April 25, 2008

Steven Haydon, Forest Minerals Staff
Bridger-Teton National Forest
P.O. Box 1888
Jackson, WY 83001-1888

RE: Scoping comments for the Supplemental EIS regarding oil and gas leasing of 44,720 acres on the Big Piney Ranger District

Dear Steve:

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 revised notice of intent to prepare a Supplemental Environmental Impact Statement (“SEIS” or “leasing EIS”) to analyze and disclose new information relative to oil and gas leasing of 44,720 acres on the Big Piney Ranger District. 73 Fed. Reg. 16621 (March 28, 2008).

The Bridger-Teton National Forest is a crown jewel in the National Forest System and undoubtedly one of the more celebrated and frequently visited national forests in the country. This world-class landscape is renowned for its ecological, wildlife and recreational values, not to mention its key contribution to our state’s tourism economy. New oil and gas wells—wells that the high bidders of some of these very parcels have widely acknowledged they intend to develop upon lease authorization—are not appropriate in a forest whose niche has been identified as one with unparalleled wild, scenic and backcountry qualities. Moreover, the Forest Service’s proposed action of new leasing in the Wyoming Range runs contrary to the wishes of the Wyoming public and its bi-partisan elected representatives who have worked tirelessly through the federal legislative process to prevent this very occurrence.

Our initial concern was that the Forest Service would make an isolated decision without the benefit of considering the issue within a broader geographic context. The bulk of our comments would have focused on the need to prepare a forest-wide and in some cases a region-wide analysis of the affected environment as well as the need to make informed projections of the likely impacts that could result from new leasing and development in the Wyoming Range. However, after learning about the Forest Service’s arrangement with one stakeholder to fund and actively oversee the drafting of the EIS, we have serious reservations about participating fully.
and openly in this process.\footnote{We are reluctant to submit the type of substantive comments we typically provide given the ethically questionable arrangement the Forest Service has made with Stanley Energy. Specifically, we are opposed to the scenario in which the Forest Service simply turns over our comments to Stanley Energy’s attorneys and they provide private analysis and feedback to the agency and third party contractor. See Memorandum of Understanding between the Forest Service and Stanley Energy, October 18, 2007 #5(f) (“The U.S. Forest Service shall furnish copies of the following information to . . . Stanley: Letters, comments or other materials received by the U.S. Forest Service from interested parties or agencies in the scoping session, comments on the document, or at other stages in the analysis process.”); see also id. #19 (stating that the Forest Service shall receive input from Stanley regarding its analysis of public comments) (\textit{Exhibit 1}). Instead, we have briefly noted various resources and issues upon which a future leasing EIS should focus. When it becomes clear that we are submitting comments within a process where there is no screening of our comments through Stanley’s attorneys, we will offer further substantive input.} As discussed in more detail below, preparation of this EIS should be suspended immediately and once the conflicts of interest have been fully remedied the Forest Service should initiate a new, agency-funded EIS in order to ensure an independent and objective decision making process moving forward.

1. **The 44,720 acres in context: Leasing history, public involvement, federal legislation and Stanley Energy’s efforts to unduly influence the leasing decision in its favor**

In 2005-2006, in response to the Forest Service’s consent to offer these 44,720 acres for oil and gas lease sale, homeowners, ranchers, hunters, anglers, business owners, labor union members, outfitters, recreational users and conservationists protested the lease sales. Governor Freudenthal also protested the sales. Many of these citizens and entities cited the obvious changes in the Upper Green River Valley in the years since the Bridger-Teton National Forest’s Land and Resource Management Plan (“forest plan”) and subsequent leasing environmental assessments (“EAs”) were prepared and called for updated analyses prior to new leasing. The Forest Service’s disregard of the changed circumstances to air quality, sensitive and threatened species and the reasonably foreseeable development scenario (just to name a few) raised potential NEPA violations to be sure, but the public hoped that through an updated NEPA process the Forest Service would not only assess the changes, but determine that in light of the changes new leasing was simply the wrong decision.

Despite the numerous protests condemning new leasing in the Wyoming Range, the Forest Service remained committed to its decision to lease without supplemental NEPA analysis and authorized the BLM to proceed with the sales. The BLM dismissed protests from the December 2005 and April 2006 lease sales and issued leases to the high-bidding companies. Several entities pursued appeals of the BLM’s protest dismissals to the Interior Board of Land Appeals (“IBLA”) and requested a stay pending appeal with respect to the December and April parcels. The IBLA granted the stay requests, which remain in place to this day on 20,963 acres. Given the outcome of the first two appeals, the BLM upheld the protests of the sales in July and
August 2006. The BLM sold these parcels, but did not issue the leases. As such, 23,757 acres are in a “pending” status.

The IBLA grants a stay request when it appears the appellants are likely to be successful on the merits of their appeal. An IBLA decision on the merits, however, can take several years and one of the high-bidding companies—Stanley Energy—urged the BLM to request a remand of the appeals rather than wait for what all parties assumed would be a decision that the Forest Service and the BLM had violated NEPA by not supplementing the environmental analysis based on changed circumstances prior to offering the parcels. Instead, a faster and in its estimation a more advantageous outcome would be for the agencies upon remand to “remedy” the NEPA deficiencies and after going through the legally required motions, simply lift the suspensions on the first two sales and authorize the second two sales. The BLM was more than willing to oblige the wishes of this one company.

While Stanley Energy was successful in its pursuit of a remand, it didn’t foresee what would happen in the following months. The same entities and individuals that protested the sales had become organized. They had begun to gather and 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 distinct coalitions formed: Citizens Protecting the Wyoming Range and Sportsmen for the Wyoming Range. The citizens’ group is comprised of more than 500 people, most who live in western Wyoming, but many also live in other Wyoming towns or in nearby states. All of the members value the range for its hunting, fishing and recreational opportunities and its ability to support sustainable, local businesses. The sportsmen’s group is comprised of 30 hunting and fishing organizations and 64 trade unions. Combined, these sportsmen and labor unions represent some 50,000 people in Wyoming. The two coalitions raised 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 that would withdraw the area from future oil and gas leasing and facilitate a process by which existing leases could be purchased and then retired.

In June 2007, the late Senator Craig Thomas announced his intention to begin drafting such legislation. Sadly, this was just days before he passed away. Upon being appointed to replace Senator Thomas, Senator John Barrasso traveled around the state and hosted town-hall meetings in an effort to talk to the people of Wyoming about what was important to them. He heard from citizens that they valued the Wyoming Range and that given the accelerated pace of leasing in the last several years and oil and gas development’s documented impacts to our air, water, wildlife and small town quality of life, some places warranted protection. People looked to the protection of the Wyoming Range as a way to ensure some balance in the Upper Green River Valley.

On October 25, 2007 Senator Barrasso, with co-sponsorship from Senator Mike Enzi, introduced the Wyoming Range Legacy Act of 2007 (S. 2229). This bill has the enthusiastic support of Wyoming’s democratic governor Dave Freudenthal and the bipartisan support of state and local elected officials, the Wyoming Tourism Board and the Wyoming Game and Fish
Commission. An impressive list of the individuals, businesses and organizations that support this legislation is attached as Exhibit 2. On February 27, 2008 the subcommittee on Public Lands and Forests within the Senate Energy and Natural Resources Committee invited testimony on the bill. In this hearing, Gary Amerine, a Daniel-based outfitter and founder of Citizens Protecting the Wyoming Range and Governor Freudenthal testified in support of the bill.

Efforts to protect the Wyoming Range have come a remarkably long way, and it all began out of a desire to stop oil and gas leasing on these 44,720 acres—the eastern gateway to the Range. The decision the Forest Service will make about the fate of these acres will have far-reaching consequences. If leased, these 23 parcels will serve as a catalyst for industrialization throughout the Range. Stanley Energy has already circulated its plans for eight, 50-acre well pads and 200 wells along Horse Creek and Beaver Creek if its contested leases are authorized and has hinted at plans to develop its non-contested leases farther into the forest’s backcountry.

The involvement and influence that this one out-of-state company has wielded over this leasing EIS process is significant and troubling. After the IBLA stay decisions, Stanley Energy and its attorneys began to meet with Mark Rey, Undersecretary of Agriculture, hoping he could aid the company in its desire to initiate a NEPA process that would resolve the leases in its favor. Upon a visit to Wyoming in the spring of 2007, Mr. Rey expressed a desire for a “resolution” of the contested acres before he left his position. Although the Forest Service could have easily resolved the issue by directing the BLM to cancel the issued leases outright, to withdraw the offering of the pending leases and to refund the monies paid to date, the agency instead initiated an EIS process in February whose short timeline was unprecedented, but whose estimated final decision dovetailed not coincidentally into the final days of this administration and Mark Rey’s tenure. From the beginning, the public feared that this EIS would be merely a vehicle through which upper level administrators in the Forest Service would see to it that Stanley Energy’s leases were validated. And that concern became a reality when the Forest Service announced its proposed action to lift suspensions on the December and April parcels and authorize and issue the leases from the June and August sales.

Although the Forest Service didn’t release the NOI to prepare this leasing EIS until February, we now know that it signed an MOU with Stanley Energy five months earlier. The Governor addressed some of the more obvious problems with specific sections of the MOU in his April 21, 2008 letter to the Forest Service. Letter from Governor Freudenthal to Harv Forsgren, April 21, 2008 (Exhibit 3). Needless to say, the very existence of the MOU is highly inappropriate, particularly in a leasing context where no valid rights yet exist.

As expressed in a letter to the Forest Service earlier this month, we are deeply disturbed to learn that this company and its attorneys requested private consultation with the Forest Service, the BLM, the state of Wyoming and Arcadis, the third party contractor drafting the EIS—and that the Forest Service granted this request and committed to a schedule of bi-monthly meetings. See Letter from Lisa McGee to Steve Haydon, April 10, 2008 (Exhibit 4). This is an inappropriate concession to a company whose rights as a valid leaseholder are as yet uncertain. Moreover, to allow this company’s attorneys the opportunity to advise and consult directly with

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2 A final EIS and ROD were initially scheduled for release in September 2008.
the third-party contractor behind closed doors is unacceptable. This is a process that is designed to determine the fate of the 44,720 acres and the rights of this and several other high bidding companies. That one of the companies that stands to gain from the decision document has been given this type of special access and influence has tainted the objectivity of the entire NEPA process.

It is uncommon that an agency is placed in a situation in which it must prepare a pre-leasing NEPA analysis after it offers the lease parcels for sale. It is for this reason that more than a year ago we objected to the BLM’s request for remand of our appeals without the cancellation of the leases at issue here. See Appellants’ Request for Clarification and Objection to the BLM’s Request for Remand, January 19, 2007 at 3 (Exhibit 5). We were concerned that as long as the leases remained in place, the NEPA process would be nothing more than a paperwork exercise to justify a predetermined result, something NEPA’s implementing regulations prohibit. See 40 C.F.R. §1502.5 (stating that an EIS should not be used “to rationalize or justify decisions already made.”). We urged the agencies to cancel the leases prior to undertaking a leasing environmental analysis so that the decision could be made on a clean slate.

Not surprisingly, the BLM and Stanley Energy objected to our request to cancel the leases and made assurances to the IBLA that objective pre-leasing NEPA analysis could be prepared without lease cancellation. See generally BLM’s Response to Appellants’ Request for Clarification and Objection to BLM’s Request for Remand, February 7, 2007 (“BLM’s Response”) and Stanley Energy, Inc.’s Response to Appellants’ Objection to BLM’s Request for Remand, February 8, 2007 (“Stanley Energy’s Response”) (Exhibits 6 and 7). Moreover, they claimed that the issue of bias—or the potential that the agencies would be unduly influenced by the presence and involvement of the high-bidding companies—was not yet ripe. BLM’s Response at 17 and Stanley Energy’s Response at 16-17.

It would be difficult to refute that the issue of impropriety is not now timely given the fact that Stanley Energy’s attorneys have persuaded the Forest Service that they should help to craft the very document that will determine the outcome of their client’s rights to these leases. The coaching of the agencies and the third-party contractor by these attorneys is highly suspect and warrants immediate disclosure of the information exchanged in any meetings that have already occurred and assurances by the Forest Service that any future meetings will not occur.

After our correspondence with the Forest Service about the impropriety regarding the level of involvement this one stakeholder has had in the EIS process, we then learned that Stanley Energy was actually funding the preparation of the EIS. We objected to this arrangement in a second letter, explaining that unlike an APD scenario in which the rights of the lesseholder are not in question, this EIS is designed to evaluate objectively whether the leases were properly issued. Letter from Lisa McGee to Steve Haydon, April 16, 2008 (Exhibit 8). If, after a thorough analysis of changed circumstances the Forest Service determines its leasing decisions in 2005-2006 were incorrect, it has the authority to cancel the issued leases and withdraw the pending leases. A company whose rights to the leases will be determined via this EIS process cannot pay for the third party contractor’s services without creating the appearance of undue influence.
In contrast to the ethically questionable dealings of Stanley Energy and its attorneys, not to mention the failure of the Forest Service to withstand pressure from these entities, the public has participated in good faith—beginning in 2004 when the Forest Service first announced its leasing intentions—and has worked diligently over these many years to prevent new leasing in the Wyoming Range. Although the Forest Service in response to the public’s desires and the IBLA stay orders could have simply cancelled and withdrawn these leases, it decided instead to initiate a supplemental NEPA analysis. At the very least the public expected the Forest Service to make its decision objectively. What we have come to find out, however, is that the process has been corrupted. If Stanley Energy and Mark Rey truly wanted a “resolution” to these leases, they should have made sure the EIS process was not colored by even a hint of impropriety. This process cannot be a preordained formality in which the NEPA work is updated to a standard Stanley Energy’s attorneys deem legally sufficient, ultimately allowing Stanley to move ahead with its development plans. That is what appears to be happening now.

Stanley Energy’s influence over the proposed Wyoming Range Legacy Act is also apparent. The law firm representing Stanley Energy has a D.C. lobbyist on staff who was present during the subcommittee hearing and remarked that he had “provided input” on the BLM’s testimony on behalf of his firm’s clients. Indeed, this “input” is unmistakable in the BLM’s recommendation that “the bill be amended to preserve the opportunity for the 23 leases in pending status to be issued and developed ....” Statement of Luke Johnson, Deputy Director BLM Before the Senate Energy & Natural Resources Committee, S. 2229, Wyoming Range Legacy Act of 2007, Feb. 27, 2008 at 8-9 (emphasis added) (Exhibit 9). It is clear that this company’s influence has reached the upper levels of both the Agriculture and Interior Departments and that its chosen law firm will continue to use whatever connections it has to gain a favorable outcome for its clients within the waning months of this administration.

Stanley Energy’s attempts to influence the legislation and this EIS process are to be expected. This company has one goal, which is to profit from the development of a new natural gas field on the Bridger-Teton National Forest. In Stanley Energy’s estimation, drilling in this national forest is nothing more than a business venture—a potentially highly profitable business venture—and to one of its owners who is nearing retirement, his “last hurrah.” Chris Merrill, Casper Star Tribune, “Does State Have a Say?” February 5, 2008 (Exhibit 10). For the rest of us—citizens, hunters, anglers, outfitters, ranchers, homeowners, outdoor/environmental educators, small business owners, tourism boards, labor union members, health care professionals, parents, elected officials, biologists, all types of recreational users, wildlife enthusiasts and conservationists—the prospect that the southern Bridger-Teton could be transformed into an industrial gas field is devastating. It leaves many of us to wonder whether any place in Wyoming can be spared if this world-class forest; which has such diverse and widespread support for its protection, can fall prey to bulldozers and drill rigs.

The Forest Service is in the unique position to receive input both from interested companies like Stanley Energy and the public. As such, it has a responsibility to maintain its independent judgment and to refrain from activities that create even the appearance that a decision has already been made, which would be a violation of NEPA. 40 C.F.R. §1502.5. By allowing Stanley Energy to pay for the EIS and by entering into an MOU (something the agency might reasonably do only within an APD process), the Forest Service is already treating Stanley
Energy as if it has valid rights. This is the one thing it cannot do without risking the appearance of having already made a decision.

We urge the Forest Service to consider the history and the role that these very parcels have played in the grassroots movement to protect the Wyoming Range. The introduction of the Wyoming Range Legacy Act was a historic event and passage of the bill is anticipated in the near future. That people from all walks of life have rallied together to protect this part of the Bridger-Teton National Forest is a testament to public’s desire to keep the Wyoming Range the way it is. From 2004 to the present, the views expressed by citizens regarding future oil and gas development on the Bridger-Teton are in stark contrast to the current suitability decision in the forest plan EIS and the availability decisions reflected in the leasing EAs for specific management areas. In particular, the agency should recall that hundreds of people participated in forest planning workshops in late 2006 and early 2007 and as one newspaper reported, the participants were “overwhelmingly opposed to [new] oil and gas development” anywhere on the forest. Cory Hatch, Jackson Hole News and Guide, “Residents: Curb oil drilling...comments gathered at workshop raise concerns over wildlife, air quality,” Dec. 6, 2006 (Exhibit 11).

The examples of public input support a no-leasing decision to be sure, but they also illustrate the importance of preparing an EIS that in no way could be perceived as a sham document. The public and the Bridger-Teton National Forest deserve better. In describing how the Forest Service’s favoritism towards one stakeholder contravenes the efforts of Wyoming people who have worked together to protect the Wyoming Range, the Casper-Star Tribune editorialized, “A tainted process should not be allowed to silence Wyoming’s voice.” Casper Star Tribune, “Wyoming Range Environmental Study Should Start Over,” April 24, 2008 (Exhibit 12). The decision whether to lease should be based on a comprehensive, independent and unbiased assessment of changed circumstances and a fair consideration of the no action alternative. An objective assessment cannot be prepared given the amount of control the Forest Service has ceded to Stanley Energy.

To remedy the grave problems uncovered in the EIS process to date, the Forest Service should immediately suspend the preparation of the EIS and withdraw itself from the MOU with Stanley Energy. If it wishes to continue with a leasing analysis at some future date, it should fund the EIS itself, not allow a financially-interested stakeholder to do so, as that creates an obvious conflict of interest. If the Forest Service chooses not to prepare the new EIS in-house, it should hire a third-party contractor other than Arcadis, the company that has already consulted inappropriately with Stanley Energy behind closed doors and been unduly influenced by its input. The public should not be expected to participate in anything less than an objective and transparent process.

2. The Forest Service should suspend this compromised EIS process and start over with a stand alone EIS, not one that merely supplements the forest plan EIS.

The Forest Service’s intention to supplement the forest plan EIS is problematic. First, the forest plan EIS is nearly 20 years old. Significant changes over the past two decades in this part of the state warrant the preparation of a new EIS that would look at the entire forest with respect to potential future oil and gas development. Without the benefit of an updated, forest-wide oil
and gas availability study/EIS, supplementation will miss the mark with respect to the comprehensive, geographically large-scale and cumulative analyses needed. This cart-before-the-horse approach makes little sense given the recent announcement of the 2008 forest planning rule, which will likely usher in renewed work on forest plan revision that could provide a process in which this larger-scale analysis could take place.

Second, it is questionable whether updating the forest plan EIS would give the Forest Service the proper authority to lease these parcels. It is our understanding that the forest plan EIS didn't make any final decisions regarding oil and gas leasing, it only outlined general suitability. Actual availability decisions were made in a series of subsequent EAs for specific management areas. Thus, by supplementing the forest plan EIS the Forest Service may make a new suitability determination, but it cannot make a new availability determination—at least not through the supplementation of a document whose function was never to determine site-specific availability.

In an email correspondence in which I inquired about the Forest Service’s intention to supplement rather than prepare a new EIS, you replied that court cases support the approach you are taking. Please supply citations to these cases. I also requested that the Forest Service supply the public (prior to the draft EIS or within the draft itself) copies of the original documents slated for supplementation, i.e. the sections of the forest plan EIS that address oil and gas suitability and/or documents that supported the original EIS, such as the 1987 Reasonably Foreseeable Development (“RFD”) oil and gas scenario, the leasing EAs for specific management areas and any others. We make this formal request again.

We advocated for this forest-wide approach prior to learning that Stanley Energy was funding the preparation of this EIS. It is now apparent that a regional or forest-wide approach was never a realistic option. Stanley Energy has no interest in long-term forest planning or a forest-wide oil and gas analysis the way the agency might and the public certainly does. Its only concern is that a NEPA document be prepared that addresses the 44,720 contested acres. The Forest Service should have disclosed months ago that Stanley Energy was paying for the EIS so that the public would not have wasted its time advocating for analyses that we now realize the Forest Service had no intention of preparing. In its letter in reply to our request, the Forest Service should have stated that because Stanley Energy was funding the EIS and because this company’s only interest was in the contested acreage, no forest-wide oil and gas analysis would be prepared.

Now that the Forest Service has been called to task and is considering various ways to best remedy the errors made to date, it should look again at the reasonable option of preparing a forest-wide oil and gas availability EIS. As described below, it should utilize regional assessments to inform this geographically larger scale EIS and a leasing decision with respect to the 44,720 acres could be encompassed within or tier to such a document.

3. The Forest Service should prepare regional assessments for various resources.

In February, in response to the first notice of intent to prepare a supplemental EIS (73 Fed. Reg. 6453, Feb. 4, 2008), our organizations sent a letter requesting that the Forest Service
suspend the EIS process until it revises its forest plan and finalizes a forest-wide oil and gas availability study. Letter from Lisa McGee to Knifty Hamilton and Harv Forsgren, February 14, 2008 (Exhibit 13). Citing the nearly two decades that have passed since the forest plan EIS and subsequent EAs were prepared, we described how a suspension would offer the Forest Service the benefit of more time to undertake updated forest-wide and in some cases region-wide analyses prior to making leasing decisions for individual parcels. Given the tremendous changes to the region in the last twenty years largely as a result of increased oil and gas development, we reasoned that it would be only by stepping back and looking at the big picture that a fully informed decision could be made.

Much has changed in western Wyoming since the early 1990s. Oil and gas development in the Upper Green River Valley and surrounding lands has escalated at a pace and to a degree that few could have imagined twenty years ago. Along with increased development have come substantial consequences. 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. Wildlife species not imperiled two decades ago are now federally listed (Canada lynx), or in danger of being listed (Greater sage-grouse). Big game herds have also taken a hit—notably a 46 percent decline has been documented in the Sublette mule deer herd since 2001. The carcinogen benzene and other hydrocarbons have been detected in 38 percent of water supply wells monitored on the Pinedale Anticline in an aquifer used as a source for drinking water. And although energy development has flooded the state and county with revenue, these funds do not remedy all of the associated pressures and changes to the region’s small towns. Traffic, crime, demands for social services, impacts to infrastructure and housing costs have increased, making this part of the state a much less desirable place to live than in years past.

Although land managing agencies may not have had the ability to predict these consequences twenty years ago, there was a recognition at least ten years ago that energy development across the Rocky Mountain region had brought with it (and would continue to bring) serious resource management challenges and impacts. A decade ago, representatives from the Forest Service, BLM, EPA and DOE met to address “the unprecedented high levels of recent development of oil and gas in Rocky Mountain basins and the effects of development activities on other resources.” Rocky Mountain Federal Leadership Forum, Framework for Regional Resource Assessments, February 2001 at 1 (referencing a 1998 meeting) (Exhibit 14). The team committed to determining a framework for preparing “regional resource assessments.” These assessments would not be NEPA documents, but rather evaluations that could be referenced within NEPA and other planning processes to provide decision makers with needed information. Noting that “land management agencies, for various reasons, have often limited the extent of environmental analyses and geographic coverage to the area contained within administrative boundaries or within the immediate boundaries of a given project or proposed action” the team stated that “[r]egional resource assessments would provide land management agencies with credible information across administrative boundaries” and could “help address cumulative impacts, reduce duplication of effort, ensure consistency and provide a dynamic approach to meeting agency mandates.” Id. at 1-2.
This regional-scale assessment approach was never implemented in western Wyoming. Pers. comm., Janet Kurman, NEPA Specialist, BLM April 4, 2008. And, in the ten years since these evaluations were initially contemplated, oil and gas development has expanded and the resulting adverse effects to air, water, wildlife, human health and quality of life have increased dramatically. Thus, given these documented changes since the current Pinedale Resource Management Plan ("RMP") (1988) and the Bridger-Teton forest plan (1990) were prepared, prior to authorizing any new drilling projects or contested oil and gas leases on the Bridger-Teton National Forest, the Forest Service in conjunction with the BLM and the EPA (as well as with Wyoming DEQ, Game and Fish and other applicable state agencies) should prepare regional resource assessments that consider air quality/human health, water quality and quantity, reasonably foreseeable development scenarios (for oil and gas development), wildlife species/habitat and socio-economic concerns. These assessments could then be referenced in the Bridger-Teton forest plan revision process to better inform a framework for long-term decision making, particularly with respect to oil and gas suitability and availability determinations. After such analyses are prepared and incorporated into a forest-wide oil and gas availability study, leasing decisions such as this one regarding the fate of the 44,720 acres could be made.

4. The purpose and need statement for the project accurately reflects the Forest Service’s authority to cancel the leases.

Because the stated purpose and need for a federal action determines the range of alternatives, it is essential that the Forest Service properly articulate the action’s purpose and need. 40 C.F.R. § 1502.13. The scoping notice defines the purpose of the action as such: “[T]o determine whether and to what extent analysis of new issues and information may alter the oil and gas leasing decision as it relates to the 44,720 acres submitted to BLM for leasing by the Forest Service.” This statement is accurate and if the Forest Service moves ahead with a new EIS, it should better communicate to the public that one reasonable and legally sound outcome of the process is that as a result of an updated and comprehensive “hard look,” the Forest Service could alter its initial leasing decision and thereby cancel and withdraw the leases at issue here.

Any statements from Stanley Energy or its attorneys that the Forest Service is not authorized to cancel the leases from the December 2005 and April 2006 sales without risking a breach of contract action or a takings claim should be disregarded as empty threats lacking legal support. Arguments like these have been used before, particularly in their various attempts to persuade Undersecretary Rey to resolve these contested leases in the company’s favor. Although wrong, these statements have apparently trickled down to some Bridger-Teton personnel who have repeated them, suggesting that the authority of the agency is not clear even to its own employees. Statements from Forest Service staff such as, “The agency could withdraw the June and August leases, but might not have the ability to cancel the December and April parcels” illustrate this confusion.

The Forest Service has the authority to withdraw its consent to leasing and direct the BLM to cancel leases improperly issued. The law is clear on this point and companies who bid on federal oil and gas leases are aware that the process is subject to numerous conditions that make the final disposition of the lease sale uncertain. Companies know for example, that lease sales include a public protest and appeals process. The companies are also on notice that if the
parcels are leased improperly, those parcels are subject to cancellation. See 43 C.F.R. § 3108.3(d) ("Leases shall be subject to cancellation if improperly issued."). In this case in particular, the high bidding companies knew that improper issuance resulted in suspension and subjected their leases to potential cancellation. See Order, February 14, 2007, IBLA 2006-249 (Exhibit 15) ("Following further analysis on remand, BLM may decide that it is necessary to cancel the leases."). The BLM acknowledged that these improperly issued leases were not valid, but "voidable." BLM's Response to Appellants’ Request for Clarification and Objection to BLM's Request for Remand, February 7, 2007 at 8, 15, 16.

If cancellation was not a consequence of an improperly offered lease sale, appeals processes would provide absolutely no relief to appellants who take their claims before the IBLA. This is because the BLM’s common practice is to issue oil and gas leases after it resolves the protests, regardless of whether appeals of protest dismissals have been filed. This is exactly what happened with respect to the December 2005 and April 2006 sales. The BLM denied our protests, and issued the leases in question. Because the appeals process lacks an automatic stay provision, the BLM is not required to wait for the outcome of an appeal before it issues oil and gas leases. 43 C.F.R. § 3120.1-3. Thus, it is only by cancellation of the leases that the appellants can be awarded relief in a situation in which leases were offered improperly.

There is also no question that the authority to decide whether to cancel the leases lies exclusively with the Forest Service—not the BLM. Although the BLM is the agency that would oversee the cancellation of the leases, since passage in 1987 of the Federal Onshore Oil and Gas Leasing Reform Act ("FOOGLRA") it is the Forest Service that has the ultimate decision-making authority in this regard. See 30 U.S.C.A. § 226(h) ("The Secretary of the Interior may not issue any lease on National Forest System Lands reserved from the public domain over the objection of the Secretary of Agriculture."). Several BLM staff acknowledged this authority. Pers. comm. Jane Darnell, Larry Claypool, Pam Lewis, Janet Kurman and Michael Madrid, April 4, 2008 meeting (explaining that since the passage of FOOGLRA, the Forest Service has the ultimate authority to consent to leasing of its lands or in a situation like this, to withdraw its consent. The BLM cannot "overrule" that consent.)

The purpose and need section of the scoping notice acknowledges the Forest Service’s authority to alter its original leasing decision. The issue of the authority of the Forest Service to consent to leasing (and conversely its authority to withdraw its consent to leasing) is well settled and should not be purposefully distorted by Stanley Energy’s attorneys. If this EIS process moves ahead, the decision to be made is whether the Forest Service will cancel the leases, not whether it has the authority to do so. We urge Forest Service to continue to clearly acknowledge its authority to cancel the December 2005 and April 2006 leases and to withdraw the June and August 2006 leases.

5. 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 new leasing and development on fish and wildlife species, air quality, water quantity and quality, impacts to the backcountry characteristics of the forest including all forms of recreation and impacts to socio-economics in the region. 40 C.F.R. §§ 1502.16, 1508.8.

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. With a new leasing proposal on land as special as the Bridger-Teton National Forest, the public expects the Forest Service to prepare the most comprehensive and erudite analyses that will not only meet, but exceed NEPA’s requisite “hard look” standard.

To most citizens who value Wyoming’s public lands, new leasing on the Bridger-Teton National Forest is a dire prospect that if authorized will benefit a handful of companies at the expense of all other stakeholders and the environment. Numerous resources stand to be negatively affected by leasing and the eventual industrialization of the 44,720 acres, including air quality, water quality and quantity, wildlife, and a local economy that relies on the backcountry character of the Bridger-Teton National Forest to support a recreational, sporting and tourism economy. The Forest Service should carefully assess the impacts that could accompany the reasonably foreseeable development of these leases and not attempt to limit its analysis to impacts from leasing alone. The Forest Service cannot posit that development is too speculative at the leasing stage to warrant an analysis of potential impacts from development, especially in this case where Stanley Energy has broadcast its plans for 200 wells from eight 50-acre well pads.

Below are specific resources or issues that require comprehensive consideration in any future draft EIS. We note again for the record that the Forest Service should suspend work on this EIS until the ethical problems have been resolved. Until it addresses these problems, we have reservations about participating fully in this process. We mention several resources below, but without the detail we have provided to the Forest Service in the past on other projects. We hope to participate more fully in a future EIS process that is truly an objective, pre-leasing analysis that is not tainted by the improper influence of one stakeholder.

a. *Canada lynx*

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. 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 and 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 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) coupled with the reasonably foreseeable development that could occur as a result of leasing that could impact lynx. The Forest Service should give this section sufficient attention given the strong comments submitted in the past by the Wyoming Game and Fish Department about the necessity of the Wyoming Range and the acreage in question to the very survival of lynx in Wyoming.

b. Mule deer, elk, moose, pronghorn and other migratory species

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. 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 areas under analysis.

The Forest Service should ensure that comprehensive baseline information is collected on all migratory species that spend part of the year in the areas in question 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.

c. Greater 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. 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. “ Forest plan at 126. 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.

The lease parcels in question represent areas of mixed sagebrush and forest. The Forest Service should refer to relevant scientific literature and work in consultation with the Wyoming Game and Fish Department and the U.S. Fish and Wildlife Service to consider the area’s
importance to sage grouse populations. It should determine whether new leasing (and the proposed 200 well development scenario that would likely follow in addition to other reasonably foreseeable development) could be implemented without negative consequences to this sensitive species.

d. Fisheries

In contemplating whether to authorize new leasing, the Forest Service should consider the importance of these parcels 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 is the only place in North America world that can boast being the home to three subspecies of cutthroat trout. Core conservation populations of CRCT reside in streams within the lease parcels at issue.

The Forest Service should state with certainty that new leasing and development can comply with the current forest plan objectives. If leasing and resulting development cannot move forward without impacts to these sensitive species, the Forest Service should not lease. An analysis should include impacts from increased sedimentation as a result of erosion from road and well pad construction and other impacts associated with a reasonably foreseeable development scenario 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 leases 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).

The Forest Service must prepare a comprehensive air quality model and analysis that includes 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 potential oil and gas development—not only what Stanley Energy has broadcast (i.e. 200 wells from eight, 50-acre pads) 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. It should consider the cumulative impacts from these wells coupled with anticipated pollution from major cities in Utah and other southwestern states and the ongoing and proposed expansion of development in the Jonah, Anticline and other regional gas fields. Finally, the Forest Service should include in its model the potential for wells that could be developed on additional leased acreage west and north of the Noble Basin project area and west of the 44,720 acres.

The analysis should include all categories of emissions that will occur during the construction and operating phases of future development including drilling the wells, emissions from compressor stations and other surface facilities as well as from traffic 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.

f. Surface and groundwater quality & quantity

Due to the large quantity of ground and surface water needed for any new oil and gas development scenario, 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.

In other projects now being analyzed on the forest, the Forest Service noted that there was a lack of data with respect to these resources. This reality should give the agency pause and should be cited as a rationale to study comprehensively the groundwater aquifers that may be affected by future oil and gas development. The Forest Service should provide data on aquifer structure, connectivity, recharge areas and water volumes in various aquifer zones.

Additionally, the EIS should thoroughly discuss the risks from potential groundwater contamination. The public is now 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 new leasing. There are also numerous risks from the project that threaten surface water resources. The Forest Service should collect baseline data regarding stream quality prior to its
preparation of this draft EIS.

g. Wetlands

The Forest Service should conduct an analysis to address wetland resources, if applicable and determine whether as a result of new leasing these important waters could be put at risk.

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.

i. Eligible river segments under the Wild and Scenic Rivers Act

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. 16 U.S.C. § 1271, et seq. Please provide a list of any reaches or stream segments within the lease parcels in question that are or may be eligible for inclusion under this Act and include an analysis of impacts to these segments if leasing and development were to move forward.

j. Noxious weeds and invasive species

Road systems and other soil disturbing construction activities that remove vegetation to allow for well pads and staging areas are a major pathway for the spread of invasive plants. Leasing is the first step toward this type of development. 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. The Forest Service 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 contested lease areas. The study should also include attention to any rare and special status plant species.

k. Noise

The Forest Service should address impacts related to noise. New road construction, well pad construction, compressors, generators, truck traffic and drill rig operations will all have an impact on the remote and quiet contested lease acreage if developed. The draft EIS should also include the likely direct, indirect and cumulative impacts from noise to hunters, anglers and recreational users, wildlife and communities near the project area.
1. Climate change

The Forest Service should address the potential greenhouse gas emissions from potential development 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 as a result of new leasing and identify means to reduce those emissions.

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

As new leasing and development 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. 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).

7. Conclusion

For the reasons described above, the Wyoming Outdoor Council and the undersigned conservation organizations request that the Forest Service suspend the process to prepare a Supplemental EIS regarding oil and gas leasing of 44,720 acres in the Big Piney Ranger District. A suspension would give the Forest Service needed time to remedy the grave problems uncovered in the EIS process to date. It should also immediately withdraw from the MOU it entered with Stanley Energy. If it wishes to continue with a leasing analysis at some future date, it should fund the EIS itself and if the Forest Service chooses not to prepare the new EIS in-house, it should hire a new third-party contractor. These are the very minimum requirements necessary in order for the Forest Service to be able to assure the public that any process moving forward is trustworthy and fair.

After addressing and remedies the ethical improprieties documented in the EIS process, the Forest Service should opt to prepare a forest-wide oil and gas availability EIS using updated regional resource assessments. This is a reasonable approach given the significant changes to the
Upper Green River Valley since the 1990 forest plan was finalized. It also makes good sense given the fact that forest plan revision is already underway. After a forest-wide oil and gas availability study is prepared, an informed, unbiased decision regarding the 44,720 acres could be made.

Thank you for considering our comments.

Sincerely,

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