

**Powder River Basin Resource Council  
The Wilderness Society  
National Wildlife Federation  
Wyoming Outdoor Council  
Wyoming Wildlife Federation  
Biodiversity Conservation Alliance  
Wyoming Wilderness Association  
Natural Resources Defense Council  
Sierra Club Wyoming Chapter**

October 23, 2009

Duane Spencer and Paul Beels  
BLM Buffalo Field Office  
1425 Fort Street  
Buffalo, WY 82834

Stephanie Connolly  
BLM Wyoming High Plains District Office  
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Casper, Wyoming 82604

**RE: Fortification RMP Amendment Proposed Fortification Elk and Habitat Alternative**

Dear Mr. Spencer,

You have told us that BLM will be releasing a new Draft Resource Management Plan (RMP) Amendment which will analyze new alternatives including an alternative proposed by the coalbed methane (CBM) industry. Given your accommodation of industry's concerns with phased development through information exchange and negotiations occurring outside a formalized public comment period, we respectfully request that you analyze this Fortification Elk and Habitat Alternative in your ongoing analysis as well.

Firstly, we would like to remind you of your duties as a federal agency under the National Environmental Policy Act (NEPA) to analyze a reasonable range of alternatives and to analyze cumulative impacts for the entire Fortification Creek Area in this RMP Amendment. Secondly, we ask that the BLM conduct a NEPA review of the leases for consideration of CBM development consistent with *Pennaco Energy, Inc. v. U.S. Dept. of the Interior*. Next, we would like to see an expanded Wilderness Study Area (WSA) boundary and/or proper management of lands with wilderness characteristics based on the previously proposed Area of Critical Environmental Concern (ACEC) boundary as well as a newly designated ACEC boundary which incorporates the crucial winter and parturition ranges. Finally, we would like to see a phased development approach with reclamation standards based on re-vegetation success and re-colonization of elk before moving to the next development phase. We would like BLM to establish the elk yearlong range as the Fortification area planning boundary and consider the current development in the southern yearlong range the first phase of this development.

We genuinely appreciate the opportunity to submit this Proposed Fortification Elk and Habitat Alternative and would ask that you adopt it in its entirety for analysis in the ongoing RMP Amendment and select it as your preferred alternative. If this is not entirely feasible, please incorporate as many management elements into your preferred alternative as possible to protect all of the values within the Fortification Creek Area.

Sincerely,



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*And on the behalf of:*

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Proposed Fortification Elk and Habitat Alternative

	Component
Power lines	Continue mandate on buried power, supported by the FWS in its June 23, 2006 Scoping Letter and recommendations of the Wyoming Game & Fish Department for protection of sage-grouse and elk populations. <sup>1</sup>
Phasing and Reclamation	Employ phased development by area with a time buffer to be determined by measured reclamation success, forage species recovery and wildlife re-colonization before the next phase of development can proceed. Prescriptive timing is not adequate for an acceptable phased development proposal.  The current permitted development of the southern elk yearlong range shall be considered the first phase of the phased development strategy.
Elk Yearlong boundary to define the FCPA	Use the elk yearlong range boundary as the management planning boundary for the RMP amendment analysis as supported by Game and Fish Scoping Letter November 30, 2007. <sup>2</sup>
ACEC and WSA Designation	Expand the WSA to the formerly proposed ACEC proposed boundary and/or manage these lands to protect and enhance their wilderness characteristics.  Establish an ACEC that includes the crucial winter and parturition ranges and security habitat within the Fortification Creek habitat area.
Well visitation	Require well monitoring by real-time telemetry to minimize visitation and vehicular travel to the area. Wells should not be visited more than once per month unless emergency necessitates more frequent access. Activity restrictions will apply from Nov. 15-Apr 30 in elk crucial winter habitat and May 1 – June 30 in calving areas. All visits to the field should be outside dawn and dusk hours to minimize impacts to wildlife.
Adaptive Management	Continue coordination with UW and Game and Fish to study and monitor elk herd reactions to development. Establish thresholds to trigger adaptive management based on impacts to current elk herd populations of 230 animals and changes to 2007 habitat data for the entire elk yearlong range
Water Management	Locate water management facilities outside yearlong range
Water for wildlife	Should CBM development result in water source loss, industry shall provide permanent year-round frost-free water sources until bond release with water conditions a component of bond release.
Produced Water	Prohibit direct, untreated discharge to drainages or rivers. Prohibit on-channel impoundments. Pipe water out of the area for treatment and potential reinjection or other beneficial use; Treated water may be used for landowner purposes, dust mitigation, reclamation, drilling, or sale to water dependent industry

<sup>1</sup> Fish and Wildlife Service Scoping Letter from Brian T. Kelly to Paul Beels June 23, 2006. Attached for reference.

<sup>2</sup> Wyoming Game and Fish Letter to Thomas Bills WER 10635.00 Signed by Vern Stetler for John Emmerich. November 30, 2007. Attached for reference.

Compressors	Locate secondary compressors outside yearlong range.
Surface	Prohibit disturbance on slopes greater than 25%, in areas with highly erosive soils, or near ephemeral drainages where erosion is a concern. No exceptions.
Consolidation of infrastructure	Encourage infrastructure consolidation and sharing among companies to reduce surface impacts including concentrating roads, power lines and pipelines in existing road ways or development corridors.
Well Spacing	Expand and manage well spacing to best protect the area. Determine density on a site specific basis with wells clustered in areas of lower surface/wildlife impact, easier access and development feasibility.
Inspection and monitoring	Delegate and charge Specific BLM personnel with duties to monitor compliance within Fortification Creek, track reclamation, and communicate with developers, landowners, hunters, and grazing permit holders to ensure the best reclamation and land use outcome possible.
Noise	Prohibit diesel generators.
Lease Review	Conduct a NEPA review of the leases that will be used for CBM development consistent with <i>Pennaco Energy Inc. vs U.S. Dept. of the Interior</i>
Fortification Best Management Practices	Review and incorporate BMP's from <i>Management practices to reduce impacts associated with oil and gas development in the Fortification creek special management area</i> into the RMP Amendment

## **Purpose and Need**

According to the Fortification Creek Planning Area Draft RMPA/EA released in August 2008:

**[t]he purpose of the Resource Management Plan Amendment (RMPA)/Environmental Assessment(EA) is to provide guidance in the management of the approximately 100,655 acres of the Fortification Creek Planning Area (FCPA) in regard to special resource values in light of future coal bed natural gas (CBNG) development... Of particular importance is consideration of a proposed Area of Critical Environmental Concern...Other Critical issues that this RMPA will address are wildlife, cultural, paleontological, and visual resources and how to best manage CBNG development in a region with erosive soils and steep slopes...Under the Federal Land Policy and Management Act (FLPMA) and National Environmental Policy Act (NEPA), BLM is required to consider impacts to non-BLM lands and resources that would occur as a result of its actions.**

Draft Fortification Creek Area RMPA at 1-1<sup>3</sup>.

This Fortification Elk and Habitat Alternative proposal falls within the scope of the purpose and need for considering mineral development for the area while protecting other resources as outlined by the BLM. This is a reasonable proposal because it does not deprive companies of the right to develop CBM within the Fortification Creek Area while lending consideration to all the area resources. This proposal also helps meet non-mineral goals BLM holds for the area and limits preclusion of other uses and values for the area in the future by managing for multiple uses.

### **The RMP Amendment must consider a reasonable range of alternatives, including this Habitat Alternative**

NEPA requires the BLM to evaluate a reasonable range of alternatives, which includes alternatives that would minimize environmental effects. 42 U.S.C. § 4332(2)(E) (1982); *Bob Marshall Alliance v. Hodel*, 852 F.2d 1223, 1228 (9<sup>th</sup> Cir. 1988). This requirement applies equally to EAs and EISs.<sup>4</sup> *Id.* at 1228-29; *see also Davis v. Mineta*, 302 F.3d 1104, 1120 (10<sup>th</sup> Cir. 2002). Thus, consideration of alternatives is necessary in an EA to further “[t]he goal of the statute ... to ensure ‘that federal agencies infuse in project planning a thorough consideration of environmental values.’” *Bob Marshall Alliance*, 852 F.2d at 1228 (citations omitted). “The consideration of alternatives requirement furthers that goal by guaranteeing that agency decisionmakers ‘[have] before [them] and take [ ] into proper account all possible approaches to a particular project (*including total abandonment of the project*) which would alter the environmental impact and the cost-benefit balance.’” *Id.* (quoting *Calvert Cliffs' Coordinating Committee, Inc. v. United States Atomic Energy Commission*, 449 F.2d 1109, 1114 (D.C. Cir. 1971)) (emphasis in original).

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<sup>3</sup> Fortification Creek Area Draft Resource Management Plan Amendment/Environmental Analysis. BLM, July 2008.

<sup>4</sup> We reiterate our position that preparation of an EIS is required to analyze the environmental impacts of this RMP Amendment, due to the likelihood of significant impacts on the environment and the need to conduct an analysis of coalbed methane development that was not contemplated in the Buffalo RMP.

In the context of this RMP Amendment, an alternative that considers the many values of these lands is more than reasonable – it is necessary for the BLM to evaluate it. The lands within the Fortification Creek area include vital elk habitat, acknowledged wilderness characteristics, steep slopes with erosive soils, and cultural, historic, and or paleontological values; and the BLM has already acknowledged (in considering ACEC designation) the relevance and importance of these resources. Accordingly, BLM should seek an alternative that can protect these resources, even while accommodating coalbed methane development. A recent decision from the U.S. Court of Appeals for the Tenth Circuit is instructive on the agency’s obligations here. In *State of New Mexico v. Bureau of Land Management*, the BLM refused to consider an alternative that would have closed Otero Mesa (a substantial portion of the planning area) to oil and gas development altogether, focusing on the fact that the agency was preparing an RMP Amendment for the purpose of addressing oil and gas development. The court found that the BLM’s multiple use mandate encompassed both development and protection, and that the BLM was required to consider this “conservation” alternative even in the context of a NEPA process addressing only oil and gas development. The court concluded:

**It is past doubt that the principle of multiple use does not require BLM to prioritize development over other uses. . . Development is a possible use, which BLM must weigh against other possible uses—including conservation to protect environmental values, which are best assessed through the NEPA process.**

*State of New Mexico v. Bureau of Land Management*, 565 F.3d 683, 710 (10<sup>th</sup> Cir. 2009) (emphasis added). The Tenth Circuit further found that “a management alternative closing the Otero Mesa would have been fully consistent with the objectives of the RMPA” and that failing to consider the alternative “prevented BLM from taking a hard look at all reasonable options before it.” 565 F.3d at 711. The court, applying the “rule of reason” held that evaluation of this conservation alternative was “**compelled.**” *Id.* (emphasis added).

The Fortification Elk and Habitat Alternative is a reasonable alternative that would support the BLM’s management of the many “special resource values” of the area that the agency has acknowledged since the 1975 Management Framework Plan and before. Failing to fully evaluate this alternative, especially while considering an alternative developed by the coalbed methane industry, would risk the validity of the RMP Amendment.

### **The RMP Amendment must address Cumulative Impacts and expand the FCPA**

Given duties under NEPA to consider cumulative impacts and ensure consistency of measures necessary to mitigate those impacts, we believe it is necessary to use the established yearlong range boundary as the Fortification Creek Planning Area (FCPA) boundary for your analysis.

The BLM has never conducted a programmatic-level NEPA analysis for coalbed methane development within either the greater Fortification Creek Area (FCA) or the within the current FCPA boundary. Analysis was absent from the 2003 Powder River Basin EIS and the latest Buffalo Resource Management Plan (RMP) revision will not be completed before the Fortification Creek Area RMP Amendment is finalized. Nowhere, in any BLM considerations, have range acreages or impact projections been made for only the area within the FCPA. The

1995 Elk Study<sup>5</sup>, the 2007 Elk Report<sup>6</sup>, and the 2007 Monitoring Plan<sup>7</sup> all look at the entire Fortification Creek Area including the southern yearlong range. While we support a landscape scale management approach, and believe these documents evidence that one is required, none of these documents are a substitute for NEPA level analysis. For instance, the 2007 Elk Report is a projection based on a hypothetical development scenario. However, the information it does contain, reveals significant impacts from CBM development at an 80 acre spacing, which in itself should trigger the completion of a programmatic EIS for the entire yearlong range.

According to NEPA Regulations, 40 C.F.R. § 1502.4, “Proposals or parts of proposals which are related to each other closely enough to be, in effort, a single course of action shall be evaluated in a single impact statement.” Also 40 C.F.R. § 1508.25(a)(2) states that “To determine the scope of environmental impact statements, agencies shall consider...cumulative actions, which when viewed with other proposed actions have cumulatively significant impacts and should therefore be discussed in the same impact statement.”

Furthermore, the southern portion of the elk habitat is being developed without consideration for the future phased development of the area. In permitting the area, BLM—in direct contravention to biological reasoning—has severed the habitat and fragmented the yearlong range, which was established by Wyoming Game and Fish to protect the wildlife and habitat. Careful management of these resources has been supported by the Game and Fish and the BLM over many decades.

Among other instances, in a 2007 Scoping Comment letter for this RMP Amendment, the Wyoming Game and Fish stressed the importance of the southern portion of the Fortification Creek area for elk and other resident species:

**The importance of minimizing disturbance to parturition and crucial winter range is particularly stressed; however, we recommend use of the yearlong elk range for the fortification elk herd as the primary boundary for development planning regarding the elk.**

WGFD Scoping Comment letter at 3.<sup>8</sup>

This directly supports BLM’s obligation under NEPA section 1508.25 (a)(3) which states,

**To determine the scope of environmental impact statements, agencies shall consider...similar actions, which when viewed with other reasonably foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their environmental consequences together, such as common timing or geography. An agency may wish to analyze these actions in the same impact statement. It should do so when the best way to assess adequately the combined impacts of similar actions**

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<sup>5</sup> Fortification Elk Study, BLM, Game and Fish, Rocky Mountain Elk Foundation, 1995.

<sup>6</sup> Environmental Report: Coalbed Natural Gas Impacts on the Fortification Creek Elk Herd, BLM 2007

<sup>7</sup> Elk Monitoring Plan for the Fortification Creek Area, BLM 2007.

<sup>8</sup> Wyoming Game and Fish Letter to Thomas Bills WER 10635.00 Signed by Vern Stetler for John Emmerich. November 30, 2007. Attached for reference.

**or reasonable alternatives to such actions is to treat them in a single impact statement.**

Large tracts of habitat are becoming fewer and farther between in the Powder River Basin, making the Fortification Creek Area increasingly valuable. It only makes sense for BLM and other agencies to support minimizing habitat fragmentation and promote habitat-scale management decisions. Similarly, the purpose of this RMP Amendment must be to analyze the cumulative impacts for the entire area with regard to habitat functioning and wildlife, which will be significant if CBM development proceeds in the area.

In order to achieve that objective, Powder River and seven other conservation and hunting groups have repeatedly asked the BLM through NEPA comments and letters to include the southern portion of the elk yearlong range in BLM's phased development considerations.<sup>9</sup> As discussed above, Wyoming Game & Fish has also vouched for the value of the entire yearlong range and asked for its inclusion in BLM management considerations since early in the scoping process for this RMP Amendment. Excluding the southern end of the elk herd yearlong range from impact analysis related to CBM development is arbitrary and capricious. It is also biologically untenable.

With these obligations in mind, it is incumbent upon BLM to conduct the proper NEPA analysis, and especially the cumulative impacts analysis that must be completed before CBM development can proceed in the Fortification Creek Area.

**BLM must conduct a NEPA review of the leases for consideration of CBM development consistent with *Pennaco Energy, Inc. v. U.S. Dept. of the Interior***

The oil and gas leases in the Fortification Creek Area were issued under BFO Resource Management Plans prior to environmental analysis of the impacts of CBM development in the 2003 PRB EIS. Those previous RMPs discussed environmental impacts of oil and gas leasing generally, but they did not analyze the substantially different, and more severe, impacts of CBM development or discuss measures to mitigate those impacts because CBM was not an anticipated use of the leases. Even in the case of 2003 PRB EIS, BLM did analyze the impacts of full-field CBM development on the unique resources in the Fortification Creek Area, including the elk herd. Thus, in the case of these leases, BLM has never conducted the pre-leasing NEPA analysis required prior to an irretrievable commitment of resources. This has prevented up-front analysis of lease stipulations, conditions of approval, alternatives for reasonably foreseeable development scenarios, consideration of areas that should be off-limits to leasing where BLM should buy back leases (i.e. a true "no action" alternative), and other mechanisms to mitigate significant impacts of CBM development in the Fortification Creek Area and across the larger Powder River Basin. *Pennaco Energy, Inc. v. U.S. Dept. of the Interior* affirms the need for a consideration of a range of alternatives to appropriately address the nature and magnitude of impacts that will result from CBM development given that the leases were not issued for that purpose. 377 F.3d 1147 (10th Cir. 2004).

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<sup>9</sup> Letter from conservation groups to Duane Spence regarding elk monitoring data and requesting inclusion of the souther elk yearlong range. May 19.2009; Powder River Basin Resource Council et al. Comments on Fortification Creek Area Draft RMPA. October 2008. Attached for reference.

## **The RMPA should protect and enhance the wilderness values of these lands and establish an ACEC**

According to Game and Fish, “The Fortification Creek Wilderness Study Area and federal lands surrounding the WSA contain high value wildlife habitats that are uncommon in the Powder River Basin of northeast Wyoming.” WGFD Scoping Comment Letter at 1. The Purpose and Need for the Draft RMP Amendment also describes this planning effort as evaluating “special resource values in light of future coal bed natural gas (CBNG) development” – contemplating the need to protect these values from the effects of development. Further, the Purpose and Need contemplates designation of an ACEC and characterizes as “critical issues” the “wildlife, cultural, paleontological, and visual resources” of the area. In addition to BLM’s work to characterize the wilderness characteristics of the land, the Wyoming Wilderness Association and other conservationists have re-inventoried lands in the Powder River Basin and found nearly 24,000 acres of lands suitable for wilderness designation in the Fortification Creek area. This data and information has been provided to the BLM in the February 2004 Wyoming Wilderness Association’s *Citizens Wilderness Proposal for Wyoming BLM Lands: Powder River Breaks (Fortification Creek, WY-060-204)*.

Given these well established values for lands surrounding the WSA and the explicit consideration of how to conserve these values in the RMP Amendment’s Purpose and Need, this Citizens’ Alternative incorporates proposed protective management of both the wilderness-quality lands and the elk habitat, including the crucial winter and parturition ranges and security habitat within the elk herd’s yearlong range. We propose that the BLM manage the lands with wilderness characteristics beyond the current WSA to the formerly proposed ACEC boundary. Additionally, we nominate as an ACEC the crucial winter and parturition ranges and security habitat within the Fortification Creek yearlong range. Given that these areas are designated as crucial ranges for the elk herd, it makes both logical and biological sense to include these areas in an ACEC designation to protect the habitat and wildlife present.

### **Protection of lands with wilderness characteristics**

Pursuant to FLPMA, “[t]he Secretary shall prepare and maintain on a continuing basis an inventory of all public lands and their resource and other values (including, but not limited to, outdoor recreation and scenic values), giving priority to areas of critical environmental concern. This inventory shall be kept current so as to reflect changes in conditions and to identify new and emerging resource and other values.” 43 U.S.C. § 1711(a). Wilderness character is a resource for which BLM must keep a current inventory. As the U.S. Court of Appeals for the Ninth Circuit recently held: “wilderness characteristics are among the ‘resource and other values’ of the public lands to be inventoried under § 1711. BLM’s land use plans, which provide for the management of these resources and values, are, again, to ‘rely, to the extent it is available, on the inventory of the public lands, their resources, and other values.’ 43 U.S.C. § 1712(c)(4).” *Oregon Natural Desert Ass’n v. Bureau of Land Management*, 531 F.3d 1114, 1119 (9<sup>th</sup> Cir. 2008). Therefore, BLM is required to consider “whether, and to what extent, wilderness values are now present in the planning area outside of existing WSAs and, if so, how the Plan should treat land with such values.” *Id.* at 1143.

In addition, where the agency has been presented with information regarding wilderness characteristics that was not considered during preparation of the original RMP, it must be considered prior to making management decisions. For example, the U.S. District for the District of Utah found that information regarding wilderness characteristics that was not considered in the existing land use plan was:

**a textbook example of significant new information** about the affected environment (the **wilderness attributes and characteristics...that would be impacted by oil and gas development**; information that was **not reflected in BLM's existing NEPA analyses**.

*Southern Utah Wilderness Alliance v. Norton*, 457 F. Supp. 2d 1253 (D. Utah 2006) (emphasis added). Similarly, here, the information on wilderness characteristics inventoried by Wyoming citizens was not evaluated in the Buffalo RMP and must be considered as part of the Fortification Creek RMP Amendment.

The BLM can protect these lands by designating a new WSA. While we maintain that the April 2003 settlement agreement between Secretary of the Interior Norton and the State of Utah, in which BLM abdicated its authority to designate any additional WSAs, is invalid and will ultimately be overturned in pending litigation, the agency's current policy also does not prevent consideration of this alternative. NEPA requires consideration of alternatives "that are practical or feasible" and not just "whether the proponent or applicant likes or is itself capable of carrying out a particular alternative;" in fact, "[a]n alternative that is outside the legal jurisdiction of the lead agency must still be analyzed in the EIS if it is reasonable." Council on Environmental Quality, *Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations, Questions 2A and 2B*, available at <http://ceq.hss.doe.gov/nepa/regs/40/40p3.htm>; 40 C.F.R. §§ 1502.14, 1506.2(d).

In addition, BLM can manage these lands to protect and enhance their wilderness characteristics without designating a WSA. BLM has identified "wilderness characteristics" to include naturalness and providing opportunities for solitude or primitive recreation. See Instruction Memoranda Nos. 2003-274, 2003-275, Change 1. These values are to be *identified and protected* in the land use planning process. See BLM Land Use Planning Handbook (H-1601-1, 2005); *Oregon Natural Desert Ass'n v. Bureau of Land Management*, *supra*. Further, BLM's national guidance provides for management that emphasizes "the protection of *some or all* of the wilderness characteristics as a priority" over other multiple uses. (emphasis added). This guidance therefore does not limit its application to lands suitable for designation of WSAs; for instance, the guidance does not include a requirement for the lands at issue to generally comprise 5,000-acre parcels or a requirement that the lands have *all* of the potential wilderness characteristics in order to merit protection.

The Department of Interior has confirmed that it expects to issue a new "Wilderness Characteristics Inventory Manual." The Interior Department's Review Team for Utah's December 2008 oil and gas lease sale characterized the new guidance as "soon-to-be-released" and found that the lack of national guidance on wilderness characteristics caused confusion in identifying, evaluating and deciding on management for these values. For the RMPs underlying

those leasing decisions, recommended that “BLM-Utah review the plans in light of this new guidance and make necessary modifications.”<sup>10</sup> Similar considerations are required here.

Further, the BLM’s original Wilderness Inventory Handbook acknowledges that larger potential units can have more evidence of human impacts and still justify protection of their wilderness values as a whole. In addition, the Handbook specifically provides for protection of an entire unit where the unit (or portions of it) where “human imprints are substantially noticeable” but “otherwise contains wilderness characteristics” and those imprints “will return or can be **returned to a substantially unnoticeable level either by natural processes or by hand labor.**” H-6310-1.13.D (emphasis added). While the Handbook is not currently in effect for ongoing inventory of wilderness, the agency’s interpretation of the meaning of wilderness characteristics remains relevant and instructive, and highlights the opportunities for managing the Fortification Creek lands outside the WSA and within the boundary of the original proposed ACEC to protect and enhance their wilderness values.

### **Designation of new ACEC for elk habitat**

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

BLM’s ACEC Manual (1613) provides additional detail on the criteria to be considered in ACEC designation, as discussed in the applicable regulations, as well. *See*, Manual 1613, Section .1 (Characteristics of ACECs); 43 C.F.R. § 8200. An area must possess relevance (such that it has significant value(s) in historic, cultural or scenic values, fish & wildlife resources, other natural systems/processes, or natural hazards) and importance (such that it has special significance and distinctiveness by being more than locally significant or especially rare, fragile or vulnerable). In addition, the area must require special management attention to protect the relevant and important values (where current management is not sufficient to protect these values or where the needed management action is considered unusual or unique), which is addressed in special protective management prescriptions. The BLM has acknowledged that the lands in the planning area have these values, by considering an ACEC in the Draft EA, and WGFD has specifically recommended expanding the management to consider the entire Fortification Elk Herd Unit.<sup>11</sup>

The Manual also sets out more specific requirements for how consideration of ACECs should be conducted during the land use planning process and outside of it. Manual 1613 specifically requires that each area recommended for consideration as an ACEC, including from external nominations, be considered by BLM, through collection of data on relevance and importance, evaluation by an interdisciplinary team and then, if they are not to be designated, the analysis

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<sup>10</sup> [http://www.doi.gov/documents/BLM\\_Utah77LeaseParcelReport.pdf](http://www.doi.gov/documents/BLM_Utah77LeaseParcelReport.pdf). *See*, recommendations on pp. 7-8 and pp. 32-33.

<sup>11</sup> Wyoming Game and Fish Department Letter to Thomas Bills WER 10635.00 Signed by Vern Stetler for John Emmerich. November 30, 2007. Attached for Reference.

supporting the conclusion “must be incorporated into the plan and associated environmental document.” Manual 1613, Section .21 (Identifying Potential ACECs).

Further, ACECs can be evaluated and designated across planning areas and even field offices. An ACEC is to be as large as is necessary to protect the important and relevant values. Manual 1613, Section .22.B.2 (Size of area to receive special management attention). Where the ACEC crosses administrative boundaries, BLM can still complete its evaluation of attributes and designate an ACEC. *See, e.g.*, discussion of evaluation and designation of ACECs crossing Price and Richfield, Utah RMP boundaries, Price Proposed RMP, Appendix L; Richfield Proposed RMP, Appendix 1.

We nominate an ACEC to encompass the entirety of range needed to sustain the relevant and important Fortification elk herd, which, as noted by WGFD in its August 2009 letter<sup>12</sup>, requires special management and protection of crucial winter and parturition ranges and security habitat. While this ACEC will expand beyond the current planning area for the RMP Amendment, all of these lands will be managed by the Buffalo Field Office through the permitting of federal mineral development and can be ultimately incorporated into management under the Buffalo RMP Revision.

**The RMP Amendment must present a true phased development alternative with objective measures of reclamation success**

We support a phased development approach for the Fortification Creek Area with the current development of the southern elk yearlong range considered the first phase of the phased development strategy.

Phased development cannot be successfully implemented with an oversimplified time table. Such management endeavors require baseline data, planning and diligent monitoring for success. The RMP Amendment must require operators to document and disclose the nature of the vegetation disturbed by proposed activities. Development between areas must be punctuated by a significant time buffer to be determined by a pre-determined level of reclamation success, forage species recovery and wildlife re-colonization. Adaptation of the wildlife populations to the development and potential recovery of vegetation from development cannot be prescribed with inflexible timelines. Such re-colonization and re-vegetation must be assessed and monitored locally. Once ground cover and forage vegetation are recovering and wildlife populations have returned to the area in sufficient numbers as prescribed by the management plan, the next area may be opened for that phase of development. Reclamation and restoration may involve fencing around reclamation areas & livestock rest in certain areas during the process. Without such provisions, habitat will be consumed more quickly than usability or use is reestablished, which will result in a devastating reduction in biodiversity, creating instability in the entire ecosystem

**The RMP Amendment must reconsider well density and location**

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<sup>12</sup> Wyoming Game and Fish Department Letter to Duane Spencer 10635.02. Signed for John Emmerich. August 31, 2009.

The number of proposed wells alone represents an “extreme” impact according to *Recommendations for Development of Oil and Gas Resources within Important Wildlife Habitats, Version 3.0* released by the Wyoming Game and Fish in 2009. According to the BLM Elk Report, elk are hesitant to venture within 1.7 miles of well sites and 0.5 miles of roads (BLM Elk Report 2007). Therefore, the usual 80 acre spacing will have significant impacts to the resident elk herd should be increased to 160 acres unless information is presented by operators demonstrating that 160 acre spacing is an unreasonable burden to developing the resource.

This spacing is recommended by the BLM’s *Management practices to reduce impacts associated with oil and gas development in the Fortification Creek Special Management Area* and the Fish and Wildlife Service Scoping Letter referenced above. In addition, unitization orders for the area also document that 160 acre spacing is sufficient to develop the oil and gas resources in the area. The unit order for the Augusta Unit provides that Lance could produce the area with a well density of one well per every 160 acres as opposed to the permitted density, which is much higher especially when considering the existing fee and state development. Augusta Unit Order, Received by BLM Aug. 11, 2004 at 6.

Ideally, density must be determined on a site specific basis with wells clustered in areas of lower surface/wildlife impact, easiest access and development feasibility. This freedom will ensure better development than under a rigid, oversimplified acreage prescription.

### **BLM must require management of produced water to minimize impacts to soils and vegetation**

Produced water must be treated and piped out of the area. The only exception should be if water is used for reclamation watering, livestock or wildlife watering, or if a landowner wishes to put water to another beneficial use, provided that use does not negatively affect downstream neighbors. Direct discharge of water to an ephemeral drainage on a perennial basis in any area must be avoided due to the difficulty or impossibility of drainage reclamation as acknowledged by recent reports by Drs. Hendrickx and Buchanan presented to the Wyoming Department of Environmental Quality and Environmental Quality Council, available on the WY EQC website.

Piping water is an economically viable option already being employed by Williams in the area. For example, Williams has constructed a 44 mile underground water pipeline that transports discharged water outside the area (Finding of No Significant Impact and Decision record for Williams Production Company CD/SRU/SPU Environmental Assessment –WY-070-08-013).

### **BLM must reduce surface disturbance through the use of shared development corridors, combined infrastructure, and buried power**

The BLM must define a plan for cooperation among operators to share infrastructure and development corridors containing roads, power and pipelines. This was a consideration presented in earlier documents and as an option in signed leases. Clustering such linear features in the

existing rights of way would minimize surface disturbance and should also minimize construction costs.

The mandate for buried power lines should be continued to prevent fire hazard and limit raptor perches to limit excess predation on mammals and birds. BLM has required buried power in some, but not all, of the CBM projects permitted in the southern elk yearlong range, and we are particularly concerned about BLM inconsistently applying these mitigation measures unless they are incorporated into the plan amendment. For example, the Augusta Unit Zeta project requires buried power, while Carr Draw III West does not. It is important to plan and manage this area at a landscape scale while enforcing measures equitably across projects and developers.

**BLM must include a robust monitoring plan and explicit measures that will be taken through the adaptive management process if monitoring thresholds are reached**

In the 2007 monitoring plan, BLM established threshold limits stipulating that if oil and gas-related impacts exceeded a loss of habitat effectiveness greater than 20 percent from the 2007 habitat baseline (which already leaves out thousands of acres developed prior to 2007), these impacts would be “biologically significant,” and would trigger adaptive management or some other form of mitigation for the area. To date, permitted development disturbances in the southern yearlong range have already exceeded the 20 percent threshold for the elk herd’s crucial winter range. Parturition range disturbances rest dangerously close at 19.3 percent and the yearlong range falls at 15.7 percent, meaning that only around 5,000 acres of additional CBM activity within the yearlong range will exceed the 20 percent threshold as well. (See included acreage chart). To date BLM has done nothing to mitigate these impacts. Given this predicament, we request that this issue be addressed by considering development to date in the analysis and implementing an extensive monitoring and a specifically defined adaptive management strategy for the entire elk yearlong range in the RMP Amendment.

In conclusion, we emphasize the great responsibility bestowed upon the BLM to manage the lands and minerals of the United States with care as well as the lasting legacy the decisions you make will leave for the State of Wyoming. For additional scientific and legal support of many of these positions please see our attached 2008 comments on the Fortification Creek Area Draft RMP Amendment and other references.