February 6, 2008

Greg Clark, District Ranger
Big Piney Ranger District
215 South Front St.
P.O. Box 218
Big Piney, WY 83113

RE: Scoping comments for the Eagle Prospect and Noble Basin Master Development Plan EIS.

Dear Greg:

Please accept the following scoping comments on behalf of the Wyoming Outdoor Council, The Wilderness Society, Greater Yellowstone Coalition and Jackson Hole Conservation Alliance regarding the Eagle Prospect and Noble Basin Master Development Plan. The above-named organizations submitted substantial comments in April 2007 regarding the Eagle Prospect Exploratory Wells Draft EIS. A copy of these comments is attached and we incorporate them by reference in their entirety (Exhibit 1).

The National Environmental Policy Act ("NEPA"), 42 U.S.C. § 4321 et seq. requires agencies to prepare a thorough analysis to assess the potential impacts from proposed projects like this one that may significantly affect the environment. The majority of our comments will address the level and scope of analysis that the Forest Service should prepare for a project of this significance. At the outset, however, it is necessary to highlight an equally important mandate of NEPA: that of ensuring adequate public participation. The type of participation that Congress envisioned under NEPA is not only a method by which an agency discloses or makes transparent its decisions, but rather a process whereby the public is offered a meaningful opportunity at all stages of planning to help shape the project’s design and offer creative suggestions or solutions. This involvement can lead to different and often better results.

We urge the Forest Service to recognize the degree of concern with which the public regards this project. Not only will full field development forever change the character of this part of the forest, but as Governor Fruedenthal expressed, this project may be the "first domino" that ushers in development of tens of thousands of leased acres in the Wyoming Range. His concern was realized this week when the Forest Service

Working to protect public lands and wildlife since 1967
announced its plans to initiate a new leasing EIS to address the 44,700 acres of contested lease offerings from 2005-2006, with a proposed action to authorize all of the leases.

As the public is well aware, the project proponent, Plains Exploration & Production Company ("Plains") holds valid leases. However, as the Forest Service explained at the Jackson open house on January 28, 2008, Plains has requested and been granted various extensions and suspensions—effectively putting the fate of these National Forest lands in limbo for far longer than the statutory ten-year lease term. It is certainly not too much to ask that the public, who owns these lands, be given the same consideration in response to their requests for additional time and further public involvement.

The Forest Service has far greater authority with respect to how it chooses to proceed with this proposal than it has disclosed to the public to date. While the agency cannot extinguish Plains' valid lease rights or arbitrarily deny its Application for Permit to Drill ("APD"), it can suspend the EIS process in order to ensure that proper baseline analyses are prepared and landscape scale availability decisions are made. Suspension of an EIS process is not unprecedented and the example we provided in our April 2007 comments is as relevant today, if not more so than it was last year given the pending Wyoming Range legislation that envisions buy-out/trade options for companies like Plains that hold leases in the Wyoming Range. See Exhibit 1 at 2-4.

The Forest Service can also deny development outright if the project as designed would violate any non-discretionary statutes the agency is bound to uphold, including the Clean Air Act, 42 U.S.C. 7401 et seq., the Clean Water Act, 33 U.S.C. 1251 et seq. and the Endangered Species Act, 16 U.S.C. 1536(a)(2). We urge the Forest Service to better articulate this authority to the public in open houses and meetings and to the media when discussing the project. The Forest Service should err on the side of caution when considering whether to approve the proposed development and not assume that impacts that could violate federal law can be mitigated.

Much has changed since the initial draft EIS was released in March 2007. Plains conceded that it did in fact anticipate a larger development scenario than its initial three wells. As a result, it asked the Forest Service in this draft EIS to assess the impacts of full field development. In addition, the Forest Service has now agreed to analyze alternatives in this draft that differ substantially from Plains' proposed action. Although these changes are promising first steps, only a careful preparation of this draft will allow the necessary time for the Forest Service to thoroughly analyze and evaluate the impacts from the proposed development project and to determine whether approval of the project should occur given those impacts.

If the Forest Service decides not to suspend the EIS and instead proceeds with the analysis, it has complete discretion to dictate a process by which a comprehensive EIS is prepared. The Forest Service also has the discretion to offer further opportunities for public involvement, including additional public meetings and field trips. The four-month time period between the scoping deadline and the anticipated draft EIS, however, suggests that instead of proceeding cautiously to ensure that impacts to irreplaceable
natural resources and local economies are fully considered, the Forest Service is rushing forward and seems willing to shortcut the process in order to meet some arbitrary May deadline.

Taking a deliberate and careful approach would be beneficial for everyone involved. It would allow the opportunity to more effectively analyze the impacts from the proposed development, but it would also provide time for all stakeholders to pursue other, non-development alternatives outside the Forest Service’s direct authority. This includes the option of voluntary retirement of leases in the Wyoming Range (including Plains’ leases) through purchase or trade, which is a course of action that the Wyoming Range Legacy Act of 2007 outlines and which Governor Freudenthal, Republican and Democratic members of the Wyoming Legislature, the Wyoming AFL-CIO, the Jackson Hole Chamber of Commerce, numerous sportsmen groups, many business owners, landowners, outfitters, recreational users, conservation organizations and others have publicly advocated.

The Bridger-Teton National Forest, surely one of the crown jewels of the National Forest System deserves no less than the “gold standard” with respect to depth of analysis and a range of alternatives of varying scope and degree. To do any less would be a disservice not only to the future well being of the forest, but to the citizens of Wyoming who have worked tirelessly to see the Wyoming Range protected from this type of industrial development and to a national public who cherish the forest as an integral part of the Greater Yellowstone Ecosystem, a celebrated part of our nation’s outdoor heritage.

1. **The Forest Service should define a balanced purpose and need statement for the project.**

Because the stated purpose and need for a federal action determines the range of alternatives, it is essential that the Forest Service clearly articulates the project’s purpose and need from the agency’s perspective rather than simply adopting Plains’ objectives for the project as its own. 40 C.F.R. § 1502.13. As courts have cautioned, “One obvious way for an agency to slip past the structures of NEPA is to contrive a purpose so slender as to define competing ‘reasonable alternatives’ out of consideration (and even out of existence.)” *Davis v. Mineta*, 302 F.3d 1104, 1119 (10th Cir. 2002) (quoting *Simmons v. United States Army Corps of Eng’rs*, 120 F.3d 664, 669 (7th Cir. 1997)).

The Forest Service should include a commitment to protect surface resources as a purpose and need on par with gas exploration rather than defining the purpose and need for the proposed action solely from Plains’ perspective. Although the goals of a private party proponent are, to a limited extent, relevant in determining a project’s purpose and need, “more importantly, an agency should always consider the views of Congress, expressed, to the extent that an agency can determine them, in the agency’s statutory authorization to act, as well as in other Congressional directives.” *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 196 (D.C. Cir. 1991). As just one example, Congress was unwavering in its message when it passed NEPA: federal agencies are
entrusted to act as trustees of the environment for present and future generations. 42 U.S.C. § 4331(b).

The Forest Service should consider its broader responsibility as surface land manager and its affirmative responsibility to protect air quality related values in Class I areas like the Bridger Wilderness, not to mention its responsibilities under the Endangered Species Act and other statutes so that the purpose and need statement encompasses greater protections for the sensitive and irreplaceable National Forest lands at stake—not only the desires of the project proponent. Because the purpose and need statement sets the stage for the range of alternatives the Forest Service selects, its importance should not be underestimated.

2. The Forest Service should consider a reasonable range of alternatives.

NEPA mandates that the Forest Service provide a detailed statement regarding the alternatives to a proposed action. 42 U.S.C. § 4332(2)(C)(iii). Its implementing regulations also require the Forest Service to “[r]igorously explore and objectively evaluate all reasonable alternatives.” 40 C.F.R. § 1502.14. In fact, a thorough and objective analysis of alternatives is so essential to reasoned and informed decision making that a discussion of alternatives is considered the “heart of the environmental impact statement.” Id. at § 1502.14(a).

a. Buy-out/trade/retirement alternative

During our meeting on January 24, 2008, we discussed the inclusion of a “buy-out/trade/retirement” alternative in the upcoming draft EIS. Many citizens at both the Jackson and Pinedale scoping meetings also raised this as a “win-win” solution that would simultaneously protect the forest from industrial development while honoring Plains’ lease rights. As you noted, this is something that could occur at any time and there is no prerequisite that it be considered in a NEPA document. In addition, you expressed skepticism that because the Forest Service’s lacks the authority to fully enact such an alternative that you would not be able to include it or perhaps if included it would not be carried forward for comprehensive consideration. Neither of these issues precludes the Forest Service from including such an alternative in the upcoming EIS and giving it full consideration. In fact, Congress envisioned and courts have upheld this very approach.

The regulations implementing NEPA are clear: in the alternatives section of the EIS, the agency “shall include reasonable alternatives not within the jurisdiction of the lead agencies.” 40 C.F.R. § 1502.14(c). Although the Forest Service alone may not be able to “choose” the buy-out alternative, this is not a factor that should have any weight in the agency’s decision whether to include it as an alternative. The regulations contemplate the inclusion of alternatives beyond the agency’s authority to enact; the only determining factor is whether a buy-out/trade/retirement alternative is reasonable. To be sure, given provisions in the Wyoming Range Legacy Act of 2007 that address this very scenario and the overwhelming public interest in pursuing this alternative—it is not only
reasonable—it is necessary. The EIS process was not designed as a tool to assist agencies in reaching a predetermined end, but rather as a vehicle to facilitate an open-ended, meaningful, public decision making process. Including this alternative in the EIS would validate this reasonable option and encourage further negotiations outside of the NEPA process to proceed.

Courts have found fault with agencies for failing to consider alternatives in an EIS when such alternatives were beyond the jurisdiction of the agency to complete, but were reasonable nevertheless. In Muckleshoot Indian Tribe v. U.S. Forest Service, 177 F.3d 800 (9th Cir. 1999), the court addressed a situation in which the Forest Service initiated an EIS to address a land exchange with a timber company. The court found that the Forest Service violated NEPA by not considering an alternative that would have involved a purchase of the timber company’s inholding, rather than just an exchange. Id. at 814. The Forest Service argued that it was unclear whether funds would be available and for this reason it had no obligation to consider what in its estimation was a “remote and speculative alternative.” Id. The court disagreed and citing 40 C.F.R. § 1502.14(c), found that “the alternative clearly [fell] within the range of such reasonable alternatives, and should have been considered.” Id.

In another case, National Wildlife Federation v. National Marine Fisheries Service, 235 F.Supp.2d 1143, 1154 (D. Wash. 2002), Plaintiffs argued that the Service and the U.S. Army Corps of Engineers should have considered an alternative that would have controlled sediment deposits into a reservoir by encouraging better upstream agricultural and forestry practices. The Corps responded that it did not have the authority to regulate land uses and practices within the vast majority of the affected basin and as such did not need to include the alternative in its analysis. Id. Again, the court disagreed finding the “agency’s refusal to consider an alternative that would require some action beyond that of its congressional authorization is counter to NEPA’s intent to provide options for both agencies and Congress.” Id.

In a final example, Natural Resources Defense Council v. Morton, 458 F.2d 827, 834 (D.C. Cir. 1972) the Department of Interior posited that “the only alternatives required for discussion under NEPA are those which can be adopted and put into effect by the official or agency issuing the statement.” The court disagreed, responding that an EIS is not only a tool for the lead agency, but also a means by which “Congressional objectives of Government coordination [and] a comprehensive approach to environmental management” are implemented. Id. at 836. It instructed, “The mere fact that an alternative requires legislative implementation does not automatically establish it as beyond the domain of what it required for discussion, particularly since NEPA was intended to provide a basis for consideration and choice by decisionmakers in the legislative as well as the executive branch.” Id. at 837. Moreover, the court stated that an agency may not “disregard alternatives merely because they do not offer a complete solution to the problem.” Id. at 836.

As reflected in both NEPA’s implementing regulations and in these examples from case law, there is ample support for including a buy-out/trade/retirement alternative
in this EIS. Although none of the fact patterns in the cases mentioned above precisely mirror the situation the Forest Service faces here, there is no doubt that it can—and indeed should—consider an alternative whereby the purchase or trade of Plains’ existing leases could occur. After the purchase and/or trades are completed, under the guidance of the already introduced Wyoming Range Legacy Act of 2007, the Forest Service could permanently retire the leases. The Forest Service would be remiss not to include such an alternative in light of the congressional legislation nearly enacted that was designed to facilitate precisely such a process. We urge the Forest Service not to move ahead with an EIS without including a buy-out/trade/retirement alternative that is fully carried forward in the analysis.

b. **Alternatives that address various scenarios regarding pace, extent and conditions of development**

The initial EIS attempted to address the impacts that were likely to result from just three wells. Given the now well-known statements from Plains’ CEO to its investors that Plains believed the underlying geology mirrored that of the Jonah field and that its plans ultimately included full field development in the forest, the public had no choice but to demand an analysis of those larger-scale impacts. Now that Plains has admitted its larger plans and asked the Forest Service to undertake an analysis that encompasses a “master development plan” there are numerous alternatives—in addition to the buy-out/trade/retirement alternative—the agency should consider. We offer the following suggestions.

i. **A “threshold” alternative**

The Forest Service could analyze the impacts from Plains’ proposal of 17 well pads and 136 wells, but if it decides to authorize the project it would do so incrementally or in phases. With the assistance of the Environmental Protection Agency (“EPA”) and Wyoming’s Department of Environmental Quality (“DEQ”) for air quality monitoring and the Wyoming Game and Fish Department (“WGFD”) with respect to wildlife impacts, the Forest Service would determine unacceptable thresholds that if met would halt further development. For example, if after the development of 3 or 6 or 9 wells, air quality in Class I areas is far worse than the initial modeling suggested, additional development would no longer be permitted until the impacts were remedied. Similarly with wildlife, if the WGFD found unacceptable impacts to sage grouse or moose (just to name two of the many species that may be adversely impacted) after the development of just some of the wells, the field would not be permitted for further build-out.

Instead of authorizing the entire master development plan and allowing that plan to be the document to which all subsequent APDs tier, the Forest Service would use the plan for purposes of analysis, but not as a decision document for all 136 wells. In a methodical manner, the Forest Service could perhaps permit 3 wells at a time or no more than two well pads at a time—and depending on the results of monitoring, it might decide at some future date that it will cap the project at a much smaller number of wells than Plains’ desired 136. Success of this alternative would be based on well-defined
thresholds that all parties would agree would not be exceeded.

ii. A shut-in alternative

As mentioned in the Jackson scoping meeting, in addition to the myriad negative impacts to wildlife, air, water and local communities that will inevitably result from the project, there is not even a good argument to be made that development of this field is beneficial to Wyoming’s economy. The current lack of pipeline capacity coupled with the amount of production already occurring across Wyoming means that the natural gas leaving our state is greatly devalued. Wyoming receives just a portion of the revenue other states are realizing.

The Forest Service should analyze an alternative that would authorize the drilling and testing of one to three wells and if productive, analyze the potential to shut-in these wells—halting further production until a time when the state of Wyoming would derive better revenue from the project. To be sure, there is no dollar amount that can completely compensate for the transformation of a backcountry forest area into an industrial gas field, but that does not mean that the state should suffer diminished revenue from this already undesirable project. If the project proceeds—against the wishes of Wyoming citizens, our elected officials and other state and federal agencies—it should at a minimum only proceed when the revenue derived is at an amount on par with other regions of the country.

iii. Lease retirement alternative

Assuming the project is designed so as not to violate any non-discretionary statutes (and with explicit caveats that if impacts are observed the development will be modified or halted), the Forest Service should consider an alternative that caps the level of development at no more than 136 wells. As a condition of allowing this enormous level of development to proceed, the Forest Service would require Plains to donate all other leases it holds in the Bridger-Teton National Forest at which point the Forest Service would permanently retire them in accordance with the Wyoming Range Legacy Act of 2007. The Forest Service should analyze this alternative in light of the reasonably foreseeable event that Plains will seek to develop all of its leases, not only the ones considered in this proposal.

iv. Mitigation fund alternative

The Forest Service should analyze an alternative that would require Plains to establish a mitigation fund as a condition of development. Mitigation funds that seek to remedy the impacts from large gas field development projects are not unprecedented in Wyoming. The Jonah Field operators established a mitigation fund and operators on the Pinedale Anticline have offered to do the same. Since Plains has already equated the Noble Basin with the Jonah Field, one would expect Plains to consider a mitigation fund as a matter of course. However, unlike the other funds that are being used or contemplated for projects that may have little on-the-ground benefit, this mitigation fund
would be established for the sole purpose of purchasing existing leases from other leaseholders in the Wyoming Range. Once acquired, these leases would be donated back to the Forest Service and permanently retired under the direction of the Wyoming Range Legacy Act of 2007. Given the likelihood that Plains' master development plan will set in motion development proposals from other companies, the Forest Service should consider an alternative that would help prevent this from happening.

v. Helicopter access alternative

In the draft EIS for the three wells, the Forest Service briefly considered but eliminated from comprehensive review an alternative that would have required helicopter drilling. In response, we submitted detailed information that suggested that helicopter drilling was a reasonable alternative within the realm of a number of development scenarios the Forest Service should have considered. We included evidence that the Bridger-Teton National Forest had required this technique on a nearby well project in the early 1990s and offered expert opinions that supported the feasibility of implementing helicopter drilling. As stated before, we have attached these April 2007 comments and incorporate them by reference. Please see Exhibit 1 at 13-15. Although it is not known whether the impacts from helicopter access will be acceptable given the sensitivity of the area, it may be that this is a better option than constructing new roads. Because questions remain about the potential benefits and drawbacks of helicopter access, it is imperative that the Forest Service fully consider this as an alternative in the upcoming draft EIS.

vi. Others

The Forest Service should consider the above alternatives and others it receives during the scoping period as concepts from which a full range of reasonable alternatives should be developed. In addition to these new alternatives, the Forest Service should review the suggested alternatives in comments submitted for the three exploratory wells—including requiring the first well pad and initial wells stay out of the Grayback Ridge inventoried roadless area and considering locations the Wyoming Game and Fish Department recommended. See attachment at 8-12. We encourage the Forest Service as part of a comprehensive planning effort to review the alternatives submitted and host another series of public meetings during which this list could be discussed in more detail prior to the release of a draft EIS. We cannot emphasize enough the importance of creating a sufficiently varied range of alternatives in order to inform the proper design of the potential project and ultimately to help the Forest Service make a well-informed decision.

3. The Forest Service must take a “hard look” at the project’s likely environmental and economic impacts.

As envisioned by Congress, one of NEPA’s goals is to “prevent or eliminate damage to the environment . . . by focusing government and public attention on the environmental effects of proposed agency action.” Marsh v. Oregon Natural Resources Council, 490 U.S. 360, 371 (1989) (quoting 42 U.S.C. § 4321). “By so focusing agency
attention, NEPA ensures that the agency will not act on incomplete information, only to regret its decision after it is too late.” Marsh, 490 U.S. at 371. As such, NEPA requires the Forest Service to take a “hard look” at a project’s environmental impacts. Kleppe v. Sierra Club, 427 U.S. 390, 410 (1976). In this case, that means giving thorough consideration to the direct, indirect and cumulative impacts of the project on fish and wildlife species and water resources. 40 C.F.R. §§ 1502.16, 1508.8.

The public has long advocated and continues to urge the Forest Service to prepare the most comprehensive and erudite analyses that will not only meet, but exceed NEPA’s requisite “hard look” standard. People in Wyoming are keenly aware of the rapidly expanding natural gas development projects across the state and the impacts we are experiencing as a result. Development in the Upper Green River Valley has transformed sagebrush winter range into what some would consider industrial sacrifice zones whose impacts are felt far beyond the fields themselves, threatening air and water quality, viability of our big game herds and the quality of life in our small towns.

A new gas field on National Forest land is a dire prospect that if authorized will benefit one out-of-state company at the expense of all other stakeholders and the environment. Numerous resources stand to be negatively affected by the industrialization of the Noble Basin, including air quality (particularly in Class I areas), water (both surface water, groundwater and wetlands), wildlife (large ungulates, fisheries, sensitive species like sage grouse and federally listed species like Canada lynx) and a local economy that relies on the backcountry character of the Bridger-Teton National Forest to support a recreational, sporting and tourism economy.

It is within this context that the Forest Service must demand—starting now at the scoping stage—a different approach. Nothing less than the “gold standard” should be contemplated for this project. In defining such a standard, the Forest Service should keep in mind that it must apply to both the design and conditions of approval for the project, but also to the scope and quality of the NEPA analysis prepared. The planning and potential authorization of this project cannot be business as usual, resulting in a fast-tracked decision where the EIS is a means to an end, rather than a cautious and comprehensive process in which impacts are fairly evaluated. The Forest Service’s well-informed decision whether to authorize the project can only result from a high quality NEPA analysis.

In response thus far to the public’s request for a careful approach, the Forest Service has suggested that in fact it has taken its time and mentions that it has been working with Plains for three years. The agency cannot point to the fact that Plains has been discussing its plans for the Basin since 2005 as evidence that the agency has taken a measured approach. It was the insincerity of the company in stating that its plans didn’t exceed a few exploratory wells and the inadequate draft EIS for these wells that received such overwhelming public outrage that sent Plains back to the drawing board. This is not an example of how to do it right. Doing it right would have been full disclosure by Plains from the beginning and a gold standard NEPA analysis. Doing it right this time means acknowledging that starting over with a new EIS (not even a supplemental EIS, but as in
this case, a brand new draft EIS) effectively means treating this scoping period as the beginning of a very long process, not a four-month timeframe whereby Plains and the Forest Service rush through to produce a document that they believe will meet the very basic level of what is legally required.

The Forest Service has an opportunity to remedy the approach it used in the past. If it chooses, the Forest Service is fully empowered to require the highest level of comprehensive study and review this time around. It should not be pressured by the project proponent to streamline this draft EIS. The Forest Service is not bound to any timetable Plains has established or desires. Indeed, Plains has taken full advantage of the suspensions the leasing regulations provide; its leases are not at risk of expiring. Thus, the Forest Service should feel secure that in order to address what is undoubtedly one of the most important decisions it will make and one that will have far-reaching consequences for future oil and gas development decisions on the forest, it can and should take all the time that is necessary to do it right.

Below are specific resources or issues that require comprehensive consideration in the draft EIS.

a. **Canada lynx**

In the many letters and formal comments the Wyoming Game & Fish Department ("WGFD") has submitted over the last several years, it has extolled the Wyoming Range as the most important remaining lynx habitat in Wyoming. Unfortunately, Plains’ proposal epitomizes the types of threats such as new road building and direct loss of lynx habitat that the WGFD has stated may jeopardize the future existence of lynx in Bridger-Teton National Forest. Now that full field development has emerged as Plains’ true intention for the Noble Basin, these concerns are even more relevant today.

The Forest Service’s requirement to take a "hard look" at the potential impacts to lynx as a result of the proposed project includes the mandate to provide a complete and accurate assessment of the affected environment. See 40 C.F.R. § 1502.15. Similarly, the Forest Service must "insure the professional integrity, including the scientific integrity, of the discussions and analyses in environmental impact statements." 40 C.F.R. § 1502.24. The Forest Service should include an analysis that encompasses all relevant data about lynx habitat and presence in and around the project area. It should reference any and all studies currently underway or completed about lynx in the region. Without this information it is impossible for the Forest Service to make an accurate assessment of the likely impacts to lynx and its habitat.

There is no question that high quality lynx habitat exists within and around the project area. As we detailed in our April 2007 comments, the WGFD and the Wyoming Natural Diversity Database regard the Wyoming Range, including the area of Plains’ proposed development as the best lynx habitat in Wyoming. See Exhibit I at 22-33. In addition to containing unique lynx habitat, this area supports actual individuals. The Forest Service should include complete data, acquired from it own records and data from
other state and federal agencies and institutions that will provide sufficient baseline information upon which informed management decisions can be made. This is not only a requirement under NEPA, but also a mandate under the Endangered Species Act.

The Forest Service must also address the significance of the project area to migrating lynx through an area commonly referred to as the “Bondurant corridor.” This corridor is important for long term-survival of the sparse southern populations of lynx who depend on movements of individuals across large geographic areas. The draft EIS must also include an analysis of impacts to denning sites—some of which have been documented just a few miles from the project area. The importance of the project area and surrounding National Forest lands to the successful recovery of lynx in Wyoming should not be underestimated.

We urge the Forest Service to ensure that an adequate cumulative effects analysis is prepared with respect to lynx. This analysis should include all past, present and reasonably foreseeable actions (e.g. timber harvest, vegetation treatment projects, oil and gas development and others) that coupled with the master development plan could impact lynx. The Forest Service should give this section sufficient attention given the strong comments submitted by WGFD about the necessity of the Wyoming Range and the project area to the very survival of lynx in Wyoming.

The Forest Service must also properly implement the Northern Rockies Lynx Management Direction (“NRLMD”) with respect to the 30 percent threshold for unsuitable lynx habitat within each Lynx Analysis Unit (“LAU”). The two-volume document can be found at: http://www.fs.fed.us/r1/planning/lynx.html. The measures outlined in the NRLMD are envisioned as minimum recommendations. Thus, the Forest Service cannot assume that if its data indicates impacts to lynx will remain within the thresholds established by the NRLMD the project would have no adverse impacts on lynx.

In order to meet the measures in the NRLMD and its responsibilities under NEPA, the Forest Service should adequately compile and regard the overwhelming body of knowledge and evidence suggesting the project area and surrounding environs are unique and critical to lynx survival in Wyoming. In this case, more than a routine application of the NRLMD measures is warranted. The Forest Service should incorporate all relevant information into its analysis and consider alternatives that maintain and restore lynx habitat.

The regulations implementing NEPA require that the Forest Service “shall identify any methodologies used and shall make explicit reference by footnote to the scientific and other sources relied upon for conclusions in the statement.” 40 C.F.R. § 1502.24. By doing so, the Forest Service “insure[s] the professional integrity, including the scientific integrity, of the discussions and analyses in environmental impact statements.” Id. The Forest Service has a responsibility to explain the methodology it uses to reach its conclusions about the project’s likely impacts to lynx. Without this underlying information, it impossible to assess whether the Forest Service has fairly
analyzed impacts to lynx and taken the steps required of it to further lynx recovery.

Under the Lynx Conservation Assessment and Strategy ("LCAS") that preceded the NRLMD, the Forest Service is instructed to delineate lynx analysis units—units of scale that aid in evaluating and monitoring effects of management actions on lynx habitat. We are not aware of additional direction that governs the mapping of LAUs in the NRLMD or elsewhere, in which case the direction contained in the LCAS remains the best available scientific information on this issue that should be followed by the Forest Service. Our concerns raised in the April 2007 comments remain. The LAUs on the Bridger-Teton National Forest implicated in the project area are either: 1) impermissibly large, rendering them meaningless for analysis purposes; or 2) already beyond the 30 percent threshold as described in the LCAS. The Forest Service should remedy this deficiency before moving forward in its analysis.

The concern with respect to such large LAUs is that these are the units upon which the Forest Service calculates whether the thresholds for suitable habitat as outlined in the NRLMD are being met. See NRLMD Standard VEG S1 ("If more than 30 percent of the lynx habitat in an LAU is currently in a stand initiation structural stage that does not yet provide winter snowshoe hare habitat, no additional habitat may be regenerated by vegetation management projects.") It becomes less likely that a project will exceed the 30 percent threshold if the baseline acreage is inflated.

The Forest Service should articulate the methodology it uses to determine potentially suitable lynx habitat within any affected LAUs. Under NEPA, the Forest Service is charged with providing the public with adequate information about the affected environment when proposing major federal actions. 40 C.F.R. § 1502.15. Detailed information about the vegetation layers and methodology that the Forest Service uses in its analysis is particularly important.

The Forest Service should also require that the project comply with specific measures in the NRLMD including the guideline that “[d]esignated over-the-snow routes or designated play areas should not expand outside baseline areas of consistent snow compaction, unless designation serves to consolidate use and improve lynx habitat.” NRLMD Guideline HU G11. Several other NRLMD guidelines are applicable here as well:

**Guideline HU G4**
For mineral and energy development sites and facilities, remote monitoring should be encouraged to reduce snow compaction.

**Guideline HU G5**
For mineral and energy development sites and facilities that are closed, a reclamation plan that restores lynx habitat should be developed.

**Guideline HU G12**
Winter access for non-recreation special uses and mineral and energy exploration and
development, should be limited to designated routes or designated over-the-snow routes.

In conclusion, the Forest Service should accumulate the best available science regarding the unique habitat and active presence of lynx in the southern Bridger-Teton National Forest. Moreover, the Forest Service should carefully describe in detail the past, present and reasonably foreseeable future actions coupled with the potential impacts from the proposed project in order to assess the likely cumulative impacts to lynx. It must also adequately explain its methodology with respect to LAU delineation. Finally, the Forest Service should ensure that minimum NRLMD guidelines are not violated by the project design.

b. Mule deer, elk, moose, pronghorn

The Forest Service must take a hard look at the project's likely impacts to mule deer, elk, moose and pronghorn. First, in assessing direct and indirect impacts, it must use the most up-to-date big game seasonal range designation maps that the WGFD has offered to provide. Although this seems like a request that would meet with no opposition, the Forest Service refused to use this data last year in draft EIS for the three wells. Data illustrating the presence of various species and seasonal use information is essential for developing any meaningful baseline information from which to estimate and analyze possible future impacts.

Second, the Forest Service must include an analysis of the potential cumulative impacts to all large ungulate populations that migrate through or use the Noble Basin seasonally. A cumulative impacts analysis is particularly important with respect to migratory animals. In Natural Resources Defense Council v. Hodel, the court found that the FEIS at issue was inadequate in that it failed to address the cumulative impacts to migratory species from proposed oil and gas development. 865 F.2d 288 (D.C. Cir. 1988). Petitioners in that case argued that had Secretary of Interior Hodel considered the "synergistic" effect of development in two regions where off-shore oil and gas lease sales were proposed, he might have "cancelled or deferred some of the lease sales in the two regions so that migratory species [whales and salmon] would not be exposed to maximum risks throughout their habitat simultaneously." Id. at 297. The court found that the FEIS only devoted a few conclusory sentences to the "inter-regional" cumulative impacts to migratory species. Id. at 299. It required the Secretary to rewrite this section of the document, suggesting that in order to comply with NEPA the Secretary should

[Identify the various migratory species and the full routes of migration, describe the [oil and gas and non-oil and gas] activities along those routes, and state the synergistic effect of those activities on the migratory species. The Secretary could support such a presentation with references to scientific studies and other materials so that a decisionmaker would have ready access to the information underlying the Secretary's findings and conclusions. Finally, the Secretary could, consistent with NEPA's requirement that he consider alternatives to the proposed action, examine alternatives to simultaneous development that would mitigate any]
synergistic impacts on migratory species, such as staggering development.

Id. at 300.

The Forest Service should ensure that comprehensive baseline information is collected on all migratory species that spend part of the year in the Noble Basin and include reference to any studies that have already been undertaken on various species. It should then use the best modeling tools and analyses to determine the likely direct, indirect, and cumulative impacts on these species.

Using mule deer as an example, a proper analysis would address in both qualitative and quantitative terms the likely direct and indirect impacts from the development of the field itself, including the potential for displacement of these animals as a result of road building, well pad and associated infrastructure construction, vehicular traffic and/or helicopter access, the presence of drilling equipment and workers in addition to potential mortality/harm from increased human presence (e.g. harassment, intentional poaching or negligent driving.)

It would also include a thorough assessment of the potential cumulative impacts to the mule deer population that could result from loss of winter range habitat from oil and gas development and around the rapidly developing gas fields in the Upper Green River Valley together with the proposed oil and gas development on their summer range in the location of Plains' proposed field. The Forest Service should also consider in addition to the impacts from Plains' proposal, the probable effect on deer from the reasonably foreseeable development of leases on the 44,700 contested acres improperly offered for lease sale in 2005-2006, any occurring, proposed or reasonably foreseeable residential development and the impacts resulting from drought conditions that could persist into the future.

These and other potential factors should be considered in detail and assessed using the best available data and modeling. Non-quantifiable statements such as: “Past, ongoing, or reasonably foreseeable activities or events would have a cumulative effect on Sublette mule deer herd” are not sufficient nor is a mere listing of regional ongoing or planned projects an adequate attempt at a cumulative impacts analysis.

c. Sage grouse

One of the goals of the Bridger-Teton forest plan is to prevent sensitive species from becoming federally listed threatened species in Wyoming. See Bridger-Teton National Forest Land and Resource Management Plan (“BTNF LRMP”) at 126 (Exhibit 2). Objective 3.3(a) instructs the Forest Service to “[p]rotect National Forest Service Intermountain Region sensitive plant and animal species and provide suitable and adequate amounts of habitat to ensure that activities do not cause: (1) long-term or further decline in population numbers or habitats supporting these populations; and (2) trends toward federal listing.” Id. The greater sage grouse is on the Intermountain Region Proposed, Endangered, Threatened and Sensitive Species list and is specifically listed as
a sensitive bird species on the Bridger-Teton National Forest. See Intermountain Region Proposed, Endangered, Threatened and Sensitive Species (12/03 with technical edits on 7/04) at 6 (Exhibit 3).

The Noble Basin is an area of mixed sagebrush and forest. Wyoming Game and Fish data show that sage grouse seasonal ranges overlap the entire project area and are within miles of confirmed sage grouse leks. On January 29, 2008 Wyoming Game and Fish biologists presented to Department Director Terry Cleveland a report that describes the consensus biologists from five western states reached about the science related to oil and gas development’s impacts to sage grouse populations. See report: “Using the Best Available Science to Coordinate Conservation Actions that Benefit Greater Sage Grouse Across States Affected by Oil & Gas Development in Management Zone I-II (Colorado, Montana, North Dakota, South Dakota, Utah & Wyoming)” (Exhibit 4). The report describes the three-fold nature of the problem: 1) the best available science shows that full field development has severe negative impacts on sage grouse populations under current lease stipulations; 2) most of the greater sage grouse habitat has already been leased; and 3) these leases contain stipulations that have been shown to be inadequate for protecting sage grouse populations. Id. at 2.

The report outlines six key areas to be considered: core areas, no surface occupancy stipulations (“NSOs”), phased development, timing stipulations, well pad densities and restoration. Id. With respect to core or crucial areas, which are areas that the biologists authoring the report suggested should include leks, male display areas, sagebrush patch size, seasonal habitats, seasonal linkages or appropriate buffers, the conclusion was simple: “Because breeding, summer and winter habitats are essential to populations, development within these areas should be avoided. If development cannot be avoided within core areas, infrastructure should be minimized and the area should be managed in a manner that effectively conserves sagebrush habitats within that area.” Id. The report recommends “identifying and implementing greater protection within core areas from impacts of oil and gas development...as a high priority.” Id. The report also suggests that due to the current scale at which NSOs and timing stipulations are established, they alone will not conserve sage grouse populations without being used in combination with core areas.” Id. at 3, 6. On the other hand, phased development is a tool that depending on the design “may help maintain large, functional blocks of sage grouse habitat.” Id. at 6.

The Forest Service should refer to this report and any other relevant scientific literature and work in consultation with the WGFD and the U.S. Fish and Wildlife Service to consider the project area’s importance to sage grouse populations. It should determine whether the project as proposed could be implemented without negative consequences to this sensitive species.

d. Fisheries

In contemplating whether to authorize the proposed project, the Forest Service should consider the importance of the Noble Basin to the survival of Colorado River
Cutthroat Trout ("CRCT"), the most imperiled of the cutthroat trout subspecies as well as another native fish, the Snake River fine-spotted cutthroat trout. The Wyoming Range and its environs are the only place in the world that can boast being the home to three subspecies of cutthroat trout. Core conservation populations of CRCT reside in streams within the project area and Muddy Creek supports Snake River fine-spotted cutthroat trout. The current forest plan contains standards that are designed to protect fish habitat and populations:

For fish habitat providing a fishery at or near its potential, fish populations should be maintained at existing levels. For habitat below its potential, habitat should be improved or maintained to at least 90 percent of its natural potential. First priority for improvement should be streams supporting Colorado River and Bonneville cutthroat trout, which are sensitive species.

At least 90 percent of the natural bank stability of streams that support a fishery, particularly threatened, endangered, and sensitive species and all trout species, should be maintained.

Streambank vegetation should be maintained to 80 percent of its potential natural condition.

Habitat occupied by existing and reintroduced populations of Colorado River, Bonneville and Snake River cutthroat trout should be managed to protect species purity.

BTNFRMP at 126 (Exhibit 2).

The Forest Service should state with certainty that these standards are currently being met and if that is the case, ensure that any level of development, from 3 wells to 136 wells will not violate the standards in the future. If the project cannot be designed without impacts to these sensitive species, the Forest Service should not authorize the project. Similarly, if the project is approved, monitoring should be required and if any adverse impacts are observed the project should be halted. An analysis should include impacts from increased sedimentation as a result of erosion from road and well pad construction and take into account the area’s characteristically slumping and shifting soils.

e. **Air quality**

The Forest Service has an affirmative responsibility to protect air quality related values, including visibility over the lands within Class I areas, like the Bridger Wilderness. 42 U.S.C. § 7475(d)(1)(B). Forest Service wilderness areas are protected by provisions of the Clean Air Act. See 42 U.S.C. § 7401(b)(1) (stating that the purposes of the Clean Air Act are “to protect and enhance the quality of the Nation’s air resources so as to promote the public health and welfare....”); 42 U.S.C. § 7470(2), 7491(a)(1)
(directing that air quality in protected landscapes and airsheds be protected). The Wilderness Act provides additional direction, requiring the Forest Service to administer wilderness areas so they are “unimpaired for future use and enjoyment as wilderness.” 16 U.S.C. § 1131(a). A decision to actively contribute to the problem of declining regional air quality and visibility in the Bridger Wilderness by authorizing new oil and gas development runs contrary to these mandates.

The goal established by the Clean Air Act is that “any future” impairment of visibility must be prevented and that “any existing” impairment of visibility must be remedied. 42 U.S.C. § 7491(a)(1) (emphasis added). Likewise, air quality must be “preserve[ed], protect[ed], and enhance[ed] in protected landscapes like wilderness areas, and the “affirmative responsibility” imposed on the Forest Service for these prevention of significant deterioration areas is to “protect” them, not to allow them to be incrementally degraded. Id. §§ 7470(2), 7475(d)(1)(B).

We understand that upon the direction and advice of the EPA, the Forest Service has agreed to prepare a comprehensive air quality model and analysis. We support this approach and urge the Forest Service to include impacts to air quality locally as well as regionally (including impacts to Grand Teton and Yellowstone National Parks). The air quality model should include baseline information regarding current air quality conditions. It should also use suitable data sets from ambient air monitoring programs with a description of the quality and completeness of the data in terms of location and period in which it was collected. If the Forest Service determines that monitoring capability is lacking, it should halt the EIS process until it can acquire this data.

The Forest Service should include all reasonable estimations of full-field development—not only what is proposed in the master development plan, but the 272 wells that could be drilled from 17 well pads as mentioned by Plains in the November 2, 2007 meeting with the Forest Service, citizens and conservation groups. The analysis should include all categories of emissions that will occur during the construction and operating phases of the field including drilling the wells, emissions from compressor stations and other surface facilities as well as from traffic to and from the field and associated transportation activities. The analysis should disclose impacts to National Ambient Air Quality Standards (“NAAQS”) and Prevention of Significant Deterioration (“PSD”) increments, as well as impacts to air quality related values in Class I areas. The Forest Service should address certain pollutants of concern including NOx, ozone, sulfur dioxide (SO2) and fine particulate matter that contribute to regional haze, including PM10 as a result of road dust emissions and the changes in acid neutralizing capacity (“ANC”) of various high mountain lakes.

The Forest Service should also address the cumulative air quality impacts from Plains’ proposal when coupled with anticipated pollution from major cities in Utah and other southwestern states, the ongoing and proposed expansion of development in the Jonah, Anticline and other regional gas fields and the reasonably foreseeable development scenarios on the Bridger-Teton National Forest itself. The master development plan EIS if approved will serve as a document to which subsequent APDs
can tier and under both Section 390 of the Energy Policy Act of 2005 and the Forest Service Handbook Direction, 72 Fed. Reg. 7391, (Feb.15, 2007) these wells will undoubtedly be categorically excluded from further NEPA analysis. In order that this process does not circumvent NEPA’s requirement that the Forest Service analyze cumulative impacts prior to making a decision whether to authorize a project, the Forest Service must quantify to the best of its ability the likely impacts from the number of wells (both gas and groundwater) that could be drilled (on and off the forest) in the next 10-12 years and all associated drilling activities that may contribute to air quality degradation in the region.

With respect to the reasonably foreseeable oil and gas development on the Bridger-Teton, the Forest Service should include in its model the anticipated air quality impacts from up to 272 wells in the master development plan area even though the plan if authorized would only allow the drilling of 136 wells. In addition, the Forest Service should include the 200 wells that Stanley Energy has proposed to drill on its contested leases on National Forest land west of Merna. This is not a speculative project but a written proposal that Stanley Energy has shared with Undersecretary Rey and other Forest Service personnel, which prompted the initiation of a leasing EIS that proposes to issue all of the contested leases offered in 2005-2006 on the Bridger-Teton National Forest. See “Stanley Energy’s Proposed Gas Field Development Program for the Bridger-Teton” at 1 (noting that it proposes to drill 25 wells from each of eight, 50-acre well pads) (Exhibit 5). The company has shared its proposal widely with the public and the media. See Chris Merrill, “Does State have a Say?” February 5, 2007, Casper Star Tribune (Exhibit 6). As such, this project is not speculative, but one that must be considered as a reasonably foreseeable future action that would contribute to air quality impacts in the region.

Finally, the Forest Service should include in its model the potential for wells that could be developed on Plains’ additional acreage west and north of the project area. Plains’ representatives have made it clear that this project could very likely open the door to opportunities to develop even more pristine areas further into the backcountry around Cliff Creek. Thus, the company itself is already hinting at the potential for expanded development and it is reasonably foreseeable that it could occur. For this reason, the model should include any of these wells that could be drilled.

The air quality model and draft EIS should identify all reasonable mitigation for air quality impacts, even if they are outside the jurisdiction of the Forest Service. It should include steps the Forest Service can and must take as the agency charged with protecting visibility and other air quality related values in Class I areas, particularly the Class I area it manages, the Bridger Wilderness. The Forest Service should deny the project outright if the model proves that any new drilling will likely violate the Clean Air Act and/or require strict limitations on the pace of drilling. If the Forest Service model illustrates that impacts can be mitigated, it should also include an assessment of the probability that these mitigation measures will be implemented.
f. **Surface and groundwater quality & quantity**

Due to the large quantity of ground and surface water needed to complete the proposed project coupled with the threat of increased sedimentation that erosion from new roads and well pads will have on nearby streams, the Forest Service must ensure that its analysis of water resources—with respect to water quality and quantity—is complete and accurate. To date, neither Plains nor the Forest Service has been able to answer the public’s questions about the area’s fragile and scarce water resources sufficiently. For this reason, a complete and accurate assessment of the impacts to ground and surface water must be conducted prior to the Forest Service’s decision whether to authorize the project.

None of the Forest Plan’s objectives, guidelines or standards support authorizing the massive removal of water this project proposes, nor do they encourage the water quality degradation that will occur from new road construction and pipeline installation. Indeed, the goals and objectives encourage the opposite approach:

**Goal 1.3:** Water quantity and quality are retained or improved for local users;

**Objective 1.3(a):** Protect municipal, agricultural, and other potable water supplies and ensure that management activities do not cause a deterioration in water flow timing, quality or quantity;

**Objective 1.3(b):** Meet or exceed current State water quality standards and National Forest water quality goals.

**Objective 4.3(c):** Protect and rehabilitate riparian areas to retain and improve their value for fisheries, aquatic habitat, wildlife and water quality.

BTNFR LRMP at 114, 119 (Exhibit 2).

The Forest Service in the draft EIS for the three wells conceded that the “[j]ite-specific groundwater data for the project and vicinity are limited.” DEIS at 3-25. Despite the lack of information, the Forest Service nevertheless concluded that the formation that will be explored is hydraulically isolated from the shallower aquifers used for local water supply, and thus would not impact those local wells. The Forest Service provided no justification for this conclusion, nor could it have apparently, with the limited information available.

This time around, the lack of data should not be used as an excuse to move ahead, but rather as a rationale to study comprehensively the groundwater aquifers that may be affected by the project. The study should include information based on wells within at least a five-mile radius of the proposed master development plan project area. These wells should be mapped and identified as to depth, construction, screen intervals and permitted and actual yields. The Forest Service also should provide data on aquifer structure, connectivity, recharge areas and water volumes in various aquifer zones.
Additionally, the draft EIS should thoroughly discuss the risks from potential groundwater contamination. There are several ways in which water could become polluted as a result of developing a large gas field. First, when wells are drilled in a deep portion of an aquifer that contains high total dissolved solids, groundwater pumping can pull up water with potentially even higher total dissolved solids levels. There is the chance that this high saline/mineralized water could migrate upwards and discharge into the shallower, fresh groundwater, resulting in contamination. This reasonably foreseeable impact should be analyzed in the EIS and baseline sampling should be conducted prior to any drilling related to the project so that future monitoring will have data to which new information can be compared. The EIS should describe in detail the mitigation and remedial measures that would be taken if such an occurrence were to happen.

There are additional means by which groundwater may become polluted. For example, treatment and disposal of produced water may pollute subsurface waters. The EIS should provide adequate detail as to the flows and volumes that may be involved. Moreover, it is likely the drilling fluids, fuels lubricants and other potential pollutants could pollute groundwater. The EIS should contain a comprehensive discussion of the ways to avoid this contamination and the requirements that will be imposed on drilling operations. The EIS should also include a discussion of tank lining, leakage and spill prevention activities—beyond merely identifying best management practices.

The public has now become quite familiar with situations in and around the Jonah and Anticline fields and fields in Pavillion, Wyoming where groundwater wells have become contaminated with hydrocarbons. Lack of baseline data, however, has allowed operators to attempt to deny responsibility for this pollution, claiming the wells were polluted before they started drilling. For this reason, it is imperative that proper baseline studies are conducted prior to authorization of any development.

There are also numerous risks from the project that threaten surface water resources. When the project proposed just three wells, the Forest Service's own assessment suggested that the project may have affected “natural flow characteristics and water quality” and may have “increased siltation at stream crossings associated with road and temporary pipeline.” DEIS at 2-39. The assessment further described that “[e]ffects on stream health and watershed conditions would be primarily tied to [the] construction phase and would include potential increases in sedimentation to streams, potential effects on streambank stability and disruption of streambeds and aquatic habitat.” DEIS at 4-12.

The Forest Service should collect baseline data regarding stream quality prior to its preparation of this draft EIS (something it failed to do in the last draft). In addition, it should consult the numerous references listed in our April 2007 comments that may provide the agency relevant information for the design and mitigation of the proposed project. See Exhibit 1 at 40-41. The Forest Service should also include in the EIS a discussion of ways in which it may mitigate erosion and sedimentation. It should clearly identify the BMPs that will be followed, the monitoring program it will require and the terms and conditions of approval of the project. It should describe how it intends to fund
the monitoring (whether through fees that Plains would pay or elsewhere) and it should identify remedial measures it will take if adverse consequences are documented in the monitoring process.

g. **Wetlands**

The Forest Service should also conduct a full basin analysis to address wetland resources and to determine whether as a result of this project these important waters could be put at risk. The Noble Basin contains remarkable riparian areas and wetlands, which are vitally important to the ecological health of the region. The draft EIS should describe all of the ways the Forest Service, if it decides to authorize the project, will minimize the destruction, loss or degradation of wetlands.

h. **Socio-economic impacts**

The Bridger-Teton National Forest plays a unique role in a regional economy reliant on the protection of natural resources in the Greater Yellowstone Area. The Forest Service should consider all factors that contribute both positively and adversely to the socio-economic spectrum of the region and the state’s economy. The Forest Service should not limit its analysis to factors that can be easily quantified, but should approach this project with the aim to produce an analysis that considers all economic and social drivers and the impact from this and other reasonably foreseeable oil and gas development proposals on and off the forest.

The analysis should include, but not be limited to the following suggestions. The Forest Service should gather baseline information about revenue sources from visitor spending (i.e. general tourism), hunting and fishing licenses and related expenditures, income from outfitting and guide businesses and from local businesses and real estate firms that literally market a healthy forest as an amenity to incoming residents. It should include not only revenue produced, but also costs associated with commodity-based endeavors, including the environmental costs. It should include amenity-based values associated with the quality of life and desirability of living in towns like Jackson, Bondurant, Daniel, Pinedale and communities in Star Valley that provide easy access to the forest and attempt to quantify these values. The detriment to property values when a gas field is developed just miles from one’s home should also be analyzed.

Given that the Hoback area of the Plains project is demographically connected to the Jackson area with respect to residents that work in and travel to Jackson for commercial needs, the Forest Service’s socioeconomic analysis should include impacts to Teton as well as Sublette County. The agency should consider impacts from the new worker influx the project will create. There are current housing shortages in both counties and the impacts from increased traffic to roads and other country infrastructure, coupled with the need for more law enforcement and social services in the surrounding small towns should be fully examined.

The analysis should also include an assessment of the value of ecosystem services
that would be lost if this field is developed. This can be approached by quantifying what it would cost to artificially replace a healthy watershed for example or the costs associated with impacts to human health from polluted air. The analysis should be geographically broad enough to encompass local communities, but also address statewide impacts.

i. **Roadless characteristics**

The Grayback Ridge inventoried roadless area is the Bridger-Teton National Forest’s largest primitive/semi-primitive area outside of wilderness, where, as the draft EIS for the three wells stated, the natural integrity of the area is “high,” as is its degree of remoteness and potential for wilderness recommendation. DEIS at 3-83 to 3-84. Although there are some low standard roads that have been developed within this inventoried roadless area, its character is nevertheless largely that of an “expansive backcountry” which “embodies a ‘sense of place’ associated with the Yellowstone region.” Id. at 3-78. For these reasons, the Grayback Ridge roadless area should be regarded with the highest esteem and be managed carefully to protect its backcountry qualities.

Plains’ full-field development proposal presents an even greater threat to this roadless area than did the three wells alone. The potential that 29 miles of new or upgraded roads will be constructed will change the character of this area for decades into the future. Roads increase erosion and sedimentation into streams and wetlands, having at times fatal consequences for fish. Roads also fragment and replace secure habitat and put sensitive and big game species in jeopardy.

The Forest Service should include in its analysis modifications to the master development plan that would lessen the number of miles of roads proposed—whether by requiring helicopter access or fewer well pads altogether. It should also include a soil study unique to the basin in response to statements the Forest Service made in the January 2008 public meetings that the soils in the project area are part of a “shifting and slumping topography” that renders road construction a challenge.

j. **Eligible river segments under the Wild and Scenic Rivers Act**

In 1993, the Bridger-Teton National Forest determined that two distinct reaches of the Hoback River are eligible for protection under the Wild and Scenic Rivers Act, 16 U.S.C. § 1271, et seq. The first is the upper reach of the Hoback River, which extends from its source downstream for seven miles. The second—the lower reach—extends for fifteen miles from the mouth of Cliff Creek down to the confluence of the Snake River. The lower reach is downstream of the proposed project area.

Under the current forest plan, wild and scenic eligible river segments are to be managed under the same standard as if they were already designated under the Act. The Act, **inter alia** restricts any activities that would degrade a river’s outstanding remarkable values and guarantees that water quality is maintained and enhanced. An industrial gas
field upstream from this lower section of the Hoback River proposes a grave threat to its values and water quality. The draft EIS should address whether such a project is compatible with an area identified for its wildlife, scenery and recreational values and what mitigation measures will be required to protect the Hoback and associated resources from the potentially dangerous impacts of this proposal.

k. Noxious weeds and invasive species

Road systems and other soil disturbing construction activities that remove vegetation to allow for well pad and staging areas are a major pathway for the spread of invasive plants. The Forest Service has a duty not only to monitor and mitigate the spread of invasive plants, but also to prevent their spread when possible. According to Executive Order 13112, all federal agencies whose actions may affect the status of invasive species are charged with the responsibility to prevent the introduction of invasive species. Specifically, the Forest Service shall not "authorize, fund or carry out any actions that it believes are likely to cause or promote the introduction or spread of invasive species in the United States . . . unless the agency has determined and made public its determination that the benefits of such actions clearly outweigh the potential harm caused by invasive species . . ." 64 Fed. Reg. 6183 (Feb. 8, 1999).

If the Forest Service authorizes the project, it should address its responsibilities to prevent the spread of invasive species. The draft EIS should fully analyze current vegetative conditions by creating a baseline study that documents and maps the native and non-native plants in the Basin. The study should also include attention to any rare and special status plant species. The EIS should describe in detail the mitigation measures the Forest Service will require so that the mandates in the Executive Order are carried out. It should also establish an invasive plant monitoring program to ensure that mitigation in the project area is in fact accomplishing the agency's stated goals.

l. Noise

The Forest Service should address impacts related to noise. New road construction, well pad construction, compressors, generators, truck traffic, drill rig operations and possibly helicopters will all have an impact on the remote, quiet and largely roadless Noble Basin. The draft EIS should include the likely direct, indirect and cumulative impacts from noise to hunters, anglers and recreational users, wildlife and communities near the project area, including but not limited to Hoback Ranches, Daniel and Bondurant.

m. Other oil and gas projects on the Bridger-Teton National Forest

Prior to moving forward with this EIS, the Forest Service should prepare a forest-wide oil and gas availability study to assist it in long-term planning for the future of the Bridger-Teton National Forest. This is something that typically occurs in conjunction with or subsequent to forest plan revision, however, because: 1) that process is on hold indefinitely, 2) substantial protective measures are in play (i.e. the Wyoming Range
Legacy Act of 2007); and 3) substantial projects and new leasing have been proposed that would, if authorized, undermine the intent of the legislation without giving the public and these companies an adequate chance at negotiating trades or buy-outs, we encourage the Forest Service to prepare this analysis now. As mentioned already, Plains and other leaseholders have the benefit of lease suspensions, which protect their rights until such a time when the agency is ready to proceed with project-level analyses.

n. Climate change

The Forest Service should in the draft EIS address the project’s greenhouse gas emissions and the direct, indirect and cumulative effects these may have on global climate change coupled with other past, present and reasonably foreseeable drilling projects on the forest itself and across the state. NEPA requires consideration of this serious and environmentally significant issue and the Supreme Court recently held that this is an issue that must be considered. See Massachusetts v. Environmental Protection Agency, 127 S.Ct. 1438 (2007) (explaining that the harms associated with climate change are serious and well recognized and greenhouse gases fit well within the Clean Air Act’s definition of an air pollutant).

In addition to increased global temperatures, the Forest Service should address the numerous consequences associated with a warmer climate. These include shorter winters and earlier snowmelt, which affect plant and animal populations. The Forest Service should also provide an estimate of the quantity of CO₂ and methane emissions that will be generated by activities on the Bridger-Teton National Forest and identify means to reduce those emissions.

4. The master development plan ("MDP") model is appropriate for analysis purposes but not for use as a final decision document.

As the scoping notice describes, a master development plan has the potential to better facilitate “planning of oil and gas infrastructure by taking into account development as a whole rather than piecemealed actions.” Last year we advocated that the Forest Service analyze the impacts from potential full field development—a scenario that was reasonably foreseeable in light of Plains’ own statements and aspects of the initial plan itself. We are encouraged that the Forest Service has chosen to address this project in more comprehensive manner. We are concerned, however, that this model does not include adequate safeguards to curtail development if after the initial phases, the project proves to have far greater impacts than anticipated.

The decision the Forest Service proposes to make is whether to authorize the drilling of 136 over the next 10-12 years. If it decides to approve the project as proposed, no further environmental analysis will be required as long as infill of the field "occurs within the parameters of the approved MDP.” Id. at 2. Future APDs would be categorically excluded from review under the theory that the impacts from drilling individual wells and constructing new pads were already considered in the MDP.
Language such as “within the parameters of the MDP” is too vague to put Plains or the public on notice of what will be permitted by the MDP decision and what may require further analysis. At a minimum, if the Forest Service moves forward, the draft EIS should clearly articulate the level of detail it will require in the MDP decision and the types of variances if any that will be encompassed in the decision. The EIS should also enumerate changes to the plan that would be substantially different such that further NEPA review is needed.

The MDP model may be a sufficient tool for decision-making purposes in some areas of the country where the landscape is uniform or in areas where wells have been drilled nearby so that information has already been gathered about the subsurface geology. We understand the BLM is using this model with greater frequency on its lands. The Forest Service to date, however, has not used this model to authorize oil and gas development projects and we have strong reservations about the Bridger-Teton National Forest, a mountainous forest renown for its recreational and wildlife qualities, being used as a test case.

We urge the Forest Service to use the MDP as an analytical tool, but not as a final decision document. Like the threshold alternative we suggested above, the Forest Service should consider all of the potential impacts associated with full field development, but use caution in permitting such development—and permit the development incrementally, if at all. This approach would allow for “adaptive management” and the possibility of limiting development in the Basin if adverse impacts not anticipated are observed. These threshold limits should be well defined and understood by all parties (i.e. state and federal agencies, industry and the public).

5. **The Forest Service must formally consult with the USFWS regarding Canada lynx in order to comply with the Endangered Species Act.**

As this project may affect listed species, particularly Canada lynx, the Forest Service must ensure compliance with the Endangered Species Act (“ESA”) 16 U.S.C. § 1536(a)(2), particularly timely § 7 consultation with the U.S. Fish and Wildlife Service. Section 7(a)(2) of the ESA requires that in preparation for authorizing any action, an agency must prepare a biological assessment (“BA”) in situations where a threatened or endangered species “may be present.” 16 U.S.C. § 1536(a)(2). A BA “shall evaluate the potential effects of the action on listed and proposed species and designated and proposed critical habitat and determine whether any such species or habitats are likely to be adversely affected by the action and is used in determining whether formal consultation or a conference is needed.” 50 C.F.R. § 402.12(a).

In the draft EIS for the three wells, the Forest Service indicated that it intended to find that the project may affect, but would not likely adversely affect lynx. The ESA requires the Forest Service to “use the best scientific and commercial data available” when analyzing potential effects to listed species as a result of a proposed project. 16 U.S.C. § 1536(a)(2). The Forest Service has a responsibility to provide the FWS with the best scientific and commercial data available so that the FWS can properly perform an
“adequate review of the effects that an action may have upon a listed species or critical habitat.” 50 C.F.R. § 402.14(d). As discussed in detail above in the section that discusses the Forest Service’s duties under NEPA with respect to lynx, the Forest Service in the past has not relied on the best available data specific to lynx and their habitat in and around the project area. If the Forest Service finds that the project may likely adversely affect the lynx, it must request formal consultation with the USFWS.

6. Conclusion

For the reasons described in these comments, the Wyoming Outdoor Council and the undersigned conservation organizations request that the Forest Service suspend the Eagle Prospect and Noble Basin Master Development Plan EIS. A suspension will allow time for the Forest Service to complete the numerous studies required for a project of this magnitude and allow time for interested stakeholders to find creative solutions that could occur outside the EIS process.

If the Forest Service instead decides to move forward with preparation of a draft EIS, it must do so by complying with the National Environmental Policy Act (“NEPA”) 42 U.S.C. § 4321 et seq. NEPA instructs agencies to allow opportunities for meaningful public participation, consider a full range of reasonable alternatives and to take a hard look at resources that may be impacted by the project. We encourage the Forest Service to be receptive to suggestions that may be unfamiliar, but nonetheless reasonable in the context of the unique parameters of this proposal—such as, but not limited to—the inclusion of a lease buy-out/trade/retirement alternative.

Thank you for considering these comments. We look forward to future discussions about this proposal and remain optimistic that given time, creative solutions can be found that will satisfy all stakeholders.

Sincerely,

Lisa D. McGee, Esq.
Wyoming Outdoor Council
262 Lincoln St.
Lander, WY 82520

And on behalf of:

The Wilderness Society
503 W. Mendenhall
Bozeman, MT 59715

Greater Yellowstone Coalition
P.O. Box 4857
Jackson, WY 83001
Jackson Hole Conservation Alliance
P.O. Box 2728
Jackson, WY 83001

cc: Kniffany Hamilton, BTN Supervisor
    Dave Freudenthal, Governor
    John Barrasso, Senator
    Jodee Pring, Wyoming State Engineer’s Office
    Jeremy Lyon, Wyoming Department of Environmental Quality
    Larry Svoboda, Region VIII EPA
    Vern Stelter, Wyoming Game and Fish Department
    Scott Smith, Wyoming Game and Fish Department