in determining the methods of conducting the modeling. 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 is our understanding that the 2011 emission inventory, that was completed outside of the DEIS, is going to be extrapolated to 2015 with BLM's "understanding" of what new sources are or will be in existence. We acknowledge that BLM expects 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 "actual" flaring data clearly would not be representative to use in extrapolating for future predictions. The DEIS must also take into account the reduction in emissions associated with the New Source Performance Standards (NSPS) 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 reduce emissions in the planning area. All of these items lead to considerable concern about BLM's ability to accurately estimate emissions, and thus ambient impacts and we strongly urge BLM to reconsider its proposal.

#### MONITORING

Page 421 - *"Due to the relatively low density of expected oil and gas activity in most of the HiLine, far-field criteria air pollutant concentrations are expected to remain low."*

Page 424 - *"Qualitative assessments of far-field air resource impacts for additional criteria air pollutants are provided below."...*

**COMMENT:** Based on monitoring data from Sidney, MT, the qualitative analysis demonstrates expected compliance with the NAAQS. MDEQ is now operating two new air quality monitoring stations in Malta and Lewistown, MT. These sites will confirm the areas' compliance with the NAAQS. Consequently, 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 scientific monitoring data. BLM should only use approved design values prior to implementing mitigation measures on sources in the planning area.

#### MITIGATION MEASURES

Page 425 - 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 included a definition as to what it believes constitutes "good" air quality and what "unacceptable impacts" would be. As such, it is impossible

to provide comments in any knowledgeable fashion when these terms are undefined and the information used to make these decisions has not been publically vetted.

Page 426 - *“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:** This vaguely defined strategy 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 further mitigation measures placed on individual minor sources.

The DEIS has a number of initial mitigations that will require implementation measures upon signature of the ROD. Several of the measures deal with fugitive dust control. While the industry believes fugitives should be controlled, adherence to state requirements for reasonable precautions (Administrative Rule of Montana 17.8.308) already meets the objectives for these measures, is already required for all sources, and allows the facility flexibility in choosing measures used to comply. Therefore, we recommend eliminating these measures because they are duplicative and unwarranted.

Page 418 – *“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 operates an EPA approved air quality program, and as it has been demonstrated, the planning areas have no concerns with air quality. As a result, the requirement to implement Tier 4 engines is unwarranted because it transcends current statutory requirements.

There is discussion in the initial mitigation measures that sources will be required to consolidate facilities to reduce fugitive emissions. However, these consolidation determinations are either redundant or overly restrictive for the control of fugitive emissions, since emissions are successfully mitigated through existing regulations. Once again, BLM would exceed its authority.

We object that BLM intends to surpass both federal and state regulations by requiring compliance with a New Source Performance Standard (NSPS) on sources for which that rule is not applicable. What is BLM’s justification for exceeding established programs? The NSPS standards were adopted nationally after considerable research and public participation. It is inappropriate for this requirement to be capriciously applied to sources where it is not applicable.

As noted above, BLM is basing mitigation measures on emissions estimates and modeling that are inappropriate for this level of control. The DEIS claims that, with regard to oil and gas emission sources, emissions were estimated conservatively because they do not include more stringent

emission controls mandated by USEPA on August 16, 2012, which become effective prior to final issuance of the DEIS.

While the “Monitoring-Based Mitigation” process is seemingly a very deliberate process to determine cause or contribution, the potential enhanced mitigation measures to be imposed are nothing short of excessive in light of that fact that the determination is made based on a single source contribution of a single exceedance at a single monitor. A single exceedance, even if the data is valid, certainly 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 on any additional measures it chooses. Again, this is done with no involvement with the public or the regulated industry and is based simply upon a single exceedance at a single 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 which facilities this will apply to.

#### AIR QUALITY RELATED VALUES (AQRV) ANALYSIS

Page 424 - The DEIS discusses the fact that AQRV analysis will be fully conducted using the CALPUFF and PGM modeling results.

**COMMENT:** We object that there is no opportunity afforded to the public to comment on this analysis and are concerned that potential mitigations will be imposed based on the outcome of the analysis.

#### RIGHTS-OF-WAY

Page 63, Chapter 2 – *“The BLM would designate 19 avoidance areas for the issuance of rights-of-way on 1,672,698 acres... A right-of-way may be allowed if no reasonable alternative is found; however, special mitigation measures may be required to protect sensitive resource values. Rights-of-way may also be allowed if they support or promote other management objectives for the area.”*

**COMMENT:** We object that BLM proposes in the Preferred Alternative to place 1.7 million acres in a right-of-way avoidance classification because it would effectively prevent infrastructure improvements needed for transportation of oil and gas resources. BLM must recognize that fluid mineral pipelines, for example, create only short-term disturbance and are fully reclaimed within the parameters BLM requires once construction is completed. We support, however, the flexibility BLM has adopted to allow a right-of-way to be built in the event no reasonable alternative is found. Nevertheless, the DEIS fails to explain what types of special mitigation measures may be required to protect sensitive resource values. BLM needs to provide direction as to the types of mitigation it would consider effective rather than leaving such decisions opened ended and solely in the realm of a Natural Resource Specialist.

## **FISH, WILDLIFE, AND SPECIAL STATUS SPECIES**

The species habitat delineations in the RMP/DEIS are wholly inconsistent with those identified by the Montana Department of Fish, Wildlife & Parks (MFWP). We ask BLM to explain these discrepancies in the final 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 in circumstances where projects cross 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 for Species in Alternative B

**COMMENT:** The proposed closures to future oil and gas leasing as well as restrictions for surface-disturbing activities, NSO stipulations, and timing limitations for development with respect to several wildlife and plant species under Alternative B throughout Chapter 2 are unreasonable and unjustified in the DEIS. Incorporating any of the restrictions from Alternative B, particularly the closures of over 3.1 million acres to future oil and gas leasing, into the proposed alternative will unnecessarily preclude, prevent, and delay oil and gas development and other responsible multiple users from economic activities on millions of acres in the planning area.

### Species and Habitat Maps

**COMMENT:** While the NSO, CSU, and TLS for fish and wildlife species may have been aggregated in Map 2.4 “Fluid Mineral Leasing Stipulations for Future Leasing” (Alternative E – Preferred), BLM failed to separately map the habitat areas with associated management restrictions for several species. It is crucial for BLM 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. Therefore, we strongly recommend that BLM provide habitat maps which show land-use restrictions, including special management areas for all species discussed in Chapter 2 of the DEIS.

### Mountain Plover

Page 4-501 - *“Lands that have been identified as mountain plover habitat would be stipulated as NSO. This would affect 285,170 acres, of which 2,144 acres (1%) are already leased. Additionally, a timing stipulation would be stipulated for areas within 1/4 mile of mountain plover habitat. This would affect an additional 23,186 acres, of which 346 acres (1%) are already leased.”*

Page 2-223 - Mountain Plover ACEC - *“The ACEC would be closed to oil and gas leasing which would avoid any impacts from oil and gas exploration and development.”*

**COMMENT:** BLM has no scientific basis to preclude or severely restrict leasing in identified mountain plover habitat through the designation of the “Mountain Plover ACEC.” In May 2011, the US Fish and Wildlife Service (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.”<sup>1</sup> 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. Prohibiting fluid mineral leasing or adding NSO stipulations to well over 300,000 acres in the planning area does fails to 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, the NSO stipulations proposed for oil and gas leasing in areas within mountain plover habitat is completely arbitrary and capricious and should be eliminated from the revised DEIS.

**COMMENT:** What is BLM’s rationale in seeking to impose stipulations on all habitat areas rather than occupied habitat?

**COMMENT:** Language in Chapter 4 of the DEIS implies that NSO stipulations that apply to all mountain plover habitat will also apply to areas that have already been leased. We remind BLM that any stipulations for mountain plover 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 not be consistent with valid existing lease rights.

Page 3-401 - “*Current mountain plover management is closely related to black-tailed prairie dog management in much of the planning area because of the close association of plovers and the low structure habitat created by prairie dogs.*”

**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 black-tailed prairie dog. In 2009 the FWS determined that the listing of the black-tailed prairie dog under the ESA was also not warranted, and that “increasing trends in the species’ occupied habitat since the early 1960s, indicates that the present or threatened curtailment 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, the 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 [Emphasis added.] Accordingly, the management restrictions proposed for oil and gas leasing and development in mountain plover habitat are completely unjustified simply due to its close association and shared habitat with the black-tailed prairie dog and should be removed from the revised DEIS.

Page 2-195 - “*TLS - Surface occupancy and use is prohibited within 1/4 mile of mountain plover habitat from April 1 through July 15.*”

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<sup>1</sup> “Mountain Plover Factsheet.” U.S. Fish & Wildlife Service. Last updated: August 2011. Available at: <http://www.fws.gov/mountain-prairie/species/birds/mountainplover/>

**COMMENT:** This restriction will result in the prohibition of surface occupancy and use on an additional 23,186 acres from April 1 through July 15. 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 over 285,000 acres as NSO, is necessary to protect the species during nesting season. In addition, while BLM has mapped the Mountain Plover ACEC, the DEIS does not contain a separate map that delineates the lands identified as mountain plover habitat or the area within ¼ mile of habitat where surface occupancy will be seasonally prohibited. A new map needs to be included in the revised DEIS.

### Black-Tailed Prairie Dog

Page 2-193, Alternative E (Preferred Alternative) - *“NSO within ¼ mile of black-tailed prairie dog habitat.”*

**COMMENT:** BLM has failed to present any supporting data to justify the management restrictions for the black-tailed prairie dog in the DEIS, particularly the NSO stipulation within ¼ mile of habitat. Moreover, this stipulation does not correspond with the FWS’ recent listing determination for the species and its conclusions about the impact of oil and gas development on black-tailed prairie dog habitat. In 2009 the FWS determined that the listing of the black-tailed prairie dog under the ESA was not warranted and that “increasing trends in the species’ occupied habitat since the early 1960s, indicates that the present or threatened curtailment 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, the FWS has 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, we recommend that BLM eliminate the proposed NSO stipulation for oil and gas leasing within ¼ mile of black-tailed prairie dog in a revised DEIS to maintain consistency with the FWS’ findings.

**COMMENT:** What is BLM’s rationale in seeking to impose stipulations on all habitat areas rather than occupied habitat?

Page 4-730 - *“Alternative E would eliminate the Prairie Dog Towns within the 7km Complex ACEC for black-tailed prairie dogs. The impacts to black-tailed prairie dogs because of this change are not apparent because all prairie dog towns in the planning area are now afforded similar protections as those in this ACEC, negating the need for special management for a subset of the prairie dogs located in the Prairie Dog Towns within the 7km Complex ACEC.”*

**COMMENT:** We object to BLM’s decision to ease restrictions for black-tailed prairie dogs in the 7km Complex ACEC by dramatically increasing restrictions, particularly those for oil and gas development, across the entire planning area. This ‘one size fits all’ management approach fails to correspond with the FWS’ view recent not-warranted listing determination and its findings regarding the impact of oil and gas development on the species’ habit, and will unnecessarily delay, preclude, or prevent responsible oil and natural gas development without commensurate benefit to the species across the planning area.

## Vegetation - Special Status Plants

Page 2- 139 - *“Through activity plans for other resources (e.g., watershed plans, fire management plans, allotment management plans, etc.) the BLM will design site-specific management prescriptions and projects to benefit individual species habitats and communities. Special status plants will be monitored to assess their condition and trend.”*

Page 2-190 - All Alternatives: *“Site-specific prescriptions may include avoidance of special status plant habitat for ROWs, seasonal timing restrictions for grazing (e.g., limited to no grazing during flowering to seed set for a particular species), no salt or water placement within 0.25 miles of a known special status plant species population, seed collection or transplanting of special status plant species for mitigation.”*

**COMMENT:** The management prescriptions for special status plants are unacceptably vague in the DEIS. Furthermore, BLM has, once again, failed to map the locations of special status plants in the planning area. Consequently, it is impossible to fully understand how those prescriptions may affect oil and natural gas development in areas with special status plants. We ask BLM to fully explain any management actions or restrictions that will be prescribed for activities in areas with special status plants, address how those restrictions will affect other resource uses in the planning area, and adequately map those areas in a revised DEIS.

## Bald Eagle

Page 2-192, Alternative E - *“NSO within ½ mile of bald eagle nest sites active within the preceding 5 breeding seasons.”*

**COMMENT:** BLM presents no scientific justification for designating areas that are within ½ mile of the active nests of bald eagles as NSO. The species was recently removed from the threatened and endangered list and these buffers significantly exceed the FWS’s recommended restrictions for oil and gas activities around nests, which call for 200 meter (660 feet) buffers. Accordingly, this ½ mile buffer is unwarranted and must be revised to comport with FWS recommendations in a revised DEIS.

**COMMENT:** What is the scientific justification for a nest considered to be “active” if it has been used in the past five breeding seasons? 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 breeding seasons 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.

BLM has failed to identify which nests within the planning area have been active within the past five breeding seasons and it is unclear whether the burden to demonstrate that a nest has or has not been active falls on the operator or the BLM. 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. In addition, BLM has failed to map active or inactive nests for bald eagles in the map section of Chapter 2 in the DEIS.

Specifically, BLM must explain and justify the methodology used to define a nest as “active” in order to use the proposed 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 use within the last five breeding seasons or some other period of time, the agency must also clearly identify nest sites that have been inactive within the past five breeding seasons or some other period of time and clearly note that they will not be subject to the surface disturbing and disruptive activities and lease stipulations identified in Chapter 2. It is important for BLM to plainly identify and map active and inactive bald eagles nests in a revised DEIS.

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 amendment has been prepared. Further, restrictions on surface-disturbing and disruptive activities that are inconsistent with the original lease terms will abrogate valid existing lease rights.

#### Pallid Sturgeon

Pages 2-196, Alternative E - *“CSU - Prior to surface-disturbing or disruptive activities occurring in or within 1/2 mile of river or stream shorelines identified as pallid sturgeon habitat, a plan to maintain pallid sturgeon habitat would be prepared by the proponent and implemented upon approval by the authorized officer.”*

**COMMENT:** It is not explained in the DEIS whether the recommended ½ mile CSU buffer was suggested by the FWS or devised by BLM. BLM must disclose in a revised DEIS the scientific justification for the proposed CSU stipulation, either through reference to a recommendation by FWS or some other scientific justification. We also encourage BLM to regularly work and consult with the FWS to determine if portions of the stipulated area are no longer critical to the pallid sturgeon and may be modified. BLM must also clearly identify and map pallid sturgeon habitat in the maps section of the revised DEIS.

#### Big Game Crucial Winter Range

Pages 2-193, Alternative E - *“Surface-disturbing or disruptive activities would be restricted or prohibited within 0.6 miles from any existing surface-disturbing or disruptive activity.”*

**COMMENT:** BLM must explain the logic behind prohibiting or restricting new surface-disturbing or disruptive activities within 0.6 miles from existing surface-disturbing or disruptive activities within big game crucial winter range. Prohibiting additional disturbances within 0.6 of oil and gas infrastructure and wells, whether they are existing and producing, or are being drilled, completed, or maintained, may prevent the construction of additional infrastructure, pipelines, roads, or other equipment needed to bring important energy resources to consumers, which may ultimately shut in that resource and/or compromise valid existing lease rights. Further, by restricting or prohibiting

these activities within 0.6 miles of existing surface disturbing activities, BLM may actually increase the overall amount of surface disturbance within crucial winter range. Accordingly, we recommend that BLM remove this provision from the CSU stipulations for crucial winter range as proposed under the preferred alternative. If BLM does decide to move forward with this provision, the RMP/EIS must clearly define what constitutes an 'existing surface-disturbing or disruptive activity' and whether BLM will consider a completed and producing oil or gas well and other infrastructure as an existing surface-disturbing activity.

### Big Horn Sheep

Page 4-500 - *"Lands that have been identified as bighorn sheep habitat would be stipulated as CSU. This would affect 7,792 acres, of which 1,248 acres (16%) are already leased. Lands that have been identified as bighorn sheep lambing areas would be stipulated as NSO. This would affect 2,364 acres, of which 343 acres (15%) are already leased."*

**COMMENT:** Language in Chapter 4 of the DEIS implies that CSU stipulations that apply to bighorn sheep habitat will also apply to areas that have already been leased. We remind BLM that any stipulations for bighorn sheep habitat that may be applicable for future leases cannot 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 will abrogate valid existing lease rights.

Page 2-192, Alternative D - *"TLS - Surface occupancy and use is prohibited within bighorn sheep lambing areas from May 1 through June 30."*

**COMMENT:** We are puzzled as to why BLM has opted to designate bighorn sheep lambing areas as NSO in the preferred alternative, rather than the seasonal timing limitations as proposed in Alternative D. BLM has provided no 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 from May 1 through June 30. Accordingly, we recommend that the preferred alternative reflect the proposed TLS as proposed in Alternative D in the revised DEIS.

### Black-footed Ferret

Page 2-192 - *"NSO within 1/4 mile of black-footed ferret habitat."*

**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 devised by the agency. It is necessary for BLM to disclose 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 the 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 map black-footed ferret habitat in the maps section of Chapter 2 in a revised DEIS.

### Piping Plover and Interior Least Tern

Page 2-196, Alternative E - *“NSO within 1/4 mile of piping plover habitat.”*

Page 2-195, Alternative E - *“NSO within 1/4 mile of interior least tern occupied habitat.”*

**COMMENT:** BLM has failed to demonstrate why the NSO stipulation for Interior Least Tern will apply to *occupied* habitat while the NSO stipulation for Piping Plover will apply to all habitat areas. Applying NSO stipulations to all piping plover habitat, rather than just occupied habitat, has not been justified in Chapters 3 or 4 by any reference to guidance from the FWS. Management restrictions for the Interior Least Tern should be consistent with those for the Piping Plover unless BLM can cite recommended guidance from FWS that justifies the more restrictive management prescriptions for Interior Least Tern in the DEIS. In order to avoid the unfounded application of stipulations to areas that may not truly contain occupied habitat, we recommend that BLM apply stipulations for occupied habitat for both species. Accordingly, BLM must clearly identify and map Interior Least Tern and Piping Plover occupied habitat in the maps section of the revised DEIS.

### Raptors and Peregrine Falcons

Page 2-196, Alternative E - *“NSO within 1 mile of peregrine falcon nests active within the preceding 7 breeding seasons.”*

Page 2-196, Alternative E - *“NSO within ¼ mile of raptor nests active within the preceding 7 breeding seasons.”*

**COMMENT:** BLM intends to designate as NSO areas that are within 1 mile of the active nests of peregrine falcons and within ¼ mile of raptors. These buffers significantly exceed the FWS’s recommended restrictions for oil and gas activities around nests, which call for 200 meter (660 feet) buffers. Accordingly, these 1 and ¼ mile buffers are capricious and have not been justified in the DEIS. We recommend that BLM comport with FWS’ NSO restrictions for special status eagles and raptors. Accordingly, the buffers in the final plan must be consistent with the FWS’ recommendation of 200 meters (660 feet) around nests.

**COMMENT:** What is the scientific justification for a nest considered to be “active” if it has been used in the past seven breeding seasons? Without a clear explanation for the seven season “active” definition, this restriction is unreasonable and arbitrary. For example, if a nest was used in the past six breeding seasons 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 peregrine falcons and raptors. 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 seven breeding seasons. It is also unclear whether the burden to demonstrate that a nest has or has not been active falls on the operator or the BLM. In order to demonstrate that habitat can be maintained so that peregrine falcons and raptors 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. Once again, BLM has failed to map active or inactive nests for peregrine falcons and raptors in the map section of Chapter 2 in the DEIS.

BLM must clearly explain and justify the methodology used to define a nest as “active” in order to use the proposed timeline in surface use restrictions and CSU stipulations for future oil and gas leases. If BLM ultimately decides that the standard by which a nest will be considered “active” is use within the last seven breeding seasons or some other period of time, the agency must explicitly state that nest sites that have been inactive within the past seven breeding seasons 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 active and inactive nests for raptors and peregrine falcons in the revised DEIS.

We also remind BLM that any NSO stipulations for raptors or peregrine falcons 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 will abrogate valid existing lease rights.

#### Mitigation Trust Account

*Appendix E.5, page 973, “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” 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 in the revised DEIS. Further, we request 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.

#### **CULTURAL RESOURCES**

Cultural resource sites vary widely in quality of preservation, size, and 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, and the mitigation measures employed to protect discrete sites must therefore vary according to their scientific or contemporary cultural significance. Prior general knowledge as to how these mitigation measures might be employed is

vital to planning purposes for other land uses. Therefore, it is crucial for BLM to establish detailed parameters for inclusion in the revised DEIS.

Traditional Cultural Properties (Leasing within TCPs) – The DEIS notes the preexistence of two Traditional Cultural Properties (TCPs): The Little Rocky Mountains TCP (30,648 acres) and the Sweet Grass Hills TCP (7,718 acres). Chapter 2, pages 30-32 discusses the variances among the alternatives for oil and natural gas leasing within these areas.

**COMMENT:** Properties identified as Traditional Use include those that are important to and still used by contemporary native populations for maintaining cultural identity, spiritual purposes, and other similar uses. For this reason, these designated TCPs have, in every alternative except the Preferred Alternative (Alternative E), No Surface Occupancy (NSO) stipulations for oil and natural gas leasing. The Preferred Alternative proposes to exclude nearly the entire Little Rocky Mountain TCP and all of the Sweet Grass Hills TCP from leasing eligibility. However, BLM failed to clarify why the Preferred Alternative drastically varied from each of the other alternatives in this regard. Chapter 2, page 26 indicates that BLM will consult with the tribes to determine if specific actions will adversely affect areas of high cultural/spiritual importance. If the preferred alternative's direction is the result of such consultation, why is it the only alternative in the DEIS to impose such a restrictive approach? If the proposed management is not the result of consultation with the tribes, it makes more sense for individualized measures to be formulated on a site-specific, case-by-case basis in consultation with the tribes to mitigate adverse any possible impacts to areas of significant cultural importance.

Chapter 2, pages 199 & 200, Table 2.22 Cultural Resources (Fluid Minerals) – A cross-reference of the acreage open for fluid mineral leasing and stipulations for development regarding cultural resources is needed. At one extreme, Alternative B proposes to close 3,173,637 acres, or roughly three-fourths of the entire planning area to fluid mineral leasing. The Preferred Alternative purports to significantly reduce the amount of acreage off limits to leasing, with 152,702 acres falling under the prohibition, yet it places an NSO stipulation on 1,711,378 acres (2,674 mi.<sup>2</sup>).

**COMMENT:** Avoiding surface disturbance may certainly be warranted in some cases, but the Preferred Alternative's default preference for an NSO stipulation on so many acres fails to account for the variability among sites and provides little opportunity for flexible management solutions. While the acreage in question would be open for leasing in theory, in practicality such widespread NSO requirements place large swaths of resource technologically out of reach. Furthermore, cultural resources enjoy statutory protection by many federal and state laws. Section 106 of the National Historic Preservation Act already outlines an effective process whereby cultural resource sites may be identified, assessed, and strategies effected to mitigate impacts from other uses. Further still, as pointed out previously in these comments, BLM is statutorily required to utilize the least restrictive stipulations. Given this mandate and the processes already in place to protect cultural resources, we find no justification for BLM to resort to the most restrictive stipulation available for such a large proportion of the acreage in the planning area and ask for clarification in the revised DEIS.

Chapter 4, pages 489 – 502 (Retroactive Stipulations of Fluid Minerals) – The DEIS lists various surface use stipulations under Alternatives B through E to be applied for the protection of cultural resources. The document indicates the amount of acreage currently under lease that would be affected by any newly adopted stipulations.

**COMMENT:** Subject to the requirements of existing federal and state law protecting various cultural and historic resources, the FLPMA, the MLA, and BLM Planning Handbook 1600 all prohibit BLM from imposing new restrictions on existing lease holdings. Leases issued under one management regime may not be altered by the introduction of new management regimes or amendments to existing management plans. Nor can BLM impose mitigation measures that exceed the requirements outlined in existing leases. The integrity of valid existing rights for mineral leases must be maintained as any other private property right must be.

Appendix E, Page 897 (Cultural Resource Inventories) - The DEIS states that prior to any surface disturbing activities an inventory may be required to determine the presence of cultural resources and to identify any necessary mitigation measures to protect the resources.

**COMMENT:** We recognize that proper surveys are necessary to ensure compliance with the various federal statutes addressing cultural resource protection. We encourage BLM to provide assurances in the revised DEIS that these surveys will be considered expeditiously so as not to unnecessarily delay the ability of mineral lease holders to develop oil and natural gas resources.

## **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 present and make common sense discretionary management decisions accordingly.

Chapter 4, pages 489 – 502 (Retroactive Stipulations on Fluid Minerals) – The DEIS lists various surface use stipulations under Alternatives B through E, including NSOs and CSUs, to be applied for the protection of paleontological resources. The document indicates the amount of acreage currently under lease that would be affected by any newly adopted stipulations.

**COMMENT:** FLPMA, MLA and BLM's Planning Handbook 1600 all prohibit BLM from imposing new restriction on existing lease holdings. Leases issued under one management regime may not be altered by the introduction of new management regimes or amendments to existing management plans. Nor can BLM impose mitigation measures that exceed the requirements outlined in existing leases. The integrity of valid existing rights for mineral leases must be maintained even as any other private property right must be.

Appendix E, Page 899 (Inadvertent Discovery) – *“Upon the discovery of significant fossil resources during the course of operations, all activity shall cease until an assessment of the fossil resource can be made and stabilization or recovery of the resource can be accomplished.”*

**COMMENT:** If, during the course of operations, a significant fossil discovery is made, we encourage BLM to provide assurances that any requisite mitigation measures be completed expeditiously so as not to unnecessarily delay the ability of mineral lease holders to develop oil and natural gas resources.

Appendix E, page 918 (Paleontological Resource Inventory) – The DEIS states that prior to any surface disturbing activities in areas classified as Class IV and V of the Potential Fossil Yield inventory system, an inventory for paleontological resources will be required.

**COMMENT:** We recognize that proper surveys are necessary to ensure protection of scientifically valuable paleontological resources. We encourage BLM to provide assurances that these surveys will be considered expeditiously so as not to unnecessarily delay the ability of mineral lease holders to develop oil and natural gas resources.

## **VISUAL RESOURCES**

Chapter 2, Table 2.19, page 141 (Visual Resource Management Classification) – The DEIS indicates similar acreages for Alternatives B, C, D, and E (preferred) for Visual Resource Management (VRM) classes I and III, with B, C, and E being similar in total acreage for Class II, and Alternative D with a larger total of Class IV. Chapter 4, page 644 indicates that BLM would rely on the high amount of acreage under NSO stipulation in the Preferred Alternative to meet the requirements of Class I and II VRM.

**COMMENT:** We urge BLM to consider the temporary nature of much of the infrastructure and surface disturbance associated with oil and natural gas development when assessing impacts to visual resources. Over the life of a well, which may be several decades, surface impacts on the front end, including the drill rig, the initial well pad, and mobile equipment are removed after several weeks and are reclaimed to reduce the overall footprint. In the case of a gas well, relatively inconspicuous well heads and smaller roads for maintenance access may remain before final reclamation occurs. For oil wells, resource recovery enhancers like pump jacks may be in place, but are also not permanent structures. Best Management Practices (BMPs) may be employed to site and camouflage equipment and access infrastructure to minimize the impact to visual resources. Appendix E, page 902 states, *“When it can be used, site selection can be critical (as is color choice) in reducing the contrast of a pumpjack unit.”* We support the use of discretionary decision-making to account for the unique circumstances of each discrete site. Reliance on vast swaths of NSO stipulations to protect resources, including visual resources (as BLM indicates is its management strategy for the Preferred Alternative) eliminates the ability of BLM field staff to work with industry to craft solutions unique to each locale to facilitate access to natural resources and simultaneously protect other valuable resources in the process, and we oppose BLM’s proposal to utilize such widespread use of NSO stipulations and recommend changes be made in the revised DEIS.

## **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. 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 USFWS' "warranted-but precluded" determination was based upon the conservation measures already contained in BLM Manual 6840 - Special Status Species Management. Moreover, the USFWS 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 164 (Alternative E) – *“Even after avoiding and minimizing impacts, projects that will cause adverse impacts to resources typically require some form of compensatory mitigation. Compensatory mitigation refers to restoration, establishment, enhancement, or in certain circumstances preservation of resources for the purposes of offsetting unavoidable impacts. The BLM will determine the appropriate form and amount of compensatory mitigation required.”*

**COMMENT:** As pointed out previously in this letter, we strongly oppose the use of compensatory mitigation for a variety of reasons and recommend that BLM abandon this proposal. A key concern is that the parameters of the program are exceptionally vague. For example, on a project-by-project basis, how will BLM determine the appropriate form and amount of compensatory mitigation required for sage-grouse and their habitat? For each project, baseline conditions will need to be compared with post-project conditions to determine impacts to sage-grouse. Presumably, some form of monitoring would be needed to determine effects. Would monitoring be based on lek counts? If so, what mitigation measures have been shown to influence population levels based on lek counts (assuming leks reflect population levels)? If habitat losses are to be compensated, how will habitat functionality be assessed to determine losses or degradation from a project and adequate compensation for losses or degradation?

Establishment (creation) is listed as an option for compensatory mitigation. It may not be practicable to create sagebrush habitats where they do not currently exist. How would the functionality of such created habitats be evaluated for sage-grouse use and habitat value?

These measures appear to be based on the model established by the U.S. Army Corps of Engineers and EPA for wetland mitigation. To support wetland mitigation, numerous specific regulatory documents, scientific papers, and lawsuits have resulted in a complex and arcane functional assessment and mitigation methodology. The same complexity and need for specific policies and guidance would be required to implement a compensatory mitigation policy for sage-grouse and other sensitive species. At what point in the RMP process will specific information be developed to guide assessments of habitat functionality, monitoring, and compensatory mitigation for sage-grouse and other sensitive species?

*Page 165 – “Because of some site-specific circumstances, some mitigation measures may not apply to some activities (e.g., a resource or conflict is not present on a given site) and/or may require slight variations from what is described in Appendix M. Proposed variations will be addressed as site-specific mitigation applied in the permitting process. All variations in mitigation and conservation actions will require appropriate analysis and disclosure as part of activity authorization. It is anticipated that variations in the mitigation measures and conservation actions will be approved in very limited circumstances and only in coordination with state wildlife agencies. Mitigation measures selected for implementation will be identified in the Record of Decision (ROD) or Decision Record (DR).”*

**COMMENT:** This statement is confusing. Does it mean that some mitigation measures as described in Appendix M would not be implemented if a resource or conflict is not present on a given site? The paragraph goes on to state that mitigation measures selected for implementation will be identified in a Record of Decision or Decision Record. If a resource or resource use conflict is not present on a given site, why would mitigation be required and addressed in a ROD or DR? Also, this approach fails to take into account the site-specific conditions of an area and would impose blanket requirements without proper justification.

Appendix M appears to provide “guidelines”; however, references in the text of the DEIS imply that the mitigation measures in Appendix M are requirements. This highly is problematic as there are conflicting statements regarding disturbance buffers around grouse leks (see later comments).

### Chapter 3 - Affected Environment

**COMMENT:** 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 HiLine planning area. BLM needs to clearly specify the current situation in the HiLine planning area consistent with the direction provided on Page 241. Individual comments along this same vein are made below reflecting this concern as it applies to specific topics. Although analysis of MZ1 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 implementation of the RMP must address only those conditions and potential direct and indirect impacts specific to the HiLine planning area.

Page 397 – *“In 2000, the Montana Sage-Grouse Working Group was formed to develop a statewide, multi-agency strategy for the conservation of the greater sage-grouse. This group prepared the Management Plan and Conservation Strategies for Sage-Grouse in Montana – Final (MSGWG2005) to provide for coordinated management and direction across the state. In 2004, local greater sage-grouse working groups were formed to develop and implement local conservation plans. The only working group in the planning area is located in Glasgow and the BLM participates with this group. The area covered by this group includes much of the BLM land in Phillips and Valley Counties.”*

**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 DEIS.

Building off the general comment above, the discussion of sage-grouse under subheading “Greater Sage-Grouse Management Zone 1” does not explain the management relationship between the HiLine planning area and Greater Sage-Grouse MZ1. It is not clear how descriptions of current conditions in MZ1 relate to conditions in the (smaller) HiLine planning area and how the conditions in the HiLine planning area will be affected by the proposed actions. For example, Cropland currently cover (sic) 19% of the MZ and 91% of the MZ is within 6.9 km of cropland (Knick et al 2011).

What are comparable percentages for the HiLine planning area and what is the significance of these values for assessing impacts of the proposed planning action? Several specific examples of this concern/question are discussed in more detail below.

Page 398 – *“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 HiLine planning area does this statement apply? What are the sources of direct mortality in the HiLine 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 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 DEIS, the influence of these factors on sage-grouse in the HiLine planning area, specifically, is unclear. What is the status of sage-grouse populations specific to the HiLine planning area? The DEIS seems to equate Sage-Grouse MZ1 with the planning area, but does not present any rationale for how the planning area is similar or dissimilar. Much of the discussion hinges on information gathered on a much broader scale, which may or may not have direct applicability to the HiLine planning area. Please clarify the above, and provide a more robust discussion of the HiLine planning area specifically.

Page 398 – *“The most pervasive and extensive change to sage-brush ecosystems in MZ1 is 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. Moreover, Samson et al (2004) also does not differentiate between prairie grasslands and sagebrush steppe.

It is necessary for the final RMP/EIS to explicitly quantify the amount of sagebrush habitat that has been converted to agricultural uses within the HiLine planning area specifically. The DEIS seems to equate Sage-Grouse MZ1 with the HiLine planning area, but fails to provide a rationale detailing how MZ1 is similar or dissimilar to the planning area. Please clarify.

Page 399 – *“Individual species have different thresholds of fragmentation tolerance; greater sage-grouse have large spatial requirements and eventually disappear from landscapes that no longer contain enough patches of habitat while smaller birds like the Sprague’s pipit can persist in landscapes with smaller patches of habitat because their spatial requirements are smaller.”*

**COMMENT:** What are the thresholds for patch size for persistence of sage-grouse? This information has implications for management. Various studies have shown patch-size requirements for other

grassland birds. Have studies been done on patch-size thresholds for sage-grouse? What is the source of information that indicates that sage-grouse have habitat patch-size thresholds?

Page 400 – *“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:** Page 400 addresses grazing in MZ1 but there is no discussion of grazing or the associated range condition within sage-grouse habitats in the HiLine planning area. Water developments and associated West Nile virus are addressed for MZ1 but again, BLM has not provided any information on how or whether West Nile virus has affected sage-grouse in the HiLine planning area, specifically. BLM needs to add this information in the revised DEIS.

Page 400 *“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, especially in the southeast part of MZ1, is addressed. However, energy development in the HiLine planning area is not addressed in similar or sufficient detail. What percentage of HiLine planning area is within 3km of oil and gas wells and how would that affect proposed sage-grouse management in this specific planning area?

Page 400 – *“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:** This is a very broad statement. Upon what data is this assumption made? What is the source of information that there are little or no mitigation efforts on private land? Does this statement apply to MZ1 or the HiLine planning area? How does current oil and gas development in the planning area compare on private versus public land?

This statement fails to recognize the initiatives and advances in technology that have been developed in response to elevated concerns over the conservation status of sage-grouse. 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.

Has BLM taken these measures into account in its analysis? If not, they need to be fully considered in the revised DEIS.

**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 USFWS, 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.
- The Western Association of Fish and Wildlife Agencies 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 acknowledge and directly consider 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.”*

#### **Chapter 4 - Environmental Consequences**

The sheer length and disjointed organization of Chapter 4 (e.g., weaving between alternatives, impacts common to all alternatives, topic areas, cumulative effects, etc.) makes it incredibly difficult and virtually impossible to discern the crux of the matter related to sage-grouse populations in the HiLine planning area. Frankly, this general comment regarding document organization pertains to all topic areas. Specific to the Environmental Consequences of the listed alternatives (A through E) on sage-grouse populations, BLM fails to describe the potential impacts to sage grouse populations within the HiLine 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). We request that a relative comparison of alternatives be included in the revised DEIS. It is essential for the public to understand how these potential impacts compare among alternatives.

What is the current status of sage-grouse populations in the HiLine FO? Are they increasing, decreasing or remaining stable? This must be the crux of the analysis. Without a clear description of the existing sage-grouse resource, 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? All these issues must be addressed in a revised DEIS.

Under *Assumptions and Guidelines*, BLM provides no discussion of the assumed relationship of sage-grouse and sage-grouse habitat in MZ1 compared to the HiLine 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, which is not a projected occurrence in the HiLine FO.

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.

#### **Impacts under Alternative E (Preferred Alternative)**

Page 501 – *“Greater sage-grouse: Lands within one mile of greater sage-grouse leks would be stipulated as NSO. This would affect 107,494 acres, of which 58,085 acres (54%) are already leased. Greater sage-grouse nesting habitat would be stipulated with a CSU stipulation. This would affect 1,212,152 acres, of which 221,385 acres (18%) are already leased. Areas that fall within the boundaries of the Greater Sage-Grouse Protection Priority Area would be subject to that stipulation.”*

**COMMENT:** Please clarify and/or provide the total BLM acres of “Federal Mineral Estate” and “Surface” that would be included within the “General Habitat acres” category for the HiLine planning area in the revised DEIS. It is unclear based on the information presented here as well as on Page 167 of the Draft RMP/EIS what the total number of acres that fall either under this broad category would be and whether the total would be derived from adding in those acres subject to NSO with those subject to CSU stipulations in nesting/brood rearing acres, or whether there is another way to calculate this total.

Page 501 - *“Crucial winter range: Lands that have been identified as crucial winter range for big game and/or greater sage-grouse would be stipulated as CSU. This would affect 44,720 acres, of which 7,154 acres (16%) are already leased.”*

**COMMENT:** It is impossible to discern from the DEIS which lands are involved. Please depict on a map in a revised DEIS where this crucial winter range is located and how/if this area intersects with the main Priority Protection Areas, General Sage Grouse areas, and/or Restoration Areas.

Page 607 – *“The 42,020 acre Frenchman ACEC would be designated. Management actions would be implemented to protect erodible soils and areas (rock outcrop) and important wildlife habitats such as crucial mule deer winter range, greater sage-grouse leks and adjacent nesting habitat, and habitat for designated BLM sensitive species. Establishing the ACEC would restrict surface-disturbing activities such as mineral development and rights-of-way. The ACEC would be an exclusion area for wind energy rights-of-way. An NSO stipulation for oil and gas leasing would avoid direct long-term impacts to scenic values, wildlife, and the unique landscape. The entire area is within a very low development potential for oil and gas exploration and development and is currently unleased.”*

**COMMENT:** Why isn't the Frenchman ACEC reflected in the summary of Alternative E potential impacts relative to sage grouse listed on Page 501, which lists acreages of NSO and CSUs for various categories of sage grouse habitat?

Page 682 – *“Many of the current oil and gas stipulations in place to protect wildlife resources are effective at mitigating effects at local scales, but often do not mitigate impacts at larger scales (Naugle, et al. 2009).”*

**COMMENT:** What specific oil and gas stipulations are referenced as effective at protecting wildlife resources at local scales but often do not “mitigate impacts” at larger scales”? What does this mean or how does this apply to the specific NSO/CSU restrictions proposed in this DEIS under Alternative E (See page 728)? The effectiveness of mitigation is a topic that has not been addressed in this DEIS. Mitigation of potential impacts from oil and gas development has been ongoing with increased intensity in recent years, especially in Wyoming. It would be prudent for BLM to review types of mitigation that have been effective in avoiding and reducing impacts to sage-grouse and other wildlife species affected by oil and gas development and include them in the revised DEIS.

Page 683 – *“Recent investigations conducted on the effects of oil and gas activities on greater sage-grouse found impacts to breeding populations when well densities exceed one well pad/2.6 km<sup>2</sup> (one well pad/mi<sup>2</sup>) within 3 km (1.9 miles) of a lek (Holloran 2005) and impacts at well densities of 8/mi<sup>2</sup> exceeded the species threshold of tolerance (Holloran 2005, Walker, et al. 2007, Doherty, et al. 2006). Harju, et al. (2009) found that long-term effects varied by development area but generally occurred at densities greater than two well pads/mi<sup>2</sup> within 5.3 miles of a lek. Some areas had impacts when well densities were less than one well pad/mi<sup>2</sup> and common well pad densities of 4 and 8 well pads/mi<sup>2</sup> were associated with lek declines ranging from 13-74% and 77-79% respectively (Harju, et al. 2009). Holloran (2005) and Walker, et al. (2007) found effects were often not noted until 3-4 years after development and Harju, et al. (2009) found effects in some areas were only apparent 9-10 years after development, suggesting that the full impact of development may not*

*have yet occurred from recent oil and gas activities. In addition, Tack (2009) found the probability of large leks (>25 males) decreased with the number of wells within 12.3 km (7.6 miles) of a lek and no large leks were expected when well pads exceeded 2 wells/mi<sup>2</sup>. Yearling females avoided infrastructure when selecting nesting sites (Holloran, et al. 2010) and older females that nested near infrastructure had lower survival (Holloran 2005). This suggests that impacts to greater sage-grouse populations are determined by the level of disturbances in nesting habitat regardless of the distance of disturbances to leks, and impacts can be assessed by well density in sagebrush habitats even though those impacts are measured by the number of males at nearby leks and are often described in relation to distance to leks. The threshold level for disturbances in silver sage habitats may be lower because of the limited habitat available in this system (Tack 2009)."*

**COMMENT:** Numerous articles are referenced in this paragraph with a wide variety of results/findings. How do these myriad of findings relate to the RMP/EIS's singular conclusion that *"This suggests that impacts to greater sage-grouse populations are determined by the level of disturbances in nesting habitat regardless of the distance of disturbances to leks, and impacts can be assessed by well density in sagebrush habitats even though those impacts are measured by the number of males at nearby leks and are often described in relation to distance to leks"*? We ask BLM to specifically clarify how this "suggestion" could be made from the variety of citations discussed above and how the conclusion reached in the DEIS relates to the proposed NSO/CSU stipulations in the document.

Page 689 – *"Greater Sage-Grouse: Impacts from surface-disturbing activities, disruptive activities, and management actions are anticipated for greater sage-grouse across all alternatives. Estimated short-term and long-term surface disturbance from BLM actions in the planning area are anticipated to result in loss, degradation, and fragmentation of sagebrush habitat. Oil and gas development is the major source of surface disturbance identified in the planning area under all alternatives, and oil and gas development has been identified as a cause of declining greater sage-grouse populations (Doherty, et al. 2006, Walker, et al. 2007, Naugle, et al. 2009, Harju, et al. 2009). Surface disturbance is anticipated to have adverse impacts to sagebrush habitats including temporary and permanent loss of habitats across all alternatives. Fragmentation and degradation of habitat for greater sage-grouse also is anticipated from surface-disturbing activities and associated development."*

**COMMENT:** While the document discusses that potential impacts from various alternatives would impact the greater sage-grouse across all alternatives, there is no clearly articulated discussion of how existing population levels of sage-grouse would be affected by each alternative. The above statement seems to indicate, that even with the preferred alternative, there would be a decline in sage-grouse populations. If this were the case, the preferred alternative (and others) would increase the potential for listing of sage-grouse under the ESA, which the revised DEIS should clearly state.

Page 726 – *"Fluid Minerals: The number of new wells on BLM minerals anticipated under Alternative E is 1,756 wells. Most of these wells (931) would be located in the moderate development potential area. This would result in 9,068 acres of short-term habitat disturbance and 2,337 acres of long-term*

*disturbance. Most of this disturbance would occur in grassland/sagebrush/shrubland habitats (approximately 92%, based on percentage of habitat types in the planning area)."*

**COMMENT:** How much of sage-grouse habitat would be affected? The 92% is comprised of "grassland/sagebrush/shrubland habitats." A substantial part of this DEIS addresses oil and gas development and sage-grouse; therefore, it would be appropriate to identify how much sage-grouse habitat would be affected by anticipated oil and gas wells.

### **Impacts under Alternative E (Preferred Alternative) - Cumulative Impacts**

Page 733 – The impact discussions contained in both Chapter 3 and the Chapter 4, particularly when addressing predicted impacts to sage-grouse, rely heavily upon research conducted in MZ1, which we have already pointed out is an area that encompasses sage-grouse habitats in large areas of Montana, Wyoming, and the Dakotas; however, the cumulative effects of land management in the HiLine planning area on sage-grouse, over this broad area, are not addressed under Cumulative Impacts.

MZ1 is extensively referred to in Chapter 3; however, the relationship of sage-grouse and their habitat in MZ1 to the planning area is not addressed. From the text in this 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 on Page 733. Why does Chapter 3 have a section dedicated to MZ1 but impacts of the proposed HiLine 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 the HiLine planning area. At a minimum, the HiLine EIS must address the cumulative effects of the proposed planning activities in the nearby MCFO planning area as they relate to the HiLine planning area.

The cumulative effects discussion does not specifically address the effects of livestock grazing on private and public land on sage-grouse and other wildlife. Comparatively, the draft MCFO RMP/EIS (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)."*

Grazing undoubtedly has the potential to effect on sage-grouse habitat; however, it is unclear how sage-grouse habitat and displacement of sage-grouse have been affected by grazing practices in the HiLine planning area as well as the broader region (e.g., MZ1 or adjoining MCFO planning area). Potential cumulative impacts should evaluate the effects of livestock grazing on public and private land on sage-grouse.

## **Appendix E.5 – Requirements and/or Guidelines for Wildlife Controlled Use Stipulations**

Page 903 – *“Prior to surface-disturbing or disruptive activities a plan to maintain bighorn sheep habitat will be prepared by the proponent and implemented upon approval by the authorized officer. This plan shall address how short-term and long-term direct and indirect effects to bighorn sheep range will be mitigated based on current science and research.”*

**COMMENT:** This appendix indicates that plans will be required to develop CSU stipulations for bighorn sheep range, crucial winter range, greater sage-grouse habitat and protection priority areas, and grassland bird priority areas. The plans will address a range of mitigation and monitoring requirements; however, there is no discussion of how appropriate levels of mitigation and monitoring will be determined. For example, the plan shall consider the use of off-site mitigation (e.g., creation of sagebrush habitat or conservation easements) with proponent dollars to offset habitat losses. No discussion of how appropriate levels of off-site mitigation will be determined is provided. Creation of sagebrush habitat may not be practicable. Similarly, how will the adequacy of a monitoring plan be determined? Have previous successful mitigation and monitoring been conducted relative to sage-grouse and their habitat? From the discussion in the DEIS, it appears that identifying effective mitigations is a new endeavor, with few or no precedents. Implementing what has been successful in Wyoming and other parts of MZ1 would be appropriate.

Page 936 - The appendix also states that: *“If approved by BLM, the proponent may contribute funding to maintain habitat function based on estimated cost of habitat treatments or other mitigation needed to maintain the functions of impacted habitat.”* How will pre-project habitat (i.e., baseline) functions be assessed and how will residual impacts to habitat function, following implementation of a project, be assessed and how does that translate into adequate mitigation? It appears that many of the stipulations for CSU will be assessed using subjective criteria that BLM has failed to identify in the DEIS.

## **Appendix E.5 Requirements and/or Guidelines for Wildlife Controlled Use Stipulations**

Page 973 – *“Plans that are required by controlled surface (CSU) stipulations for bighorn sheep range, crucial winter range, greater sage-grouse habitat and protection priority areas, and grassland bird priority areas will be subject to the following requirements and/or guidelines. These requirements and/or guidelines may be modified based on the best available science and research, and best management practices.”*

**COMMENT:** While the appendix lists what a plan to maintain functionality of sage-grouse habitat must address, it does not distinguish which of the elements are “requirements” and which are “guidelines”.

Page 905 (Greater Sage-Grouse Priority Areas) – *“Within the protection priority area surface-disturbing and disrupting activities will be avoided if possible within 6/10 mile from any existing surface-disturbing or disruptive activity.”*

**COMMENT:** In other parts of the DEIS, NSO is stipulated for sage-grouse protection priority areas. How does the 6/10 mile “avoidance if possible” relate to NSO?

### **Appendix M - Mitigation Measures and Conservation Actions for Greater Sage-Grouse Habitat**

Page 1126 (Fluid Minerals) – *“To limit impacts to breeding and nesting habitat, surface-disturbing activities shall be prohibited or restricted within 4 miles of a lek to the extent possible and consistent with valid existing rights.”*

**COMMENT:** The guidelines in Appendix M restrict or avoid disturbance at varying distances from sage-grouse leks. For example, page 1135 under the heading Greater Sage-Grouse Leks, states the following: *“Surface-disturbing activities would be avoided if possible within 1 mile of greater sage-grouse leks.”* These guidelines present a conflict on avoidance of disturbance in relation to leks, which must be clarified.

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

| 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  |
|                                 |                              |  |  | • 298,772 acres   |   |
| <b>Billings/Pompey's Pillar</b> | 336,479 Acres <sup>(4)</sup> | <ul style="list-style-type: none"> <li>• 19 active leks on BLM Surface (8 inactive)</li> <li>• 30 lek sites are on FME.</li> </ul> | BLM-FME: <ul style="list-style-type: none"> <li>• 116,452 acres</li> </ul> BLM Surface: <ul style="list-style-type: none"> <li>• 78,575 acres</li> </ul> | BLM-FME: <ul style="list-style-type: none"> <li>• 191,543 acres</li> </ul> BLM Surface: <ul style="list-style-type: none"> <li>• 154,140 acres</li> </ul> | BLM-FME: <ul style="list-style-type: none"> <li>• 63,437 acres</li> </ul> BLM Surface: <ul style="list-style-type: none"> <li>• 45,555 acres</li> </ul> |

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

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

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

<sup>(4)</sup> 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 |
| <b>Miles City</b><br><sup>(1)</sup> | Surface-disturbing activities would be avoided within 2 miles of leks<br><br>CSU stipulations within 2 miles of leks<br><br>Low-voltage power lines buried within 2 miles of leks | Surface-disturbing activities would be avoided within 4 miles of leks.<br>Timing restrictions (BMP Appendix) | NSO                                       | CSU stipulations  |
| <b>HiLine</b> <sup>(2)</sup>        | NSO within 1 mile of leks   | CSU stipulations   | NSO                                       | ---               |

| Planning Area            | BLM Sage-Grouse Habitat Categories  |   |   |   |
|--------------------------|---|---|---|---|
|                          | General Habitat Acres   | Nesting/Brood Rearing   | Protection-Priority and Source Population | Restoration Areas   |
| 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> |

<sup>(1)</sup> 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)

<sup>(2)</sup> 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 HiLine 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 adequate, if any, maps of sage-grouse or other wildlife habitat areas in the DEIS. Additionally, 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,



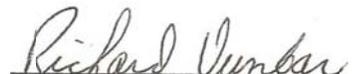
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