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CQ475

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September 23, 2002

Council on Environmental Quality
NEPA Task Force
P.O. Box 221150
Salt Lake City, UT 84122

**Re: Wyoming Outdoor Council's Comments on NEPA Task Force**

Dear CEQ staff:

With this letter please accept the written comments of the Wyoming Outdoor Council (WOC) concerning CEQ's call for comments on its NEPA Task Force, first announced in the Federal Register on July 9, 2002 (67 Fed. Reg. 45510-12).[1]

**Background**

WOC is a non-profit conservation group based in Lander, Wyoming and is the largest non-profit, non-affiliated conservation group within the state. Our membership totals over 1,000, and founded in 1967, our staff, board and membership have been consistently active in the many NEPA processes in our state, to ensure informed and well-reasoned decisionmaking, full participation opportunities for the public, the best possible understanding and disclosure of environmental impacts of proposed agency actions and a thorough effort by federal agencies to study mitigation opportunities for federal actions so as to lessen impacts to the natural environment and landscapes of Wyoming.

In the past several years, many of our NEPA participation experiences relate to the widespread oil and gas development on Wyoming's public lands, particularly by the Bureau of Land Management (BLM). Consequently, our specific examples of NEPA concerns will relate to NEPA in the oil and gas context; however, we believe these systemic problems relate to other agencies and a multitude of federal actions. For example, if BLM has tiering problems in the oil and gas context, it will likely carry these same deficiencies into its other programs such as rangeland, recreational use, protecting wildlife and fisheries, etc.

WOC approaches these concepts from a viewpoint that NEPA – a landmark environmental protection law enacted in 1970 – through its implementing regulations (40 C.F.R. Part 1500), is sufficiently designed at the present time to allow for a proper balance when federal agencies consider implementing actions on our public lands. The present framework, if properly followed, allows approval of agency actions in a way that allows for: (1) agencies to take into consideration the impacts to the environment; (2) a full study of the range of possible agency actions (alternatives); (3) the opportunity for full and meaningful public and scientific input prior to final decisions; (4) a mechanism for studying, disclosing and fully mitigating impacts; and (5) industry to have appropriate public lands operations approved in an reasonable time frame given the required public input and environmental impact reviews.

Unfortunately, however, WOC has seen consistent pressure – particularly by the Department of Interior and BLM – to "fast track," "expedite," or "streamline" the NEPA process in an effort to cater to industry's oil and gas interests on Wyoming's public lands, all too often at the cost of the very things NEPA was designed to ensure: a complete and full study of likely and cumulative impacts, full and meaningful public input and debate, a thorough and diverse range of reasonable alternatives for carrying out proposals and importantly, an meaningful exploration of mitigation measures to lessen environmental impacts.

One cannot escape the present realities with which we are dealing in this context. The Bush Administration has ordered the Department of Interior to implement the May 2001 National Energy Policy (NEP) which, in the words of BLM, has raised oil and gas production on public lands as the administration's "number one priority." BLM has created an "Energy Office" to carry out the NEP's goals of fast tracking and expediting oil and gas leasing and permit approvals, has developed a list of "time sensitive [land use] plans" to be put on a fast track for amendment due to oil and gas concerns and is now requiring every BLM employee to hesitate when considering *any* action that might protect the environment if it has the possibility of having an "adverse impact" on public lands energy production. In Wyoming, the first-ever BLM Excellence Award was granted to the Buffalo Field Office for its efforts in 2001 – not for resource protection, or for balancing drilling with competing resource uses, but rather, for simply approving a high number of drilling permits (APDs), over 1,100, which, except for New Mexico, exceeded the APDs approved by all other BLM field offices *combined.*

The Buffalo Field Office in Wyoming oversees the public lands within the Powder River Basin, for years touted as the hottest natural gas play in the United States with its vast coalbed methane reserves. Presently, Wyoming and Montana BLM are considering approving projects for 51,000 and 26,000 CBM wells, respectively, in the PRB as it extends into the two states. In proper context, there are approximately 59,000 federal onshore wells in the entire United States. As such, BLM and DOI are now considering approving the largest natural gas project ever proposed for federal onshore public lands. Both WY and MT BLM are planning on releasing final EISs by December 2002.

With this factual backdrop, and the enormous pressures facing Wyoming public lands from oil and gas production – additional pressure comes from the CBM plays and development in south central Wyoming (the Atlantic Rim proposal for nearly 4,000 CBM wells and a other exploratory projects), drilling proposals in Wyoming's Red Desert and increasingly intensified conventional oil and gas development in southwestern Wyoming in the crucial wildlife migration corridors south of Teton National Park – WOC feels it appropriate with in this context to provide its feedback to the task force on the multitude of NEPA problems as they relate to public lands oil and gas development. Overall, we feel that if these problems are properly resolved, the existing NEPA framework can serve its fundamental purposes – a well-informed, disclosed and publicly open process that ensures agencies take the hardest look possible at

environmental concerns and impacts before they leap. We now turn to our specific areas of concern.

**Fragmentation of Analysis and Cumulative Impacts**

One of the major NEPA deficiencies in the federal oil and gas program concerns the related areas of fragmenting analyses and improperly assessing and disclosing cumulative impacts. Current CEQ regulations provide proper guidance on these issues, if they were followed by the agencies. The types of actions to be considered by an agency when determining the scope of an environmental impact statement include:

> Similar actions, which when viewed with other reasonably foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their environmental consequences together, such as common timing or geography. An agency may wish to analyze these actions in the same impact statement. It should do so when the best way to assess adequately the combined impacts of similar actions or reasonable alternatives to such actions is to treat them in a single impact statement.

40 C.F.R. § 1508.25(a)(3). In addition, when preparing an EIS for broad actions, agencies should evaluate the proposal, "geographically, including actions occurring in the same general location, such as [a] body of water, region, or metropolitan area," and, "generically, including actions which have relevant similarities, such as common timing, impacts, alternatives, methods of implementation, media, or subject matter." 40 C.F.R. § 1502.4(c)(1), (2). The duty to study all impacts of a proposal extends to connected actions or those "that are closely related and therefore should be discussed in the same impact statement." 40 C.F.R. § 1508.25(a)(1). Connected actions include those that "[c]annot or will not proceed unless other actions are taken previously or simultaneously," or "[a]re interdependent parts of a larger action and depend on the larger action for their justification." 40 C.F.R. § 1508.25(a)(1)(ii), (iii).

Several examples, however, illustrate that federal agencies are ignoring these basic requirements. The Powder River Basin extends from northeast Wyoming to southeast Montana and is one "body of water" that would seemingly require one EIS. Yet, the WY and MT BLM state offices decided to proceed separately and study the anticipated 77,000 CBM wells in the two states in two separate EISs. The result, thus far, is unfortunately predictable: both EISs overlook full cumulative impacts and both arrived at different assumptions for the exact same types of impacts, indicating that fundamental impact evaluations in both EISs are flawed. Quite clearly, for this one geographic region defined by one large river basin, BLM should have prepared one EIS to be consistent with its projections and to look at the geographic river basin as one comprehensive whole.

In addition, the Forest Service recently submitted a proposal to allow Powder River Energy Corp. (PreCorp) a special use permit ROW to provide electricity to CBM wells in the Thunder Basin National Grasslands. The problem is that this power requirement (and needed right of way) has been recognized for a long time in the Powder River Basin and TBNG. In recent months, the FS has considered multi-well CBM projects in the TBNG, including proposals by Coleman, Yates, Prima and Independent Prod. Co. (453 wells), where all of the related power requirements could have been handled in one comprehensive NEPA analysis. Indeed, the very scattered nature of the projects all in the same general vicinity should not have been fragmented into separate EAs.[2]

Another recent example concerns the Seminoe Road CBM project in Carbon County, Wyoming. In 2001, BLM completed an EA/FONSI and Decision Record for a 19 CBM well project. Obviously, any plan of

development (POD) is going to include compressor facilities and pipelines (take away) capacity – yet, in August 2002, BLM sent out a letter announcing a separate EA for these components of the project. These are all related and necessarily connected actions that are part of one project, but have been illegally fragmented out from each other. The result of such fragmentation is an unrealistic projection of impacts for a particular project – indeed, if the projects are not fragmented, but rather combined into one, a much clearer and realistic picture of actual impacts can be obtained. WOC submits that the agencies may have a tendency to fragment these types of analyses so that the separate NEPA documents can more easily conclude a FONSI, thereby avoiding an EIS.

Very related to the fragmentation problems for components of one cohesive action being separated into separate EAs is BLM's consistent failure to look at full cumulative impacts of oil and gas development. In the Powder River Basin DEIS for 51,000 CBM wells, for example, BLM knew of at least two 500-megawatt coal-fired power plants that were *not* included in the air quality analysis. What is most disturbing is not that these plants and the emissions are to occur within the planning area for the 51,000 CBM well project, but that they are *related to* the project itself given higher power needs for CBM development. BLM also new (and stated in the DEIS) that at peak production, take-away pipeline capacity for the natural gas would need to be doubled given the given limits of the existing pipeline infrastructure. Nonetheless, BLM completely failed to mention, let alone study, the impacts of doubling this pipeline infrastructure.

On a larger cumulative impacts level, as noted above, BLM is now aggressively implementing the National Energy Policy, which, among other things, calls for heightened oil and gas drilling on western public lands. Leasing in Wyoming has proceeded at a frenzied pace, along with seismic exploration activities and APD approvals. The public would be much better served if the cumulative impacts of these actions – particularly on air, water and wildlife resources – were studied in one comprehensive and programmatic document. There is a direct link that should be studied and assessed, for example, for the wildlife that are forced to navigate around the oil fields of southwest Wyoming and the wildlife in the Red Desert and within the CBM plays in south central Wyoming.

**The NEPA Shell-Game: Deferral of Analysis to Subsequent NEPA Stages**

This area of concern is disturbing in many respects – with the end result that many aspects of impacts from oil and gas development end up severely understudied or completely ignored. In public lands oil and gas development there are four primary stages before development can occur: (1) land use planning (i.e., which areas in a resource area are open to oil and gas leasing, which are open to special stipulations, including no occupancy of the surface, etc.); (2) leasing individual oil and gas parcels; (3) project approval for wells on existing leases; and (4) drill permits (APDs) after project approval. (In many cases, the final APD NEPA document may simply tier back to the earlier studies, with the result being *no* study of a category of impacts).

The "shell game" works against the full understanding, disclosure and mitigation of impacts in two key respects. First, is the "we'll study it later" routine. BLM, in some cases understandably, states that impacts of oil and gas development are "too uncertain or speculative" to be studied during the land use planning or leasing stages. A perfect example of this concerns historic and cultural artifacts and the National Historic Preservation Act. WOC urges that before even opening an area to oil and gas development and leasing, the necessary cultural surveys and clearances should occur at the land use planning stage. What is certain is that when a lease sale is proposed, BLM knows of the specific acreage and should conduct these surveys. It doesn't. Moreover, in recent project approval EISs, most notable

the WY PRB EIS (the largest natural gas project ever studied for approval by Interior/BLM), BLM noted that over 90% of the public lands had not received NHPA clearance. And at the final stage, APD approval, BLM will undoubtedly do a short form EA/FONSI, tiering back all impact analyses to the previous documents. The result: impact assessments, including cultural surveys, specific effects of roads, powerlines, well pad placement, water disposal, etc., are passed from one "shell" to another, with the end result in many cases a very shallow treatment of the impacts, if any at all for some categories. This impact deferral to later stages "shell game" played by BLM is a direct affront to NEPA's underlying purposes. See e.g., Kern v. Bureau of Land Management, No. 99-35254, D.C. No. CV-98-06063-HO (9th Cir. 2002) (invalidating an EIS at the RMP stage, stating, "NEPA is not designed to postpone analysis of an environmental consequence to the last possible moment. Rather, it is designed to require such analysis as soon as it can reasonably be done. . . . If it is reasonably possible to analyze the environmental consequences in an EIS for an RMP, the agency is required to perform that analysis."); City of Williams v. Dombeck, 151 F. Supp.2d 9, 19-20 (D. D.C. 2001) (illegal deferral of analysis of "connected actions" where the deferred analysis was an "interdependent part of the larger action"). In the oil and gas context, the test for deferral is: an analysis may not be put of to a subsequent stage where obtaining more detailed and useful information is "meaningfully possible" at the time when the EIS is prepared, *even if the agency can change or modify the project at a later stage*. County of Suffolk v. Secretary of Interior, 562 F.2d 1368, 1378 (2nd Cir. 1977).

The second and related problem here concerns BLM's fear of NEPA documents becoming too quickly outdated. BLM recently learned in the Powder River Basin Wyodak CBM study, for example, that studying the cumulative impacts of 5,000 CBM wells proved problematic when quick private and state development "used up" the allotted for (or studied) 5,000 wells. BLM then did the seemingly unthinkable – authorizing 2,500 additional federal wells in the area in hastened fashion finding, unbelievably, that these CBM wells and their impacts would not significantly affect the human environment.

The unfortunate lesson learned by BLM appears to be the agency now intentionally overstating the number of wells studied in a document to make its oil and gas NEPA documents have a longer shelf life. The ongoing Atlantic Rim 3,880 CBM well project in south central Wyoming is a perfect example. In 2000, the Atlantic Rim project was scoped for 100 CBM wells. That proposal went no further and interestingly, in 2001, the project was "rescoped" for 3,880 wells – simply the entire project area divided by one well per 40 acres. Since that time, BLM has proceeded to piecemeal 10 separate plans of development for 200 total CBM wells in the interim. In each of the three separate EAs for these PODs, we have raised the point that BLM, in each, should, under cumulative impacts, be analyzing the 3,880 wells it said it foresaw in the 2001 scoping notice. BLM, in turn, responds that there is no real likelihood that this number of wells is likely to occur. The problem? In actuality, perhaps the first scoping notice of 100 wells (in 2000) was closer in accuracy to what BLM actually reasonably foresees than 3,880 wells. However, to protect itself from a Wyodak situation, BLM is proceeding with an EIS that will purportedly study 4,000 CBM wells and their impacts, when realistically, BLM is only predicting (and thereby studying) a few hundred wells. Why? BLM is obviously trying to provide itself and industry cover by overstating the number of wells in case development takes off. In that way, the EIS stating (but not studying) 3,880 wells will have a longer NEPA shelf life. In the end, should that occur, BLM will have allowed a nearly 4,000 CBM well project to move forward when in fact it only studied the impacts of an expected few hundred wells. This would result in thousands of wells receiving approval without any comprehensive planning, analysis or impact assessment. That analysis is not likely to come in subsequent APD approvals as those NEPA documents will simply tier back to the larger "study," that in fact never studied the bulk of the 4,000 wells in the first place.

**Deferral to State Agencies**

Not only does BLM illegally defer the study of oil and gas impacts to subsequent stages of development (with often shallow if any analysis at the APD stage) it is also in the habit of not studying impacts because of overlapping state agency responsibilities. In short, if a state agency has any authority in permitting an aspect of development (e.g., the Wyoming Dept. of Environmental Quality regarding the Clean Water Act or the Wyoming Oil and Gas Conservation Commission on well spacing and drilling operations), BLM in its NEPA documents punts all responsibility to the state agency and performs little or no analysis of the impacts itself. This is illegal. See, e.g., Idaho v. Interstate Commerce Comm'n, 35 F.3d 585, 595 (D.C. Cir. 1994) (holding that responsible federal agencies may not delegate their NEPA responsibilities by deferring "to the scrutiny of other [agencies]."); Citizens Against Toxic Sprays, Inc. v. Bergland, 428 F. Supp. 908, 927 (D. Or. 1977) ("[t]he responsible agency may not attempt to abdicate to any other agency merely because that agency is authorized to develop and enforce environmental standards."). BLM is often reminded of its independent Clean Water Act responsibilities under the Federal Facilities Clause, see 33 U.S.C. § 1323(a), and yet generally performs little analysis of this responsibility if there is a state agency with overlapping authority.

**Voluntary Mitigation Measures**

A closely related problem to assuming state agencies will study and mitigate impacts (whether that is true is something independent of, and not a legal substitute for, BLM's NEPA responsibilities) concerns mitigation measures and mitigated FONSIs. Once again using the CBM context, BLM has all too often reached a FONSI with respect to the dewatering impacts by assuming industry will sign (and then honor) third-party water-well mitigation agreements with landowners. As a further example, many mitigation measures in the WY PRB CBM DEIS are purely voluntary. In particular, BLM is assuming that on the private and state CBM play in the Basin (or 1/2 the entire 8 million acre project area), industry will voluntary inject 5% to 10% of the produced water, and depending on the alternative and sub-watershed, dispose of up to 10% to 15% of water through land application devices, with up to 40% passive and 25% active treatment of the water. However, and not discussed or disclosed by BLM to the public, is that these figures *assume VOLUNTARY compliance by industry.*

That point cannot be overstated – industry, barely regulated by the state agencies, and particularly in a time when gas prices are much lower than the 2000 peak of $9.00/MCF, will most often choose the most cost-effective disposal method. Translation: dumping ALL of the water it possibly can onto the ground or into unlined waste pits untreated. Moreover, WOGCC Chairman Don Likwartz stated publicly on April 5, 2002, that only 1 in 18 injection wells have worked in the PRB. Accordingly, not only is assuming 10% injection silly when considering no agency is requiring this of industry, due to early attempts, industry will most definitely not try more injection wells if purely voluntary.[3]

Accordingly, in this example – the largest natural gas field ever studied by BLM – **every single surface water impact in every alternative in the DEIS is simply a guess.** BLM should have considered the present reality that no federal or state agency right now is requiring *anything* other than direct surface or indirect surface (via unlined wastewater reservoirs) discharge. That reality throws off every analysis of every impact related to surface water in the entire DEIS. Is it that hard of a stretch for anyone that the oil and gas industry, when considering cutting into its profits to try and offer some bare level of protection to other resources, may in fact, ignore a voluntary mitigation measure? For that matter, industry often ignores the few mandatory provisions out there. The significance is that when these voluntary water handling assumptions are ignored by industry, much more water than BLM actually analyzed will be

discharged onto the surface and will reach mainstems and create other unstudied impacts.

These examples are spelled out in some detail to illustrate a very real problem in the way BLM carries out its NEPA responsibilities. BLM is legally required to disclose, and then analyze, the very real possibility that voluntary mitigation measures will NOT be followed by industry. See 27.09 Acres, 760 F. Supp. at 352 ("Given that reality [of non-compliance], the EA is inadequate in its failure to consider the consequences of possible non- implementation or inadequacy of its anticipated mitigation measures. What happens if the fail-safe fails?"). See also Sierra Club v. Marsh, 816 F.2d at 1385 ("The reliance on the proposed actions of [others] does not satisfy the [Corps'] burden on insuring that its actions will not jeopardize the continued existence of the [endangered species]."); Northwest Indian Cemetery Protective Association v. Peterson, 764 F.2d 581, 588 (9th Cir. 1985), rev'd on other grounds 485 U.S. 439 (1988) (where the court determined that NEPA requires agencies to "analyze the mitigation measures in detail [and] explain how effective the measure would be. . . . A mere listing of mitigation measures is insufficient to qualify as the reasoned discussion required by NEPA."). BLM, by failing to disclose and assess these factors in most of its NEPA documents is well into familiar territory for the agency: arbitrary and capricious decision-making.

**Types of Impacts v. Degree of Impacts**

Yet another serious flaw that permeates almost all BLM/FS oil and gas NEPA analyses concerns qualitative versus quantitative impact assessments. BLM has mastered the obvious in these documents by being able to state the *types* of impacts but has done very little in actually telling the public *what the actual impacts to various resources will be*. Examples in the recent Wyoming PRB 51,000 CBM well DEIS include: roads will fragment wildlife habitat; compressor stations will cause noise; soil loss will affect vegetation communities; produced wastewater will increase sedimentation; 39,000 wells will cause soil loss, and on. However, the point of NEPA is to study and disclose what the actual impacts will be. In other words, there must be much more than a terse qualitative overview serving as a meaningful impact analysis, e.g.: what will impacts be by species, location and distinct populations of wildlife due to roads; with displaced vegetation communities, what types of new species will invade and how long will it take to reach equilibrium; how will increased sedimentation affect aquatic life; and what are impacts to species, vegetation, ecological functions, etc., from 200,000 acres of soil loss?

Simply stating the obvious that massive industrial development will cause qualitative impacts really misses the point of a NEPA analysis; rather, in its NEPA documents BLM must look at what the actual degree of impacts will be. As with other areas, deficiency by BLM may result in many of its oil and gas NEPA documents receiving a failing grade. See, e.g., Defenders of Wildlife, 130 F. Supp. 2d 121, 128 (D. D.C. 2001) (setting aside agency's EIS where it "states that noise would be increased and both the pronghorn and their habitat would be disturbed" but contained "no analysis of what the nature and extent of the[se] impacts will be"); National Parks & Conservation Association v. Babbitt, 241 F.3d 722, 743 (9th Cir. 2001) (NEPA document inadequate where it identified "an environmental impact" but "did not establish the intensity of that impact."); Neighbors of Cuddy Mountain v. U.S. Forest Service, 137 F.3d 1372, 1379-80 (9th Cir. 1998) ("General statements about 'possible' effects and 'some risk' do not constitute a 'hard look' absent a justification regarding why more definitive information could not be provided. . . . Nor is it appropriate to defer consideration of cumulative impacts to a future date. . .").

Therefore, without an analysis of the on-the-ground effects that are likely to flow from the various "risks" identified in EAs and EISs, there is no way for either the agency or the public to make a meaningful evaluation of competing alternatives – which, after all, is the core purpose of preparing a NEPA document

in the first place. CQ475

**Adequately Describing the Existing Environment**

One of the most important aspects in any NEPA document is to adequately and accurately describe the affected environment such that impacts can be properly evaluated. Again, the recent WY PRB CBM DEIS provides some glaring examples of how this most basic requirement if poorly assessed and disclosed by agencies. For example, BLM failed to include baseline data for: characteristics of targeted aquifers (2-27); soils by affected areas (3-45); existing air quality conditions (3-54); species populations by inventoried habitat (3-96); stream habitat conditions and fish populations (3-103); black-tailed prairie dog colonies (3-122); depth of existing water wells in the Basin (4-12); and abandoned oil and gas wells (to assess aquifer communication) (4-29). These are just a few of the categories – another stark example is lack of cultural and historical surveys for 90% of the Basin – that render the subsequent impact analyses in the DEIS defective.

Importantly, 40 C.F.R. §1502.15 requires agencies to "describe the environment of the areas to be affected or created by the alternatives under consideration." Establishment of baseline conditions is a requirement of NEPA. In Half Moon Bay Fisherman's Marketing Ass'n v. Carlucci, 857 F.2d 505, 510 (9th Cir. 1988), the Ninth Circuit stated that "without establishing . . . baseline conditions . . . there is simply no way to determine what effect [an action] will have on the environment, and consequently, no way to comply with NEPA." The court further held that, "The concept of a baseline against which to compare predictions of the effects of the proposed action and reasonable alternatives is critical to the NEPA process." Accordingly, in the PRB CBM EIS, and most every other NEPA document, BLM has failed this basic duty and must work much better to provide this information in future NEPA documents so that environmental consequences can be satisfactorily assessed.

**Full Range of Reasonable Alternatives and Mitigation of Impacts**

Another key area of NEPA deficiency concerns BLM's consistent pattern of analyzing much less than the full range of alternatives. In the oil and gas context, and given existing leases and the rights conveyed therein, BLM quickly dismisses the "no action" alternative, and usually analyzes the industry proposal as the only "actionable" alternative. BLM, only in the rarest of circumstances, develops the requisite full range of alternatives to include differing spacing and timing of operation options, alternatives looking at other levels of wells than simply going with the full amount proposed by industry, alternatives that incorporate new and developing technologies and operating plans that include differing levels of mitigation – often called a "resource protection" alternative. The unacceptable result is often a "rubber stamp" by BLM on approving exactly what industry proposed without exploring these different options.

Again, the recent WY PRB CBM DEIS provides a perfect example of this point. In that document, there are effectively only two "action" alternatives. And they are: (1) allowing the full amount of wells requested by industry (51,000) and dumping most of the water on the ground untreated; and (2) allowing the full amount of wells requested by industry and analyzing (but not requiring – not even on federal resources) some level of water treatment and either 50% or 100% of power supplied by electrical lines. As such, the WY PRB CBM DEIS has only two action alternatives that are practically the same. This type of limited and narrow range of alternatives can result in EISs being remanded to agencies for the development of additional alternatives. See State of California. v. Block, 690 F. 2d 753 (9th Cir. 1982) ("Consideration of alternatives which lead to similar results is not sufficient under NEPA . . ."); Citizens

for Environmental Quality v. Lyng, 731 F. Supp. 970, 989 (D. Colo. 1989). (Forest plan alternatives inadequate because all involved high levels of unprofitable timber cuts.)

That's it? For the largest natural gas well project *ever* studied by the Department of Interior? For the first major CBM EIS conducted by BLM that may (unfortunately) serve as a blue-print for other rapidly developing CBM plays in the West? CEQ should examine why BLM failed to analyze alternatives including: (1) different spacing scenarios; (2) phased development options; (3) using alternative technologies; (4) injecting more than 10% of the produced water – what about alternatives analyzing 50% or 80% injection?; (5) differing levels of landowner protections and notifications; (6) differing monitoring requirements and procedures; (7) some smaller number of wells with a new EIS to come later that will be more site or coal-seam specific; (8) producing one coal seam at a time to better gauge impacts to aquifers, cross-contamination, recharge and subsidence; (9) or the Citizen's Alternative (submitted to BLM months before the DEIS was released yet none of its concepts were analyzed). WOC highlights here that the full range of reasonable alternatives allows agencies to live up to their NEPA responsibilities of studying, assessing and disclosing all reasonable methods to mitigate impacts, including: avoiding an impact altogether; minimizing impacts by limiting the degree of magnitude of the action; rectifying the impact by repairing or rehabilitating the affected environment; reducing or eliminating the impact over time by preservation and maintenance operations; or compensating for the impact by replacing or providing substitute resources. See 40 C.F.R. § 1508.20(a)-(e); see also 40 C.F.R. § 1502.14(f) (requirement to include appropriate mitigation measures in an alternative).

For the alternative of reinjection of produced CBM water, BLM entirely ignored economic feasibility analyses (disclosing that requiring reinjection where technically feasible would still yield industry a handsome profit) which underscores our point that these types of mitigation options that should have been explored by BLM in the range of alternatives are very reasonable. Yet, BLM developed only two (and nearly identical) action alternatives despite the "heart" of an EIS being "rigorously explor[ing] and objectively evaluat[ing] *all reasonable alternatives*." 40 C.F.R. § 1502.14(a) (emphasis added). NEPA requires agencies to "study, develop, and describe appropriate alternatives to recommended courses of action in any proposal that involves unresolved conflicts concerning alternative uses of available resources." 42 U.S.C. § 4332(E); 40 CFR 1508.9(b). Moreover, BLM "shall" "to the fullest extent possible, . . . Use the NEPA process to identify and assess the reasonable alternatives to proposed actions that *will avoid or minimize adverse effects of these actions upon the quality of the human environment*." 40 C.F.R. § 1500.2(e) (emphasis added).

CEQ should note that this basic, fundamental requirement that is the touchstone of *every* EIS, when ignored, often results in industry's perceived "delays" as the agency usually has to go back to the drawing board. 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.")

WOC, therefore, would like CEQ to provide recommendations to the agencies concerning a full development of the entire range of reasonable alternatives, taking a hard look at utilizing mitigation measures and requiring the use of alternative and developing technologies to different degrees to provide the public a meaningful opportunity to assess how the proposed action will affect the human environment based on different methods and manners of proceeding. Furthermore, particularly in the oil and gas field as it is so directly tied to energy production, we ask that CEQ examine to what extent agencies are including discussions of "[e]nergy requirements and conservation potential of various alternatives and mitigation measures," including, in the CBM context as an example, the use of different methods to meet the increased power demands associated with development (e.g., using solar, fuel cells or produced natural gas from a well to power submersible pumps and booster compressors v. the present alternatives/methods of utilizing coal-fired plants and diesel generators). See 40 C.F.R. § 1502.16(e).

**Bad Science and Flawed Assumptions**

Another problem plaguing BLM NEPA documents is their use of flawed scientific data to assess impacts. For example, in the current WY PRB CBM DEIS, BLM bases most of its treatment of impacts assuming that 80% of the produced CBM water will be conveyed (either by infiltration into the ground or by evaporation). However, that study was done in dry summer months and for one isolated area of the 8 million acre project study area. Critical factors were ignored such as differing soil types throughout the PRB and different infiltration rates during winter months. Nonetheless, BLM applied the isolated study to the *entire* 8 million acre PRB; obviously, conveyance rates will vary in different parts of the Basin and the one study cannot be applied universally. Therefore, this assumption on conveyance, based on bad science, will throw off water quantity and quality impacts, and effects on soils, stream hydrographs, native vegetation and aquifer recharge, for the entire analysis.

The regulatory framework is very clear on this issue: overlooking important data, faulty assumptions and incorrect data render an EIS meaningless. NEPA mandates the use of all relevant data as an integral part of good science. NEPA regulations require that, "Agencies shall insure the professional integrity, including scientific integrity, of the discussions and analyses in [EISs]. They shall identify any methodologies used and shall make explicit reference by footnote to the scientific and other sources relied upon for conclusions in the statement." 40 C.F.R. § 1502.24.

Moreover, "obviously inadequate or bad faith analyses by an agency are not to be validated." 27.09 Acres, 760 F. Supp. at 350. See also Silva v. Lynn, 482 F.2d 1282, 1285 (1st Cir. 1973) ("[C]omments from responsible experts . . . [that] disclose new or conflicting data or opinions . . . may not simply be ignored."); County of Suffolk v. Secretary of Interior, 562 F.2d 1368, 1383 (2d Cir. 1977); ('[T]he agency's conclusions [must] have a 'substantial basis in fact' . . . . Where evidence presented to the preparing agency is ignored . . . serious questions may arise about the . . . efforts to compile a complete

statement."); Sierra Club v. United States Army Corps of Engineers, 701 F.2d 1011, 1030 (2nd Cir 1983) (holding in the context of an EIS, "[i]f the . . . agency did not make a reasonably adequate compilation of relevant information and [if] the EIS sets forth statements that are materially false or inaccurate . . . it cannot provide the basis for an informed evaluation or a reasoned decision.").

We ask that CEQ analyze to what extent agencies are using the best available science in assessing impacts in their NEPA documents.

**Public Notification and Participation**

The NEPA fundamentals are seriously undermined when agencies do not "make diligent efforts to involve the public in preparing and implementing their NEPA procedures." 40 C.F.R. § 1506.6(a). In the oil and gas context, BLM's public notification problems concern both leasing and APD NEPA analyses.

In the leasing context, BLM in Wyoming sells industry oil and gas lease parcels every 60 days pursuant to the Mineral Leasing Act. In 1987 the Mineral Leasing Act was seriously overhauled by the Federal Onshore Oil and Gas Leasing Reform Act (FOOGLRA). Pertinent here is FOOGLRA's handling of adequately ensuring full public notification of, and participation in, these very important lease sales. FOOGLRA provides that, "At least 45 days before offering lands for lease under this section, . . . the Secretary shall provide notice of the proposed action. Such notice shall be posted in the appropriate local office of the leasing and land management agency. *The requirements of this subsection are in addition to any public notice required by other law.*" 30 U.S.C. § 226(f) (emphasis added); 43 C.F.R. § 3120.4-2.

Usually, however, BLM merely posts the announcement of the sale in the field office as well as now providing notice about 4 links into the Wyoming BLM home web page. CEQ should investigate and provide recommendations to BLM about additional requirements under both FOOGLRA (as it relates to public participation) and NEPA to take additional steps to involve the public. The mere posting notice of the sale is insufficient. The "in addition to" public notice required by other law is a clear reference to NEPA. The involvement of the public in agency decisionmaking, prior to final agency decisions, is a core underpinning of the entire statute. "NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken. . . . [P]ublic scrutiny [is] essential to implementing NEPA" 40 C.F.R. §1500.1(b). "Federal agencies shall to the fullest extent possible . . . [e]ncourage and facilitate public involvement in decisions which affect the quality of the human environment." 40 C.F.R. § 1500.2(d).

Section 1506.6 of the CEQ regulations, "Public Involvement," requires that BLM shall:

> (a) Make diligent efforts to involve the public in preparing and implementing their NEPA procedures.
> (b) Provide public notice of NEPA-related hearings, public meetings, and the availability of environmental documents so as to inform those persons and agencies that may be interested or affected.
>
> . . . .
>
> (2) In the case of an action with effects of national concern notice shall include publication in the FEDERAL REGISTER and notice by mail to national organizations reasonably expected to be interested in the matter . . .

(3) In the case of an action with effects primarily of local concern, the notice may include:

. . .

(iv) Publication in local newspapers (in papers of general circulation rather than legal papers).
(v) Notice through other local media.
(vi) Notice to potentially interested community organizations including small business associations.
(vii) Publication in newsletters that may be expected to reach potentially interested persons.
(viii) Direct mailing to owners and occupants of nearby or affected property.
(ix) Posting of notices on *and* off site in the area where the action is to be located.

(d) Solicit appropriate information from the public.

40 C.F.R. § 1506.6(a); (b)(3)(iv)-(ix); (d) (emphasis added).

Moreover, BLM must follow Section 1503 on inviting and responding to comments and Section 1501.7 on scoping (see also Section 1501.4(d)). Obviously, BLM has followed none of these additional notice and public involvement activities. WOC notes that the mere listing of the notice on a website is not sufficient – not all of the concerned public has web access, and this is not a method contemplated by Section 1506.6. Therefore, we ask that to ensure more meaningful public involvement prior to the irretrievable commitment of federal resources by selling an oil and gas lease parcel, CEQ provide BLM recommendations in this area.

Another serious NEPA public participation violation in the leasing context concerns that in many BLM field offices (particularly the Powder River Basin), these federal minerals are beneath *private* surface, and BLM knows very well the conflicts created by this unique split-estate situation. For split-estate parcels, why would BLM not bother with sending a certified letter to the affected landowner a month prior to the sale? The burden here is minimal and the benefits tremendous: first and foremost, this would allow these landowners and ranchers to bid on their minerals and if successful at the auction, have a say in how the mineral estate below them, affecting their private surface estate, is developed. To lease out federal minerals underneath private surface without proper notice and the opportunity for these landowners to participate in the NEPA and sale process is a gross mismanagement of public lands. This results in a direct violation of 40 C.F.R. § 1506.6(b)(3)(viii), which requires "direct mailing" of the EA and sale proposal to "affected landowners."

At the drilling permit or APD stage, public participation is critical given this is the last opportunity for the public to participate prior to the drilling bit breaking the surface. BLM has serious NEPA public participation and notification deficiencies at this stage of oil and gas development as well.

Again, there is an interplay between FOOGLRA and NEPA. The Leasing Reform Act requires that, "[A]t least 30 days before approving applications for permits to drill under the provisions of a lease . . ., the Secretary shall provide notice of the proposed action. *Such notice shall be posted in the appropriate local office of the leasing and land management agency. . . . The requirements of this subsection are in addition to any public notice required by other law.*" 30 U.S.C. § 226(f) (1994) (emphasis added).

As in leasing, the "in addition to" language here is a clear reference to NEPA. The involvement of the public in agency decisionmaking, prior to final agency decisions, is a core underpinning of the entire statute. (See the above discussion under leasing concerning the key principles of public participation and notification in NEPA). Moreover, CEQ's own interpretations of its NEPA regulations, which are to be given great deference, ask and answer the following question as follows:

38. Q. Must [EAs] and FONSIs be made public? If so, how should this be done?
A. Yes, they must be available to the public. Section 1506.6 requires agencies to involve the public in implementing their NEPA procedures, and this includes public participation of EAs and FONSIs. These are public 'environmental documents' under Section 1506.6(b), and, therefore, agencies must give public notice of their availability. . . . The objective, however, is to notify *all* interested or affected parties. If this is not being achieved, then the methods should be reevaluated and changed. *Repeated failure to reach the interested or affected public would be interpreted as a violation of the regulations.*

46 Fed. Reg. 18,026, 18,037 (Mar. 23, 1981) (emphasis added).

Oil and gas APDs require environmental assessments (EAs). Importantly, BLM shall, "involve environmental agencies, applicants, and the public, to the extent practicable," in preparation of EAs. 40 C.F.R. § 1501.4(b). If the EA results in a Finding of No Significant Impacts (FONSI), the FONSI must be made available to the public pursuant to section 1506.6. 40 C.F.R. § 1501.4(e)(1). (See above recitation of 1506.6 public notification possibilities). BLM has in fact recognized that much more is needed than APD posting for oil and gas EAs, "The manager must notify the public . . . of the review period. . . . Generally, notice of the review should be announced in regional and local newspapers or other media." (BLM NEPA Handbook H-1790 (1988) at IV.B.4.a.)

It is both shocking and disturbing, yet somewhat not surprising, that given these clear mandates, BLM *never* makes an attempt to contact the interested and affected public prior to finalizing NEPA for APDs. An example is the Lower Prairie Dog Creek EA for 13 APDs (CBM wells) within the Powder River Basin. On May 15, 2000, the Buffalo BLM field office reached a final decision (decision record and FONSI) on the EA for the APDs in question. In that case, WOC made it clear several months before the APD decision that it's membership wanted to participate in any future NEPA processes. WOC was notified of the EA/FONSI and decision record, but all of the notifications were *after* the final decision had been made. (The email notification is dated May 17, 2000; and the hard copy was received May 19, 2000; the decision of the Buffalo FO was reached on May 15, 2000). To expect WOC, or for that matter, any of the interested public, to meaningfully participate in the EA process by notifying them days after the final decision has been made truly shows how little BLM understands NEPA.

These FOOGLRA and NEPA violations consistently leave the public entirely uninformed of the EA process, with no chance at all to participate and comment. WOC asks CEQ to specifically review BLM's EA public notification practices, particularly in the area of APD approvals.[4] Lastly, in many instances involving the Pinedale and Buffalo field offices, WOC has learned of projects and, pursuant to 40 C.F.R. 1506.6(b)(1), has written BLM to request pre-decision notification of pending EAs. Despite this section's mandatory "shall" requirement that such specific requests trigger NEPA notification, BLM has repeatedly told WOC that it need not provide EAs for pending APDs and other projects to the public, and in many cases feels that notifying the public *after* a decision is final satisfies NEPA's public participation requirements. We also ask CEQ to provide the agencies guidance on this important NEPA public participation component.

**Tiering**

Perhaps one of the key failings of BLM and other agencies in the NEPA process – often in an effort to expedite and fast track project approvals – is the improper use of tiering. Tiering is adequately defined and explained when appropriate in 40 C.F.R. §§ 1502.20; 1508.28. Several examples, however, demonstrate agencies' failure to properly utilize tiering.

Perhaps the most glaring example is within the oil and gas leasing and development program, primarily administered by BLM. For leases known to be used for CBM development, BLM has leased (and continues to do so) for oil and gas development, tiering back to stale, outdated land use plans (RMPs), often completed in the late 1980s. None of the EISs associated with the RMPs mentions, let alone studies, CBM impacts. This practice has resulted in *four* stays (from IBLA) on BLM leasing decisions in the Wyoming Buffalo, Great Divide, Green River and Pinedale resource areas. Making matters worse is that BLM has recognized this problem for years – publicly admitting it to Congress in February of 2000 for most of its RMPs in the West – and yet still continues to rely on (and purportedly tier to) outdated RMPs to justify present day leasing decisions.

The pertinent CEQ regulations above make it clear that tiering is only appropriate when the broader document covers a range of impacts within a defined area and then the subsequent document incorporates the broader, general analysis and focuses in on more site-specific information. Therefore, tiering is illegal when the former document – in this case, stale EISs that accompanied RMPs – has no general analysis at all of CBM and its unique impacts. Tiering also has no application in the leasing context when the EISs associated with the old RMPs have a dated cumulative impacts analysis – generally the case here is a greatly exceeded number of authorized wells in a resource area than cumulatively studied back in the aging land use plan.

Other examples include recent projects proposed by the Forest Service in the Thunder Basin National Grasslands that purport to "tier" to the 1999 Wyodak EIS. The tiering problem there is two-fold: first, many of these TBNG project proposals are outside the boundaries of the area studied for the Wyodak CBM EIS; and two, the Wyodak EIS studied a precise number of wells and their impacts, and the number of wells studied were all drilled by 2000. How then, in 2002, can the FS possibly attempt to "tier" its proposals for hundreds of more wells to the impacts disclosed for a certain number of wells and their impacts in the Wyodak project, when any new wells will have additional impacts never studied in the previous document? WOC asks CEQ, therefore, to provide the agencies guidance on when, and in what circumstances, tiering is appropriate.[5]

**Interim Actions Jeopardizing the Full Range of Reasonable Alternatives**

One of the most disconcerting aspects of BLM's oil and gas program is that it allows interim activities to jeopardize the full range of possible alternatives during ongoing NEPA processes. The fundamental prohibition against this is found within 40 C.F.R. § 1506.1.

Violations of this prohibition against interim actions abound in the oil and gas program (e.g., allowing a multitude of "exploratory" projects to proceed within the PRB during the current study of 51,000 wells; allowing 200 exploratory wells in the Atlantic Rim project during the current EIS underway to study 3,880 wells), but nowhere is the NEPA violation is this circumstance more pronounced than in BLM's leasing program. Presently, the Wyoming Pinedale field office presents the most egregious example.

Due to old RMPs throughout the West needing amendments to finally address CBM impacts and to bring current the very outdated cumulative impacts analyses in the 1980s of expected oil and gas development, BLM is now amending numerous RMPs in the Interior West. RMP amendments are done in concert with an EIS. In the oil and gas context, one of the primary questions an amended RMP will address is to what extent unleased public lands will be open to oil and gas leasing at all, or if so, with what resource specific stipulations? In 2001, Wyoming BLM announced its intent to amend the Pinedale RMP, primarily for the oil and gas concerns stated above. At the time, summer of 2001, of the 1.2 million acres of public lands in the Pinedale field office, over 95% of those lands that were open to oil and gas leasing were under lease. One would think that proper land stewardship would result in BLM not leasing the remaining 5% until the RMP was amended, to preserve the option of not leasing those lands or attaching newly developed stipulations in the RMP process to these last few remaining acres.

Unfortunately, this has not been the case. From August 2001 to the present, the Pinedale field office has taken every opportunity to lease every last acre – over 100,000 acres have been leased since that time. The result is that over *99%* of the lands available for leasing in the Pinedale field office are now locked up under 10 year (or indefinite if held in production) leases, necessarily precluding the ability of BLM in the ongoing RMP amendment process, scheduled to be completed by 2004, to say "no" to leasing these last few acres or attaching newly developed stipulations. We ask CEQ to review these situations across the West and to provide recommendations to BLM concerning section 1506.1.[6]

**Conflict of Interests**

Last, but certainly not least, is a major concern we have dealing with conflicts of interests. This concern stems from the fact that many major EISs and EAs are farmed out by BLM to industry, who then hires third-party contractors to prepare the NEPA documents. The CEQ regulations require that all such "contractors" shall "execute a disclosure statement prepared by the lead agency . . . specifying that they have no financial or other interest in the outcome of the project." 40 C.F.R. § 1506.5(c).

Using the PRB CBM DEIS as yet another example, that DEIS was prepared by Greystone Environmental Consulting, with Applied Hydrologists for the produced water impacts. In 2000, industry formed an ad-hoc committee to select the contractor, headed by Western Gas Resources. (a major CBM player in the Basin). WGR then told BLM that the group had selected Greystone and BLM gave that selection its approval. Demonstrating who was running the show, WGR, and not BLM, notified Greystone that it had been awarded the contract to write the EIS for 51,000 CBM wells.

The problem? Greystone was selected the primary contractor for the entire EIS. At the same time, according to its website, it, "provides environmental services to support all oil and gas industry business units and all phases of oil and gas projects. We facilitate projects by ensuring all regulatory requirements are met and unnecessary obstacles are effectively avoided."

Regarding CBM, Greystone states that it, "provides complete environmental permitting and compliance services for coal-bed methane development projects. On both government and/or fee ownership, we assist companies and agencies to plan each project in order to minimize environmental effects and related permit requirements and expedite acquisition of all necessary authorizations."

This raises the obvious question: if Greystone's financial interests are directly tied to contracting for the oil and gas industry, and particularly the CBM industry for specific projects, how can it legally meet the NEPA requirements of having "no financial interest in the outcome of the EIS," when Greystone itself is

the primary contractor for the EIS and subsequently, Greystone may end up doing consulting work for the operators awarded drilling permits as a result of the EIS (in addition to the fact that some of these operators actually chose Greystone to write the EIS for them)? In other words, if the EIS were to disclose impacts such that no federal CBM wells would be drilled in the Basin (or less than the full number requested by industry), then this would directly play into Greystone's financial interests and make them less likely to be objective. As such, they have a direct financial stake in the outcome of the EIS process.

Unfortunately, Greystone is not alone. Applied Hydrology publicly states that for CBM companies in the Powder River Basin, it has "prepared comprehensive Water Management Plans in support of the Applications to Drill on Federal leases. These plans address how produced water will be handled during testing and production at CBM developments to mitigate impacts to stream channels and related structures." (AHA Website). To allow it at the same time to craft portions of the EIS – while it is also working for industry that will benefit by the 39,000 new well approvals after the EIS is completed – seems an obvious conflict of interest. In addition, Applied Hydrology has consulted for Devon Energy and Production Company, and as of early 2002, Devon had over 1,600 CBM permits within the PRB EIS study area. If Devon will receive additional federal wells on its existing leases as a result of the EIS, on which AHA is doing the consulting for water impacts, and then after the EIS is approved Devon provides consulting work to AHA, how can this company say with a straight face that it has no conflict of interest? Is it not in its, or Greystone's interests, for that matter, to write the most industry-friendly EIS such that these third-party contractors will continue their existing business ties with these contractors and hire them to do post-EIS consulting work?

WOC asks CEQ to take a serious look at and provide recommendations concerning the conflict of interests prohibition. Obviously, any contractor that has contracted for and written a portion of the EIS itself, and is also consulting or contracting for industry that has an expectation to obtaining federal approval to do work after the EIS is completed (in this case, tens of thousands of CBM well approvals), has an obvious conflict of interest. In other words, these contractors, if also doing work for the very industry that is expected to do any portion of the resulting action approved by the EIS, have a direct financial stake in the outcome of the EIS process, as their consulting/contracting work for industry will be directly affected by the EIS they have contracted to write for BLM.

**Conclusion**

The Wyoming Outdoor Council thanks CEQ for considering our input into the ongoing NEPA review task force. As the above discussion illustrates, the existing NEPA regulatory framework has the necessary tools in place for an effective and efficient process than can work for all involved – the agencies, industry and the public – if agencies would simply follow these clear guidelines. The failure to do so by the agencies, as encouraged by industry, is where the NEPA process breaks down. When the public is intentionally left out of the NEPA process, agencies repeatedly rely upon old and outdated NEPA documents to justify proposed actions, and in newly developed NEPA documents the agencies fail to describe the existing environment and develop a full range of reasonable alternatives, the NEPA process deteriorates. The result – often with the agency required to supplement or start over – is what industry perceives as "delay" and agencies refer to as "backlog." A better way to view the NEPA process is that if things are done correctly the first time around, instead of agencies taking short cuts, the result will be a more efficient process that more fully educates, involves and informs the interested and affected public, thereby leading to agency actions that utilize the best science, latest technologies and mitigation measures to balance extractive uses on our public lands while preserving other resource values and the multiple use ethic.

Sincerely,

CQ475

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Since that time CEQ has extended the comment cut-off date to September 23, 2002.

[1] WOC notes that these comments provide many examples from a multitude of BLM/FS NEPA documents. If CEQ would like copies of the relevant pages of these studies providing the basis for these comments, WOC will gladly assist CEQ in obtaining them.

[2] Another purely voluntary mitigation measure – in alternative 2 – is electrification of 50% or 100% of booster compressors. Again, this is voluntary – presently, industry uses the cheapest (and dirtiest) method to power compressors that it can: diesel generators. BLM wholly failed to recognize in alternative 2 that if the electrification option was voluntary, industry could freely choose to ignore it, leading to a whole different set of impacts than those analyzed.

[3] WOC acknowledges that most BLM field offices now have a "NEPA log" on the Internet. However, these registries of NEPA documents are voluminous, unclear as to what type of action is being contemplated and do not state when the NEPA comments are due. We ask that CEQ review the "NEPA log" approach by BLM and, at the very least, if BLM is going to proceed in this manner, recommend that BLM include the relevant information to allow the public to participate and further, provide a link on the web so that the public can instantly download these EAs.

[4] Related to tiering problems and relying on outdated, stale NEPA documents is the requirement that agencies "shall" prepare supplemental NEPA documents when, among other reasons, "[t]here 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). We also ask CEQ to provide the agencies guidance on when and in what circumstances they should be supplementing stale and outdated NEPA documents.

[5] Of course, BLM is also violating other NEPA provisions by leasing these parcels in reliance on an outdated cumulative impacts analysis (and no analysis of CBM development) in the 1988 RMP.