



March 17, 2010

Carole 'Kniffy' Hamilton  
Bridger-Teton National Forest  
P.O. Box 1888  
Jackson, WY 83001

**RE: Comments on the draft supplemental EIS regarding oil and gas leasing in the Wyoming Range**

Sent via USPS and electronic mail at: [comments-intermtn-bridger-teton@fs.fed.us](mailto:comments-intermtn-bridger-teton@fs.fed.us)

Dear Kniffy,

Please accept the following comments on behalf of Wyoming Outdoor Council, The Wilderness Society and Greater Yellowstone Coalition regarding the draft supplemental Environmental Impact Statement (DEIS) to consider oil and gas leasing of 44,720 acres in the Wyoming Range. We commend you for identifying Alternative 1—the no action alternative—as the preferred alternative and lend our support to the Forest Service for what we hope will be a retention of this alternative as the agency's final decision. Not only is the no action alternative the right course to safeguard wildlife, air quality and traditional, sustainable uses in the Wyoming Range, it is responsive to the desires of so many citizens who have participated in good faith in this long administrative process. We are grateful for your careful consideration and leadership at this time.

The complicated procedural history of these leases and the role they played as the impetus for a successful grassroots effort to safeguard the Wyoming Range from future oil and gas leasing is worth mentioning in order to provide a broader context for this EIS. As you know, for many years our organizations along with concerned citizens including local ranchers, sportsmen, permitted outfitters and labor union members have been actively engaged in a conservation effort to safeguard the Wyoming Range from new oil and gas leasing. It was the offering of these leases that galvanized such remarkable citizen activism.

Beginning in 2005 in a series of four oil and gas lease sales, the Forest Service consented to lease and BLM began offering for lease sale the 44,720 acres now addressed in this DEIS. Our organizations protested the first two sales and the BLM dismissed these protests, which prompted appeals and requests for stay to the Interior Board of Land Appeals (IBLA). We argued that changed circumstances on the national forest and in the surrounding valley—namely air quality and the listing of Canada lynx as a threatened species among other things—warranted

supplemental NEPA analysis. The IBLA found that we were likely to be successful on the merits of our appeals and granted the stay requests. The stays resulted in suspensions on the leases issued in these two sales, which remain in place to this day. As a result of the IBLA stay decisions, the BLM upheld protests on Wyoming Range parcels offered in the final two lease sales and did not issue those leases.

In response to these controversial lease sales, citizens came together in 2006 to talk about the future of the Wyoming Range and how they wanted it to remain a recreational and wildlife haven in the midst of widespread oil and gas development on surrounding BLM lands in Upper Green River Valley. Two coalitions formed: Citizens Protecting the Wyoming Range and Sportsmen for the Wyoming Range with the shared goal of raising awareness of the need to strike a balance between energy development and Wyoming's wildlife and outdoor heritage. From these grassroots coalitions emerged the idea of crafting permanent protection for the Wyoming Range in the form of federal legislation.

In January 2007, the BLM requested remand of the appeals to allow the Forest Service to remedy what the IBLA had indicated was likely inadequate NEPA analysis. In the spring of 2008 the Forest Service issued its notice of intent to prepare a supplemental EIS. At that time we registered serious concerns about what we learned of Stanley Energy's funding and active oversight of the EIS process with Arcadis, the third-party contractor originally hired to prepare the document. To its credit, the Forest Service admitted mistakes were made and agreed to fund and administer the process itself. Since the drafting of the EIS was transferred from Arcadis to the regional Forest Service office, the process has seemed professional and thorough. We would like to thank the Forest Service for taking steps to ensure the NEPA process is objective as well as comprehensive.

The multi-year, grassroots effort to protect the Range culminated in the passage in March 2009 of the Wyoming Range Legacy Act as part of the Omnibus Public Land Management Act, Pub. Law. 111-11, 123 Stat. 1128. The Act withdraws 1.2 million acres in the southern Bridger-Teton National Forest from future oil and gas leasing. Although the 44,720 contested acres are within the legislative "Wyoming Range Withdrawal Area," the fate of these contested acres was not resolved with passage of the Act. As citizens involved in this protection effort understood, the decision whether to uphold the initial leasing decision or to withdraw consent for leasing rested with the Forest Service and the BLM and would be made at the conclusion of this EIS process.

This understanding is set forth in the legislation under the heading "PRIOR LEASE SALES." This section of the Act states:

Nothing in this section prohibits the Secretary from taking any action necessary to issue, deny, remove the suspension of, or cancel a lease, or any sold parcel that has not been issued, pursuant to any lease sale conducted prior to the date of enactment of this Act, including the completion of any requirements under the National Environmental Policy Act of 1969.

Pub. L. 111-11, § 3202(e).

Pursuant to its authority as acknowledged in the above passage, in August 2009, the BLM announced it had rejected pending bids from the June and August 2006 lease sales. High bidding companies appealed this decision to the IBLA and two of these companies filed petitions for stay. Our organizations, the state of Wyoming and other groups intervened on behalf of the BLM. The IBLA denied these petitions on December 29, 2009. The Forest Service has crafted the alternatives and its analysis to reflect the fact that these appeals are still pending.

We would like to extend our gratitude to the Forest Service regional office staff in Ogden for a comprehensive analysis of the changed circumstances in the region and to you, Kniffy, for responding appropriately with the selection of the no action alternative as your preferred alternative given the new information revealed in the draft EIS. For those organizations and citizens who have been involved with these contested leases for the past nearly five years, that the Forest Service is considering seriously the no action alternative is welcome news.

**I. There is ample support for carrying the no-action preferred alternative forward as the Forest Service’s final decision.**

There are numerous reasons the Forest Service can cite to justify the selection of the no action alternative as its final decision. Oil and gas leasing and development threaten air quality, recreation, wildlife (including threatened, big game and aquatic species) and ground water resources and are contrary to what countless citizens and forest users have identified as the highest and best uses of the Wyoming Range area. The retention of the area as a high quality wildlife and backcountry haven, and the effort to safeguard forest resources and human health through the protection of air and water quality, requires selection of the no action alternative.

**A. Air Quality**

As we have noted in prior correspondences, protests, appeals and comments over the past several years, much has changed in western Wyoming since large-scale oil and gas development in the Upper Green River Valley intensified beginning in the late 1990s. Along with increased development have come substantial consequences, particularly to the region’s air quality. Today, families in Sublette County live with health risks as a result of elevated ozone levels. There are frequent days of haze, which hangs over the valley and mars the once pristine mountain views. Visibility in the Bridger Wilderness is impaired. In addition, pollutants are contributing to changes in sensitive, high elevation lakes in the Wind River Range. Because this is the first decision the Forest Service will make that could contribute to declining air quality in the region, the agency is correct to take a cautious approach in determining whether to lease at all.

The draft EIS properly states that 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. DEIS at 3-139, 3-145; see also 42 U.S.C. § 7475(d)(1)(B). 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). Moreover, 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 draft EIS also acknowledges the requirement in the Wilderness Act that wilderness managers “protect and preserve wilderness areas from man caused degradation.” DEIS at 3-139.

The draft EIS discloses the affected environment in the Upper Green River Basin with respect to air quality. First, data collected from monitoring sites show exceedances for the criteria pollutant ozone. DEIS at 3-139 (stating that “high ozone readings in February of 2006, 2007 and 2008 are showing a violation of the new ozone standard of 75 parts per billion.”) Governor Freudenthal has recommended to EPA that all of Sublette County and parts of Lincoln and Sweetwater Counties be designated as nonattainment areas for ozone. DEIS at 3-141. Second, “[r]ecent air quality modeling completed for local natural gas projects have shown that impacts to visibility in the Bridger (and other) wilderness areas are currently occurring . . . .” Third, atmospheric deposition has been sampled in high elevation lakes for more than two decades. DEIS at 3-150. This sampling shows that the nitrogen deposition levels are much higher than the level the Forest Service believes is allowable in order to be protective of aquatic systems. *Id.* Notably, “some of the highest measured deposition has occurred in recent years since natural gas development began in the Pinedale area.” DEIS at 3-151. Finally, lake acidification data were collected. DEIS at 3-152. “Statistical analysis of this data shows that there are long term significant changes occurring in the ANC, nitrogen and sulfur deposition in these lakes.” *Id.*

Thus, with respect to all measurements of air quality—ozone exceedances, impacts to visibility in Class I areas and lake chemistry—there are serious, existing problems. Based on a reasonably foreseeable development (RFD) scenario of 27 additional wells from the 44,720 acres, the EIS concludes that “it is not likely that emissions from this project alone would cause exceedances of National Ambient Air Quality Standards or have a noticeable impact on air quality related values (including visibility) in nearby sensitive Class I and Class II wilderness areas and national parks.” DEIS at 4-166. However, when these wells are coupled with “other emissions in the basin, they would likely contribute some to the cumulative effects that are occurring.” *Id.* We agree with this assessment. We believe the no action alternative is the only alternative that would not contribute to the problem of declining regional air quality, visibility in the Bridger Wilderness and alteration of lake chemistry in sensitive, high elevation lakes. For this reason, we support the Forest Service’s initial determination that the no action alternative is preferable and urge this to be its final decision.

Although we have in the past questioned the seemingly low RFD scenario (and continue to ask whether this is not an under-estimation), it is reassuring to know that even with this low projected number of wells, the Forest Service concludes there would be a cumulative impact to the resources it manages. A qualitative air quality analysis, such as the one prepared for this EIS is sufficient to make this determination. Although we advocated for a quantitative air quality analysis, we don’t believe one is necessary if the Forest Service retains the no action alternative

as its final decision. If, however, the final decision authorizes any amount of leasing whatsoever, we contend a quantitative analysis is required.

## **B. Recreation**

The Bridger-Teton National Forest is without question one of the gems of the national forest system. As a key component of the Greater Yellowstone Ecosystem, it provides important and in some cases critical habitat to numerous wildlife species and provides unparalleled recreational opportunities. As a result, it supports a local economy that relies on the backcountry character of the forest to support a recreational, sporting and tourism economy.

The EIS states correctly, “The existing qualities of the area (the essentially wild landscape, large backcountry areas, remoteness, relatively few people, fine scenery, and existing recreation roads and trails) provide valued opportunities for recreation.” DEIS at 4-24. Similarly correct is the statement that “roads, pipelines, well pads, and support facilities such as gravel pits, staging areas and collection facilities, sights and sounds of oil and gas activities, hazards from leaks, and effects of winter operations on existing snow trails” would “change the scenic character and recreation setting” for the area. Id. at 4-25. In addition, there are potential effects on special areas as a result of new road building and a “resulting increase in vehicle access, noise, lights and air pollution.” Id. at 4-27.

Recreation is a use on the forest that is only increasing. As noted in the EIS, visitation to the Bridger-Teton has “roughly doubled since 1980.” Id. at 4-37. “Leading the increases were a rapid rise in river floating, snowmobiling, and general hiking and touring.” Id. The forest draws visitors from all over the world, but use among local residents is especially high and access to the forest is one of the reasons property values on adjacent private land have risen. “New residents commonly cite the amenities of large wildlands as their primary reason for moving to the area.” Id.

Energy development would reduce “the roadless character of some areas by bringing higher-standard roads into places that are currently remote, primitive and little-known.” Id. at 4-39. This is a problem because “[n]ot only does this invite more traffic, it creates more opportunities for unauthorized off-road travel in places where the BTNF is already having trouble with enforcement of travel management regulations.” Id. For the reasons the EIS properly summarizes, oil and gas leasing and development are not compatible with and would adversely affect backcountry recreation and the economy that relies on it. The no action alternative would protect these important values and uses.

## **C. Wildlife**

The effects of oil and gas leasing and development on wildlife that are common to all action alternatives are perhaps among the most convincing reasons to choose the no action alternative. As the EIS acknowledges, development results in direct habitat loss, indirect habitat loss and alteration, disturbance, road related effects and impacts to linkages and migration routes. With respect to direct habitat loss: “In the case of a production well, the area of the well pad and facilities is no longer functional in any capacity for wildlife species and there is no potential for

it to become so for fifty or more years.” DEIS at 4-55. Citing data from the Wyoming Game and Fish Department (WGFD), “If species are displaced from suitable habitats, they will most likely be displaced into marginal or unsuitable habitats. It is contrary to basic wildlife ecology to assume that species can just move to other suitable habitats because unoccupied, suitable habitat typically does not exist. Id. As a result, species are likely to experience lower survival and reproduction rates. Id.

There are also indirect effects on wildlife from oil and gas leasing and development—such as avoidance of developed areas and stress responses. Id. at 4-56. As WGFD information shows, oil and gas development and operations have an impact “beyond just the footprint of habitat removal/alteration.” Id. Moreover, ground disturbance brings with it the “potential decline in habitat quality due to noxious weed introductions and an increased complexity/risk for prescribed burning to improve habitat.” Id. During the drilling and production stages, truck traffic, noise and human activity are serious disturbances. The EIS is correct to point out that Timing Limitation Stipulations for calving are not applicable after the initial development stage. Id. Thus, there is the potential for year round disturbance after the wells are producing. Within an RFD scenario of 27 wells, the EIS estimates there would be 19 miles of new roads and reconstruction of existing roads, some of which are currently closed. Id. at 4-61. Roads negatively affect wildlife species to varying degrees and it is undisputed that roads cause habitat loss and fragmentation and are routes whereby disturbance occurs.

The EIS addresses a comprehensive sampling of wildlife species that could be affected by oil and gas leasing and development on the forest. For purposes of our comments, we have focused on Canada lynx, big game species and aquatic species. As will be discussed in more detail below, oil and gas leasing and development would cause unacceptable risks to these species, adding further support for the selection of the no action alternative.

### **1. Canada lynx**

As we have cited in past comments, the data show that “drainages within the project area provide what is probably the best lynx habitat in the Wyoming Range. This habitat is being used at the present time and is believed to be of crucial, immediate importance to the small remaining lynx population in Wyoming.” DEIS at 4-107. According to the best available research, the estimate of less than seven individual lynx residing in the Greater Yellowstone area cautions against authorizing any activities, like oil and gas development, that would be detrimental to any individual, as that could in turn be detrimental to the population as a whole. Id. at 4-62. This is because “[a]ctivities associated with oil and gas leasing (short/long-term habitat loss, extended presence of humans, increased risk of mortality) are inherently negative for Canada lynx and especially so in the context of the Wyoming Range because of its great importance to recovery of the species and the tenuous condition of the lynx population.” Id. at 4-111.

The EIS is correct to point out that “[o]il and gas leasing presents no benefit to lynx and in fact induces negative effects.” Id. at 4-107. “[E]nergy development inherently removes any existing value of the habitat for lynx for the short and long-term, directly within and surrounding development. Increased roading and human activity contribute to higher risk of mortality.” Id. It is noteworthy that many potential mitigation measures “are not likely sufficient for lynx” due to:

1) the crucial importance of the habitat in and surrounding the project area; 2) the very low population level; 3) large home ranges; 4) difficulty in discovering den sites and 5) vulnerability of lynx to poaching. Id. at 4-108. Not only would the impacts to lynx as a result of the proposed action be detrimental, but also numerous present and reasonably foreseeable projects on and off the forest “leads to the conclusion that there is a probability of substantial incremental cumulative effects to Canada lynx. . . .” Id. at 4-107.

The conclusion in the EIS that the proposed action would “likely result in substantial effects to lynx individually and possibly at the population-level in the Greater Yellowstone area because of the small number of remaining lynx” warrants a no leasing decision. Id. at 4-64. Similarly, the finding that the action alternatives “may affect and are likely to adversely affect lynx” with respect to the criteria set forth in the Endangered Species Act is supported by the facts presented in the administrative record over the past five years and is recounted in the EIS. The best decision the Forest Service can make for the future viability of lynx in the Wyoming Range is not to lease.

## **2. Elk, Moose and Mule Deer**

Big game species are vulnerable to the direct impacts from oil and gas development and its associated infrastructure and human disturbance. As the EIS states, “Disturbance, particularly during exploration and development of wells, would certainly displace ungulates from otherwise suitable nearby habitats.” DEIS at 4-66. Roads affect mule deer and moose (reducing available habitat and habitat effectiveness), but they are especially detrimental to elk. Id. Elk have a “greater sensitivity” to roads and their avoidance of roads is well documented. Id. Notably, the project area already harbors a “limited amount of highly secure habitat” and this habitat “could become almost nonexistent in the project area” with the introduction of oil and gas development. Id. at 4-67. In addition, “all of the action alternatives have the potential for disrupting migration activities [of mule deer and elk] and impacting migration routes.” Id. at 4-71. “Well drilling and pad construction, depending on the exact location, could cause disturbance and displacement from primary routes, which would lead to increased stress and energetic loss as affected animals head into the winter season . . . . In extreme cases of long-term displacement of ungulates from migration routes the ‘migration memory’ of subsequent generations could be lost.” Id. (citing WGFD data).

The cumulative effects analysis states, “[U]nprecedented energy development, numerous projects and developments such as subdivisions, roads, fences, [and] vegetation management...are reducing and disrupting migration (transition) habitat for these ... species within the cumulative effects area.” Id. at 4-115. The EIS cites the Pinedale RMP, which states:

Mineral development activities would likely cause displacement of animals and selection of alternative habitats and would likely inhibit elk movement between winter ranges and birthing areas. Should migration be disrupted and key habitats continue to be degraded over a short period of time, it is likely that the long-term displacement of elk from these habitats would occur. Depending on the rate of forage loss, herd sizes could decrease over time and dependency on elk feedgrounds could increase.

Id. at 4-117. Given these predictions, the EIS concludes that there is a “moderate potential” that effects associated with the proposed action “could result in detectable incremental cumulative effects.” Id. To support this conclusion, the EIS relies on the presence of feedgrounds as a safeguard to bolster population levels. We question this rationale, as the EIS fails to take into consideration the risks to elk and moose populations from chronic wasting disease, a disease that is more easily spread in concentrated feeding areas. We contend that there is at least—if not more than—a moderate potential for adverse effects to elk and moose as a result of increased oil and gas development in the project area coupled with the extensive present and foreseeable development on nearby BLM land.

We agree with the assessment that it is “likely the magnitude of effects [from the proposed action] would be greater on mule deer...” than on elk or moose. Id. As we have noted in past comments, each of the seasonal mule deer ranges is “vitaly important” to the mule deer population. Id. at 4-118. The Wyoming Range provides summer and transition/migration habitat and deer can spend nearly half the year on these ranges. Id. Moreover, because mule deer winter range and migration routes have been so heavily impacted (with documented severe population declines) and because mitigation measures “may not be achieving the desired protections” there is a serious risk to degrading birthing and transition ranges. Id. The EIS correctly anticipates that because the “transition (migratory) habitat in upland areas such as the 44,720-acre project area is becoming increasingly important to the success of the Wyoming Range mule deer herd” there is “potential for adding incrementally to the substantial existing and foreseeable effects on mule deer in the Green River Basin, which could result in changes at the Forest-wide population trend scale.” Id. at 4-119. The no action alternative ensures that the important habitat in the project area will not be compromised by industrial development.

### **3. Aquatic wildlife**

The draft EIS considers the importance of the project area to the aquatic wildlife species, particularly to the survival of Colorado River Cutthroat Trout (CRCT), the most imperiled of the cutthroat trout subspecies and a WGFD species of greatest conservation need. Core conservation populations of CRCT reside in streams within the project area. In Management Area 24, there are 27 stream miles on North Horse, Lead, Chall and South Beaver Creeks that support CRCT. DEIS at 3-125. In Management Area 25, 9.3 stream miles on Maki, Sjhoberg, Nylander, Hardin and North and South Cottonwood Creeks support CRCT. Id. at 3-126. CRCT conservation populations reside within North Piney and Fish Creeks in Management Area 26 and in Management Area 12, Turkey Creek is a CRCT conservation stream in poor condition that WGFD is working to restore. Id. at 3-127.

Roads present risks to trout and other fish and amphibian species due to fine sediments that erode into streams, causing reduced productivity, survival and growth by smothering spawning gravels, increasing mortality of eggs and embryos, reducing invertebrate prey abundance and quality of rearing habitat and causing avoidance of impacted stream reaches. Id. at 4-126. Chemical contaminants associated with oil and gas development, whether as a result of direct spills or atmospheric deposition also can adversely affect aquatic communities—having a “profound effect on aquatic ecosystems.” Id. at 4-128. Because the no action alternative will not



require any new road construction, nor will it add to the cumulative impacts of extensive nearby oil and gas production, it is the alternative that best safeguards aquatic wildlife.

To conclude, it almost goes without saying that industrial development associated with oil and gas exploration and production is not beneficial to wildlife. In this case given the unique facts such as widespread development on surrounding lands already affecting mule deer or the sensitivity of a threatened species like Canada lynx, such development can pose serious threats at a population level. For these reasons the Forest Service is correct to have identified the no action alternative as its preferred choice. It is only this alternative that will protect wildlife and the habitats they need for their survival.

#### **D. Ground Water Resources**

In our scoping comments we urged the Forest Service to study comprehensively the groundwater aquifers that may be affected by future oil and gas development in the project area coupled with the existing and foreseeable nearby development on BLM lands. We also requested baseline data be collected prior to any new leasing so that water quality could be assessed prior to development. The Forest Service instead used a general model that was provided in a recent BLM document regarding the Wasatch Formation. DEIS at 4-47. Like the information presented in the air quality section of the EIS, we believe the information presented with respect to ground water could have been more quantitative and specific, however, if the Forest Service retains the no action alternative as its final decision, this analysis is adequate.

#### **E. The Wyoming Range and Its Sense of Place**

The EIS describes “sense of place” as a phrase that “describe[s] the largely unquantifiable values that draw people to specific landscapes. It goes beyond scenic quality, recreational opportunities and other factors that the Forest Service typically addresses in environmental documents. It is an important component of culture and the self-identity of a society, and a major factor in the minds of many of those who have responded to the public scoping for this analysis.” DEIS at 3-24. We’d like to compliment the Forest Service for acknowledging this sensitive and important factor that is appropriately included in the analysis. That the public has expressed an outpouring of support and love for this place—and has communicated that it values the Wyoming Range for its backcountry character and does not want new oil and gas leasing and development—should undoubtedly inform the Forest Service’s decision-making process.

### **II. Conclusion**

As the EIS states, “The decision to be made is whether additional environmental analysis or significant new information or changed circumstances indicate a need to modify prior decisions by the Forest Service to authorize the leasing of the subject lands or by the BLM to lease the subject lands.” DEIS at 1-2. Our organizations have long advocated that changed circumstances not only warranted an updated NEPA analysis, but also that upon considering those changes, the Forest Service should make the decision not to lease. Given the new information adequately analyzed in this draft supplemental EIS, the Forest Service should retain

the no action alternative as its final decision and formally withdraw its consent to lease. This will require the cancellation of leases issued improperly in December 2005 and April 2006 and a simple refund of monies high bidding companies have paid to date. A no leasing decision would safeguard (by not adding to the already documented cumulative effects in the area) air quality, wildlife, and water resources and would protect recreational and sense of place values that so many citizens have identified as important to them. This is the right course of action and follows in the spirit of the Wyoming Range Legacy Act—legislation that was inspired in response to the offering of these very parcels for oil and gas lease sale. We can think of no better resolution to the multi-year controversy over these contested leases than for the Forest Service to decide not to lease.

Thank you for indicating that this is the course of action you are considering and for considering our comments.

Sincerely,

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

And on behalf of:

Stephanie Kessler  
The Wilderness Society  
304 Main St.  
Lander, WY 82520

Lloyd Dorsey  
Greater Yellowstone Coalition  
P.O. Box 4857  
Jackson, WY 83001

cc:

Harv Forsgren, Intermountain Regional Forester  
Dave Freudenthal, Governor  
John Barrasso, Senator  
Joyel Dhieux, EPA  
Don Simpson, BLM