Working to Protect Native Species and Their Habitats

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Comments on the McCullough Peaks Travel Management Plan EA

Dear Ms. Sironen:

The following are the comments of Biodiversity Conservation Alliance and wilderness guidebook author Erik Molvar on the McCullough Peaks TMP EA. Overall, the proposed TMP caters far too heavily to motorized recreation interests (who represent a rather paltry minority of the populace even in Wyoming), fall short of adequate protection for sensitive resources, fail to properly manage a fragile badlands landscape; and fail to enhance primitive recreation opportunities. As such, it must be amended to correct these deficiencies. Please address these comments in detail pursuant to NEPA obligations as the process moves forward, presumably to a full EIS befitting the major impacts of motorized recreation on the fragile badlands landscape found within the planning area.

AN INVENTORY OF WILDERNESS QUALITY LANDS MUST BE COMPLETED AS PART OF THE ANALYSIS

BLM Must Respond to Significant New Information About Wilderness Qualities, and Analyze Impacts to Wilderness Resources

The BLM has a mandate from Congress to maintain an accurate inventory of its lands and resources, including roadless lands that qualify for wilderness designation. The Federal Lands Policy and Management Act requires the Secretary of the Interior to:

> prepare and maintain ***on a continuing basis*** an inventory of all public lands and their resources and other values (including, but not limited to, outdoor recreation and scenic values), giving priority attention to areas of critical environmental concern. This inventory ***shall be kept current*** so as to reflect changes in conditions and to identify new and emerging resource and other values.

43 U.S.C. § 1711(a) (emphasis added). Official BLM policy acknowledges wilderness as a resource under FLPMA:

> Under FLPMA, wilderness preservation is part of BLM's multiple-use mandate, and wilderness values are recognized as part of the spectrum of resource values considered in the land-use planning process.

BLM Handbook H-8550-1 at 2. For public lands administered by the BLM, the Secretary has delegated this inventory responsibility to the BLM. Roadless areas, as potential wilderness, are known to be a significant resource and to possess significant recreation, wildlife, and scenic values. The National BLM Director has also interpreted the FLPMA inventory requirement to obligate the agency to maintain a current inventory of possible roadless areas on BLM lands:

> "Authority for additional inventories is provided by FLPMA in Sections 102(a)(2) and (8), 201(a), and 202(c)(4) & (9), and land use planning in Sections 202(a), (b), and 205(c). Among other things, these sections direct BLM to '***preserve and protect certain public lands in their natural condition***.'"

Instruction Memorandum No. 96-176 (September 6, 1996, emphasis added).

And while the new IM 2003-274 withdraws the Wilderness Inventory handbook and argues that the BLM no longer has the authority to designate new Wilderness Study Areas, the IM ***does not*** absolve the BLM of its NEPA responsibility to carefully consider and objectively evaluate impacts to wilderness qualities brought to light in the context of citizens' wilderness proposals. Instead, this IM states explicitly that "BLM retains its Section 201 authority to inventory resources or other values, including areas with wilderness characteristics such as naturalness, or those that offer solitude and are conducive to primitive, unconfined recreation." IM 2003-274 at 1. Furthermore,

> The BLM may continue to inventory public lands for resources or other values, ***including wilderness characteristics***, as a part of managing the public lands and land use planning. Information provided by the public about resources and other values ***will be considered*** along with other information in the planning process. New information may be considered in the NEPA process as appropriate.

Id. at 2, emphasis added.

With These Comments, We Re-Submit Significant New Information on Lands of Wilderness Character Adjacent to the Existing WSA

With these comments, we are attaching two sets of information documenting wilderness characteristics in lands bordering but outside the McCullough Peaks WSA. We incorporate these two attachments into our comments by reference. The *Wilderness at Risk* proposal information was submitted to the BLM in 1994. The BLM (at that time, the Worland Resource Area, I believe) was presented with the applicable excerpts of the manuscript of *Wild Wyoming* (including the attached chapter on McCullough Peaks WSA and surrounding wilderness-quality

lands) for review purposes in 1998. The lands in the attached citizens' wilderness proposal and excerpts from the book *Wild Wyoming* qualify as "roadless" under the official BLM definition:

> roadless: for the purpose of the wilderness review program, this refers to the absence of roads which have been improved and maintained by mechanical means to ensure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

BLM Handbook H-8550-1 at Glossary, Page 3; emphasis in original. This roadless quality is correctly recognized on Map 2 of the TMP, which notes that lands in proposed additions or new wilderness units may in some cases contain "2-track trails" and "ATV" trails, but lack "Gravel Rds." And "Graded Dirt Rds."

Wild Wyoming identified "unprotected roadless lands" totaling 28,790 acres to the east and west of the existing Wilderness Study Area (see p. 157, map page 158). Commenting on the quality of the BLM's initial wilderness inventory, the book states,

> Roadless areas to the east and west [of the Wilderness Study Area] that are both spectacular and pristine were ignored by the BLM study.

Wild Wyoming, p. 158. This book specifies that all of the lands identified in the book specifically meet the criteria for wilderness designation:

> Each of the 63 wildlands described in this book consist of contiguous lands that are either roadless or essentially pristine in character, and **each meets the criteria for wilderness designation**.

Wild Wyoming, p. xxvii, emphasis added. The book noted that these lands possessed naturalness required for wilderness designation, stating

> Human imprints on the landscape, such as seismograph trails, reservoirs, and drift fences, are small and widely scattered. They do not detract from the pristine quality of the badlands.

Wild Wyoming, p. 157. Solitude and outstanding recreation opportunities also were noted:

> The area has outstanding potential for dispersed recreation, and the innumerable draws and canyons could absorb a large number of visitors without losing the feeling of solitude.

Wild Wyoming, p. 159. Thus, the size, naturalness, and solitude/outstanding recreation opportunities needed to satisfy wilderness qualities for these lands have all been documented, and this information was received by BLM.

BLM Must Now Perform an In-Depth Inventory of Wilderness Qualities to Include in the McCullough Peaks TMP Analysis

However, the BLM never responded to this submission with a detailed wilderness inventory under the provisions of H-6310-1 (since repealed). Thus, there has been an unfilled requirement to inventory wilderness qualities on the lands in question, and because the McCullough Peaks TMP would certainly have an impact on these wilderness qualities, this analysios and inventory must be performed prior to the approval of the TMP.

THE PROPOSED ACTION VIOLATES THE BLM'S INTERIM MANAGEMENT POLICY FOR WSAS

The following discussion covers the Interim Management Policy and Guidelines for Lands Under Wilderness Review, as modified by IM 2004-140. This handbook sets forth BLM policy for the management of Wilderness Study Areas established under Section 603 of FLPMA, including the McCullough Peaks WSA. Authority for the IMP derives from FLPMA and the Wilderness Act. BLM Handbook H-8550-1 at Appendix D. This Handbook remains in full force and effect, as modified by IM 2004-140, which amended and added wildlife information but did not address, repeal, or otherwise modify any of the recreation and motorized use requirements, or basic NEPA requirements, outlined in the following section.

FLPMA requires that lands identified for wilderness study under Section 603 be protected from impairments to wilderness characteristics. Section 603(c) of FLPMA states:

> During the period of review of such areas and until Congress has determined otherwise, the Secretary shall continue to manage such lands according to his authority under this Act and other applicable law in a manner so as not to impair the suitability of such areas for preservation as wilderness

"Grandfathered" uses allowed within WSAs are explicitly limited to pre-existing mining, grazing, and mineral leasing uses. BLM Handbook H-8550-1 at 3, 7-9. Motorized vehicles may (or may not) be allowed on vehicle routes that existed prior to WSA establishment, but are expressly prohibited on new routes. Id. at 34, 35.

For all proposed projects (including this TMP), BLM must

> Review the proposal to determine whether, in a specific case, the activities will be nonimpairing and to ensure that the approval of such activities will not create a situation in which the cumulative effect of existing activities and the new proposed activities would impair wilderness suitability.

BLM Handbook H-8550-1 at 13. The Handbooks specifically allows construction of trails from "primitive recreational use" for the purpose of "public enjoyment of the wilderness values." BLM Handbook H-8550-1 at 13. But the handbook does not permit the construction of motorized trails (motorized use does not fall under statutory definitions of "primitive recreational

use”), nor does it allow the official recognition of new motorized trails created through illegal use departing from established vehicle routes. Specifically,

> No new, permanent recreational ways and trails, structures, or installations will be permitted, except those that are the minimum necessary for public health and safety in the use and enjoyment of the public lands’ wilderness values.

BLM Handbook H-8550-1 at 33. There are several salient points in this passage that bear highlighting. First, no new recreational ways and trails will be “permitted,” meaning that no only will no new trails be constructed, but also that new ways or trails which have resulted from unauthorized activity cannot be permitted to remain open, and indeed must be close immediately and rehabilitated. To the extent that there are ATV trails on the TMP map within the WSA, and ATVs had **not yet been invented** when the initial inventories took place in the late 1970s, every ATV trail which did not already exist as an existing vehicle route is de fact a “new, permanent recreational way or trail” which cannot be permitted to remain. In addition, an ATV trail can never meet the “minimum necessary” threshold, because a footpath provides equally good public access and is more minimal than an ATV trail. Finally, and ATV trail is never necessary for the use and enjoyment of wilderness values; indeed, it is impossible to enjoy wilderness values on an ATV, because wilderness values include natural soundscapes.

This is further elucidated by the fact that new trails may only be built if they are needed to preserve wilderness characteristics and they meet the nonimpairment criteria, and mechanical transport (including mountain bikes and motor vehicles) cannot use new trails. BLM Handbook H-8550-1 at 34. It is absolutely inconceivable that an ATV trail would be needed to maintain wilderness qualities, and at any rate, the trails described in the TMP are being authorized primarily for recreation use, not the protection of wilderness resources.

This is reinforced by the direction that ORVs and mountain bikes “may only be allowed on **existing ways and trails** and within ‘open’ areas that were designated prior to the passage of FLPMA (October 21, 1976).” BLM Handbook H-8550-1 at 35, emphasis added. Thus, because all ATV trails are “new” trails and cannot be open to motorized use, the TMP must close all trails shown as ATV trails within the WSA unless it can be proven that they historically existed as vehicle routes prior to the wilderness inventory process. Maps and inventories prepared pursuant to the Wilderness Intensive Inventory for the McCullough Peaks are the controlling authority on the historical existence of motorized routes. BLM should consult these maps and must close all routes to motorized travel that are not shown as existing motorized routes on those maps.

Current motor vehicle use is impairing suitability for wilderness, and inasmuch as the new TMP essentially formalizes current use patterns, it too will result in the impairment of wilderness suitability in violation of the IMP and FLPMA. “The use of motor vehicles and motorized equipment is allowed **as long as they do not cause impacts that impair suitability**…” BLM Handbook H-8550-1 at 19. BLM has specifically noted that ATV traffic can lead to “impairing the suitability of the area for designation as wilderness.” TMP at 4. Furthermore, motorized use under the current BLM policy (motorized vehicles restricted to existing roads and trails), due to compliance failures noted in the EA, has led to the “beginnings of illegal ORV use in the area

such as hill climbing and vehicle travel in drainages." Id. Inasmuch as the BLM has already documented that motor vehicle use within the WSA is already causing impacts that impair suitability for wilderness designation, a fundamental change in motor vehicle use is needed to come into compliance with the IMP and FLPMA.

The proposed Travel Management Plan (TMP) fails to significantly reduce vehicle access to the areas where problems are occurring. Thus, as these problems are rampant under general BLM ORV direction, there is nothing in the new TMP that changes the fundamental access patterns, and therefore the problems with illegal ORV use that are the "purpose and need" for this planning document will in fact continue unabated, and likely increase as the local population increases and motorized recreation pressure increases with it. Thus, in order to prevent further impairment of wilderness suitability in the McCullough Peaks WSA, **all motor vehicle use in the WSA must be terminated immediately**.

The Proposed Action Fails to Provide Adequate Monitoring and Enforcement, or Appropriate Remedial Measures, for Motorized Use Within the McCullough Peaks WSA

The Interim Management Policy for WSAs requires a higher threshold for monitoring and enforcement for wilderness study areas:

> State directors will assure a level of monitoring and surveillance adequate to prevent, detect, and mitigate unauthorized activities and to properly supervise authorized activities.

BLM Handbook H-8550-1 at 29. The level of monitoring and surveillance adequate to prevent unauthorized activities (i.e., motorized travel off designated routes) and properly supervise authorized activities in this case will be the full-time, seven-day-a-week presence of an enforcement officer patrolling the WSA constantly during daylight hours and sporadically at night. Short of this level of commitment, BLM cannot meet its policy requirement to "prevent…unauthorized activities." While the new TMP does include provisions for making the area a "priority/emphasis area for law enforcement patrol following initial implementation **as time and staff allows**." TMP at 12, emphasis added. While perhaps showing good intentions, the monitoring and surveillance standard in the TMP falls far short of even guaranteeing that the area will see heightened enforcement activities over current levels (which, of course, have been permitting an unacceptable level of vehicle trespass off existing routes). BLM's failure to guarantee daily enforcement of motor vehicle provisions of the TMP within the McCullough Peaks WSA is an arbitrary and capricious violation of longstanding BLM Policy.

In addition,

> BLM will take all actions necessary to ensure full compliance with the Interim Management Policy. Every effort will be made to obtain voluntary compliance with the IMP by users of the public lands. Where such efforts fail, BLM will promptly initiate additional appropriate action to achieve immediate compliance with the IMP. Violations will not be tolerated.

BLM Handbook H-8550-1 at 30. In addition,

> If the responsible person is not willing to comply, and if the operation is causing impairment of an area's wilderness suitability, **the BLM will shut down the operation**.

Id., emphasis added. In this case, the "responsible user" would be motorized users of the WSA collectively, and "the operation" would be motorized use within the WSA. Thus BLM's "zero-tolerance" policy for public violations of the IMP requires that the TMP include a fail-safe measure immediately closing the McCullough Peaks WSA to all motorized use upon the discovery of violators using motor vehicles off designated roads and trails. The failure of the TMP to include such a provision is also an arbitrary and capricious violation of longstanding BLM policy.

ALL VEHICLE ROUTES ESTABLISHED AFTER AUGUST 29, 1990 MUST AUTOMATICALLY BE CLOSED

Furthermore, according to the Cody RMP, "Unless otherwise specified, vehicular use on BLM-administered public lands in the general planning area is designated as limited to **existing** roads and trails (map 9). "Existing" roads and trails apply only to roads and trails in existence when these designations were identified for the Cody Planning Area in the Federal Register on August 29, 1990. Roads or trails created after this date are not "existing" within the intent of the RMP and will be closed as time and funding allow." Thus, all routes not in existence on August 29, 1990 (inside the WSA or elsewhere in the TMP planning area) must be closed in accordance with the RMP. It is far from clear the McCullough Peaks conforms to these RMP requirements; indeed, it appears that some user-created routes established after this date have been designated for motorized travel, in violation of the RMP.

THE MCCULLOUGH PEAKS TMP IS A MAJOR FEDERAL ACTION REQUIRING AN EIS

The National Environmental Policy Act ("NEPA") is our nation's basic charter for the protection of our environment and it "contains 'action forcing' provisions to make sure that federal agencies act according to the letter and spirit of the Act." 40 C.F.R. § 1500.1. The Council on Environmental Quality ("CEQ") was created under NEPA to promulgate regulations "to tell federal agencies what they must do to comply with the procedures and achieve the goals" of NEPA. *Id*.

The purpose of NEPA is to "promote efforts which will prevent or eliminate damage to the environment." 42 U.S.C. § 4331. NEPA's fundamental purposes are to guarantee that: (1) agencies take a "hard look" at the environmental consequences of their actions before these actions occur by ensuring that the agency has and carefully considers "detailed information concerning significant environmental impacts," Robertson v. Methow Valley Citizens Council, 490 U.S. 332, 349 (1989); and (2) agencies make the relevant information available to the public

so that it "may also play a role in both the decisionmaking process and the implementation of that decision." Id. NEPA emphasizes that "coherent and comprehensive up-front environmental analysis" to ensure an agency "will not act on incomplete information, only to regret its decision after it is too late to correct." Blue Mountain Biodiversity Project v. Blackwood, 161 F.3d at 1216 *quoting* Marsh v. Oregon Natural Resources Council, 490 U.S. 360, 371 (1989); *see also* Foundation on Economic Trends v. Heckler, 756 F.2d 143, 157 (D.C. Cir. 1985) (emphasis in original) ("The NEPA duty is more than a technicality; it is an extremely important statutory requirement to serve the public and the agency before major federal actions occur.").

Federal agencies must prepare an environmental impact statement (EIS) for all "major federal actions significantly affecting the quality of the human environment." 42 U.S.C. § 4332(2)(C). An EIS must identify and evaluate the environmental impacts of the agency's action as well as propose alternative actions. *See* 42 U.S.C. § 4332(C); *see also* 40 C.F.R. § 1500 *et seq*. NEPA requires federal agencies to analyze the direct, indirect, and cumulative impacts of the action. 40 C.F.R. §§ 1508.7, 1508.8.

An agency may first prepare an Environmental Assessment (EA) to determine whether the project may significantly affect the environment and requires a full EIS. 42 U.S.C. § 4332(2)(C); 40 C.F.R. § 1508.9; *see also* LaFlamme v. F.E.R.C., 852 F.2d 389, 397 (9th Cir. 1988) (evidence regarding the significance of the impacts need not be conclusive in order to compel the preparation of an EIS); National Parks & Conservation Ass'n v. Babbitt, 241 F.3d 722, 730 (9th Cir. 2001) (EIS required if project "may have a significant effect"). Significance is based upon the "intensity" and "context" of the action. 40 C.F.R. § 1508.27. "Context" refers to the geographic and temporal scope of the agency action and the interests affected. Id. § 1508.27(a). In the instant case, the project would cover over 119,000 acres, a vast expanse of public land, and includes a wilderness study area, an area set aside for its natural qualities and outstanding opportunities for primitive and unconfined recreation. "Intensity" addresses the severity of the impacts. Id. § 1508.27(b). In this case, impacts include not only impacts to trails approved for motorized use, but also to noise generated by vehicles on these routes (an impact that extends for miles into the backcountry), and impacts from illegal off-trail vehicle use enabled by access provided by routes established as "open" under the TMP. Factors relevant to intensity include the presence of "uncertain impacts or unknown risks," whether the action is "related to other actions with individually insignificant but cumulatively significant effects," and whether the project "threatens a violation" of other laws. *Id*. at § 1508.27(b).

If an EIS is not required, the federal agency must provide a "convincing statement of reasons" why the project's impacts are insignificant and the issuance of a Finding of No Significant Impact or "FONSI" is appropriate. 40 C.F.R. §§ 1501.4, 1508.9, 1508.13; Blue Mountain, 161 F.3d 1208, 1211-12 (9th Cir. 1998), cert. denied, 527 U.S. 1003 (1999) *quoting* Save the Yaak Comm. v. Block, 840 F.2d 714, 717 (9th Cir. 1988). This convincing statement of reasons has yet to be provided.

The proposed TMP constitutes a major federal action for a number of reasons. First, it covers an area of 119,839 acres. TMP at 2. This vast scope is itself suggestive of a major federal action. Second, the EIS involves wilderness-quality lands, both inside the existing McCullough Peaks

Wilderness Study Area, and wilderness-quality lands ignored by BLM in their initial wilderness inventory, lying to the east and west. These lands are substantially undeveloped, and indeed they have been recommended for wilderness status in the past. There is strong legal precedent indicating that federal projects impacting lands that are undeveloped in nature require an EIS. For example, in Wyoming Outdoor Coordinating Council v. Butz (484 F.2d 1244, 1249-1250, 10th Cir. 1973), the courts ruled that logging in a roadless area, even if not pristine and traversed by numerous jeep roads, significantly affects the human environment and requires an EIS; in National Audubon Society v. U.S. Forest Service, (4 F.3d 832, 9th Cir. 1993), the courts concluded that the decision to harvest timber on a previously undeveloped tract is "an irreversible and irretrievable decision" which could have "serious environmental consequences," therefore requiring an EIS. The designation of ATV trail and other motorized routes within a Wilderness Study Area and within adjacent wilderness-quality lands constitutes a similar situation.

Thus, the EA cannot legally proceed to a Decision Record, but instead a complete Environmental Impact Statement must be compiled prior to reaching a decision.

THE EA FAILED TO CONSIDER A RANGE OF REASONABLE ALTERNATIVES, VIOLATING NEPA AND FLPMA

The range of alternatives is "the heart of the environmental impact statement." 40 C.F.R. § 1502.14. NEPA requires BLM to "rigorously explore and objectively evaluate" a range of alternatives to proposed federal actions. See 40 C.F.R. §§ 1502.14(a) and 1508.25(c). Formulation of alternatives during the NEPA disclosure and study process is at the heart of Congress' choice of NEPA as the procedural method that guides federal agencies' management of the public lands. *See* Natural Resources Defense Council v. Hodel, 865 F.2d 288, 299 (D.C. Cir. 1988) (citing Kleppe v. Sierra Club, 427 U.S. 390, 410 (1976)). In fact, NEPA requirements state that "no action concerning the proposal should be taken which would: (1) Have an adverse environmental impact; or (2) Limit the choice of reasonable alternatives." 40 C.F.R. § 1506.1(a). Catron County v. U.S Fish and Wildlife Service, 75 F.2d 1429 (10th Cir. 1996)(partial NEPA compliance is not enough.) NEPA regulations also require agencies to address appropriate alternatives in Environmental Assessments. 40 C.F.R. § 1508.9, with specific reference to section 102(2)E of NEPA. In addition, the law requires consideration of a range of mitigation measures. See Kootenai Tribe of Idaho v. Veneman, 313 F.3d 1094,1122-1123 (9th Cir. 2002) (and cases cited therein) (stating that agencies must develop and analyze environmentally protective alternatives in order to comply with NEPA).

Section 102(2)(C) of NEPA requires an agency to present alternatives to the proposed action and Section 102(2)(E) requires the agency to "study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources." 42 U.S.C. § 4332(2)(C) and (E) (1994); see 40 C.F.R. § 1501.2(c); Biodiversity Associates, IBLA 2001-166 at 6; Wyoming Outdoor Council, 151 IBLA 260, 272 (1999); Howard B. Keck, Jr., 124 IBLA 44, 53 (1982); Bob Marshall Alliance v. Hodel, 852 F.2d 1223, 1228-29 (9th Cir. 1988, cert. Denied, 489 U.S. 1066 (1989).

BLM should note that this basic, fundamental requirement that is the touchstone of *every* NEPA document has not gone unnoticed on the federal judiciary in sending back environmental studies that fail to meet this requirement. See e.g., Calvert Cliffs Coordinating Comm., Inc. v. United States Atomic Energy Comm'n, 449 F.2d 1109, 1114 (D.C. Cir. 1971) (detailed EIS required to ensure that each agency decision maker has before him and takes into account all possible approaches to a particular project . . . which would alter the environmental impact and the cost-benefit balance); Natural Resource Defense Council v. Callaway, 524 F.2d 79, 93 (2d Cir. 1975); ("The duty to consider reasonable alternatives is independent from and of wider scope than the duty to file an environmental statement."); Simmons v. United States Army Corps of Engineers, 120 F.3d 664, 660 (7th Cir. 1997) ("The highly restricted range of alternatives evaluated and considered violates the very purpose of NEPA's alternative analysis requirement: to foster informed decision making and full public involvement."); Alaska Wilderness Recreation & Tourism v. Morrison, 67 F.3d 723, 729 (9th Cir. 1995) ("The existence of a viable but unexamined alternative renders an environmental impact statement inadequate."); Dubois v. U.S. Dept. of Agric., 102 F.3d 1273, 1288 (1st Cir. 1996) (EIS invalid because agency did not consider alternative of using artificial water storage units instead of a natural pond as a source of snowmaking for a ski resort); Libby Rod & Gun Club v. Poteat, 457 F. Supp. 1177, 1187-88 (D. Mont. 1978), rev'd in part on other grounds, 594 F.2d 742 (9th Cir. 1979) (Army Corps violated NEPA in an EIS for a hydroelectric dam by only cursorily addressing the alternatives of meeting the Northwest's energy needs through other sources or conservation.); Northwest Envt'l Defense Center v. Bonneville Power Admin., 117 F.3d 1520, 1538 (9th Cir. 1997) ("An agency must look at every reasonable alternative, with the range dictated by the nature and scope of the proposed action.")

The failure to look at the full range of reasonable alternatives is related to BLM's duty in any environmental analysis to develop, study, analyze and adopt mitigation measures to protect other resources. The ability to adopt post-leasing mitigation measures – see 43 C.F.R. § 3101.1-2 – is quite broad, as all reasonable measures not inconsistent with a given lease may be imposed by BLM. This is particularly true given that BLM, pursuant to FLPMA, must manage public lands in a manner that does not cause either "undue" or "unnecessary" degradation. 43 U.S.C. § 1732(b). Put simply, the failure of BLM to study and adopt these types of mitigation measures – especially when feasible and economic – means that the agency is proposing to allow this project to go forward with unnecessary impacts to public lands, in violation of FLPMA.

In particular, federal agencies must explore alternatives to proposed actions that will avoid or minimize adverse effects on the environment, 40 C.F.R § 1500.2(3), alternative kinds of mitigation measures, 40 C.F.R. § 1508.25(c)(3), alternatives that would help address unresolved conflicts over the use of available resources (e.g. roadless areas and/or potential wilderness), 40 C.F.R. § 1501.2(c), and other reasonable courses of action, 40 C.F.R. § 1508.25(c)(2). The requirement to consider such less damaging alternatives helps agencies meet NEPA's primary purpose of promoting "efforts which will prevent or eliminate damage to the environment and biosphere..." 42 U.S.C. § 4321. These requirements are affirmed in BLM policy: "BLM officials may not so narrow the scope of a planning/NEPA document as to exclude a reasonable range of alternatives to the proposed action..." USDI Instruction Memorandum No. 2001-075. The IBLA

has established that the elimination of reasonable alternatives without sufficient analysis does not satisfy NEPA, and noted that "While we could speculate about the BLM's rationale for dismissing these two alternatives, we should not be required to fill in the blanks for BLM. The record should speak for itself." Biodiversity Associates et al., IBLA 2001-166, at 7 (2001). Such objective evaluation is gravely compromised when agency officials bind themselves to a particular outcome or foreclose certain alternatives at the outset.

BLM Failed to Analyze an Alternative Incorporating Scientifically Defensible and Adequate Sage Grouse Lek Buffers

In addition to being on the BLM Sensitive Species list, the greater sage grouse has been petitioned for listing under the Endangered Species Act, and the USFWS has recently made a positive 90-day finding on the species, meaning that there is "substantial biological information" that listing may be warranted. Sage grouse are very sensitive to disturbance, and vehicle activity of any kind in the vicinity of lek sites would be expected to have major impacts on the population using the lek site in question.

Routes within 2 miles of sage grouse lek sites should be closed at least seasonally between March 15 and June 15 to protect breeding and nesting habitat; this is a reasonable alternative that the BLM should in fact have evaluated in detail. The 1990 Cody RMP indicates that two leks were present at that time in the TMP area. Sage grouse are highly sensitive to disturbance from vehicle traffic, a fact which should have led BLM to examine a range of alternatives, including **at least one** which adequately protects sage grouse.

The best available science indicates that vehicle use in sage grouse nesting habitats can have negative consequences for the grouse. Call and Maser (1985) made the following recommendations concerning off-road vehicle use and sage grouse:

> Organized motorcycle or four-wheel drive races across sage grouse nesting habitat, however, can cause substantial loss of production from direct destruction of nests, from abandonment of nests during egg-laying, from destruction of young chicks, or from all three. If sage grouse production is a management goal, then it is wise to postpone such races until after the first of September when the birds are old enough to fly out of harm's way (p. 19).

The same could be said for regular motorized traffic outside the venue of a competition. Road development can lead to lek abandonment (e.g., Braun 1986). In western Wyoming, Lyon (2000) found that for sage grouse leks within 3 km of oil and gas developments, grouse hens successful at raising their broods selected habitats farther from roads than unsuccessful hens.

If roads or wells are built near leks during the off-season, the resulting regular vehicle traffic will have major negative impacts when the sage grouse are present, effectively circumventing any mitigative value of delaying construction activities.

As a rule, breeding and nesting activity are concentrated in the habitats adjacent to the lek site. In a Montana study, Wallestad and Schladweiler (1974) found that no male sage grouse traveled

farther than 1.8 km from a lek during the breeding season. But following breeding, males may make long migrations to distant summer ranges (Connelly et al. 1988). Hulet et al. (1986) found that 10 of 13 hens nested within 1.9 miles of the lek site during the first year of their southern Idaho study, with an average distance of 1.7 miles from the lek site; 100% of hens nested within 2 miles of the lek site during the second year of this study, with an average distance from lek of 0.5 mile. In Montana, Wallestad and Pyrah (1974) found that 73% of nests were built within 2 miles of the lek, but only one nest occurred within 0.5 mile of the lek site.

But in Bates Hole, Wyoming, Holloran (1999) found that average nesting distance from lek site was 3.25 km for adults and 5.27 km for yearlings. Wakkinen et al. (1992) cautioned that leks were poor predictors of sage grouse nest sites; although 92% of sage grouse nested within 3.2 km of a lek in this study, sage grouse did not necessarily nest near the same lek where breeding took place.

Lyon (2000) pointed out that quarter-mile lek buffers were insufficient to maintain the viability of grouse populations. Connelly et al. (2000) recommended that sage grouse habitat should be protected within 3.2 km of lek sites under ideal habitat conditions, within 5 km when habitat conditions are not ideal, and within 18 km where sage grouse populations are migratory. Furthermore, these researchers stated that in areas where 40% or more of the original breeding habitat has been lost, all remaining habitat should be protected.

But Beck (1977) cautioned that protection of lek sites only is insufficient to maintain sage grouse winter habitats. And Connelly et al. (1988) later cautioned, “Protection of sagebrush habitats within a 3.2 km radius of leks may not be sufficient to ensure the protection of year-long habitat requirements” (p. 116). And Braun (pers. comm.) recommended even larger buffers of 3 miles from lek sites where surface disturbance and vegetation treatments should be prohibited, based on the uncertainty of protecting sage grouse nesting habitat with smaller buffers. Thus, at least areas within 2 miles of a sage grouse lek as well as winter ranges should be identified and seasonal vehicular closures be put in place for the entire sensitive season. This is an alternative which must be thoroughly evaluated, and should be adopted in the final TMP.

The BLM Failed to Evaluate an Alternative that Provides for Opportunities for Primitive and Unconfined Recreation in the WSA and adjacent Wilderness-Quality Lands, While Allowing ORV Use Elsewhere

The Cody RMP accords the greatest degree of protection from ORV impacts to a handful of areas:

> Vehicular use on BLM-administered public lands is limited to **designated** roads and trails in the following areas (see maps 9 and 10):
>
> --- Essential and recovery habitat for threatened or endangered species.
>
> --- Areas with fragile soils or with Class I or II Visual Resource Management (VRM) ratings (appendix H).

--- Areas containing significant cultural and paleontological resources.

The wilderness quality lands on the north slope of the McCullough Peaks have a triple dose of these sensitive resources: fragile soils, important visual resources (VRM Class II lands – the highest VRM Class in the Cody Field Office), and significant cultural and paleontological resources. And this is without considering the WSA and other wilderness-quality lands in this part of the planning area. Given the multitude of extremely sensitive resources in this part of the TMP area, the common-sense course of action would be to designate these areas for nonmotorized use only.

The McCullough Peaks EA eliminated an alternative to close all routes in the planning area on the basis that it was inconsistent with the RMP's ORV management objective "to maintain or enhance opportunities for ORV use while protecting or avoiding adverse effects of vehicular travel on other resource values." EA at 5. It is important to note that this is an objective that applies to the entire Cody Field Office, not to this TMP planning area in particular. Thus, ORV opportunities need not be maintained or enhanced on every acre.

The BLM has apparently had a bout of selective amnesia when using this justification to eliminate a non-motorized alternative, because the Cody RMP also contains a directive that states,

> The recreation management objective is to enhance opportunities for primitive recreation, while increasing visitor services in some areas (to meet needs for more developed forms of recreation).

It is also telling that the BLM has ignored the second part of its ORV guidance, "while protecting or avoiding adverse effects…on other resource values." As mentioned above, wilderness qualities are an officially recognized resource value under FLPMA; the BLM must therefore protect these values from adverse effects from ORV traffic – noise, dust, loss of solitude, loss of naturalness. Fragile soils are a resource value that must be protected – by keeping ORV traffic away from steep and unstable slopes and fragile soils such as those that are found in the McCullough Peaks WSA and adjacent wilderness-quality lands. Opportunities for primitive and unconfined recreation are a resource that must be protected – by segregating ORV use areas away from primitive recreation areas such as the WSA and adjacent wilderness-quality lands. In order for the BLM to truly implement its ORV direction under the RMP, it must therefore keep ORV traffic away from fragile soils, wilderness-quality lands, and areas important for primitive recreation.

Past BLM analysis indicates that ORV use within the McCullough Peaks WSA, similar to that envisioned in this TMP, would be expected to cause major impacts on wilderness qualities and primitive recreation opportunities:

> Solitude on 1,630 acres of land in the northwest portion of the WSA would be lost because of ORV use. Opportunities for solitude would remain available, but

> impaired on 2,000 acres of the eastern portion of the WSA because of ORV touring associated with rockhounding and other activities.

Grass Creek/Cody Wilderness EIS at 107. In addition, the Cody RMP contains a loophole that virtually guarantees that ORV use will occur off designated routes: “Except for areas designated as closed to vehicular use, performance of necessary tasks requiring off-road use of a vehicle is authorized. Examples of necessary tasks include picking up big game kills and constructing or repairing authorized range improvements.” Thus, it is reasonably foreseeable that off-trail ORV use will in fact occur on fragile soils, on steep slopes, of the WSA and surrounding wilderness-quality lands, in association with big game retrieval, and it will all be completely legal. But the EA fails to analyze the impacts of off-trail motorized game retrieval, or account for the major damage that would be inflicted on these fragile badland areas as a result. Once again, to achieve “protecting or avoiding adverse effects of vehicular travel on other resource values,” as per ORV requirements in the Cody RMP, the BLM must close these fragile areas entirely to motorized use.

Thus, the Cody RMP directs the BLM to maintain and enhance ORV opportunities, while simultaneously enhancing opportunities for primitive recreation. These directives would inherently conflict with each other if each directive had to be satisfied on every acre of federal surface. It is obvious that ORV recreation and primitive recreation are inherently incompatible in close proximity, because the noise, dust, and pollution inherent to ORV recreation destroy and prevent opportunities for primitive recreation.

The obvious solution to this apparent conundrum is to designate some areas in the TMP for primitive recreation (i.e., the WSA and adjacent wilderness-quality lands), while designating other areas for ORV recreation. This would create a more equitable balance of recreation opportunities, both within the planning unit and within the Cody Field Office as a whole. It is a fact that the McCullough Peaks area is one of the few areas where primitive recreation of high quality is even potentially available; by contrast, opportunities for high-quality recreation are ubiquitous throughout the Field Office. In order to fulfill FLPMA’s multiple-use mandate, the BLM should adopt this alternative of motorized and nonmotorized zones, so that scarce resources are not discarded in a stampede to preserve abundant ones.

Unfortunately, **not one** of the alternatives given detailed analysis in the EA provides a balance between ORVs and primitive recreation, despite the fact that wilderness-quality lands are a prominent part of the planning unit. Under the proposed action, almost every vehicle route, even within the WSA, is designated for motorized use. The No Action Alternative allows motorized use on every existing route in the planning area. And the third alternative designates all routes officially as motorized routes. These three alternatives are not only virtually identical in their permissiveness for motorized use, they are also virtually identical in their strong negative impacts on primitive recreation in one of the last true bastions of primitive recreation in the Field Office – lands suitable for wilderness status. Where is the alternative that enhances primitive recreation opportunities? Where is the alternative that even maintains them? This failure to even consider an alternative that enhances primitive recreation opportunities is a grave violation of

NEPA's range of alternatives requirement, and the BLM's failure to adopt such an alternative as the Proposed Action renders the McCullough Peaks TMP non-compliant with the Cody RMP, which has legal precedence.

Considering an All-Motorized Alternative While Failing to Consider a Non-Motorized Alternative is Arbitrary and Capricious, in Violation of the APA

But by taking one of the few primitive areas in the Field Office and designating it for motorized recreation, as in the Proposed Action, the BLM exacerbates the shortage of primitive recreation opportunities, contravening its RMP direction to enhance these opportunities. And while the entire planning area could be closed to ORVs without creating a shortage of motorized recreation opportunities (although this is not a measure that we recommend), the designation of motorized travel within the McCullough Peaks WSA and adjacent wilderness-quality lands diminished an already scarce resource – primitive recreation opportunities.

It is the height of arrogance, not to mention arbitrary caprice (a violation of the Administrative Procedures Act), for the BLM to reject detailed consideration for an alternative to close all routes to ORVs because it would not maintain or enhance ORV-based recreation, even as the agency considers in detail an alternative to designate all routes for ORV use even though this alternative violates RMP directives to enhance opportunities for primitive recreation. The agency cannot have it both ways – what is good for the goose is good for the gander. Supplemental NEPA is needed to correct this systematic bias in the EA, so that a full range of alternatives will have been considered in detail.

BLM FAILED TO TAKE A 'HARD LOOK' AT CRITICAL RESOURCES, IN VIOLATION OF NEPA

NEPA and its implementing regulations require that when preparing an EA, agencies must take a "hard look" at the potential impacts of a project, and ensure that when a FONSI is made and an EIS is forgone, the EA convincingly concludes that no significant impacts will occur. An agency must supply a convincing statement of reasons why potential effects are insignificant. The agency's statement of reasons is crucial to determining whether the agency took a 'hard look' at the potential environmental impact of a project.

CEQ regulations implementing NEPA recognize that intelligent decisionmaking can only derive from high-quality information. EAs must provide "evidence and analysis" for their conclusions that making a FONSI or completing a full EIS is required. 40 C.F.R. § 1508.9. Information included in NEPA documents "must be of high quality. Accurate scientific analysis ... [is] essential to implementing NEPA." 40 C.F.R. § 1500.1(b). Where an agency has outdated, insufficient, or no information on potential impacts, it must develop the information as part of the NEPA process. CEQ regulations also explicitly require agencies to describe the "affected environment," 40 C.F.R. § 1502.15, and that NEPA documents disclose the underlying purpose and need for the proposed action. 40 C.F.R. §§ 1502.10(d); 1502.13.

Under NEPA, the agency must take a hard look at the new information and evaluate whether its existing NEPA analysis is accurate. *See Headwaters* 914 F.2d at 1177 ("an agency is not free to ignore the possible significance of new information. Rather, NEPA requires that the agency take a 'hard look' at the new information to determine whether an SEIS is necessary"). *See also Friends of the Clearwater*, 222 F.3d at 558 (if "'new information comes to light the agency must consider it, evaluate it, and make a reasoned determination whether it is of such significance as to require'" a supplemental analysis) (citation omitted)). Furthermore, courts have held that "[w]here evidence presented to the preparing agency is ignored or otherwise inadequately dealt with, serious questions may arise about the author's efforts to compile a complete statement." *Suffolk County v. Sec'y of Interior*, 562 F.2d 1368, 1383 (2nd Cir. 1977); *see also All Indian Pueblo Council v. United States*, 1990 WL 446902, 7 (D.N.M. 1990) (response to public comments adequate because it addressed the concerns presented and took the recommended factors into consideration).

For Wilderness Study Areas, an additional and higher threshold is required for NEPA analyses of federally approved activities. Particularly, the threshold for describing the affected environment is elevated for WSAs, with additional specific requirements:

> A description of the affected environment, considering both the specific site and the wilderness study area (or inventory unit) in its entirety:
>
> --Meaningful descriptions of soils, erosion potential, vegetation, reclamation potential, topography and climate including precipitation.
>
> --Existing uses and manmade or man-caused features.
>
> --Wilderness characteristics as documented in the intensive inventory report.
>
> --Discussion of scenery characteristics, vistas, key viewing areas, and visitor use areas.

BLM Handbook H-8550-1 at 26. The affected environment analysis within the McCullough Peaks EA satisfies none of these criteria.

Furthermore, cumulative effects analyses must be more robust for WSAs, with additional specific requirements:

> Written assessment of cumulative impacts including the following:
>
> --If the project's impacts (after reclamation) had existed at the time of intensive inventory, would those impacts have disqualified the area from being identified as a wilderness study area?
>
> --Will the addition of this proposal produce an aggregate effect upon the area's wilderness characteristics and values that would constrain the Secretary's

recommendation with repect to the area's suitability or nonsuitability for preservation as wilderness, considering the area in its expected condition at the time the Secretary sends his recommendation to the President?

--For wilderness study areas that are pristine in character, will the addition of this proposal significantly reduce the overall wilderness quality of the WSA?

BLM Handbook H-8550-1 at 27. The cumulative effects analysis in the McCullough Peaks EA leaves these questions unanswered, an unacceptable state of affairs from a NEPA "hard look" sufficiency standpoint.

NEPA Requires Agencies To Take A "Hard Look" At New Information That Indicates That The Impacts Of Its Actions May Be Greater Than Originally Analyzed.

NEPA requires federal agencies to prepare environmental impact statements ("EIS") or more abbreviated environmental assessments ("EA") prior to embarking upon major federal actions that may significantly harm the environment. *See* 42 U.S.C. § 4332(C); 40 C.F.R. §§ 1500-1508 (NEPA regulations). In order to satisfy this analytical requirement, agencies must take a "hard look" at the potential environmental impacts of their proposed actions and disseminate the conclusions of its analyses to the public. *See, e.g., Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989) (*citing Kleppe v. Sierra Club*, 427 U.S. 390, 410 n.21 (1976)). These analysis and public review requirements are meant to: (1) foster more environmentally sensitive decision-making by ensuring "that the agency, in reaching its decision, will have available, and will carefully consider, detailed information concerning significant environmental impacts," *Robertson*, 490 U.S. at 349; and (2) ensure that "the relevant information will be made available to the larger audience that may also play a role in both the decision making process and the implementation of that decision." *Id.* These purposes "emphasize the importance of coherent and comprehensive up-front environmental analysis to ensure informed decision making to the end that 'the agency will not act on incomplete information, only to regret its decision after it is too late to correct.'" *Blue Mountains Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1216 (9th Cir. 1998) (*quoting Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 371 (1989)); *see also Foundation on Econ. Trends v. Heckler,* 756 F.2d 143, 157 (D.C. Cir. 1985) ("The NEPA duty is more than a technicality; it is an extremely important statutory requirement to serve the public and the agency before major federal actions occur.").

An agency's NEPA analysis duties do not end once the agency completes its initial analysis. Rather, NEPA imposes a continuing duty on agencies to "be alert to new information that may alter the results of its original environmental analysis, and continue to take a 'hard look at the environmental effects of [its] planned action.'" *Friends of the Clearwater v. Dombeck*, 222 F.3d 552, 557 (9th Cir. 2000) (*quoting Marsh*, 490 U.S. at 374). *See also Headwaters v. Bureau of Land Management, Medford Dist.*, 914 F.2d 1174, 1177 (9th Cir. 1990) ("an agency is not free to ignore the possible significance of new information. Rather, NEPA requires that the agency take a 'hard look' at the new information to determine whether an SEIS is necessary"). If "'new information comes to light the agency must consider it, evaluate it, and make a reasoned determination whether it is of such significance as to require'" a supplemental analysis. *Friends*

of the Clearwater, 222 F.3d at 558 (*quoting Warm Springs Task Force v. Gribble*, 621 F.2d 1017, 1024 (9th Cir. 1980)). As the Supreme Court has explained:

> [i]t would be incongruous with [NEPA's] . . . approach to environmental protection, and with the Act's manifest concern with preventing uninformed action, for the blinders to adverse environmental effects, once unequivocally removed, to be restored prior to completion of agency action simply because the relevant proposal has received initial approval.

Marsh, 490 U.S. at 371.

The NEPA regulations further underscore an agency's duty to be alert to and to fully analyze potentially significant new information. The regulations declare that an agency "**shall** prepare supplements to either draft or final environmental impact statements if . . . there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts." 40 C.F.R § 1502.9(c)(1)(ii) (emphasis added).

Visual Resources

The visual resources found in the TMP are among the most important managed by the Cody Field Office. Under the Cody RMP, the McCullough Peaks area has a VRM Class II designation, the highest in the RMP. The Park Service has concluded that the McCullough Peaks qualify as a National Natural Landmark. The spectacular badlands found here contributed to the establishment of the McCullough Peaks WSA. Clearly, visual resources found within the TMP planning area are critically important.

And yet the visual resources get no mention in the "Affected Environment" section of the EA. And the impacts "analysis" contains only a cursory mention of the concept that vehicles on established routes will have little impact, while vehicles traveling off designated routes results in a variety of impact types. EA at 12. The critical questions remain unanswered by the EA: (1) How much illegal off-road activity can be expected under the Proposed Action as a result of access via designated routes; (2) How much of this illegal off-road activity will occur within the WSA, within other wilderness-quality lands, on steep and unstable slopes vulnerable to long-term scarring, and/or in areas of sensitive vegetation; and (3) what is the overall magnitude of the impact on visual resources from illegal and legal motorized vehicle use under the Proposed Action? These questions must be answered, not only for the Proposed Action but also for all other alternatives, including an additional alternative calling for a balance between motorized and nonmotorized use of the area, as requested in these comments.

Study of Impacts to Sensitive Species in the EA is Woefully Inadequate

The BLM's analysis of impacts on wildlife in general, and sensitive species in particular, is cursory at best and nonexistent at worst. Essentially, the entire analysis on the impacts of motor vehicle travel under the Proposed Action is limited to a single sentence: "Vehicle travel on roads during this time period [May 1 – June 15] has the potential to disturb young or nesting wildlife." EA at 14. The BLM mistakenly interprets its obligation as limited to analyzing the effect of reducing the open road system, when in fact the agency is making an affirmative decision to designate certain roads for motorized travel and close others as a result, the agency has an obligation to provide a detailed and credible analysis of the effects of both motorized designations <u>and</u> route closures.

It is absolutely unbelievable that the EA makes no attempt whatsoever to present baseline information of population levels and trends for the various wildlife species that could potentially be affected by this travel management decision. Where are the population data for BLM Sensitive Species? Where is the disclosure of sensitive wildlife habitats, such as sage grouse leks, prairie dog colonies, raptor nests, mountain plover nesting areas, and big game crucial ranges? And why has the agency chosen not to analyze the changes in population trend of native species, both common and Sensitive, as a result of the Proposed Action and Alternatives? The agency cannot hope to make an informed, reasoned decision pursuant to NEPA without gathering this information, and the agency also has an affirmative responsibility to present this information in its NEPA document. BLM has failed to do so, in violation of federal statute and regulation.

In addition, the list of BLM Sensitive Species found within the planning area appears to be incomplete. Our research indicates that swift fox, merlin, sage grouse, and golden eagle are present in the planning area in addition to the sage grouse, black-tailed prairie dogs, mountain plovers, and bald eagles mentioned in the EA. See EA at 7. There is no mention whatsoever of BLM Sensitive plants in the project area, although the mixture of badland and riparian cover types suggest a high level of endemism is possible, likely resulting in the presence of several rare plant species. Prior to the issuance of the decision, impacts to the additional Sensitive Species mentioned above must be thoroughly studied and presented in a supplemental NEPA document, preferably an EIS.

Nonmotorized Recreation Opportunities

The EA fails to analyze the effects of designating vehicle routes as "motorized" on nonmotorized recreation opportunities throughout the planning area. Specifically, the breaks and badlands that form the north slope of the McCullough Peaks, encompassing both the McCullough Peaks WSA asnd adjacent wilderness-quality lands, have some of the highest value for nonmotorized recreation in the Cody Field Office. And yet the EA makes no pretense of analyzing the impacts of motorized recreation on opportunities for nonmotorized recreation, both along designated routes and off designated routes as a result of access along designated routes. One of the supreme underlying flaws of the EA is the BLM's failure to recognize that primitive recreation and motorized recreation are fundamentally incompatible, as motor vehicles destroy the solitude, natural soundscapes, and primitive setting which are sought by most nonmotorized recreationists. This error in judgment led to a failure of the agency to assess the impacts of motor vehicle use on primitive recreation opportunities, even though the McCullough Peaks have been featured in *Wild Wyoming*, the nationally distributed guidebook to primitive recreation in Wyoming.

In order for BLM to satisfy NEPA's "hard look" requirements, the agency must provide the answers to the following questions for the Proposed Action and all alternatives:

- How far from designated routes do noise, pollution, and other impacts of motorized recreation travel from designated routes?

- With the above information taken into account, what percentage of acreage in the TMP area is beyond the range of these impacts, and what is the spatial distribution of this acreage?
- What percentage of the McCullough Peaks WSA will provide a high-quality (i.e., free from motorized impacts) nonmotorized recreation experience under the various alternatives?

We are confident that once the BLM performs a reasoned analysis on these impacts, it will recognize that all alternatives presented in the EA promote motorized recreation exclusively, and we hope the BLM will correct this imbalance by reworking its proposed action to also satisfy the needs of primitive recreation.

Wilderness Resources
The EA does not include an analysis of effects to wilderness resources found outside the McCullough Peaks WSA. The agency has been apprised of the presence of these lands of wilderness quality in the past, so we will not hasten to excuse this oversight. But regardless of the quality of BLM's past inventories of resources, the agency has now been made aware of the extent and location of lands with wilderness qualities falling outside the McCullough Peaks WSA, and must now perform supplemental analysis to study in detail effects of the proposed route designations on these wilderness qualities. Specifically, the extent and impact of illegal off-trail ORVing stemming from access along designated vehicle routes must be studied and determined, both for wilderness-quality lands inside and outside the McCullough Peaks WSA..

Cultural Resources
The EA also fails utterly to gather basic data and provide a credible impacts analysis of cultural and archaeological resources. This deficiency is discussed in detail in the following section.

THE MCCULLOUGH PEAKS EA DOES NOT SHOW COMPLIANCE WITH THE MANDATES OF SECTIONS 106 AND 110 OF THE NATIONAL HISTORIC PRESERVATION ACT

There is no indication in the EA that the BLM has conducted a Section 106 review, as is required by the National Historic Preservation Act (NHPA). Section 106 of the NHPA requires BLM to take into account the effects of its actions on all affected historic resources eligible for or on the National Register of Historic Places, and to provide the federal Advisory Council on Historic Preservation (Advisory Council) a reasonable opportunity to comment, prior to making its decisions. 16 U.S.C. § 470f. Congress enacted the NHPA for the explicit purpose of preserving, in the public's interest, "historic properties significant to the Nation's heritage [which] are being lost or substantially altered, often inadvertently." 16 U.S.C. § 470. The Section 106 process carries out Congress' purpose for the NHPA by requiring Federal agencies to seek ways to avoid, minimize, or mitigate adverse effects on historic resources. 36 C.F.R. § 800.1(a).

BLM's approval of the McCullough Peak TMP requires compliance with Section 106, because an undertaking funded or licensed by a Federal agency triggers Section 106, especially where, as

here, the record clearly indicates the presence of significant cultural resource values and sites within the proposed project area. 16 U.S.C. § 470(f). The Advisory Council's regulations define undertaking to include "project activit[ies] or program[s] funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including . . . those requiring a Federal permit, license, or approval. . . ." 36 C.F.R. § 800.16(y) (emphasis added); see also 16 U.S.C. § (7)(B).[1] BLM's McCullough Peaks TMP, which covers federal management on federal lands under federal jurisdiction, unquestionably triggers NHPA and the Advisory Council's regulations, and therefore requires a Section 106 review of the proposed project area **prior** to granting approval.

Motorized recreational use inherent to the McCullough Peaks TMP would unquestionably have an adverse effect on historic properties present in the project area. Federal regulation provides that,

> [a]n adverse effect is found when an undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association.

36 CFR § 800.5(a)(1). The BLM has already noted that ORV use in the planning area "significantly contributed to the degradation of the resources" with a trend "increasing in amount and severity." EA at 8. BLM must determine how the project will adversely affect the identified and unidentified historic properties eligible for or on the National Register, and provide methods to avoid or mitigate such effects, prior to approval of the TMP.

The Section 106 regulations also confirm that the "[p]hysical destruction of or damage to all or part of the Property," "[a]lteration of a property, including restoration, rehabilitation, repair, maintenance, stabilization, hazardous material remediation, and provision of handicapped access, that is not consistent with the Secretary's standards for the treatment of historic properties (36 CFR part 68) and applicable guidelines" or the "[c]hange of the character of the property's use or of physical features within the property's setting that contribute to its historic significance" results in an "adverse effect" on historic properties. 36 C.F.R. § 800.5(a)(2)(i-ii, iv). The project could provide for road closures near sites eligible for the National Register; such stipulations could mitigate adverse effects. Therefore, a thorough review of the impacts on historic and cultural resources must be done prior to approval of the TMP. Motor vehicle use, by providing access to illegal off-route travel, could result in permanent damage to eligible sites.

The Advisory Council's regulations regarding timing of the Section 106 process require BLM to complete its obligations before approval of the TMP. The regulations, with respect to timing of Section 106, state:

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[1] The 1992 Congressional amendments make clear that an undertaking can be an approval, clarifying a controversial distinction between license and approval.

> [Completion of a Section 106 review] does not prohibit agency officials from conducting or authorizing nondestructive project planning activities before completing compliance with section 106, provided that such actions do not restrict the subsequent consideration of alternatives to avoid, minimize or mitigate the undertaking's adverse effects on historic properties.

36 C.F.R. §800.1(c) (emphasis added). In the instant case, the implementation of the McCullough Peaks TMP, without even the consideration of alternative plans of development that would avoid archaeological sites, would foreclose future alternatives to close routes adjacent to archaeological and cultural sites and their settings. Further, the regulations instruct Federal agencies to initiate Section 106 early in an undertaking's planning to ensure that "a broad range of alternatives may be considered during the planning process for the undertaking." Id. (emphasis added). This has not been done in the McCullough Peaks EA (see Range of Alternatives section above).

These regulations apply directly to the McCullough Peaks TMP, which authorizes the formal designation of routes as motorized travel ways. BLM's discretion may be insufficient to fully protect special resource values if site-specific analysis is deferred to some later, unspecified time.

Because of the known presence of cultural resources on these lands, BLM must conduct a Section 106 review prior to approval of this project. Approval of this TMP constitutes an irreversible and irretrievable commitment of resources inasmuch as once archaeological resources are destroyed by vehicles or looted by their riders, it is very difficult to put it back into its original condition, particularly with regard to fragile archaeological artifacts which may lie just below the surface of the soil. Allowing this project to proceed for the disputed lands without first conducting Section 106 review would foreclose BLM's ability to preserve cultural and historic values in violation of the mandates of the NHPA.

BLM Must Comply with BLM's Stewardship Responsibilities under Section 110 of the NHPA

Federal agencies have special stewardship responsibilities with respect to historic resources on land that is under the agency's "jurisdiction or control." Section 110(a) of the NHPA requires that federal agencies "shall assume responsibility for the preservation of historic properties which are owned or controlled by such agency." 16 U.S.C. §470h-2(a)(1). All historic properties under federal jurisdiction or control must be "managed and maintained in a way that considers the preservation of their historic, archaeological, . . . and cultural values. . ." 16 U.S.C. §470h-2(a)(2)(B), and those properties must be "identified, evaluated, and nominated to the National Register." Id. § 470h-2(a)(2)(A); see id. §470h-2(a)(2)(E)(ii).

The approval of the McCullough Peaks TMP violates BLM's stewardship responsibilities under Section 110 of the NHPA because the proposed action does not adequately protect identified cultural and historic properties, and traditional religious and cultural properties. In 1992, Congress specifically amended Section 110 to increase Federal agencies' proactive, ongoing responsibility to locate, inventory, and nominate properties to the National Register, as well as assume the responsibilities for preserving historic properties. See 16 U.S.C. § 470h-2(a) (as

amended 1992). Section 110 requires Federal agencies to adopt and utilize cultural resource management programs. Id. BLM adopted an agency-wide Cultural Resource Management Program (CRMP), which includes four manuals. The CRMP has three main components – identification, protection, and utilization. See BLM Manuals 8100 – Cultural Resource Management Plan; 8110 – Identifying Cultural Resources; 8120 – Protecting Cultural Resources; and 8130 – Utilizing Cultural Resources for Public Benefit. These four manuals direct BLM field offices to carry out their responsibilities under Section 110 of the NHPA.

Here, BLM's attempt to open up the fragile McCullough Peaks badlands to motorized travel contravenes its stewardship responsibilities found in Section 110 and BLM's national directives. The proposed area has several identified cultural resources, but BLM has not adequately surveyed the parcels resources for their eligibility on the National Register. Approval of the CBM exploratory project will foreclose BLM's ability to provide for stewardship protection, especially with respect to historic resources and traditional religious and cultural properties, in contravention of BLM's stewardship responsibilities under Section 110 of the NHPA.

BLM Must Conduct Adequate Consultation with Indian Tribes Regarding Known and Discoverable Traditional Cultural Properties in Accordance with Section 106 of the NHPA

The NHPA requires BLM, when conducting a Section 106 review, to "consult with any Indian tribe . . . that attaches religious and cultural significance to properties." 16 U.S.C. § 470a(d)(6)(B). Federal agencies have an affirmative duty to seek information regarding potential areas of traditional religious and cultural value to Indian tribes. See 36 C.F.R. § 800.2(c)(ii). In exercising its consultation duties, BLM must ensure that it makes a "reasonable and good faith effort" to identify tribes that shall be consulted. Id.; see also Pueblo of Sandia v. United States, 50 F.3d 856 (10th Cir. 1995). Consulting tribes may then have an opportunity to advise BLM on identifying and evaluating historic properties.

Native American consultation is critical at the project stage because protection of traditional cultural properties (TCPs) and sacred sites are likely to directly conflict with plans for industrial development. Opening routes to motorized traffic may render the preservation of TCPs or sacred sites difficult or impossible. TCPs and sacred sites are not just irreplaceable resources, but a living entity critical to a part of the Native American way of life. Providing for consultation after approving the project sets a potentially irreversible course for properties, in spite of increased protection by Congress and the Executive branch.[2] BLM should not approve the TMP until they have an adequate opportunity to identify traditional religious and cultural properties and discuss preservation with affected tribes.

Failure to consult with Native American tribes during the NEPA process constitutes a violation of the National Historic Preservation Act. See 36 CFR § 800.2(c)(2)(i)(B). If TCPs are found to exist in the project area, additional consultation requirements are triggered under 36 CFR § 800.2(c)(2)(ii). Merely requesting input from the Tribes does not satisfy the BLM's requirement to consult with Tribes on TCPs. An actual consultation must occur with an interchange of

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[2] Congress' 1992 amendments specifically added TCPs as significant resources under the definition of historic resources. See 16 U.S.C. § 470a(d)(6)(B).

information. The idea that BLM can adequately consult with the Tribes later in the process is contrary to both the letter and spirit of NHPA, as well as BLM's Native American Coordination and Consultation Manual 8160 and Handbook H-8160-1. The NHPA implementing regulations state that

> [c]onsultation should commence early in the planning process, in order to identify and discuss relevant preservation issues and resolve concerns about the confidentiality of information on historic properties.

36 CFR § 800.2(c)(2)(ii)(A). Approval of vehicle routes for motorized use in the absence of consultation contravenes the clear mandate of NHPA by failing to adequately identify and discuss with Indian tribes methods to prevent future adverse effects on the TCPs, especially given the existence of three identified TCPs in the area of potential effects.[3] Failure to conduct Native American consultation violates the NHPA and invalidates the EA and DR/FONSI for this project.

While conversations with Cody BLM staff indicate that several tribes have been furnished with information, there is no indication in the EA that the BLM has consulted with the other tribes, particularly Arapaho, Shoshoni, Crow, Northern Cheyenne, and Blackfoot, to determine the location of sites of religious or cultural significance, as well as gathering places for herbs and other natural resources. This omission is quite glaring, and a full disclosure of tribal consultation must be made in the forthcoming EIS.

BLM Must Consult with SHPO on Impacts to Important Archaeological Sites
In addition, BLM must consult with the Wyoming State Historic Preservation Officer (SHPO), as is required by the NHPA and the Wyoming State Protocol (which carries out the Nationwide Programmatic Agreement between the Advisory Council, BLM, and the National Association of State Historic Preservation Officers). As BLM noted, important archaeological sites are present in the project area.

The known presence of sites potentially eligible for the National Register triggers BLM's affirmative obligation to conduct Section 106, as is discussed above, and to consult with the SHPO in accordance with the implementing regulations and the Wyoming State Protocol. 36 CFR § 800.2(c)(1). The Wyoming Protocol requires BLM to seek SHPO comments on eligibility and effect for "[u]ndertakings that adversely affect[ ] National Historic Landmarks or National Register eligible properties." Wyoming State Protocol at 6-7. There is no indication that this consultation was never performed for the McCullough Peaks TMP and the identified historic properties and TCPs. A failure to comply with required procedures would render the Decision Record flatly illegal.

The known presence of these sites triggers Section 106 of the National Historic Preservation Act, which requires, *inter alia*, consultation with the State Historic Preservation Officer. 36 CFR § 800.2(c)(1). This consultation must be performed before the McCullough Peaks TMP can be

[3] See the National Register Bulletin 38, created by the National Park Service, which sets out guidelines for identifying and evaluating TCPs.

approved. The procedural nature of Section 106 reinforces the importance of strict adherence to the binding process set out in the ACHP's NHPA regulations: "While Section 106 may seem to be no more than a 'command to consider,' . . . the language is mandatory and the scope is broad." *United States v. 62.20 Acres of Land, More or Less*, 639 F.2d 299, 302 (5th Cir. 1981). The goal of the Section 106 process is not to generate paperwork, but rather to provide a mechanism by which governmental agencies may play an important role in "preserving, restoring, and maintaining the historic and cultural foundations of the nation." 16 U.S.C. § 470.

Section 106 of the NHPA requires BLM to take into account the effects of its actions on all affected historic resources eligible for or on the National Register of Historic Places, and to provide the federal Advisory Council on Historic Preservation (Advisory Council) a reasonable opportunity to comment, prior to making its decisions. 16 U.S.C. § 470f. Congress enacted the NHPA for the explicit purpose of preserving, in the public's interest, "historic properties significant to the Nation's heritage [which] are being lost or substantially altered, often inadvertently." 16 U.S.C. § 470. The Section 106 process carries out Congress' purpose for the NHPA by requiring Federal agencies to seek ways to avoid, minimize, or mitigate adverse effects on historic resources. 36 C.F.R. § 800.1(a).

The preamble to the current NHPA regulations also make clear that Adestruction of a site and recovery of its information and artifacts is adverse. It is intended that in eliminating data recovery as an exception to the adverse effect criteria, Federal agencies will be more inclined to pursue other forms of mitigation, including avoidance and preservation in place to protect archeological sites.@ 65 Fed. Reg. 77689, 77720 (Dec. 12, 2000) (Protection of Historic Properties - Final Rule; Revision of Current Regulations) (discussing intent of § 800.5(a)(2)(iii)). *See Chevron U.S.A., Inc. v. Natural Resources Defense Council*, 467 U.S. 837, 844 (1984) (AWe have long recognized that considerable weight should be accorded to an executive department=s construction of a statutory scheme it is entrusted to administer.@) *See* 36 C.F.R. § 800.5 (broadly defining Aadverse effect@ to include direct, indirect, and cumulative effects).

BLM's approval of the McCullough Peaks TMP requires compliance with Section 106, because an undertaking funded or licensed by a Federal agency triggers Section 106. 16 U.S.C. § 470(f). The Advisory Council's regulations define undertaking to include "project activit[ies] or program[s] funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including . . . those requiring a Federal permit, license, or approval. . . ." 36 C.F.R. § 800.16(y) (emphasis added); see also 16 U.S.C. § (7)(B).[4] BLM's promulgation of a TMP for the McCullough Peaks, covering federal lands under federal jurisdiction, unquestionably triggers the Advisory Council regulations, and therefore requires a Section 106 review of the proposed project area **prior** to granting this approval. Regarding timing,

[4] The 1992 Congressional amendments make clear that an undertaking can be an approval, clarifying a controversial distinction between license and approval.

> The agency official must complete the section 106 process 'prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license.' This does not prohibit agency official from conducting or authorizing nondestructive project planning activities before completing compliance with section 106, provided that such actions do not restrict the subsequent consideration of alternatives to avoid, minimize or mitigate the undertaking's adverse effects on historic properties. 36 CFR § 800.1(c).

Therefore, BLM's approval of a Travel Management Plan is within the definition of an undertaking requiring Section 106 review – especially when, as here, the record establishes the presence of significant cultural resource values and sites on the proposed project area.

The McCullough Peaks TMP would unquestionably have an adverse effect on historic properties present in the project area. Federal regulation provides,

> An adverse effect is found when an undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association. 36 CFR § 800.5(a)(1).

The designation of motorized use along routes where off-trail damage is occurring would perpetuate the resource damage that is currently occurring at the hands of motorized users.

The Section 106 regulations also confirm that the "Physical destruction of or damage to all or part of the Property," "Alteration of a property, including restoration, rehabilitation, repair, maintenance, stabilization, hazardous material remediation, and provision of handicapped access, that is not consistent with the Secretary's standards for the treatment of historic properties (36 CFR part 68) and applicable guidelines" or the "Change of the character of the property's use or of physical features within the property's setting that contribute to its historic significance" result in an "adverse effect" on historic properties. 36 C.F.R. § 800.5(a)(2)(i-ii, iv) (emphasis added). The project lacks stipulations designed to close routes in close proximity to eligible sites; such stipulations could mitigate adverse effects. <u>See, e.g.</u> <u>Conner v. Burford</u>, 848 F.2d 1441 (9th Cir. 1988) (discussing the implications and distinctions between NSO oil and gas leases and non-NSO oil and gas leases). Inadequate stipulations undermine BLM's ability to control surface use and protect cultural resources. Therefore, a thorough review of the impacts on historic and cultural resources must be done <u>prior</u> to leasing. Leasing the disputed lands could permanently compromise cultural and historic resources.

The Advisory Council's regulations regarding timing of the Section 106 process require BLM to complete its obligations before issuing the two leases. The regulations, with respect to timing of Section 106, state:

> [Completion of a Section 106 review] does not prohibit agency officials from conducting or authorizing nondestructive project planning activities

> before completing compliance with section 106, <u>provided that such actions do not restrict the subsequent consideration of alternatives to avoid, minimize or mitigate the undertaking's adverse effects on historic properties</u>.

36 C.F.R. §800.1(c) (emphasis added). In the instant case, the implementation of the TMP (without even the consideration of alternatives that would close roads near archaeological sites) would foreclose future alternatives to protect archaeological and cultural sites and their settings. Further, the regulations instruct Federal agencies to initiate Section 106 early in an undertaking's planning to ensure that "a <u>broad range of alternatives</u> may be considered during the planning process for the undertaking." <u>Id</u>. (emphasis added). This has not been done in the McCullough Peaks EA (see Range of Alternatives section above).

These regulations apply directly to the McCullough Peaks TMP, which designates motorized use on existing vehicle routes, with the ancillary effect of providing access for off-road travel by scofflaws. BLM's discretion may be insufficient to fully protect special resource values if site-specific analysis is deferred to some later, unspecified time. Because of the known presence of cultural resources on these lands, BLM must conduct a Section 106 review prior to approval of this project. Approval of this project constitutes an irreversible and irretrievable commitment of resources inasmuch as the vehicle use along designated routes will occur as soon as the DR is signed, and once the landscape has damaged by off-route travel, it is very difficult to put it back into its original condition, particularly with regard to fragile archaeological artifacts which may lie just below the surface of the soil. Allowing this project to proceed for the disputed lands without first conducting a Section 106 review would foreclose BLM's ability to preserve cultural and historic values in violation of the mandates of the NHPA.

A Route-by-Route Historic and Cultural Resources Inventory Must be Performed

The BLM's inventory of cultural resources in the project area is also very poor. The EA notes the presence of over 100 archaeological sites, of which about 40% are eligible for the National Register of Historic Places. EA at 8. While it certainly makes sense to avoid disclosure of the locations of individual sites, there is no excuse for the BLM's failure to enumerate how many of these sites occur within 100 yards of trails and roads proposed for vehicle use, as well as a detailed evaluation of the magnitude of impact to these irreplaceable historic and cultural resources under the various alternatives. This failure is particularly glaring in light of the agency's acknowledgment of the seriousness of the degradation occurring to this resource in conjunction with recreational use (having "significantly contributed to the degradation of the resources" with a trend "increasing in amount and severity"). EA at 8.

In addition, a detailed archaeological field inventory of all vehicle routes proposed for motorized use must be performed during the NEPA analysis and prior to the issuance of a Decision. BLM notes that site inventories are currently incomplete, and that "the known site array is an artifact of the application for useof the Public Lands driven process." EA at 8. The glaringly obvious aspect of this statement which the BLM has apparently overlooked is that this NEPA process is <u>**precisely**</u> the type of "Public Lands driven process" which is supposed to result in the generation of a comprehensive, route-oriented archaeological survey. The BLM's failure to perform this

analysis concurrent with its NEPA process constitutes a violation of NEPA's "hard look" requirements as well as a violation of the NHPA.

SPECIFIC ROUTE DESIGNATION RECOMMENDATIONS

We have the following recommendations for route disposition under the new TMP. As an overarching concept, the BLM must (to maintain conformity with the Cody RMP) close all vehicle routes not specifically recognized as existing at the time the Cody RMP ROD was signed. We concur with BLM on the desirability of closing routes marked as "closed" under the McCullough Peaks TMP. In addition, the following changes should be made in order to protect sensitive landscapes and enhance primitive recreation opportunities pursuant to the Cody RMP while providing sufficient access for hunters and motorized recreationists:

Routes that should be closed to motorized vehicles (mountain bikes not affected):

- Route in T54N R100W Sec. 29;
- Route beginning T54N R100W Sec. 28 NW ¼ and ending in Sec 32 E ½;
- Route beginning at junction T54N R100W Sec. 28 NE ¼ and ending at junction in T53N R100W Sec. 15 SW ¼ SW ¼, plus spur thereof;
- Route beginning at junction T53N R100W Sec. 14 NE ¼ and ending in T53N R100W Sec. 22 SE ¼;
- Route beginning at junction, T54N R100W Sec. 25 SE ¼ and ending T54N R99W Sec. 34 SW ¼;
- Route beginning at junction T53N R99W Sec. 2 NW ¼ and ending T53N R99W Sec. 17 SW ¼;
- Route beginning at junction T 53N R99W Sec. 12 NE ¼ and ending T53N R99W Sec. 13 SW ¼;
- Route beginning junction T53N R98W Sec. 9 NE ¼ and ending T53N R98W Sec. 17 SW ¼; and
- Route beginning junction T53N R98W Sec. 28 NW ¼ and ending Sec. 32.

Routes that should be changed to "ATV and nonmotorized use only":

- Route beginning junction T54N R100W Sec. 21 SE ¼ and ending T54N R100W Sec. 20 NW ¼;
- Route beginning junction T54N R100W Sec. 16 SE ¼ and ending T54N R100W Sec. 20 N ½, and route connecting to route above;
- Route beginning junction T53N R98W Sec. 14 SW ¼ and ending T53N R98W Sec. 28 S ½;
- Route loop and spur beginning T53N R100W Sec.22 W ½ and ending T53N R100W Sec. 20 NE ¼;
- Route beginning junction T53N R100W Sec. 18 SE ¼ and ending in state section;
- Route beginning junction T53N R100W Sec. 19 NW ¼ and connecting to route above; and
- Route descending north from rim in T53N R100W Sec. 20 and Sec. 21.

We request these route closures/designation changes in the interest of moving toward balance between motorized and nonmotorized recreation and to protect sensitive visual, soil, vegetation, wilderness, and primitive recreation resources in the TMP area.

CONCLUSIONS

After examining the Travel Management Plan and its accompanying EA, we can only conclude that the BLM has not only failed to provide adequate protection for wilderness, primitive recreation, and other resources, but has also failed to undertake a legally sufficient NEPA analysis. This may not be a fatal flaw, because a Travel Management Plan in an area with wilderness qualities clearly constitutes a major federal action and substantial impacts could result from activities permitted under the TMP, and therefore the BLM will be unable to issue a FONSI and is compelled to undertake a full EIS in any case. In the forthcoming EIS, we urge you to give greater consideration to wilderness and primitive recreation, and to formulate and adopt an alternative that provides strong protection for fragile badlands and wilderness-quality lands while allowing ORV traffic on designated routes elsewhere.

We appreciate the opportunity to comment on the TMP. Please send us all future NEPA documentation and other future correspondence regarding the McCullough Peaks TMP.

Sincerely yours,

Jeff Kessler
President
Biodiversity Conservation Alliance

Erik Molvar
Author, *Wild Wyoming*

Enclosures: Excerpts of McCullough Peaks chapter from *Wild Wyoming*; *Wilderness at Risk* citizens' inventory of McCullough Peaks

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