Working to Protect Native Species and Their Habitats

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Director (210)
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VIA U.S. MAIL WITH ADVANCE COPY TO bhudgens@blm.gov

Dear Ms. Hudgens-Williams

The following is the Final EIS Protest of Biodiversity Conservation Alliance, American Bird Conservancy, and Western Watersheds Project concerning the Chokecherry – Sierra Madre Wind Energy Project and Proposed Visual Resource Management Plan Amendment. Biodiversity Conservation Alliance supports the development of clean, renewable sources of energy such as wind power, but like other forms of energy development, it has to be done responsibly. The BLM is in receipt of our in-depth analysis of where and how to responsibly develop wind power projects, titled *Wind Power in Wyoming: Doing it Smart from the Start*, which we submitted earlier in the NEPA process for this project. The Chokecherry – Sierra Madre Project does not meet the *Smart from the Start* criteria; indeed, it violates many of the most basic principles of environmentally sound wind power production. Likewise, the proposed Plan Amendment does not provide the bare minimum in protection required by the Rawlins Resource Management Plan and other federal regulations and law. Based on the multitude of unacceptable levels of impact, paired with the shoddy and often unfinished impacts analysis and lack of compliance with federal law and regulation, the BLM's only lawful options at this point are to approve the No Action alternative or to send this project back for supplemental NEPA.

The first major problem with this project is the level of impact on sensitive environmental resources. The project will have a major impact on birds of prey, particularly golden eagles, and does not appear compliant with the Bald and Golden Eagle Protection Act. And while we expect Power Company of Wyoming to argue that their wind farm will kill fewer raptors than the BLM estimates, we understand that there are other outside estimates that indicate that eagle mortality may be even higher than currently projected. The project admittedly will have a major negative impact on the setting of the Overland Historic Trail, an impact that appears to violate the National Historic Preservation Act regardless of programmatic agreements that may be in place between BLM and the State Historic Preservation Officer. The project will have a major negative impact on the Continental Divide National Scenic Trail (CDNST), and represents a land use completely incompatible with the nature and purpose of the Trail, in violation of federal law and in contravention of the Trail's Comprehensive Plan. The project will have a level of negative impact on the North Platte Special Recreation Management Area (SRMA) and other specially designated lands and resources that have been accorded a level of protection in the Rawlins

Resource Management Plan (RMP) that is not upheld in the Chokecherry – Sierra Madre EIS. The end result is a level of impact to these various lands and resources that represents both unnecessary and undue degradation under FLPMA.

The second major problem with this project is that most of the important gathering of baseline information and the assessment of environmental impacts has yet to occur. Plans to inventory for various sensitive elements are at best incomplete and in some cases deferred until a later time. The analyses to develop mitigation measures and plans for protection have been kicked down the road for many sensitive resources. As a result, BLM is flying blind, unable to accurately assess the magnitude of impacts, plan mitigation measures that might compensate in some way for these impacts, and then evaluate the efficacy of these mitigation measures, as NEPA requires to occur. BLM should supplement this EIS based on the results of these various data-gathering and plan-drafting efforts, instead of charging ahead with the approval of the wind farm in the absence of this key analysis. BLM required PCW provide a "conceptual model of turbine layouts" for the purpose of analysis. FEIS Vol. 2 at 2-3. BLM should be requiring final siting decisions for each turbine string, because the magnitude of impacts (raptor fatalities, for example) varies greatly depending on the geographic location of turbine strings. The argument that this is a programmatic EIS and therefore does not approve the project evades the intent of federal law; allowing subsequent portions of the project to be piecemealed with subsequent NEPA smacks of segmentation of the type that NEPA does not allow.

The third major problem with this EIS is that it fails to rigorously examine reasonable alternatives in violation of NEPA. All of the action alternatives would approve 1,000 turbines. All of the action alternatives would place these turbines in substantially the same areas, with only minor variations. Moving the turbines away from sensitive lands and habitats was never considered in detail, despite the fact that BLM was called upon by the public to do just this throughout the NEPA process. Essentially, all of the action alternatives are variants of the same alternative. There is no alternative that moves the turbines away from the CDNST and the Overland Trail, protecting their settings and viewsheds, although BLM has never made the case that doing this is unreasonable. There is no alternative that would move the turbines away from the original sage grouse Core Areas and areas with concentrations of raptor nests, even though such an alternative would be perfectly reasonable. There is no alternative for building the entire project in southeast Wyoming east of the Laramie Range, although there are plenty of landowners in this area who have formed associations and are clamoring for wind energy development, and impacts to the environment would be minimal; BLM has never explained why it would be unreasonable to go this route. BLM has the responsibility to examine a range of reasonable alternatives, including those that do not match the applicant's rpeferences. This EIS does not examine such reasonable alternatives.

There are a suite of additional problems with this wind project, as outlined below. The BLM needs to successfully address all of these issues before issuing a Record of Decision approving this project; we do not believe that it will be possible to do this without a major overhaul of the NEPA analysis, involving supplemental NEPA at the very least. It might just be smarter to start over and do a thorough job next time.

VISUAL RESOURCE MANAGEMENT PLAN AMENDMENT

We protest the Visual Resource Plan Amendment that accompanies the Chokecherry – Sierra Madre EIS on the grounds that it gives short shrift to protecting the historic setting of historic features pursuant to NHPA. Alternative 4, the Proposed Plan Amendment, would radically increase the acreage of VRM Class IV, which offers zero protection for visual resources (see FEIS Vol. 1 Table 4-2), and will result in both unnecessary and undue degradation of visually sensitive landscapes.

The flaws in the VRM Plan Amendment create cascading problems that also undermine the legality of the proposed alternative for the Chokecherry – Sierra Madre project itself, through providing legally inadequate protections for visual resources.

Appropriate setbacks for sensitive lands have not been prescribed

The Plan Amendment does not provide adequate setbacks for industrial features to protect visually sensitive lands. A five-mile setback for visually intrusive projects is necessary to protect the foreground-middleground areas, restricting permitted activities that could potentially degrade the historic settings of NRHP-eligible sites and trails and/or the scenic values of SRMAs, National Scenic Trails, and other visually sensitive lands. The FEIS lists several sites where setting contributes to NRHP eligibility. FEIS Vol. 1 at 3-2. According to the Rawlins BLM's own Visual Resource Inventory, this is defined as follows:

> **Foreground-Middleground Zone**—This is the area that can be seen from each travel route for a distance of 3 to 5 miles where management activities might be viewed in detail. T e outer boundary of this distance zone is defined as the point where the texture and form of individual plants are no longer apparent in the landscape. In some areas, atmospheric conditions can reduce visibility and shorten the distance normally covered by each zone.

Visual Resource Inventory at 59. The Background Zone indicates that disturbances can be seen in the background for up to 15 miles. *Id.* BLM itself concedes that for cultural resources, "VRM Class I and II areas maintain protections of cultural setting, whereas the cultural settting in VRM Class III and IV areas would continue to be at risk." FEIS Vol. 1 Table 2-6 at 2-16. While this description is applied specifically to Alternative 1 in the FEIS, it logically applies equally to all other alternatives as VRM Classes to not vary in their prescriptions by alternative. The Preferred Alternative (Alternative 4) is allows even more impact to cultural resources than Alternative 1 by BLM's own admission. *Id.*

Under the FEIS, surface-disturbing activities will not be allowed within 0.25 miles of a cultural property or the visual horizon, whichever is closer. FEIS Vol. 1 at 2-7. This means that the maximum buffer for a historic feature is a quarter mile. This is a woefully inadequate buffer to protect the historic settings of NHPA-eligible features. As noted above, a 5-mile buffer would cover the foreground-middleground zone. BLM should apply, at minimum, the levels of protection proposed for implementation in the Lander Resource Management Plan revision, in effect, 3-mile No Surface Occupancy/No Surface Disturbance buffers paired with an additional 2-mile provision allowing permitted actions only to the extent that they are substantially invisible

from the Trail, for a total protective buffer of at least 5 miles. BLM does not appear to have evaluated this alternative, which is *de facto* reasonable as evidenced by its proposed implementation in another BLM jurisdiction in Wyoming.

For SRMAs, Alternative 4 is likewise less protective than the current management. FEIS Vol 1 Table 2-6 at 2-18. The Platte River is commonly floated from the Colorado border all the way to Seminoe Reservoir. This float corridor is scenic in its own right, with steep canyons where the river passes through the western foothills of the Medicine Bow Mountains, bluffs and flats populated with cottonwoods farther north, and steep escarpments farther north still. The area is used for recreational rafting, canoeing, and float fishing, and has been established as a SRMA in the Rawlins RMP. Protection of the viewshed for the SRMA in the VRM Plan Amendment is not adequate to meet the objectives in the Rawlins RMP.

BLM needs to implement the same setbacks as in the agency's Preferred Alternative for the Lander Resource Management Plan Revision Draft EIS to protect the visual resources of these sensitive lands. These measures include No Surface Occupancy/No Surface Disturbance within 3 miles of trails, with an additional 2 mile Controlled Surface Occupancy measure that requires that surface disturbing activities be sited in areas where they will not be visible from the trail.

The FEIS fails to provide important baseline information and take the legally required 'hard look' at impacts to visual resources resulting from its VRM Plan Amendment options
The VRM Plan Amendment EIS lacks important baseline information and fails to take the legally required 'hard look' at impacts likely to result from management designations. Table 2.1 of FEIS Vol. 1 summarizes the level of impacts allowed in each VRM classification, and it can reasonably be expected that the level of VRM classification in each alternative will result in the corresponding level of impact described in Table 2.1. But BLM fails to apply the levels of impact prescribed in VRM classes to the sensitive visual resources outlined in the FEIS, resulting in an outcome that the legally required impacts analysis never takes place.

While the FEIS lists a handful of sites where setting contributes to NRHP eligibility (FEIS Vol. 1 at 3-2), there is no complete catalog of NRHP-eligible sites in the planning area. This lack of key baseline information prevents BLM from making determinations of impacts that are likely to result from implementation of the VRM Plan Amendment, in violation of NEPA. This is a geographically circumscribed area, and under FLPMA the BLM is required to maintain an ongoing inventory of the resources under its management. NRHP-eligible sites are the most important of cultural resources in this category, the most sensitive to impacts, and the ones that carry legal requirements under the NHPA to protect their settings in the context of all federally managed activities (which would include VRM planning). Yet the agency has not cataloged even a list or even an enumeration of these sites (of which it MUST have already developed a catalog), nevermind providing at least general map locations indicating which lands fall within their viewsheds. For the sites and trails that are listed, there also is no baseline viewshed analysis provided, showing which lands are visible from these sites/trails, necessary baseline information and a prerequisite to a hard look at impacts. Indeed, BLM IM 2009-043 directs BLM to do just this. Such viewshed analysis is readily achievable using GIS technology, and such analyses are routinely included in BLM EISs (*see, e.g.*, Attachment 2), so the BLM's failure to include such

analysis in the VRM Plan Amendment EIS is an inexcusable omission and a violation of NEPA's hard look requirements.

While a handful of photo simulations and thumbnail viewshed analysis are provided for a handful of Key Observation Points in Appendix I, the FEIS fails to disclose the actual viewsheds of the Continental Divide National Scenic Trail, Platte River SRMA, and other key recreational features. See FEIS Vol. 1 at 3-10, 3-11. The WTG Viewshed Analysis Alternative 4 in Appendix I is insufficient because it shows only lands where the CCSM project would be visible, and does not account for viewsheds of any of the sensitive visual resource or historic setting features with regard to all other projects that will tier to the Rawlins RMP and its VRM plan amendments (including this one). It's not just the Chokecherry – Sierra Madre wind project that it relevant for this Plan Amendment; all other permitting activities in this area will also fall under the Plan Amendment. BLM must therefore plan ahead for the possibility that the CCSM wind farm, major though it be, may not be the only industrial intrusion proposed to take place in these sensitive viewsheds. GIS-based viewshed determinations, showing what would be visible from a given linear feature, are readily available to BLM and in fact have been performed by the Rawlins BLM in the context of NEPA analysis in the past. *See, e.g.,* Lost Creek in situ uranium Draft EIS, in which BLM mapped lands visible from a uranium plant. See Attachment 2. BCA has itself mapped viewsheds from linear features for the Adobe Town Very Rare or Uncommon petition. BLM's failure to map the viewsheds of these important and sensitive features (North Platte SRMA, CDNST, and Overland Trail being most notable) represents a failure to include important baseline information necessary to conduct a credible impacts analysis. BLM also fails to quantify the proportion of the trail expected to be subject ton industrial degradation under the Proposed Plan or any other alternative.

The Proposed Plan impact analysis contains no discussion of the efficacy of proposed management in maintaining visual resources for the North Platte SRMA. *See* FEIS Vol. 1 at 4-14. There appears to be no effort made to take a 'hard look' at the degree to which resulting management will affect visual resources along this SRMA.

The Visual Resource Inventory presented in the FEIS is biased

BLM states that VRI Class IV areas have been designated based on their current level of degradation by industrial projects. FEIS Vol. 1 at 3-3. This statement is contradicted by a comparison of Figure 3-1(showing oil and gas fields, virtually the sole source of industrial intrusion in the planning area, with Figure 2-1, showing Visual Resource Inventory. Many areas shown as VRI Class IV on Figure 2-1 have minimal wellfield development in Figure 3-1. Examples include the lands north of Riner, which are essentially undeveloped, lands north of Dixon and between the Blue Sky and Jolly Roger CBM pods, which are currently undeveloped, undeveloped lands south of Wolcott, undeveloped lands north of Hanna (excluding the very limited historic coal mining area, which <u>does</u> qualify for VRI Class IV), and lands throughout the Chokecherry and Sierra Madre project area, which are undeveloped and quite scenic (see FEIS Figure 3-4, "Class B") and sensitive (FEIS Figure 3-5, "High" Sensitivity Rating level).

BLM needs to manage its ownership in checkerboard lands

BLM also states that checkerboard lands are not conducive to VRM Class II because BLM has no control over private lands. FEIS Vol. 1 at 4-3. This "assumption" is arbitrary and capricious because ownership of private lands has no effect on BLM management of visual resources on public lands. Furthermore, with regard to the very popular river floating recreation that occurs within the North Platte River SRMA, "Much of the North Platte River runs through the checkerboard land ownership pattern where public and private sections of land alternate, but the water over private land is public." FEIS Vol. 2 at 3.7-6. BLM has a responsibility to do its part to protect public use of the river in this BLM-designated SRMA, as well as members of the public traveling along the CDNST, which receives a high level of use through the checkerboard lands according to the FEIS. This effort to predetermine the outcome of the wind farm project by classifying these areas as VRI Class IV despite their scenic and undeveloped nature displays a disconnect between the facts found and decisions made, and leads BLM toward an arbitrary and capricious lowering of VRM Class to permit the agency to reach a predetermined conclusion, the approval of the Chokecherry – Sierra Madre project according to the preferences of the proponent and without the needed compromises to protect other multiple uses and visual resource values. As such, the VRM Plan Amendment leads the agency toward unnecessary or undue degradation of land and resources.

BLM notes that land ownership in the checkerboard makes management of federal lands in the area challenging. FEIS Vol. 1 at 3-3. However, BLM maintains complete control over the management of its lands, and also maintains a large measure of control and influence regarding the permitting of rights-of-way for projects that are sited on private sections but require access across public lands. This situation incentivizes cooperation between BLM and private landowners in the checkerboard. But BLM must not abdicate control over its sections simply because it cannot control what happens on private land. The agency needs to manage visual resources on its part of the checkerboard based on the resource values found there, not based on what neighboring landowners may (or may not) pursue on their own lands. It would be shameful for BLM to approve visually damaging projects on their part of the checkerboard while neighboring landowners were managing their parcels in a manner protective of visual resources, to the detriment of sensitive and irreplaceable visual resources. The checkerboard ownership pattern cannot dictate VRM class applied; BLM has just as much responsibility to manage its checkerboard lands as it does any other parcel of public land within its jurisdiction.

Impacts to potential wilderness

BLM asserts that no lands with wilderness characteristics are found outside of WSAs within the VRM Plan Amendment area. FEIS Vol. 1 at 3-1. For the Wild Cow Creek inventory, BLM relied on criteria that conflict with IM 2011-154 and BLM Manual 6310, which provide current direction. For the Wild Cow Creek citizens' proposed wilderness, a BLM wilderness inventory evaluation was completed in 2003. See Attachment 3. This inventory reduced the original proposal of 33,435 acres to 12,060 acres, a reduction of almost two-thirds, on the basis of "eliminat[ing] state, private and withdrawn lands." Attachment 3 at 1. The "withdrawn" lands excised the greatest acreage, and were comprised of "Public Water Reserves" as shown on the 1991 edition of the BLM's 1:100,000 scale Baggs topographic map. According to Manual 6310, however, "Undeveloped ROWs and similar undeveloped possessory interests (e.g., mineral

leases) are not treated as impacts to wilderness characteristics because these rights may never be developed." H-6310.06(C)(3)(d). Public Water Reserves are exactly the type of undeveloped possessory interest that is NOT supposed to be considered in delineating potential boundaries under current policy.

In addition, the signs of human intrusion listed as detracting from Naturalness by BLM in its 2003 Inventory Area Evaluation - fences, troughs, stock ponds, and two-track trails – are precisely those minor intrusions which current BLM policy finds allowable within lands with wilderness character. *See* H-6310.06 (2)(B)(i)(1). As far as Solitude and Outstanding Opportunities for Primitive and Unconfined Recreation are concerned, this area has deeply dissected canyons offering topographic screening (See H-6310.06(C)(2)(c)(i)(2)), and has outstanding opportunities for hunting hiking and backpacking, offering one of the only areas in the Red Desert where water can be found in the backcountry (see H-6310.06(C)(2)(c)(ii)(2). The identical provisions can be found in IM 2011-154, which preceded H-6310. Had BLM conducted an inventory according to the precepts of H-6310 and IM 2011-154, it would have found that these lands indeed possess wilderness character. In this regard, BLM has failed to maintain an ongoing inventory of lands with wilderness characteristics pursuant to FLPMA; we are concerned that this also represents a direct violation of BCA's settlement agreement with BLM of February 2012 on the subject of the Rawlins RMP.

Finally, there is no evidence that BLM has ever evaluated the citizens' proposed wilderness areas adjacent to the Prospect Mountain and Encampment Canyon WSAs. Inventories of these areas were submitted to the BLM Wyoming State Office in 2004 by the Wyoming Wilderness Association. No analysis has been presented by BLM to indicate to what extent these lands have been inventoried by the agency, and which of the wilderness characteristics do or do not occur in these areas. As such, the baseline information provided in the FEIS is lacking.

The Range of Alternatives is legally inadequate

An examination of the range of alternatives in the VRM Plan Amendment indicates that <u>not one single alternative (including the No Action Alternative and Alternative 3 (Emphasis on Protection of Resources) provides adequate protection for Visual Resources</u>. *See* FEIS Vol. 1 Section 2.2.5. No alternative offers an adequate buffer of at least 5 miles with VRM Class 2 (or more stringent) to protect the Continental Divide National Scenic Trail. *Id.* No alternative provides a buffer of at least 5 miles with VRM Class II or higher for the Overland Historic Trail, nor does any alternative prescribe the buffers to protect visual resources found in the Lander RMP for historic trails. *Id.* No alternative considers at least a 5-mile buffer of VRM Class 2 or more stringent for the Platte River SRMA. *Id.* The alternatives are clearly reasonable and well within BLM's scope of authority to implement. They have been sought by commentors during the NEPA process. In each alternative, these important buffer zones, representing the foreground-middleground areas for these features according to the agency's own Visual Resource Inventory, are to be managed as VRM Class III or IV, the least protective classifications that allow intensive industrial development that can significantly alter the character of the landscape. BLM offers no explanation of why more protective management, in some cases required by law and in other cases required for RMP conformity under FLPMA, would be unreasonable. In failing to analyze reasonable alternatives, BLM stampedes toward a

predetermined outcome for the RMP Amendment that maximizes industrial development and minimizes protection of visual resources, to the detriment of the public interest. The lack of responsible stewardship displayed by this blatant abandonment of agency requirements is troubling.

The VRM Plan Amendment results in Unnecessary or Undue Degradation to historic trails and sites and recreational features with special designations

The VRM Plan Amendment fails to provide a legally sufficient level BLM's assumption that "The setting of historic properties, including historic trails, would be protected regardless of VRM class in accordance with the Wyoming State Protocol and BMPs as noted in the 2008 Rawlins RMP" (FEIS Vol. 1 at 4-3) is demonstrably false. Attachment 4 shows a Google Earth screenshot (derived from satellite imagery) of the Overland Trail as it crosses Wyoming Highway 789 as well as its visible path westward from the highway. The Historic Trail is clearly visible running west from the labeled parking pulloff and traversing the center of the screenshot from east to west. In the northwest quadrant of the screenshot is a natural gas wellpad in T17N R92W Section 8, a BLM section in the Rawlins Field Office (and within the Chokecherry VRM Plan Amendment area), which was permitted by BLM a distance of 0.28 mile from the Overland Trail (measured using Google Earth) with no intervening topography. This well complies with the Rawlins RMP direction and yet has resulted in degradation of the historic setting of the trail. This well is clearly visible from the parking pulloff on Highway 789 with its interpretive sign, one of the three primary spots in the state where casual visitors view the Overland Trail (the others are on State Highway 130 and State Highway 70). The setting of the Trail is degraded by the view of this well from the highway, even though the trail passes through checkerboard in this area.

Attachment 5 shows a screenshot of the Overland Trail where it crosses the Wamsutter Road (BLM 701), showing two gas wells in its northeast quadrant within T17N R93W section 9, a BLM section managed by the Rawlins Field Office; the western well by Google Earth measurement is within 0.32 mile of the Trail and the eastern well is 0.26 mile from the trail, on flat topography. Once again, consistent with the Rawlins RMP, once again, degrading the historic setting of the Trail. These satellite images demonstrate definitively how a 0.25-mile buffer is inadequate to protect the historic setting of an NRHP-eligible site in the face of development. Failure to provide adequate buffers through the VRM Plan Amendment will directly result in unnecessary or undue degradation to the settings of historic trails and sites through the approval of piecemeal industrial projects such as individual wellpads that rely on the RMP and its Amendments for their NEPA analysis with minimal additional analysis in the approval process. This creates attendant violations of the National Historic Preservation Act (NHPA) as well. The impacts for wind turbines, standing 400 feet high at the blade tip, would cause even worse degradation.

The FEIS concedes for Alternative 1 that Historic Trails and Properties sited in VRM Class III and IV areas would "continue to be at risk from potential development…." FEIS Vol. 1 at 4-4. The Proposed Plan (Alt. 4), as well as Alternatives 2 and 3, "allows for a higher degree of alternation of cultural resource settings in the northern portion of the Decision Area…." FEIS Vol. 1 at 4-5. The BLM uses once again the illogical rationale that in checkerboard areas, uses on

private lands cannot be controlled (id.), but this excuse has no bearing here because the NHPA requires federal agencies to protect historic settings of NRHP-eligible properties on federal land without providing loopholes in cases where actions on adjacent private lands could have impacts of their own. With this in mind, all alternatives analyzed in detail violate the NHPA with regard to protecting the historic settings of the Overland historic trail and other NRHP-eligible sites. The presence of checkerboard lands does not provide BLM with a "get out of jail free card" that exempts the agency from following federal law.

Under current management, the CDNST and the Platte River SRMA will occur within VRM Class II and III areas. FEIS Vol. 1 at 4-13. However, Figure 2-5 clearly shows the lands surrounding these features as being managed as VRM Class IV (with the exception of a very narrow band of VRM Class II, less than 1 mile in width in most places, around the Platte River SRMA) under the Proposed Plan. BLM asserts that this band of VRM Class II will result in "minimal disturbance to the recreational setting" (FEIS Vol. 1 at 4-14), but where is the analysis to back up this statement. Certainly, if a wind farm were sited just outside the Class II area under Alternative 4, the turbines would dominate the viewshed and significantly impair the recreational experience. All of the CDNST would be in VRM Class III and IV lands, "possibly allowing for more landscape altering activities and visual intrusions that would disrupt recreation uses and the recreational setting." FEIS Vol. 1 at 4-14. This includes the main recreation access points for the Trail. FEIS Vol. 1 at 4-15. The stark reality is that under VRM Class IV, the surrounding lands could be turned into an industrial wasteland with no protection at all for the scenic integrity of the National Scenic Trail.

The VRM Plan Amendment and Wind Farm approval violate CDNST organic legislation
As noted above, impacts from industrial development near the CDNST could be severe. The BLM's proposed management of lands bordering the CDNST violates the intent of the legislation establishing national scenic trails. According to the National Trails System Act (NSTA),

> In order to provide for the ever-increasing outdoor recreation needs of an expanding population and in order to promote the preservation of, public access to, travel within, and enjoyment and appreciation of the open-air, outdoor areas and historic resources of the Nation, trails should be established (i) primarily, near the urban areas of the Nation, and (ii) secondarily, within scenic areas and along historic travel routes of the Nation which are often more remotely located.

P.L. 90-543 § 2(a). The CDNST was established pursuant to this act, via amendments included in the National Parks and Recreation Act (NPRA) of 1978. Designated a National Scenic Trail and located far from cities, the intent of Congress was clearly to designate this route within scenic areas and along historic travel routes. For the CDNST in particular, the NTSA provides,

> f) Within two complete fiscal years of the date of enactment of legislation designating a national historic trail or the Continental Divide National Scenic Trail or the North Country National Scenic Trail as part of the system, the responsible Secretary shall, after full consultation with affected Federal land managing agencies, the Governors of the

> affected States, and the relevant Advisory Council established pursuant to section 5(d) of this Act, submit to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate, a comprehensive plan for the management, and use of the trail, including but not limited to, the following items:
>
> > (1) specific objectives and practices to be observed in the management of the trail, including the identification of all significant natural, historical, and cultural resources to be preserved, details of any anticipated cooperative agreements to be consummated with State and local government agencies or private interests, and for national scenic or national historic trails an identified carrying capacity of the trail and a plan for its implementation;
> > (2) the process to be followed by the appropriate Secretary to implement the marking requirements established in section 7(c) of this Act;
> > (3) a protection plan for any high potential historic sites or high potential route segments; and
> > (4) general and site-specific development plans, including anticipated costs.

P.L. 90-543 § 5(f). This comprehensive should have been completed in 1980 or 1981 according to the legislation; in reality it was completed in 2009. Yet there is no evidence in the FEIS that the responsible secretary in fact has fulfilled this charge; while there is mention of the Comprehensive Plan for the CDNST in the Response to Comments appendix of the FEIS, there is no analysis for how the Plan Amendment alternatives does or does not comply with the requirements of this comprehensive plan. According to the Comprehensive Plan,

> On public lands administered by the Bureau of Land Management, the visual resource inventory will follow the procedures outlined in BLM Manual Section 8400. The inventory shall be conducted on the basis that the CDNST is a high sensitivity level travel route and will be performed as if the trail exists even in sections where it is proposed for construction or reconstruction.

CDNST Comprehensive Plan at 13, emphasis added.[1] There is no evidence in the FEIS that this happened in practice. Under the Policy section, BLM is directed to "Manage the CDNST to provide high-quality scenic, primitive hiking and pack and saddle stock opportunities." CDNST Comprehensive Plan at 15. VRM Class IV is completely incompatible with this direction for "high quality scenic" values. BLM's assertion that "[t]he CMP is clear that human modifications may dominate views from the trail" (FEIS Appendix M 1-4) is off base. The Plan direction clearly states that routing the trail through primitive and semiprimitive ROS classes is preferable and more developed ROSs are to be avoided, and notes that passing through urban settings and altered landscapes is allowable; it does not state that modification of currently primitive and semiprimitive ROS classes to industrial landscapes is acceptable. The BLM-referenced section of the Comprehensive Plan appears to apply only to rights-of-way across private land, in any case.

[1] Available online at http://www.fs.fed.us/cdt/main/cdnst_comprehensive_plan_final_092809.pdf; site last visited 7/13/12.

CDNST Comprehensive Plan at 16, 18. BLM's empty assertion that it complied with the Plan, lacking in supporting evidence, fails to show compliance. Under NEPA's hard look requirement, BLM should at least have examined compliance with this legislation.

The NSTA itself also provides, "Other uses along the trail, which will not substantially interfere with the nature and purposes of the trail, may be permitted by the Secretary charged with the administration of the trail." P.L. 90-543 § 7(c). Further, with specific reference to the CDNST, "Other uses along the historic trails and the Continental Divide National Scenic Trail, **which will not substantially interfere with the nature and purposes of the trail**, and which, at the time of designation, are allowed by administrative regulations, including the use of motorized vehicles, shall be permitted by the Secretary charged with administration of the trail." *Id*, emphasis added. This is a National Scenic Trail. Industrial activities as described under VRM Class IV, and wind farms and other industrial uses in particular, do in fact substantially interfere with the scenic nature and recreational purpose of the CDNST. It appears that in the absence of this analysis, the Plan Amendment (and indeed the Chokecherry – Sierra Madre wind project as well) violate the NSTA and NPRA. This is a *de facto* indication of unnecessary or undue degradation pursuant to FLPMA as well.

CHOKECHERRY SIERRA MADRE WIND PROJECT

We also protest the proposed approval of the Chokecherry – Sierra Madre Wind Energy Project. This project will result in impacts that rise to the level of unnecessary or undue degradation under FLPMA, and the analysis upon which the project approval is based is deeply flawed.

The project will have unacceptable impacts on raptors

According to the American Wind and Wildlife Institute, "Generating electricity from wind can wound or kill eagles when they collide with turbine blades, and can also disturb eagles during construction and operation of the wind energy facility resulting in nest abandonment or displacement from breeding territories."[2] Estimates of fatality rates for the 4,500-turbine Altamont Pass wind farm range from 30 to 70 golden eagles per year, with estimates of 15 to 50 eagles per year over the past 3 years. *Id*., citing Smallwood and Thelander 2008, Smallwood and Karas 2009, and ICF 2011. And while BLM considers the potential impact to raptors as modest on a per-turbine basis, there are an unprecedented number of turbines in this project, such that 150 to 210 raptor mortalities per year are forecast. FEIS Vol. 2 at 4.14-20. For golden eagles, the fatalities are estimated at 46-64 eagles each year (FEIS at 4.12-23), comparable to Altamont Pass, where turbine-related mortality was found to have a significant impact in depressing eagle populations. We are concerned that the actual mortality levels may be even higher.

[2] Allison, T.D. 2012. *Eagles and Wind Energy: Identifying Research Priorities*. A white paper of the American Wind Wildlife Institute, Washington, DC. Page 4. Online at http://awwi.org/uploads/files/AWWI_White_Paper_Eagles_and_Wind_Energy_May_2012.pdf; site last visited 7/5/12.

The proposed project area has a great deal of raptor activity. Some 24 active raptor nests have been documented within 1 mile of the Application Area in 2008, along with 110 inactive nest sites. FEIS Vol. 2 at 3.14-19. Since 1980, the BLM has mapped 555 raptor nests in or within 1 mile of the Application Area, including 342 nests in the Chokecherry area and 213 in the Sierra Madre area. Id. In 2011, 23 active raptor nests and 158 inactive raptor nests were identified within the surveyed area. FEIS Vol. 2 at 3.14-21. BLM should have considered moving the turbine arrays away from areas of concentrated raptor use, such as along rims and canyon walls. The proposed 50m setback appears woefully inadequate to prevent elevated levels of raptor mortality, and this assertion is borne out in BLM's estimates of projected annual deaths.

We are concerned that golden eagle fatality rates projected in the FEIS are unacceptably high and will result in the loss of viability of golden eagle populations. The golden eagle was the most common raptor using the Application Area, comprising 30.4% of the raptor use in the Application Area. FEIS Vol. 2 at 3.14-11. Losing 46-64 eagles per year in such a slow-reproducing, territorial species that is already thinly distributed across the landscape could have major impacts on the local breeding population as well as the population of migrants travelling seasonally through the project area. In fact, this level of loss would likely create a population sink, wherein the wind turbines would kill more eagles than the area is able to replace. The FEIS asserts a total of 11 active golden eagle nests within or nearby the application area (three found during 2008 aerial surveys of the Application Area and eight found during May and June of 2011 PCW surveys within the Application Area and in suitable nesting habitats within a 5-mile buffer surrounding the Application Area, see FEIS Vol. 2 at 3.14-19 and 3.14-20). Golden eagles in the United States most frequently produce two eggs at a time. Watson at 198, Attachment 8. Therefore, the 11 active golden eagle nests identified by the project developer or its consultants might typically produce 22 eggs per year; it should be noted that not all of these eggs will hatch into golden eagles that will survive to maturity. However, the FEIS predicts that 46-64 golden eagles will be killed annually by the project, which those 22 eggs will not be able to replace.

This is of concern because there are no proven methods of compensatory mitigation that can "replace" the golden eagles lost to the Chokecherry-Sierra Madre wind turbines. U.S Fish and Wildlife Service (FWS) raptor experts stated at a 2010 conference of raptor experts that "[s]urprisingly little published literature on Golden Eagles can be used to directly inform decisions on avoiding or minimizing negative impacts of anthropogenic activities" and "[w]e have limited capability to minimize the impacts once built, so avoidance remains the best first step." *See* Attachment 7. A December 2011 FWS presentation stated, "[p]otential compensation measures to offset impacts to [Golden Eagles] are limited, due to a lack of supporting data on their effectiveness." *See* Attachment 9.

Further, Dr. Shawn Smallwood, a well-known expert on avian mortality at wind energy facilities, stated in his comments on FWS's Draft Eagle Conservation Plan Guidance that measures to reduce the risk of eagle fatalities are very limited:

> [The FWS's Adaptive Management Plan] discussion gives a false impression that [measures] to reduce Golden Eagle fatalities at wind projects are available and potentially effective . . . In fact, there are no known [measures] available to reduce

> Golden Eagle fatalities, except for strategic wind turbine removals in the Altamont Pass (Smallwood 2009, 2011). However, it is unrealistic to expect wind turbine owners to strategically remove modern wind turbines because the investment cost for installation is too high.

See Attachment 6. We are concerned that this level of impact by itself could turn Wyoming from a population source to a population sink for golden eagles, imperiling the persistence and viability of this BLM Sensitive Species (in violation of the Rawlins RMP) and speeding this species toward Endangered Species listing, contrary to BLM regulations and policy.

BLM states that additional mitigation measures will be applied upon reaching g a certain threshold of raptor mortality. FEIS Vol. 2 at 4.14-22. What is that threshold? And what mitigation measures can be applied? Presumably, the wind farm will be fully construcvted and operational by the time that raptor fatality thresholds are exceeded. Will BLM require the dismantling of turbine arrays or the shutdown of turbines? These mitigation measures need to be disclosed, and their effectiveness evaluated, in the FEIS. Failure to perform this evaluation of the effectiveness of mitigation measures is a clear violation of NEPA

The Chokecherry – Sierra Madre Project does not appear to have a Take Permit pursuant to BGEPA

Under the Bald and Golden Eagle Protection Act ("BGEPA"), it is forbidden to "take, possess, sell, purchase, barter, offer to sell, purchase or barter, transport, export or import, at any time or in any manner, any bald eagle . . . or any golden eagle, alive or dead, or any part, nest, or egg thereof . . . ." BGEPA defines "take" as "[to] pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest or disturb individuals, their nests and eggs." This project is expected to kill 46 to 61 golden eagles per year, indicating that a "take permit" from the U.S. Fish and Wildlife Service will be necessary. The Final EIS does not indicate that a take permit has been issued for this project. The take permit may require additional mitigation measures, require modifications to the project design, location of turbine arrays (including overall area where turbines could be sited), equipment specifications, number of turbines, and other features of the project that could substantially alter the nature of the project and accordingly alter the magnitude of environmental impacts, not just for bald and golden eagles but for a multitude of other affected wildlife and other resources as well. It is therefore premature to finalize the EIS prior to the issuance of the take permit, as the BLM cannot assure the public that the project in its final form has been analyzed with regard to the 'hard look' needed to asses environmental impacts and alternatives.

Levels of mortality that trigger adaptive management have yet to be identified through the permit process. According to AWWI, "For golden eagles, modeling has predicted that additional mortality would lead to population declines. Therefore, to receive a programmatic take permit, the developer would be required to implement compensatory mitigation that numerically offsets predicted fatalities to result in a net take of zero (aka "no net loss").[3] Such measures need to be

[3] Allison, T.D. 2012. *Eagles and Wind Energy: Identifying Research Priorities*. A white paper of the American Wind Wildlife Institute, Washington, DC. Page 18. Online at

disclosed and fully evaluated during the EIS process; deferring this important analysis to a later time evades NEPA's hard look requirements.

Radar baseline information on raptors appears incomplete

Throughout the NEPA process for this project, BCA requested that raptor flight patterns be established, particularly for ingress and egress to nest sites. The radar employed by PCW and being used to generate raptor use data has the capability to map flight paths and patterns, according to Dr. Nathan Wojcik of SWCA Environmental Consultants.[4] Dr. Wojcik compared this to the migration routes for mule deer that Hall Sawyer completed in his Atlantic Rim Mule Deer Study. See Attachment 1. According to Dr. Wojcik, these data could be compiled and fully analyzed, with flight paths mapped within a year or two. Dr. Wojcik asserted that for the nearby Foote Creek Rim project, elevated golden eagle mortalities could largely be attributed to several individual turbines that have been sited in problematic locations. For the Chokecherry-Sierra Madre project, mortality could be effectively mitigated in some cases by completing the data gathering and analysis process and relocating turbines predicted to conflict with the fight paths of eagles and other raptors. BLM concedes that the baseline data gathering for raptors habitat use is still underway. FEIS Vol. 2 at 4.14-22, 23. The Avian Protection Plan that is in development has not yet been completed (*see* FEIS Vol. 2 at 4.14-22), nor has the Eagle Conservation Plan (*see* FEIS Vol. 2 at 4.14-25, which means that BLM cannot use them as a means of screening existing alternatives or developing new ones, circumventing NEPA's hard look and range of alternatives requirements. BLM should defer approval of this project until these data become available and the analysis is complete so that the turbine siting can be adjusted accordingly, and the impacts of the project can be more properly evaluated through the NEPA process.

The project will result in unacceptable impacts to sage grouse

The sage grouse is listed as a Candidate Species under the ESA, with a final listing decision due out by judicial decree in 2015. Virtually all of the project area is currently sage grouse habitat, either Core or non-Core. FEIS Vol. 2 at 4.15-11. An estimated 923 of the 1,000 turbines in Alternative 1R would be sited in sage grouse habitat. FEIS Vol. 2 at 4.15-12. At the outset of this project, virtually the entire project area was within a designated Core Area. Neither the value of the sage grouse habitat nor the abundance of sage grouse changed; the state Sage Grouse Implementation Team simply acceded to the request of Power Company of Wyoming to remove these lands from Core Area status so that a clearly incompatible project would become allowable. According to the BLM, "PCW has committed to no development inside greater sage-grouse Core Areas." FEIS Vol. 2 at 4.15-14. This misleading statement evades the actual fact – all of the proposed project was originally inside Core Areas, and deservedly so, and PCW not only made no effort to avoid siting in this Core Area but had its boundary changed to exclude the project area.

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http://awwi.org/uploads/files/AWWI_White_Paper_Eagles_and_Wind_Energy_May_2012.pdf; site last visited 7/5/12.

[4] Personal communication between Erik Molvar, BCA and Nathan Wojcik, SWCA, July 10 2012 at the Sage Grouse Implementation Team meeting in Cheyenne.

The mitigation measures for sage grouse listed in the EIS – bird diverters on met tower guy wires, marking fences, etc. (FEIS at 4.15-15) are inconsequential token measures that do nothing to mitigate the fundamental impact of the project, which will be to displace sage grouse from the project area and decimate their local populations in the process. As noted exhaustively in comments on the EIS, sage grouse are intolerant of tall structures and are displaced by wind farms. Displacing sage grouse into surrounding habitats results in a net loss in sage grouse because either (1) the sage grouse habitats are suitable and already occupied, so that displaced grouse must compete with resident birds and los population in the process, or (2) the habitats are unsuitable or less suitable, and occupying them comes at the cost of population reductions.

As with other types of wildlife, PCW is currently undertaking baseline studies through lek counts and radio-telemetry outfitted birds to gather the information that should have been used to inform alternatives development and selection. FEIS Vol. 2 at 4.15-14. Once again, approval of the EIS is premature due to approval rushing ahead of the gathering of baseline information that NEPA requires as a prerequisite to adequate impacts analysis, mitigation measure development and evaluation, and informed selection of an alternative.

The Rawlins RMP provides that BLM must "[m]aintain, restore, or enhance designated BLM State Sensitive Species habitat in order to prevent listing under the ESA." FEIS Vol. 2 at 4.14-2. Inasmuch as the project area has sage grouse leks that have been designated as active by BLM, this FLPMA conformity requirement would seem to apply. In addition, the Rawlins RMP directs BLM to "sustain and optimize distribution and abundance of all native, desirable non-native, and Special status species" as well as to [m]anage or restore habitat to conserve, recover, and maintain populations of native, desirable non-native, and Special Status species." FEIS Vol. 2 at 4.14-3. This project appears to violate this provision of the RMP, in contravention to FLPMA's plan conformity requirements.

Some 35 groups totaling 151 sage grouse were documented during point-use surveys or incidentally. FEIS Vol. 2 at 4.14-25. Because this cannot possibly be even close to a census, many more sage grouse are certainly present. Alternative 1R had 37 sage grouse leks within 4 miles of turbine arrays. Importantly, each lek is surrounded by nesting habitat, most of which is within 5.3 miles of the lek site. These leks will experience population declines (at best) or abandonment possibly accompanied by population extirpation (at worst) as a result of the project. This clearly does not comport with direction in the Rawlins RMP regarding maintenance of sage grouse as a BLM Sensitive Species.

Inadequate protection for the Upper Muddy Creek/Grizzly and Red Rim – Grizzly WHMAs

The BLM has an obligation under the Rawlins RMP to "maintain, restore, and enhance" certain big game and native fish habitats in the Upper Muddy Creek/Grizzly Wildlife Habitat Management Area. FEIS Vol. 2 at 4.14-2. Birds of prey are also an important concern for these WHMAs. The turbine array in Alternative 1R, the agency's proposed action, overlaps with the Red Rim – Grizzly WHMA. See Figure 1-5, FEIS Vol. 2 at 1-22. Indeed, "WTGs and ancillary facilities would be sited in the Upper Muddy Creek Watershed/Grizzly WHMA. The sensitive resource values that are the basis for the avoidance area designation for the WHMA are the

Colorado River fish species unique to the Muddy Creek watershed, and crucial winter habitat for elk and mule deer." FEIS Vol. 2 at 4.4-10. According to the FEIS, "Approximately 19 percent (7,366 acres) of the Red Rim/Grizzly WHMA and 26 percent (15,443 acres) of the Upper Muddy Creek Watershed/Grizzly WHMA occur with the Application Area." FEIS Vol. 2 at .14-1. This area is a wind energy avoidance area under the Rawlins RMP. FEIS Vol. 2 at 3.4-6, and see 3.14-1. BLM proffers the following excuse for why incompatible uses would be permitted in the WHMA:

> The WHMAs within the conceptual area of development do not contain a significant amount of the ecological elements that either of the WHMAs were established to protect. These elements generally occur outside of the conceptual area of development; although there are potential impacts to wildlife habitat within and downstream of the WHMA area of interest from Alternative 1R. As analyzed in Section 4.14, Alternative 1R would not jeopardize the stated management objectives of the either WHMA in regards to potentially affected species.

FEIS Vol. 2 at 4.4-11. This excuse is unconvincing; by the very act of designating this WHMA for special management, BLM has implicitly made the case that ecological values for which the area is designated do in fact exist. If not, BLM would have designated the boundaries differently. BLM further attempts to excuse the siting of wind farm elements inside a wind energy avoidance area by stating that they will cover a very small proportion of the landscape. FEIS Vol. 2 at 4.14-9. This argument is also unavailing. Wind energy avoidance means wind energy avoidance. Nothing is forcing BLM to site wind turbines here; there is no constraint that dictates that this siting choice is in any way necessary (indeed, several alternatives do not site any facilities in the WHMA). The impacts of wind energy on wildlife are not directly measurable by the proportion of acreage disturbed; the installation of very tall and constantly moving objects could displace wildlife irrespective of what portion of acreage they occupy. Indeed, the FEIS does outline these potential impacts for big game, while acknowledging that the magnitude of impacts remains unknown. FEIS vol. 2 at 4.14-11.

To change the rules of the game at the project level to allow activities clearly inconsistent with RMP direction is a violation of FLPMA. In addition, WGFD has raised concerns regarding fisheries which the FEIS impacts assessment ignores. Indeed, the project will entail the construction of 348 stream crossings, including crossings of two stream channels in the Upper Muddy Creek/Grizzly WHMA. FEIS Vol. 2 at 4.13-6. This represents a significant amount of siltation impact to fisheries. As the CCSM project overlaps with crucial winter ranges for elk, mule deer, and pronghorn, the approval of the project in these WHMAs constitutes a problem to be avoided.

The project is expected to have impacts on forage resources used by big game. For example, "The accumulation of dust on vegetation, particularly broad-leafed forbs with nearly horizontal leaf surfaces, also may reduce photosynthetic capability of the plants and thereby influence changes in the plant communities adjacent to the roadways over the long-term." FEIS Vol. 2 at 4.6-5, -8. Other impacts to grazers, such as introduction of noxious weeds and displacement from

water sources and/or favored ranges, is also discussed. Id. These factors underscore the need to remove the WHMAs from consideration for wind turbine siting under this project.

Failure to Provide Baseline Information and Impacts Analysis for Pygmy Rabbit and Wyoming Pocket Gopher

For both the Wyoming pocket gopher and pygmy rabbit, the BLM was apprised that field surveys needed to be taken as part of the NEPA requirement to gather baseline information. See FEIS at 4.15-2, 3. BLM notes a suite of unpublished studies indicating that the pygmy rabbit has a "probability of occurrence" throughout the application area. FEIS Vol. 2 at 3.15-7. Figure 3.15-1 indicates areas of "high probability" based on modeling. Yet there has apparently been no effort to field survey for pygmy rabbits in likely habitats.

Likewise, BLM notes for the Wyoming pocket gopher that "Suitable habitat for Wyoming pocket gophers is found scattered throughout the Application Area and based on a habitat model developed by WYNDD (2008), likely occurs within the Application Area (Figure 3.15-2)." BLM neglects to even mention that one of the most important known strongholds for the Wyoming pocket gopher is Bridger Pass, located immediately north of the project area. Data on the known distribution of Wyoming pocket gopher is readily available from the Wyoming Natural Diversity Database, yet these data are apparently ignored by the EIS. BLM concedes, "Although pocket gopher activity is easy to identify in the field, it is difficult to know which species occupies a particular site without labor intensive trapping." FEIS at 4.15-9. That is why BLM needed to require field surveys for the Wyoming pocket gopher throughout the project area, as it did for the Lost Creek In Situ Recovery uranium project. But the agency neglected this responsibility to gather baseline information, thereby violating NEPA.

While Alternative 1R has the "lowest" direct loss of suitable pygmy rabbit habitat among the action alternatives, it does not seem remarkably different from the other alternatives. See, e.g., FEIS at 4.15-8, 20.

Failure to Analyze a Legally Sufficient Range of Alternatives

Each of the Action Alternatives analyzed in detail appears to approve all 1,000 turbines. In effect, each of these alternatives is a variation on the same alternative. FEIS Vol. 2 at Section 2.2.5. The Purpose and Need statement for the project indicates a project "consisting of **up to** 1,000 WTGs [turbines] across the two project sites." FEIS Vol. 2 at 1-4, emphasis added. While the project proponent prefers 1,000 turbines (id.), the BLM must serve a multiple-use mandate and is no way constrained to the project proponent's preference in this matter.

As BCA notes in its report *Wind Power in Wyoming: Doing it Smart from the Start*, public perceptions of wind energy facilities vary, ranging from those who enjoy seeing wind turbine arrays in operation to those who find them an eyesore. The importance of shielding wind farms from the viewsheds of sensitive areas for visual resource management, including the Continental Divide National Scenic Trail and the Overland Historic Trail, is specifically discussed in this report, which was submitted to BLM earlier in the NEPA process. None of the action alternatives would shield the project from these sensitive features using intervening topography, the recommended Best Practice in the report and also sought in BCA comments. BLM has failed to

include a rationale for why such an alternative was not considered in detail, as it would appear to be a fully reasonable alternative in accordance with NEPA's range of alternatives requirements.

BLM failed to study in detail a phased development alternative in which years might pass between construction of various pods of turbines, to allow wildlife impact studies to move forward and their results inform the construction of future pods. FEIS Vol. 2 at 2-26. This is a reasonable (and indeed, prudent and intelligent) alternative. However, BLM found it "not considered reasonable" because "project development should be dictated by seasonal stipulations and the applicant's economic considerations…" *Id*. This conclusion is arbitrary and capricious, there is no known authority in case law, statute, regulation, policy, or programmatic planning that enshrines these improvident ideals into BLM management. Indeed, the case law on NEPA suggests that the applicant's economic considerations need not be primary, and can indeed be eclipsed by the agency's need to manage the public lands responsibly.

BLM failed to study in detail alternate siting of the project, chiefly due to the agency's arbitrary criteria that the project must be sited on the proponent's ranch in areas of the highest wind potential. FEIS Vol. 2 at 2-25. There is no reason that the BLM must accede to PCW's preference that the project be sited on and/or in conjunction with TOTCO lands; wind project developers routinely lease lands they do not own for the purpose of erecting wind farms that the proponents continue to own and operate. There are hundreds of thousands of acres with outstanding wind potential on the High Plains of southeastern Wyoming which have landowners actively seeking to attract wind power producers and which lack sage grouse as well as other wildlife conflicts; these areas are outlined in BCA's *Smart from the Start* report which was submitted to BLM earlier in the CCSM NEPA process.. In addition, within TOTCO lands, there is no reason that BLM cannot require that the turbines be moved out of high quality sage grouse and raptor habitat and into greasewood habitats on the TOTCO ranch that are of low value to wildlife and where wildlife conflicts would be minimized, even though wind potential on these lands would be merely good as opposed to outstanding as they are atop the rims.

An alternative which would have avoided the original Core Areas as delineated in Version 2 at the outset of the project (Alternative 5) was initially drawn up but was not considered in detail because it "did not meet PCW's objectives." FEIS Vol. 2 at 2-22. PCW's objectives are not the standard of review here, the question is, does this alternative meet the Purpose and Need for the project? And since the Purpose and Need is to allow up to 1,000 wind turbines, and the 301-turbine project that avoids Core Areas fits within the description of "up to 1,000 turbines," it meets the Purpose and Need. It also fits within the more general Purpose and Need statement outlined in FEIS Viol. 2 at ES-2. The fact that the Governor's Executive Order changed the boundaries of the Core Area to exclude the wind farm project makes this alternative no less compelling and important, because the high density of sage grouse that exist in parts of the project area remain the same regardless of how the Core Area boundaries are gerrymandered to suit PCW's preferences.

The Chokecherry – Sierra Madre Project Results in Legally Unacceptable Impacts to Visual Resources and Settings

BLM notes, "Recreation is one of the primary uses within the CCSM project area." FIES Vol. 2 at 4.7-1. Furthermore, "the primary impact would be a change in the quality of recreational experiences from potential degradation of visual resources." *Id.* BLM summarizes,

> Development of the project would substantially change the general landscape character of the area (in particular, when viewed from some recreation sites and use areas), and recreationists may choose to avoid the project area during construction and/or operations. This change is anticipated to result in significant short-and long-term effects to visual resources and would significantly degrade the recreational experiences of some visitors to the area, including to CDNST and North Platte River users (Section 4.12).

FEIS Vol. 2 at 4.7-1. VRI Classes I and II are "most valued" by the public according to BLM. FEIS at 3.12-1. According to BLM,

> Lands acknowledged in the 2008 Rawlins RMP for their visual sensitivity include the CDNST SRMA, the North Platte SRMA, cultural sites, historic trails, eligible wild and scenic river segments, and the Seminoe-to-Alcova Back Country Byway. Many recreational activities, such as backpacking, hunting, fishing, geologic and nature study, photography, and hiking, either depend on natural settings and scenic views or are the primary attraction for recreationists in these areas.

FEIS Vol. 2 at 3.12-5. The BLM found "[t]he majority of the Chokecherry site [] to have low sensitivity; conversely the majority of the Sierra Madre site has high sensitivity, as shown in Figure 3.12-3 and Table 3.12-2." FEIS Vol. 2 at 3.12-5. Portions of the Chokecherry unit were also found to have high visual sensitivity, particularly the north and west edges that are visible from the CDNST and Overland Trail. *See* Figure 3.12-3; *see also* Tables 3.12-2, 3.12-3. Due to the rimrock features of the terrain, wind turbines are likely to have a major visual impact:

> Because of the hogback terrain and low vegetation in the Chokecherry site and the prominent ridgeline and flat top of Miller Hill in the Sierra Madre site, vertical structures above the horizon line can be visible at great distances. The horizon is a significant aspect of all distant views and observers can generally discern individual skylined features such as communication towers and transmission pole that extend above the horizon beyond 5 miles, depending on atmospheric conditions.

FEIS Vol. 2 at 3.12-14.

BLM's reliance on Key Observation Points (KOPs) for its visual resources analysis (FEIS Vol. 2 at 4.12-1) is not adequate to define impacts to recreational features that are linear, such as the Continental Divide National Scenic Trail (CDNST) and North Platte Special recreation Management Area (SRMA). The project "under any alternative will result in long-term changes to the visual setting as seen from large portions of the area, as well as from KOPs." FEIS Vol. 2 at 4.12-3. These include "[p]otential changes in the existing natural and rural landscape to a

landscape with a strong industrial component as seen from public viewpoints." *Id*. Some of these key viewpoints are then listed, including the CDNST and North Platte River, which represents the SRMA. BLM's failure to undertake such simple analyses violates NEPA's hard look requirements.

Excessive Impacts to the Continental Divide National Scenic Trail

The BLM's approval of the Chokecherry – Sierra Madre project on lands bordering the CDNST violates the intent of the legislation establishing national scenic trails. According to the National Trails System Act (NSTA),

> In order to provide for the ever-increasing outdoor recreation needs of an expanding population and in order to promote the preservation of, public access to, travel within, and enjoyment and appreciation of the open-air, outdoor areas and historic resources of the Nation, trails should be established (i) primarily, near the urban areas of the Nation, and (ii) secondarily, within scenic areas and along historic travel routes of the Nation which are often more remotely located.

P.L. 90-543 § 2(a). The CDNST was established pursuant to this act, via amendments included in the National Parks and Recreation Act (NPRA) of 1978. Designated a National Scenic Trail and located far from cities, the intent of Congress was clearly to designate this route within scenic areas and along historic travel routes. For the CDNST in particular, the NTSA provides,

> f) Within two complete fiscal years of the date of enactment of legislation designating a national historic trail or the Continental Divide National Scenic Trail or the North Country National Scenic Trail as part of the system, the responsible Secretary shall, after full consultation with affected Federal land managing agencies, the Governors of the affected States, and the relevant Advisory Council established pursuant to section 5(d) of this Act, submit to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate, a comprehensive plan for the management, and use of the trail, including but not limited to, the following items:
>
> (1) specific objectives and practices to be observed in the management of the trail, including the identification of all significant natural, historical, and cultural resources to be preserved, details of any anticipated cooperative agreements to be consummated with State and local government agencies or private interests, and for national scenic or national historic trails an identified carrying capacity of the trail and a plan for its implementation;
> (2) the process to be followed by the appropriate Secretary to implement the marking requirements established in section 7(c) of this Act;
> (3) a protection plan for any high potential historic sites or high potential route segments; and
> (4) general and site-specific development plans, including anticipated costs.

P.L. 90-543 § 5(f). This comprehensive should have been completed in 1980 or 1981 according to the legislation; in reality it was completed in 2009. Yet there is no evidence in the FEIS that the responsible secretary in fact has fulfilled this charge; while there is mention of the Comprehensive Plan for the CDNST in the Response to Comments appendix of the FEIS, there is no analysis for how the various action alternatives do or do not comply with the requirements of this comprehensive plan. According to the Comprehensive Plan,

> On public lands administered by the Bureau of Land Management, the visual resource inventory will follow the procedures outlined in BLM Manual Section 8400. The inventory shall be conducted on the basis that the CDNST is a high sensitivity level travel route and will be performed as if the trail exists even in sections where it is proposed for construction or reconstruction.

CDNST Comprehensive Plan at 13, emphasis added.[5] There is no evidence in the FEIS that this inventory happened in practice. Under the Policy section, BLM is directed to "Manage the CDNST to provide high-quality scenic, primitive hiking and pack and saddle stock opportunities." CDNST Comprehensive Plan at 15. The approval of wind turbines in close proximity to the CDNST is clearly incompatible with this direction for "high quality scenic" values. BLM's assertion that "[t]he CMP is clear that human modifications may dominate views from the trail" (FEIS Appendix M 1-4) is off base. The Plan direction clearly states that routing the trail through primitive and semiprimitive ROS classes is preferable and more developed ROSs are to be avoided, and notes that passing through urban settings and altered landscapes is allowable; it does not state that modification of currently primitive and semiprimitive ROS classes to industrial landscapes is acceptable. CDNST Comprehensive Plan at 16, 18. BLM's empty assertion that it complied with the Plan, lacking in supporting evidence, fails to show compliance. Under NEPA's hard look requirement, BLM should at least have examined compliance with this legislation.

The NSTA itself also provides, "Other uses along the trail, which will not substantially interfere with the nature and purposes of the trail, may be permitted by the Secretary charged with the administration of the trail." P.L. 90-543 § 7(c), emphasis added. Further, with specific reference to the CDNST, "Other uses along the historic trails and the Continental Divide National Scenic Trail, **which will not substantially interfere with the nature and purposes of the trail**, and which, at the time of designation, are allowed by administrative regulations, including the use of motorized vehicles, shall be permitted by the Secretary charged with administration of the trail." *Id*, emphasis added. Clearly, this wind farm will substantially interfere with the nature and purposes of the trail. This is a National Scenic Trail. Industrial activities as described under VRM Class IV, and wind farms in particular, do in fact substantially interfere with the scenic nature and recreational purpose of the CDNST. It appears that in the absence of this analysis, the Chokecherry – Sierra Madre wind project violates the NSTA and NPRA. This is a *de facto* indication of unnecessary or undue degradation pursuant to FLPMA as well.

[5] Available online at http://www.fs.fed.us/cdt/main/cdnst_comprehensive_plan_final_092809.pdf; site last visited 7/13/12.

The proposed project would have the greatest impact on checkerboard portions of the CDNST, which is "highly used." FEIS at 4.12-20.

The Rawlins RMP includes the following direction:

> Provide users with opportunities to view, experience, and appreciate examples of prehistoric and historic human use of the resources along the Continental Divide, and examples of the ways these resources on public lands are being managed in harmony with the environment, as an asset to the existing character of the Continental Divide, and which will not detract from the overall experience of the trail.

FEIS Vol. 2 at 4-7.2. Approval of this wind farm violates this direction because the wind farm will in fact, by BLM's own admission, detract from the overall experience of the trail, is not in harmony with the natural landscape, and cannot be determined to be an asset to the existing character of the Continental Divide. The RMP also directs BLM to "Maintain and enhance recreation opportunities for residents and visitors to the area to accommodate camping, wildlife viewing, and other compatible uses in prescribed settings so visitors are able to realize experiences and benefits." Id. Yet BLM, as noted above, does not maintain or enhance such recreation opportunities through this project. Turbine visibility will be "High" for the CDNST, Overland Trail, North Platte River SRMA, and other sensitive areas according to BLM's analysis. FEIS Figure 3.12-6. For KOPs along the CDNST, visual contrast is "strong" under all alternatives. FEIS Vol. 2 at 4.12-13. The Pick Bridge KOP is the closest to the North Platte SRMA, and contrast was "strong" under all alternatives as well. *Id.* at 4.12-12.

The BLM carries forward the analysis from the VRM Plan Amendment into the analysis for the Chokecherry-Sierra Madre project (FEIS Vol. 2 at 2-6); with it the agency carries forward all the deficiencies in this analysis which we have enumerated above and we object to the same problems in the context of the wind farm project EIS.

The Rawlins RMP requires BLM to comply with the CDNST Comprehensive Plan. *See* FEIS at 3.12-4. Therefore, failure to comply with the Comprehensive Plan in the context of approving the CCSM project would pose a FLPMA conformity problem. The prescribed setting for the CDNST is "middle country" under the Rawlins RMP. FEIS Vol. 2 at 3.7-5. The Comprehensive Plan specifies, "Semi-primitive Motorized (i.e., Middle Country): Trail segments in the ROS class will be in a natural setting which may have moderately dominant alterations but will not draw attention, as would be judged by motorized observers on trails and primitive roads within the area… The user may experience more control and regulation but will still have a feeling of achievement, adventure, and a release from the dominance of human structures or noise." Id. According to BLM,

> The CDNST is located within and near the Application Area and is an avoidance area for Linear Utility/Transportation Systems/Communication Sites and an exclusion area for wind energy. Between I-80 and the Medicine Bow-Routt National Forest, the CDNST is located within 5 miles from the Application Area

> boundary. Two segments of the CDNST are within the Application Area. The first segment is approximately 1.5 miles west of Miller Hill and the second segment follows the south boundary of the Sierra Madre project area for approximately 6 miles with a small portion (3 miles) inside the Application Area. As described in the 2009 CDNST Comprehensive Plan, the nature and purpose of the CDNST is to provide for high-quality scenic, primitive hiking and horseback riding opportunities; and to conserve natural, historic, and cultural resources along the CDNST corridor.

FEIS Vol. 2 at 3.4-7. Indeed, the need to maintain or enhance scenery and recreation opportunities is mentioned repeatedly in the Management Goals for the Comprehensive Plan. FEIS Vol. 2 at 4.7-3. The permitting of a wind farm inside an exclusion area is in conflict with the Rawlins RMP and thereby violates FLPMA's plan conformity requirements. All four action alternatives would also result in "Strong visual impacts in the CDNST viewshed." FEIS Vol. 2 at 2-31. Turbines would be sited within 2 miles of the CDNST under all four action alternatives. FEIS Vol. 2 at 2-35. The proposed alternative would "significantly affect visual resources (as described in Section 4.12), which would substantially degrade the recreational experience for some visitors." FEIS Vol. 2 at 4.7-5. "In general, where visible outside of the alternative area for approximately 10 miles, Alternative 1R would dominate the view of the casual observer and would result in moderate to high levels of change in the landscape." FEIS Vol. 2 at 4.12-26. Further, "The presence (sights and sounds) of the project under Alternative 1R would likely degrade the recreational experience of most but not all hunters, anglers, OHV users, and other visitors within and near the alternative boundary." FEIS Vol. 2 at 4.7-7.

BLM attempts to explain away this issue by arguing that the CDNST Comprehensive Plan provides for other multiple uses in accordance with RMPs. FEIS at 4.7-8. However, BLM may manage for multiple uses within the Rawlins Field Office without permitting major degradation of the scenery along the CDNST. Impacts are considered significant where "Intensity of development is incompatible with the stated objectives of the CDNST and/or North Platte River SRMAs." FEIS at 4.7-4. In the end, "Operation of the WTGs would result in significant visual resource changes to views from the CDNST as described in 4.12 Visual Resources." FEIS Vol. 2 at 4.7-8. Constraining the "setting" for the CDNST to 1 mile, as BLM does in the FEIS (Vol. 2 at 4.7-8) is arbitrary and capricious given that the agency very clearly outlines in its analysis of impacts to visual resources that the visual intrusion of wind turbines extends much further. Indeed, BLM notes that "[s]trong contrasts would be most pronounced within 5 miles of the CDNST…." FEIS Vol. 2 at 4.12-20. BLM attempts to create a tautology here by setting a regulatory framework inadequate to protect the CDNST as it should under the federal law that established in and the Comprehensive Plan that governs its management, then arguing that because the turbines do not occur within this inadequate one-mile buffer, there will be no significant impacts. This is false.

BLM also argues that the checkerboard nature of the most strongly affected sections of the CDNST in some way renders the strong visual contrast less impactful, so it "does not interfere with the nature and purposes of the CDNST. FEIS Vol. 2 at 4.12-20. This is highly inaccurate in light of the fact that this same checkerboard section is "highly used" by the public (*id*.); It seems

dubious that the recreational experience of visitors along the CDNST is in any way responsive to the paper ownership of sections of ground crossed by the trail.

Excessive Impacts to the North Platte SRMA

According to BLM, "The North Platte River is a major recreation resource for the area particularly with respect to fishing and non-motorized boating." FEIS Vol. 2 at 3.7-5. Furthermore, "From the Colorado border down to Sage Creek, the North Platte River is classified as a blue-ribbon trout fishery and largely considered some of the best wild trout fishing in the continental U.S." *Id*. All four action alternatives would also result in "Moderate to strong visual impacts in the natural setting as seen from some segments of the river." FEIS Vol. 2 at 2-31.

For the North Platte SRMA, the RMP directs BLM to maintain or enhance recreation opportunities to accommodate existing niche activities, including hunting, fishing, camping, wildlife viewing, OHV touring, and other uses appropriate to the prescribed setting. FEIS Vol. 2 at 4.7-3. Furthermore, BLM must "Maintain or improve the quality of river-related recreational experience along the North Platte and Encampment rivers to continue to provide high-quality recreational experiences and benefits to local residents and visitors to the area." Id. For both the CDNST and the North Platte SRMA, BLM concludes that the impacts from the Preferred Alternative will "not be expected to be significant." FEIS Vol. 2 at 4.7-9. This conclusion is arbitrary and capricious based on BLM's own analyses, which describe numerous significant impacts as described above. Wind turbines would be sited as close as 1.5 miles to the SRMA, and would be visible from the river. FEIS Vol. 2 at 4.12-20, 22. These would create "strong contrasts" as seen from KOPs along the river. FEIS Vol. 2 at 4.12-22. In the end, this project will in fact substantially interfere with the purpose of the designations both for the CDNST and North Platte SRMA.

Excessive Impacts to 'Historic Properties'

This project is acknowledged by BLM to impact the settings of NRHP-eligible sites and trails. No programmatic agreement will relieve BLM of its responsibility to prevent direct degradation of or destruction of the settings of these historic sites. According to BLM, "prehistoric sites most likely would be found on elevated ridge tops overlooking creeks…" (FEIS at 3.2-6); these are precisely the areas where wind turbines are likely to be sited.

According to the FEIS,

> The BLM RFO currently is preparing a PA for the CCSM Wind Energy Project. The PA defines general and specific measures that would be undertaken by the BLM, Wyoming SHPO, and PCW to ensure that the BLM's objectives and responsibilities regarding the protection of historic properties under the NHPA would be fulfilled. Specifically, the PA outlines the steps to be taken to: 1) identify prehistoric and historic sites; 2) evaluate them for eligibility for inclusion in the NRHP; 3) identify potential adverse effects; 4) develop measures to avoid, reduce, or mitigate adverse effects; and 5) address inadvertent discoveries.

FEIS at 3.2-1. In failing to complete the identification and eligibility of historic sites before finalizing its EIS, BLM violates NEPA's baseline information requirements with regard to historic properties. This information should be fully available to BLM before completion of the EIS so that it can inform the selection of alternatives. In failing to identify adverse effects and mitigation measures that might address them, BLM violates NEPA's hard look requirements, by excluding parts of the environmental analysis and deferring them to a later time, after alternatives are already selected or rejected. In following this approach, BLM has evaded its responsibility to carefully consider impacts of the project and tailor the project accordingly.

According to IM 2009-043, "The scope of the NEPA analysis and the compliance requirements with the Endangered Species Act, the National Historic Preservation Act, and other laws for a wind energy development right-of-way application will be broader than a site testing and monitoring application as the installation of wind turbines, access roads, and electrical transmission facilities will be addressed in the wind energy development NEPA analysis." For the BLM's inventories of archaeological sites, "128 have occurred within the Application Area minus the sage grouse core areas where no disturbance is proposed." FEIS at 3.2-5. BLM does note "several prehistoric and historic sites" outside the project area that may be affected (FEIS at 3.2-5), but does not note whether this is a comprehensive list. Excluding the lands within the project area that fall within sage grouse core areas is arbitrary and capricious because important archaeological sites may occur in these areas whose setting would be impaired by the visual intrusion of wind turbines constructed outside the core areas. BLM thereby turns a blind eye to potential significant impacts to such historic properties. BLM's impacts analysis should have included baseline information on all historic properties for which wind turbines would have been in their viewshed, regardless of whether they were inside or outside the Application Area, along with a thorough impacts analysis for these properties. In failing to do this, BLM has violated NEPA's mandates.

Some 69 sites are either NHPR-listed or NRHP-eligible. FEIS at 3.2-5. This does not count the unknown number of NRHP-listed or NRHP-eligible sites outside the Application Area but impacted by the various wind farm alternatives, which BLM excluded from its analysis. The impacts analysis does not detail the level of impact for each of these sites, even in the absence of disclosing their locations to protect them from vandalism.

Alternative 1R would result in "Visual effects to historic properties, specifically the Overland Trail, by introducing visual elements that diminish the integrity of the property's setting." FEIS Vol. 2 at 2-30. Alternatives 2 and 4 have greater impacts in this regard than Alternative 1R. *Id.* BLM expounds upon these impacts as follows:

> Visual impacts to historic properties where setting is an aspect of integrity, such as the Overland Trail, could occur as a result of introducing visual elements out of character with a property located within or adjacent to the Alternative 1R area. Introduction of structures such as the proposed WTGs and transmission line into an otherwise rural or natural setting could diminish the integrity of a property's historic features that contribute to its significance. Significant impacts and adverse effects would occur to those properties where setting is an aspect of integrity, including but not limited to, historic districts, historic trails and roads, and properties of traditional religious and cultural importance to Native Americans.

FEIS Vol. 2 at 4.2-4. In addition, "Due to the large-scale nature of the proposed CCSM project, it is anticipated that adverse affects to the integrity of the Overland Trail's setting would occur." Id. These outcomes are impermissible under the NHPA. In addition, "Approximately 3 miles of the Overland Trail cross the northern portion of the Sierra Madre site." FEIS Vol. 2 at 3.4-6. Despite any programmatic agreements that may be in place, this clear approval of a project that will violate the black-letter law of NHPA cannot stand.

In addition, the effectiveness of mitigation measures has not been disclosed. BLM states,

> **CR-2:** Additional mitigation measures will be included in the PA, which currently is being developed in coordination among the BLM, SHPO, ACHP, PCW, Indian tribes, and other interested parties.
>
> **Effectiveness:** This measure would be highly effective in avoiding, reducing, and mitigating adverse effects to historic properties. The PA outlines the manner in which adverse effects would be mitigated and the roles and responsibilities of each signatory. The agreement stays in effect until all measures have been completed to the satisfaction of all parties who have participated in its development.

FEIS at 4.2-7. The failure to complete the Programmatic Agreement prior to the completion of the FEIS means that BLM has no way of assessing the effectiveness of the mitigation measures that the PA includes, and also indicates the BLM's inability to accurately assess the level of impact to NRHP-eligible sites as well. These are the only mitigation measures listed for impacts

to the historic settings of eligible sites. This deferral of development of mitigation measures, and the failed impact assessment that goes with it, violates NEPA. Even after mitigation under the Programmatic Agreement, BLM states, "Since some of the cultural value associated with these sites cannot be fully mitigated, it is anticipated that residual impacts to these resources would occur." FEIS at 4.2-7. Furthermore, under 'Irreversible and Irretrievable Commitments of Resources,' BLM states, NRHP-eligible sites could be irreversibly and irretrievably lost if inventory, avoidance, and/or mitigation efforts are not sufficient to identify and protect these sites." BLM states that further mitigation measures listed in Appendix C, if implemented, would "reduce" impacts to historic settings; BLM does not claim that impacts would be eliminated or reduced to insignificant levels.

There is no provision for demobilization of turbines at the end of the project's life

Turbine foundation size under all alternatives was increased 60 600 yd^3 per turbine. FEIS Vol. 2 at 1-23. Who is going to dig out all that concrete and restore the soil to a function condition when the project is no longer operating? Will bonding be required for this purpose, or is BLM planning to absorb the cost of reclamation and pass it on to the taxpayers? A demobilization plan needs to be included as part of the description of the project. The omission of such a plan indicates the incompleteness of BLM's project planning, and also prevents BLM from assessing the potential impacts (both positive and negative) of demobilization activity.

Failure to analyze impacts of Cumulative and Connected Actions

According to IM 2009-043, "the cumulative impacts of other wind energy site testing activities and any other reasonably foreseeable activities that potentially impact the same environmental resources in the area are required to be addressed in the environmental analysis." Furthermore, this IM states, "The reasonably foreseeable development discussion in the environmental analysis for a wind energy development project should focus on the potential for installation of additional wind turbines and increased production and electrical transmission from the project area. In addition, the cumulative impacts of other wind energy projects and any other reasonably foreseeable projects that potentially impact the same environmental resources in the area are required to be addressed in the environmental analysis." BLM has violated both NEPA's cumulative effects analysis requirements and the policy set forth in this IM by not considering all of the connected actions for this project.

Cumulative impacts with associated gas-fired electrical generation plant(s)

The Chokecherry-Sierra Madre project is connected to the TransWest Express transmission line, a fact disclosed in the FEIS. Indeed, BLM states, "Because the wind farm project would not be possible without overhead transmission lines, any of the proposed projects {TransWest Express and other transmission lines] could be considered a connected action." FEIS Vol. 2 at 2-1. In fact, the sole purpose of the TransWest Express line appears to be to transmit electricity from the Chokecherry – Sierra Madre Project. The wind is not going to be blowing between 30 and 60 miles per hour (the windspeed range that will operate the turbines at peak efficiency) all the time.

For those periods when there is no electricity being generated by the project, or a much lesser amount of electricity than the line can carry (or the power purchaser demands under the subscription contract), there will need to be another source of baseload to supplement the wind

power being put on the line. This concept is known as "firming," and the most obvious firming source would be a natural gas-fired power plant. Natural gas is considered superior for firming of wind power because a gas-fired plant can be fired up and put on line instantaneously, and can be shut down just as quickly, as opposed to coal-fired power plants which take long periods for safe startup and shutdown.

The TransWest Express transmission project is a direct-current (DC) line, and proponents have represented that the extremely high cost of on-ramps for other generation sources at points along the line between source and terminus is prohibitive of bringing other electricity generating facilities into play at some intermediate point along the line. With this in mind, a firming facility of some kind, most likely a gas-fired power plant, will need to be built in close proximity to the beginning point of the TransWest Express line, which puts it in close proximity to the Chokecherry – Sierra Madre proposed wind farm. This is clearly a connected action that will be needed in order to put the wind power from Chokecherry – Sierra Madre onto the TransWest Express line. But Section 5.0.4 of the Final EIS makes no mention of a gas-fired power plant or any other type of electrical generation plant that will be used for firming, even though it is obvious that one will be needed to put the wind power from the Chokecherry project on line. The close proximity of the Continental Divide – Wamsutter gas field, BP's largest onshore gas field in North America, could provide a ready supply of natural gas and increases the likelihood that a gas-fired plant would be chosen to supply the firming electrical generation.

This firming plant will have environmental impacts of its own. It will come with access roads and vehicle traffic, which can only be quantified and assessed once the firming facility has an environmental impacts analysis. How many workers, and how much vehicle traffic, will be needed at the construction phase of this firming station? How many workers and how much traffic will be needed for post-construction operations of this facility? How will the impacts from this human presence and vehicle traffic interact with the impacts of the wind farm itself? What will be the direct impact of the firming plant on raptors, sage grouse, big game, Wyoming pocket gophers, and other sensitive wildlife, and what is the cumulative impact of these direct effects taken together with the impacts of the wind farm? Where will the firming plant be sited? Inside current or previously designated sage grouse Core Areas? All of these questions need to be addressed, because it is not only reasonably foreseeable but obvious that a firming plant is a necessary and integral part of the operations of this wind farm, making it clearly a connected action not addressed in the FEIS. *See* FEIS Vol. 2 Section 4.8.

And as BLM notes, the interaction between worker influx for both the natural gas plant or plants and the wind turbine construction itself, and potential influx of gas drilling workers due top fluctuating commodity prices, could pose problems. FEIS at 4.8-14. A shortfall in housing is already projected, resulting in potentially significant impacts without even considering a gas plant. FEIS at 4.8-17. Collateral problems in emergency response services and infrastructure, water and sewer, and solid waste are also projected in the FEIS.

In addition, there will be socioeconomic impacts of the firming plant that will affect local communities like Rawlins and Saratoga, both during the construction and operations phases. How many workers will be employed at the firming plan during construction, and during post-

construction operations? Where will they be housed? What is the cumulative effect of construction of the firming plant (which could require several hundred workers if projections for the construction of the nearby DKRW coal-to-liquids facility is any indication) taken together with the workers needed to construct the wind farm? This cumulative impact has not been studied. And what are the cumulative impacts of the additional workers when taken together with the wind farm and the transmission line?

Cumulative impacts with oil and gas development

BLM notes that there is some oil and gas potential within and near the project area. FEIS at 3.3-4. Indeed, as of July 14, 2012 there were a number of NOSs and/or APDs proposed for this general part of the North Platte valley. Several wells have been drilled to date. Why were these existing and reasonably foreseeable impacts not cataloged and considered in the FEIS? With more proposed, the cumulative effects analysis should have included greater consideration of the possibility of interacting and cumulative effects of the CCSM project with nearby oil and gas development on historic resources and their settings, visual resources and recreationally important features, and sensitive species of wildlife.

Cumulative impacts to migratory birds

The FEIS states, "The CIA area for birds is the RFO." FEIS at 5-42. However, this is inadequate because the RFO only includes portions of south-central and southeastern Wyoming. Migratory birds found at the project site will also be subject to threats along their migratory paths, which can stretch outside the United States. Migratory birds of special note include golden eagles, other birds of prey, and BLM Sensitive passerine and shorebird species. The absence of a cumulative effects analysis, even in the form of a broad estimate, poses difficulties for assessing the impacts of this project on migratory bird populations.

INADEQUATE TIME FOR PUBLIC COMMENT

We also protest the brevity of the comment period. The Cover Letter for the Final EIS states that a 30-day comment period would be provided. But regardless of when the Notice of Availability published, the actual Final EIS itself was not available to us in any form (either hardcopy or electronically on the internet) until July 3rd. A 30-day comment period from that date would run until August 2nd. BCA petitioned BLM for an extension of time for the FEIS protest period but to date have received no reply. Given the significant amount of travel and other responsibilities that have taken our time since the FEIS was released, the lack of a full 30-day comment period has impaired our ability to review and comment on this voluminous EIS to the extent we feel warranted. This appears to represent an additional violation of NEPA's public notice and comment procedures.

CONCLUSION

For the foregoing reasons, neither the proposed VRM Plan Amendment nor the approval of the Chokecherry – Sierra Madre project may legally move forward. As a result, we can only support the adoption of the No Action alternative at this time. Please correct the deficiencies outlined in this Protest prior to issuing a Record of Decision for this project.

Respectfully yours,

Erik Molvar

Signing on behalf of

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List of Attachments

1. Atlantic Rim Mule Deer Study
2. Viewshed Map from Lost Creek Draft EIS
3. Wild Cow Creek BLM wilderness area evaluation
4. Overland Trail Highway 789 satellite image
5. Overland Trail Wamsutter Road satellite image
6. Comments of Dr. Shawn Smallwood on USFWS draft eagle conservation plan
7. Long-term strategies and information needs for conserving golden eagles, USFWS
8. Excerpts, *The Golden Eagle*, Watson (2010)
9. USFWS, Tehachapi Wind Power and Golden Eagles