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ENVIRONMENTAL LAW CLINIC AT STANFORD UNIVERSITY

August 18, 2004

Jack G. Troyer  
Regional Forester  
Intermountain Region  
U.S. Forest Service  
324 25th Street  
Ogden, UT 84401

Re: Consent to oil and gas leasing in Bridger-Teton National Forest Management Areas 12, 22, 23, 24, 25, 26, 31, 32, and 49

Dear Mr. Troyer:

I am writing on behalf of the Biodiversity Conservation Alliance, Greater Yellowstone Coalition, Jackson Hole Conservation Alliance, National Outdoor Leadership School, Natural Resources Defense Council, Sierra Club, Upper Green River Valley Coalition, The Wilderness Society, and Wyoming Outdoor Council regarding your April 8, 2004 consent for the U.S. Bureau of Land Management to list and offer 82 oil and gas lease parcels in Management Areas 12, 22, 23, 24, 25, 26, 31, 32 and 49 of northwest Wyoming's Bridger-Teton National Forest. Specifically, I am writing to formally request that you withdraw your consent to this leasing before the scheduled October and December auction of these oil and gas lease parcels by the Bureau of Land Management ("BLM").

The proposed leasing would convey oil and gas development rights affecting a host of sensitive environments in the Greater Yellowstone Ecosystem, the premiere wildland ecosystem remaining in the lower-48 states. Of the total 157,658 acres of leasing approved by the Forest Service in these nine management areas, 87,327 acres would be leased under terms that permit development of roads, drill pads, and associated oil and gas infrastructure on the surface of the leased National Forest lands. Surface development on these leases will impact inventoried roadless areas; tributary watersheds of the Green, Greys and Hoback rivers; habitat for grizzly bears, wolves, and a rare population center of Canada lynx; air quality in pristine wilderness areas; and popular areas for hunting and fishing.

Unfortunately, the Forest Service has not taken the steps that are legally required to ensure that any oil and gas development in this area is compatible with protection of these sensitive National Forest resources. As set forth in the discussion that follows, your consent to the proposed leasing violates the National Forest Management Act regulations at 36 C.F.R. § 219.19; the Bridger-Teton National Forest Land and Resource Management Plan; the National Environmental Policy Act, 42 U.S.C. § 4321 et seq.; the Endangered Species Act, 16 U.S.C. §

1536(a)(2); and the Roadless Area Conservation Rule, 36 C.F.R. § 294.10 et seq. For these reasons, and to avoid the necessity for federal court litigation to address these legal violations, I ask that you immediately withdraw your consent to the proposed leasing.

**I. THE PROPOSED LEASING WOULD CONVEY A “RIGHT TO EXPLORE, DEVELOP AND PRODUCE OIL AND GAS UNDER THE TERMS OF THE LEASE”**

At the outset, it is important to clarify the commitment that the U.S. Forest Service makes in consenting to the proposed leasing – a commitment that necessitates a comprehensive environmental analysis of the likely post-leasing impacts of oil and gas development on these leaseholds before any leases are issued. Recent statements by Forest Service officials in Wyoming media have sought to downplay the significance of the proposed leasing, asserting that “[t]he act of leasing does not result in surface disturbance”; “[i]t has no effect on the environment”; and that leasing “does not necessarily give [the lease holder] the right to adversely affect the environment.” Rebecca Huntington, Conservationists battle national forest drilling leases, Jackson Hole News & Guide, July 21, 2004 ([Exhibit 1](#)). The Forest Service’s January 2004 Supplemental Biological Assessment for the proposed leasing reflects this same view, asserting merely that “[t]he leasing phase of oil and gas exploration is for the potential purchaser reviewing maps, field surveys and offering bids on areas that they will drill for oil and gas,” and failing even to consider the likely impacts of reasonably foreseeable oil and gas development that would result from the proposed leasing. See Supplemental Biological Assessment for Oil and Gas Leasing (Jan. 15, 2004) (“BA”), at 7; see generally id. at 13-35.

These statements fail to acknowledge the significant commitment to development that arises upon issuance of a federal oil and gas lease. Issuance of a federal oil and gas lease commits the leased lands to oil and gas exploration and development at the election of the leaseholder, with limited exceptions. A federal oil and gas lease conveys to the lessee “the right to use so much of the leased lands as is necessary to explore for, drill for, mine, extract, remove and dispose of all the leased resource in a leasehold.” 43 C.F.R. § 3101.1-2. This right is qualified only by:

Stipulations attached to the lease; restrictions deriving from specific, nondiscretionary statutes; and such reasonable measures as may be required by the authorized officer to minimize adverse impacts to other resource values, land uses or users not addressed in the lease stipulations at the time operations are proposed.

Id. In other words, unless drilling would violate an existing lease stipulation or a specific nondiscretionary statutory restriction, it must be permitted once a lease is issued subject only to certain “reasonable measures” that may be imposed at the discretion of the federal surface managing agency at the drilling stage in an effort to mitigate environmental harms. However, all such “reasonable measures” must be “consistent with lease rights granted” – i.e., the right to fully develop and extract the leased resource. Id.; see also BLM Form 3100-11, Offer to Lease and Lease for Oil and Gas, at 1 and 2 § 6 (conveying “exclusive right to drill for, mine, extract, remove and dispose of” oil and gas, subject to “reasonable measures ... consistent with lease

rights granted”). Thus, surface exploration and development generally must be allowed, if requested by the leaseholder, once the lease is issued. See Oil and Gas Resources, 55 Fed. Reg. 10,423, 10,430 (Mar. 21, 1990) (preamble to final Forest Service leasing regulations, stating “[t]his Department has determined that leases that are issued for National Forest System lands should vest the lessee with the right to conduct oil and gas operations somewhere on the lease”); BLM Land Use Planning Handbook, App. C at 16 (2000) (“A determination that lands are available for leasing represents a commitment to allow surface use under standard lease terms and conditions unless stipulations constraining development are attached to leases.”) ([Exhibit 2](#)).<sup>1</sup>

Although the recent Forest Service statements quoted above fail to acknowledge this basic development right conveyed through oil and gas leasing, it is well established in federal court case law and in numerous prior public statements by the Forest Service itself, including recent official statements by Bridger-Teton National Forest staff.

First, the significance of the Forest Service’s leasing decisions on the Bridger-Teton National Forest has already once been litigated and resolved in the federal courts in a manner inconsistent with the Forest Service’s current position. In Sierra Club v. Peterson, 717 F.2d 1409 (D.C. Cir. 1983), the United States Court of Appeals for the District of Columbia Circuit addressed a Forest Service decision to authorize oil and gas leasing in the Palisades area of the Bridger-Teton National Forest. The court specifically rejected the Forest Service’s contention – which was identical to the agency’s current contention – “that leasing is a discrete transaction which will not result in any physical or biological impacts.” Id. at 1413 (internal quotations and citation omitted). As the Sierra Club court explained:

Even assuming, *arguendo*, that all lease stipulations are fully enforceable, once the land is leased the Department no longer has the authority to *preclude* surface disturbing activities even if the environmental impact of such activity is significant. The Department can only impose “mitigation” measures upon a lessee who pursues surface disturbing exploration and/or drilling activities. None of the stipulations expressly provides that the [Interior] Department or the Forest Service can *prevent* a lessee from conducting surface disturbing activities. Thus, ... the decision to allow surface disturbing activities has been made at the *leasing stage* ... .

Id. at 1414 (footnote omitted, final emphasis added); see also id. at 1414 n.7 (rejecting “district court’s unsupported conclusion that the Secretary can preclude ‘any development’ under the

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<sup>1</sup> Pursuant to 43 C.F.R. § 3101.1-2’s provision subjecting lease rights to “[s]tipulations attached to the lease,” surface development may be denied where a lease includes a specific “no surface occupancy,” or “NSO,” stipulation. A NSO stipulation prohibits all surface operations on the leasehold – *i.e.*, it prevents construction of well pads, roads, and other developments on the surface of the leased parcel – but allows for extraction of oil and gas through directional drilling from adjacent lands. However, 87,327 acres of the total 157,658 acres of leasing proposed by the Forest Service in Management Areas 12, 22, 23, 24, 25, 26, 31, 32 and 49 will not include NSO stipulations.

lease” and concluding that “once the land is leased the Secretary cannot *preclude* surface disturbing activities, in either the exploratory or the development stage”). Having already lost once on its argument seeking to minimize the commitment made by oil and gas leasing in the Bridger-Teton National Forest, the Forest Service cannot now rely on this same rejected argument to justify the new proposed leasing. See Allen v. McCurry, 449 U.S. 90, 94 (1980) (“Under collateral estoppel, once a court has decided an issue of fact or law necessary to its judgment, that decision may preclude relitigation of the issue in a suit on a different cause of action involving a party to the first case.”).<sup>2</sup>

Second, the Forest Service’s reported attempts to downplay the significance of the proposed leasing defy the agency’s own prior statements about oil and gas leasing in the Bridger-Teton National Forest. As recently as the February 2003 Final Environmental Impact Statement on Oil and Gas Leasing in Bridger-Teton National Forest Management Areas 21, 45, 71 and 72 (“FEIS”), the Forest Service acknowledged that, “Once leased, the lessee has the right to explore, develop and produce oil and gas under the terms of the lease.” FEIS at 1-4 (emphasis added) ([Exhibit 3](#)). Further, in addressing the issue of irreversible and irretrievable commitments of resources in this same leasing analysis, the Forest Service stated, “Once a lease is issued the opportunity to deny access is irreversible for the life of the lease or the life of the producing field.” FEIS at 3-192 ([Ex. 3](#)). In responding to public comments, the Forest Service stated, “The Forest recognizes the commitment made through consenting to lease that will carry into the APD process and actual exploration and development. By consenting to lease the Forest is ‘determining that operations and developments could be allowed somewhere on each proposed lease, except where stipulations will prohibit all surface occupancy (36CFR228.102(e)(3) [sic].’” FEIS at 4-81 ([Ex. 3](#)). And, in contrast to the Forest Service’s apparent new position that leasing “does not necessarily give [the lease holder] the right to adversely affect the environment,” Huntington, supra ([Ex. 1](#)), the Forest Service in that 2003 FEIS explicitly acknowledged that, “[w]hile it is true that many environmental impacts can be anticipated by our staff and prevented or mitigated, it is also true that not all potential impacts can be prevented or mitigated” once a lease is issued. FEIS at 4-85 (emphasis added) ([Ex. 3](#)).

Third, the Forest Service’s reported statements about the proposed leasing in the Bridger-Teton National Forest fly in the face of the agency’s recent assertions about oil and gas lease rights in the context of approving applications to drill on existing leases of National Forest System land elsewhere in Wyoming. In addressing such drilling proposals, the Forest Service has steadfastly maintained that oil and gas lease rights severely constrain the agency’s options to limit or prohibit development on an existing lease in the interest of other values. Thus, for example, in a recent Decision Notice authorizing coalbed methane drilling on federal oil and gas leases in eastern Wyoming’s Thunder Basin National Grassland, the Forest Service asserted that its discretion to select the “no action” alternative of denying development was “severely constrained by the contractual rights of the [lease holder] to develop its mineral leases as granted by the United States.” U.S. Forest Serv., Decision Notice and Finding of No Significant Impact, Big Porcupine Coal Bed Methane Project (“Big Porcupine Decision”), at 18 (Apr. 23, 2004) ([Exhibit 4](#)). As the Forest Service explained:

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<sup>2</sup> The Sierra Club court’s statement addressed only leases issued without NSO stipulations. See 717 F.2d at 1412.

Although the BLM can deny approval of a particular APD [i.e., Application for Permit to Drill], it cannot deny, in general, occupancy of the surface for the exploration and development of federal minerals that have been leased, unless they were leased with a no surface occupancy stipulation. An oil and gas lease grants the lessee the “right to drill for, extract, remove, and dispose of all oil and gas deposits” from the leased lands, subject to the terms and conditions of the respective leases (BLM Form 3100-11). The denial of the right to develop a valid lease would violate the lessee’s contractual rights, as well as result in the loss of federal royalties.

*Id.* at 19 ([Ex. 4](#)). Similarly, the Forest Service explained in a recent Environmental Assessment for the separate Thunderhead coalbed methane drilling project on the Thunder Basin National Grassland that it could not consider an option to designate new “NSO,” or “no surface occupancy,” areas to protect big game winter ranges, parturition areas, and migration routes within an existing federal oil and gas lease:

Designation of an NSO area on the surface of a previously leased parcel would violate an operator’s legal right to develop its leases, in accordance with its contractual agreement with the federal government. An oil and gas lease grants the lessee the “right to drill for, extract, remove, and dispose of all oil and gas deposits” from the leased lands, subject to the terms and conditions of the respective leases (BLM, 1992).

U.S. Forest Serv., Environmental Assessment, Lance Oil & Gas Co., Thunderhead Project, at 2-44 (May 2004) (“Thunderhead EA”) ([Exhibit 5](#)).

The Forest Service has made its position clear that complete denial of operations on an existing federal oil and gas lease is permissible only in the extraordinary situation where the impacts from such operations would be so severe as to violate a substantive environmental law, as, for example, by threatening the extinction of an entire threatened or endangered wildlife species in violation of the Endangered Species Act, 16 U.S.C. § 1536(a)(2). *See* Big Porcupine Decision, at 19 ([Ex. 4](#)). This reflects 43 C.F.R. § 3101.1-2’s provision subjecting lease rights to “restrictions deriving from specific, nondiscretionary statutes.” However, numerous situations may arise where oil and gas development threatens environmental impacts that, although significant, would not violate any substantive statutory prohibition.

Understanding the commitment to development that occurs upon issuance of a federal oil and gas lease is critical, as it necessitates full compliance with federal environmental statutes before any leases are issued. As the Forest Service itself recognized in promulgating its oil and gas leasing regulations, the commitment to development that occurs upon lease issuance dictates “up-front NEPA compliance,” requiring “the Government to consider and disclose the reasonably foreseeable environmental impacts of operations that may be conducted on a lease when a decision is being made on lease issuance.” 55 Fed. Reg. at 10,433 (emphasis added). For the same reason, compliance with other federal environmental statutes must occur before the

proposed leasing – not after. Accordingly, the Forest Service must evaluate the impacts of reasonably foreseeable oil and gas development before consenting to the proposed leasing.<sup>3</sup>

## **II. THE CONSENT TO LEASING VIOLATES THE NATIONAL FOREST MANAGEMENT ACT REGULATIONS AND THE BRIDGER-TETON NATIONAL FOREST PLAN**

The Forest Service’s consent to leasing violates regulations implementing the National Forest Management Act (“NFMA”) as well as the Bridger-Teton National Forest’s Land and Resource Management Plan (“LRMP”). Both mandate the designation and population monitoring of “management indicator species,” or “MIS,” to serve as bellwethers for the purpose of ascertaining the impact of forest development activities on wildlife populations. Here, however, the Forest Service has failed to implement the most basic procedures required by the NFMA regulations and the Bridger-Teton LRMP concerning MIS. These procedures are essential to ensure that oil and gas development that is irretrievably authorized at the point of lease issuance does not push Bridger-Teton National Forest wildlife populations past the threshold of viability. The Forest Service may not consent to the proposed leasing absent compliance with the MIS requirements imposed by NFMA and the Bridger-Teton LRMP.

“The National Forest Management Act directs the Forest Service to develop Land and Resource Management Plans (‘Forest Plans’) by which to manage each National Forest under principles of ‘multiple use’ and ‘sustained yield.’” Colorado Env’tl. Coalition v. Dombeck, 185 F.3d 1162, 1167 (10th Cir. 1999) (quoting 16 U.S.C. § 1604). Among other things, such Forest Plans must “‘provide for diversity of plant and animal communities based on the suitability and capability of the specific land area in order to meet overall multiple-use objectives.’” Id. at 1168 (quoting 16 U.S.C. § 1604(g)(3)(B)). All permits, contracts “and other instruments for the use

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<sup>3</sup> Notably, the Forest Service’s oil and gas regulations, as originally proposed, called for inclusion of a “standard stipulation” in every lease giving the agency broad post-leasing authority to preclude all lease operations if necessary to avoid environmental harms. See Oil and Gas Resources, 54 Fed. Reg. 3,326, 3,329, 3,333 (1989) (proposed rule § 228.103(c)). The Forest Service explained that such a stipulation “would have allowed the Forest Service to engage in ‘staged’ NEPA compliance,” which the agency described as an approach that

permits the Government to defer environmental analysis of lease operations when a decision is being made on issuing a lease provided that the Government retains both (1) the authority to preclude all surface disturbing activities pending the submission of site-specific operating proposals and (2) the authority to prevent all proposed operations if their environmental consequences are unacceptable.

Id. at 10,433. In its final regulations, the Forest Service decided to omit this “standard stipulation,” but recognized that the omission of such a stipulation would necessitate “comprehensive compliance with environmental statutes” at the leasing stage. Id. The Forest Service thus stated that “the final rule will not allow specific lands to be leased until after an appropriate environmental review indicates that development is possible somewhere on the lease (unless a no-surface-occupancy stipulation is used).” Id.

and occupancy of National Forest System lands” (such as oil and gas leases) “shall be consistent” with the Forest Plans. 16 U.S.C. § 1604(i).

NFMA also requires the Forest Service to adopt regulations “specifying guidelines” for the Forest Plans. Id. § 1604(g)(3), (h). Those regulations are codified at 36 C.F.R. part 219.<sup>4</sup> With respect to the “fish and wildlife resource,” they provide:

Fish and wildlife habitat shall be managed to maintain viable populations of existing native and desired non-native vertebrate species in the planning area. ... (1) In order to estimate the effects of each alternative on fish and wildlife populations, certain vertebrate and/or invertebrate species present in the area shall be identified and selected as management indicator species ... . These species shall be selected because their population changes are believed to indicate the effects of management activities. ... (6) Population trends of the management indicator species will be monitored and relationships to habitat changes determined.

36 C.F.R. § 219.19(a) (emphases added). Thus, as the United States Court of Appeals for the Tenth Circuit has recently explained,

[I]n order to effectuate its MIS monitoring duties under the language of its regulations, the Forest Service must gather quantitative data on actual MIS populations that allows it to estimate the effects of any forest management activities on the animal population trends, and determine the relationship between management activities and population trend changes.

Utah Env'tl. Congress v. Bosworth, 372 F.3d 1219, 1227 (10th Cir. 2004) (footnotes omitted); see also id. at 1226 (“§ 219.19 requires the Forest Service to use actual, quantitative population data to effectuate its MIS monitoring obligations”).

Pursuant to this regulatory mandate, the Bridger-Teton National Forest LRMP identified two MIS as “ecological indicator species” and promised to identify four others that would be affected by management activities on Bridger-Teton forest lands. Specifically, the plan identified MIS for two “key habitats likely to be significantly affected by management activities on the National Forest” – the pine marten for old-growth forests, and the Brewer’s sparrow for sagebrush. U.S. Forest Serv., Bridger-Teton National Forest LRMP (“LRMP”), at 34-35 (1990) ([Exhibit 6](#)). The plan promised that the Forest Service would identify MIS for four additional sensitive habitat types: riparian, aspen, mountain meadows, and wetlands. See id. at 34 ([Ex. 6](#)).

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<sup>4</sup> The Forest Service has undertaken recent efforts to revise its NFMA forest planning regulations. However, the regulations discussed in the text above were in effect when the Forest Service consented to the proposed leasing on April 8, 2004, and therefore govern the challenged leasing decision. See Utah Env'tl. Congress v. Bosworth, 372 F.3d 1219, 1221 n.1 (10th Cir. 2004).

Despite the LRMP's promises to the public, the Forest Service has failed to comply with its legal obligations concerning MIS. First, concerning the two MIS actually identified in the LRMP – pine marten and Brewer's sparrow – despite 14 years of LRMP implementation, the Forest Service has failed even to begin to amass the most basic monitoring data on these species. As a 2002 Bridger-Teton National Forest monitoring report admits, these MIS have not been monitored. U.S. Forest Serv., Monitoring Category Reporting Form, Fiscal Years 2000 & 2001, Wildlife & Fishery Program Area, at 14 ([Exhibit 7](#)). The report explains that the required monitoring information “would normally be systematic and repeatable field surveys couple[d] with vegetation data compiled in a retrievable manner. These have not been done by the Forest.” *Id.* at 14 (emphasis added) ([Ex. 7](#)). A separate December 2002 assessment of the Bridger-Teton National Forest's MIS monitoring efforts offers more detail, noting only two isolated seasonal efforts to monitor for pine marten, each occurring within a single year in limited areas of the forest, and concluding that “there are no population or trend inferences that can be made from survey data gathered in a single year.” Reply to: Unclassified Wildlife Biologist Reassigned Tasks (Dec. 12, 2002), at 3 (emphasis added) ([Exhibit 8](#)). Similarly, the assessment notes only a single year's effort to monitor Brewer's sparrows in the Jackson District of the forest and observes that “the points have not been resurveyed, thus, no trend data specific to the area is available.” *Id.* at 4 (emphasis added) ([Ex. 8](#)). The absence of such data for Brewer's sparrow is particularly significant because this species has experienced recent sharp population declines, including in Wyoming. *See id.* ([Ex. 8](#)). Thus, the Forest Service lacks monitoring data on pine marten and Brewer's sparrow that would allow the agency to estimate the impacts of oil and gas development on wildlife population trends in the areas to be leased – or anywhere else on the forest. This violates the Forest Service's plain legal duty to “monitor population trends of the MIS in order to evaluate the effects of forest management activities on the MIS and the viability of desired fish and wildlife populations in the forest more generally.” *Utah Env'tl. Congress*, 372 F.3d at 1226.<sup>5</sup>

The Forest Service's legal violation is even more blatant with respect to the other four MIS promised in the Bridger-Teton LRMP: The Forest Service has never even identified them. In 1990, when the Forest Service released its Record of Decision for the LRMP, it also distributed to the public an “action plan” to establish “timeframes and criteria” for issues raised by conservation organizations regarding the LRMP. *See* U.S. Forest Serv., An Action Plan for Assignment of Ecological Indicator Species and a Wildlife and Fisheries Monitoring and Evaluation Program on the Bridger-Teton National Forest (Feb. 5, 1990) ([Exhibit 10](#)). This “action plan,” which was signed by the Forest Supervisor, promised that, “[i]n consultation with the Intermountain Regional Office, the U.S. Fish and Wildlife Service, the Wyoming Game and Fish Department, and other concerned agencies, groups, and individuals, I will assign the 4 remaining ecological indicators during calendar year 1990.” *Id.* ([Ex. 10](#)). Despite this “action plan,” however, the Forest Service designated no additional MIS for the Bridger-Teton National Forest in 1990. The Forest Service next addressed the MIS issue in response to conservation

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<sup>5</sup> An August 2002 e-mail from a Forest Service Intermountain Region wildlife program manager noted the agency's lack of compliance with MIS requirements on the Bridger-Teton National Forest, stating that “[t]he forest was very fortunate to avoid challenge on MIS this long” and attributing the lack of required MIS monitoring to “risk taking choices made by decision makers.” Memo from Bill Noblitt to Timmothy J. Kaminski, et al. (Aug. 7, 2002) ([Exhibit 9](#)).

groups' appeal of the Bridger-Teton LRMP. The Forest Service Chief's decision on that appeal, rendered on January 14, 1992, rejected an argument that the plan failed to protect wildlife diversity, but noted that "as of this date the additional four ecological indicator species have not been identified," and stated: "The Regional Forester is directed to ensure the Forest Supervisor complies with his commitment to identify the additional four ecological indicator species." Decision for Appeal No. 90-13-00-0195, at 18 (emphasis added) ([Exhibit 11](#)). To this day, however, the Forest Service has failed to identify the four MIS promised in the Bridger-Teton LRMP. Thus, not only has the Forest Service failed to amass the "actual, quantitative population data" for MIS associated with riparian, aspen, mountain meadow, and wetland environments required by the NFMA regulations, [Utah Env'tl. Congress](#), 372 F.3d at 1226, the agency has failed even to identify those MIS in the first place as required by the Bridger-Teton LRMP and a directive from the Forest Service Chief.

Absent compliance with the MIS requirements imposed by the NFMA regulations and the Bridger-Teton LRMP, the Forest Service may not lawfully consent to the challenged oil and gas leasing. The National Forest lands that the Forest Service has consented to leasing in Management Areas 12, 22, 23, 24, 25, 26, 31, 32 and 49 include old growth, sagebrush, riparian, aspen, mountain meadow, and wetland environments that the Forest Service itself has admitted are at "high risk of being affected by management activities." LRMP, at 34 ([Ex. 6](#)). As reflected in the Forest Service's own discussion of the Thunderhead project quoted above, the Forest Service will lack discretion to impose NSO stipulations in the interest of protecting wildlife habitats in these environments once drilling is proposed on an existing lease. [See](#) Thunderhead EA at 2-44 ([Ex. 5](#)). In this regard, the Forest Service stated in promulgating its oil and gas leasing regulations that standard lease stipulations to protect surface resources were unnecessary because "[s]ite-specific resources and values warranting protection are readily identified prior to leasing so that appropriate stipulations can be developed." 55 Fed. Reg. at 10,433 (emphasis added). In this case, however, wildlife resources warranting protection cannot be "readily identified prior to leasing," [id.](#), because the Forest Service has not taken the basic steps necessary to determine what wildlife in the leased areas may require protection, or what stipulations may be appropriate. Pursuant to the NFMA regulations and the LRMP, the Forest Service may not authorize activities in these environments absent "actual, quantitative population data" on MIS that are associated with these environments. [Utah Env'tl. Congress](#), 372 F.3d at 1226; [see also id.](#) at 1228-30, 1232 (finding Forest Service's authorization of timber sale "arbitrary and capricious" because agency "has not complied with its duties under Forest Service regulations to monitor several of the relevant management indicator species"). For this reason alone, the Forest Service's consent to leasing is invalid and must be withdrawn.

### **III. THE CONSENT TO LEASING VIOLATES THE NATIONAL ENVIRONMENTAL POLICY ACT**

The Forest Service's consent to the proposed leasing also violates the National Environmental Policy Act ("NEPA"), 42 U.S.C. § 4321 [et seq.](#) NEPA requires federal agencies to take a "hard look" at the environmental consequences of their actions. [Kleppe v. Sierra Club](#), 427 U.S. 390, 410 n.21 (1976). In the oil and gas leasing context, this means that the Forest Service must assess the environmental impacts of reasonably foreseeable post-leasing oil and gas development before any leases are issued. [See Pennaco Energy, Inc. v. U.S. Department of the](#)

Interior, No. 03-8602, 2004 WL 1776013 (10th Cir. Aug. 10, 2004); Conner v. Burford, 848 F.2d 1441 (9th Cir. 1988); Bob Marshall Alliance v. Hodel, 852 F.2d 1223 (9th Cir. 1988); Sierra Club v. Peterson, 717 F.2d at 1409; Colorado Env'tl. Coalition, 149 I.B.L.A. 154 (1999). Here the Forest Service apparently seeks to satisfy its NEPA obligations through reliance on a series of Environmental Assessments and Findings of No Significant Impact issued from 1991 to 1993, as reviewed by a February 2004 Supplemental Information Report that was never circulated to the public. See Supplemental Information Report (Feb. 25, 2004) (“SIR”), at 1. The analyses contained in these documents fail to satisfy NEPA’s “hard look” requirement in connection with the proposed leasing.<sup>6</sup>

#### A. Air Quality

The Forest Service has failed to take a “hard look” at the likely air quality impacts of the proposed leasing. Oil and gas development as a result of the proposed leasing threatens a variety of air quality impacts, including emission of numerous pollutants and reductions of visibility in Class I airsheds including Grand Teton National Park and nationally renowned wilderness areas in the Greater Yellowstone Ecosystem. Section 165(d) of the Clean Air Act imposes on the Forest Service, as a Federal Land Manager, “an affirmative responsibility to protect the air quality related values (including visibility) of any such lands within a class I area.” 42 U.S.C. § 7475(d)(2)(B). In addition, NEPA requires the Forest Service to determine whether the cumulative impact of development resulting from the proposed leasing, together with other existing and reasonably foreseeable oil and gas development, threatens to harm visibility in Class I airsheds. See 40 C.F.R. § 1508.7. Here, however, the Forest Service has not undertaken the analysis that is necessary to determine the level of impact to Class I airsheds. Instead, the Forest Service in its SIR for the proposed leasing asserted that “the impacts to air quality could be demonstrated to not have a significant impact on air quality by tiering the discussions to the Pinedale Anticline EIS.” SIR at 3; see also id. at 5.

This is wrong. The Forest Service may not rely on the Pinedale Anticline EIS to satisfy its NEPA obligations concerning air quality impacts of the proposed leasing. The Pinedale Anticline EIS is a NEPA document prepared by the BLM in connection with a proposed 700-well oil and gas development on 900 well pads in Sublette County, Wyoming. While the Forest Service acknowledged that the proposed National Forest leasing is expected to lead to 90 wells beyond those authorized in the Pinedale Anticline project, it claimed that “[t]he Pinedale Anticline Draft EIS included the 90 wells for the nine Management Areas [involved in the proposed leasing] in its air quality analysis, and no significant impacts were disclosed.” Id. at 5; see also Memo from Terry Svalberg to Greg W. Clark, et al. (Feb. 6, 2004), at 2, 3 (Supplemental Information SI-3) (same). However, as set forth below, the Pinedale Anticline Draft EIS did not evaluate the 90 wells that the Forest Service has projected to result from the proposed leasing. Moreover, the Pinedale Anticline EIS’s assessment of reasonably foreseeable development in the area surrounding the proposed leasing is already outdated. Further,

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<sup>6</sup> Although the following analysis focuses on the Forest Service’s failure to comply with NEPA, these failures are equally attributable to the Bureau of Land Management, which must make its own discretionary determination whether to lease in the Bridger-Teton National Forest, and, if so, under what conditions. See 43 C.F.R. § 3101.7-2(a), (b).

developments posing air quality impacts to Class I airsheds are not geographically limited to the area addressed in the Pinedale Anticline EIS, as the Forest Service appears to believe. Accordingly, the Forest Service's reliance on the Pinedale Anticline EIS is misplaced.<sup>7</sup>

First, contrary to the SIR's assertion, the Pinedale Anticline EIS did not analyze the air quality impacts of the 90 wells anticipated due to the proposed leasing in Management Areas 12, 22, 23, 24, 25, 26, 31, 32 and 49. The Pinedale Anticline EIS, as well as the BLM Air Emissions Inventory upon which the EIS's air quality analysis is based, did not consider any wells resulting from the proposed leasing in these nine management areas. As the EIS makes clear, its sole consideration of cumulative impacts from reasonably foreseeable oil and gas development in the Bridger-Teton National Forest focused on Management Areas 21 and 72, not Management Areas 12, 22, 23, 24, 25, 26, 31, 32 and 49 where leasing is proposed. Moreover, the EIS anticipated a total of 20 wells in these two areas, not the 90 wells expected to result from the proposed leasing. The Pinedale Anticline EIS states:

Reasonably foreseeable development on the Bridger-Teton National Forest in areas adjacent to the Pinedale Field Area would occur in Management Areas (MA) 21 (Hoback Basin) and 72 (Upper Green River) (see Figure 5-1). BLM (1998d) estimates that 10 wells could be drilled in each of these two MAs (assuming the USFS allows access and leasing within the MAs) in the next 10 to 15 years.

BLM, Draft EIS for the Pinedale Anticline Oil and Gas Exploration and Development Project (Nov. 1999) ("Pinedale Anticline EIS"), at 5-4 ([Exhibit 12](#)); see also id. at 5-2 (Figure 5-1 depicting anticipated development in MAs 21 and 72), 5-6 (Table 5-2 listing only MAs 21 and 72 as Bridger-Teton National Forest areas included in reasonably foreseeable oil and gas development projects located on "BLM Pinedale Field Office Area and Adjacent USFS Lands"); BLM, Air Emissions Inventory for the Pinedale Anticline Oil and Gas Exploration and Development Project (June 1999), at 24 (Figure 3-2 also depicting projected development in MAs 21 and 72 (labeled as areas A and B)) ([Exhibit 13](#)).

Nowhere did the Pinedale Anticline EIS address the 90 wells that the Forest Service anticipates in MAs 12, 22, 23, 24, 25, 26, 31, 32 and 49 as a result of the proposed leasing. Thus, the SIR is wrong in asserting that "the 90 wells authorized in the nine Management Areas have undergone analysis and have shown no significant environmental impact to air quality." SIR at 5. In fact, there has never been any analysis of air quality impacts from the 90 wells that are projected to result from the proposed leasing, much less any determination that those wells would not significantly impact air quality alone or in combination with other existing and reasonably foreseeable development affecting Class I airsheds. The Forest Service's attempt to "tier to" the Pinedale Anticline EIS in authorizing the proposed leasing is therefore improper.

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<sup>7</sup> The Forest Service's projection that no more than 90 wells will be developed on the 157,658 acres of proposed leasing appears highly suspect in light of the rampant oil and gas development occurring east of the proposed leasing area in the BLM Pinedale Resource Management Area.

Second, the Forest Service may not rely on the Pinedale Anticline EIS to support the proposed leasing because the reasonably foreseeable development scenario utilized in that EIS is already badly outdated. The reasonably foreseeable development scenario utilized in the Pinedale Anticline EIS fails to encompass even the amount of oil and gas development that already exists today in the area surrounding the proposed leasing, much less to properly consider reasonably foreseeable future development in this area. The Pinedale Anticline EIS concluded that “[r]easonably foreseeable development over the next 10 to 15 years in the RMP [i.e., Pinedale Resource Management Plan] area is projected to be 1,944 new and/or replacement producing oil and gas wells.” Pinedale Anticline EIS at 5-4 ([Ex. 12](#)). However, as of the end of July 2004, there were 2,393 oil and gas wells in Sublette County, Wyoming – and Sublette County represents only a portion of the area considered in the Pinedale Anticline EIS’ reasonably foreseeable development scenario. See Data from Wyoming Oil and Gas Conservation Commission ([Exhibit 14](#)). Thus, the Pinedale Anticline EIS’ reasonably foreseeable development scenario of 1,944 new and/or replacement wells has already been exceeded by 449 wells based on already existing development in Sublette County alone.<sup>8</sup>

The Forest Service’s reliance on the Pinedale Anticline EIS is even more illegitimate in light of current reasonably foreseeable future development projections for the Pinedale Resource Management Plan area, which have dramatically outpaced the development foreseen at the time of the EIS. The BLM made clear in January 2003 that its current projections for the Pinedale Resource Management Plan area call for almost 6,900 new wells to be drilled in the area through the year 2020. See BLM, Management Situation Analysis, Pinedale Resource Management Plan, Table 4.0-1 (Jan. 2003) ([Exhibit 15](#)). This level of currently foreseeable development represents more than three times the amount of foreseeable development analyzed five years ago in the Pinedale Anticline EIS – and, as discussed, the foreseeable development analyzed in the Pinedale Anticline EIS has already been exceeded by existing development alone. A legitimate NEPA analysis of cumulative impacts to Class I airsheds must consider the current level of anticipated oil and gas development, not outdated projections from five years ago.

In this regard, even the amount of development anticipated in the Pinedale Anticline EIS threatened to impact visibility in Class I airsheds at the 0.5 deciview level, with the highest level of visibility impacts occurring in the Bridger and Fitzpatrick Wilderness Areas. See Pinedale Anticline EIS at 5-17 ([Ex. 12](#)). Impacts at the 0.5 deciview level may be detected by the human eye. See id. at 5-20 ([Ex. 12](#)). At the time of the Pinedale Anticline EIS, the Forest Service determined that such visibility impacts were “within an acceptable range,” especially when considered in light of emissions reductions at Ultra Petroleum’s Naughton power plant. See id. at 5-20 ([Ex. 12](#)). However, neither the BLM nor the Forest Service has ever considered whether visibility impacts to these Class I airsheds would remain “acceptable” if the 90 wells anticipated to result from the proposed leasing were added to the current level of oil and gas development in the neighboring Pinedale Resource Management Area – which includes 2,393 wells in Sublette County alone – and the 6,900 wells reasonably anticipated in that area through the year 2020. NEPA demands such an analysis. See 40 C.F.R. § 1508.7 (requiring agencies to consider “the

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<sup>8</sup> The total of 2,393 wells includes 2,230 completed wells and 163 “spuds,” meaning a well for which drilling has been approved and has begun.

incremental impact of the action when added to other past, present, and reasonably foreseeable future actions”).

Third, the Forest Service may not confine its consideration of cumulative air quality impacts to developments within the Pinedale Resource Management Area in any event. The Class I airsheds that are threatened by the proposed leasing also face air quality impacts from oil and gas development in areas outside the Pinedale Resource Management Area. For example, the BLM’s January 2003 Final EIS for the Powder River Basin Oil and Gas Project, which anticipates 51,000 new wells in eastern Wyoming, demonstrated significant direct and cumulative impacts to air quality in Class I airsheds that are also threatened by development resulting from the proposed leasing, including the Bridger and Fitzpatrick Wilderness Areas. See BLM, Final EIS and Proposed Plan Amendment for the Powder River Basin Oil and Gas Project, Vol. II, at 4-386 to 4-392 (Jan. 2003) ([Exhibit 16](#)); see also *id.*, Vol. III, App. F (addressing air quality) ([Exhibit 17](#)). NEPA requires the Forest Service to consider the incremental air quality impact of the 90 wells expected to result from the proposed leasing, when added to all existing and reasonably foreseeable development – including the Powder River Basin development – that is also impacting air quality in the Bridger and Fitzpatrick Wilderness Areas and other affected Class I airsheds. See 40 C.F.R. § 1508.7. Otherwise, the Forest Service has no way to determine whether the development anticipated as a result of the proposed leasing will represent the “straw that breaks the camel’s back” for air quality related values in these Class I airsheds. The Forest Service has failed to prepare any such analysis. The Forest Service must consider the impacts on the air quality of wilderness areas in the Greater Yellowstone Ecosystem, the premiere wildland ecosystem remaining in the lower-48 United States, before authorizing the proposed leasing.<sup>9</sup>

## **B. Wildlife Impacts**

The Forest Service also has failed to take a “hard look” at the wildlife impacts of the proposed leasing. The Forest Service has never addressed the consequences of the proposed leasing for species, such as the grizzly bear and gray wolf, whose presence has only recently been documented in the affected management areas. Nor has the Forest Service ever addressed the consequences of leasing for the Canada lynx, whose only known population center in the Greater Yellowstone Ecosystem exists in the Wyoming Range where the proposed leasing will occur.

Instead, the Forest Service has addressed these species only in the SIR and Supplemental Biological Assessment for the proposed leasing. However, these documents fail to examine the

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<sup>9</sup> In comments reported in the Jackson Hole media, a Bridger-Teton National Forest official sought to justify the Forest Service’s failure to consider the cumulative impacts of the proposed leasing in conjunction with oil and gas development on neighboring BLM lands by asserting that “[w]e have no control over those lands and what occurs out there.” Huntington, *supra* (Ex. 1). However, NEPA requires the Forest Service to study “the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions.” 40 C.F.R. § 1508.7 (emphasis added).

likely impacts on wildlife from reasonably foreseeable post-leasing development that will occur on the proposed leases. Instead, they limit their cursory analysis to “just the leasing portion” of the oil and gas development process, which the Supplemental Biological Assessment defines as a process “for the potential purchaser reviewing maps, field surveys and offering bids on areas that they will drill for oil and gas.” BA at 5, 7. In other words, the analysis in the SIR and Supplemental Biological Assessment makes no effort to examine the impacts of oil and gas drilling and extraction that will result directly from the proposed leasing, nor does it offer any basis for the Forest Service to determine whether additional stipulations are necessary to avoid harms to wildlife in light of that likely development. Indeed, the Supplemental Biological Assessment for the proposed leasing devotes far more attention to impacts on grizzly bears from sheep and cattle grazing in their habitat than it does to impacts from oil and gas development that would be authorized pursuant to the Forest Service’s leasing decision. See id. at 28-29.

The Forest Service’s failure to consider impacts of likely post-leasing development on the proposed leases is particularly insupportable in light of the fact that the agency has already developed projections indicating that 90 oil and gas wells will result from the proposed leasing. See BA at 7-11. Neither the SIR nor the Supplemental Biological Assessment even attempted to determine the likely impacts that these projected 90 wells and their attendant roads, drill pads, and human activity will have on the grizzly bear, the gray wolf, the Canada lynx, or other species. Given that the Forest Service anticipates well spacing of one well per 640 acres, these 90 projected wells represent oil and gas development spreading across as much as 57,600 acres of wildlife habitat in the affected management areas – which, in turn, neighbor BLM lands that are themselves subject to widespread existing and anticipated oil and gas development involving roads, well pads, pipelines, and other infrastructure. The Forest Service has violated NEPA by failing to consider the probable direct, indirect, and cumulative consequences of this development on wildlife species that depend on the Greater Yellowstone Ecosystem for their continued existence.

The Forest Service’s failure to conduct required analysis of wildlife impacts is even more stark when the SIR and Supplemental Biological Assessment are compared to the recent environmental analysis conducted by the Forest Service in the FEIS for oil and gas leasing in Bridger-Teton National Forest Management Areas 21, 45, 71 and 72. That analysis, while hardly exhaustive, at least attempted to examine the likely impacts on affected wildlife species of projected post-leasing development in the four affected management areas. The FEIS analysis concluded, for example, that under one leasing alternative “[t]he land occupied by roads, well pads, and structures” would represent “a direct loss of approximately 1331 ac. of wildlife habitat within the assessment area,” and proceeded to discuss the impacts of this loss on species including the grizzly bear, gray wolf, and lynx. FEIS at 3-88; see generally id. at 3-82 to 3-98 (Ex. 3). The Forest Service has failed to conduct any such analysis in connection with the proposed leasing in Management Areas 12, 22, 23, 24, 25, 26, 31, 32 and 49, despite the fact that the agency has already formulated development projections for such leasing. The Forest Service’s approach to environmental analysis of the proposed leasing is thus entirely inconsistent

with its own recent approach to analysis of leasing in Management Areas 21, 45, 71 and 72. For this reason too, the Forest Service violated NEPA.<sup>10</sup>

### C. Reasonably Foreseeable Coalbed Methane Development

The Forest Service's consent to leasing also violates NEPA because the Forest Service has not updated its reasonably foreseeable development ("RFD") scenario to reflect new information concerning anticipated development on the National Forest lands to be leased. The Forest Service's SIR claims that "[t]he Bureau of Land Management on September 18, 2003 reviewed past assumptions used in the original RFD and determined that the assumptions made in the analysis are still accurate and can be used to revalidate the NEPA decisions for oil and gas leasing." SIR at 5. This is wrong. In fact, the BLM did not uniformly approve continued reliance on the existing RFD scenario for the Management Areas where leasing is proposed. To the contrary, the BLM stated that "most of the assumptions made in the analysis we received are still accurate and can be used to revalidate your NEPA decisions for oil and gas leasing." Letter from Asghar Shariff to Brent Larson (Sep. 18, 2003) (emphasis added) ([Exhibit 18](#)). Most is not all.

Here the BLM specifically pointed out that the Forest Service has undertaken "no discussion of the potential for future coalbed gas related activity." Id. ([Ex. 18](#)). This omission from the Forest Service's NEPA analysis is important because "[t]he U.S. Geological Survey has recently published data indicating that a potential coalbed gas resource lies within some of the subject review area. That potential resource appears to lie in the eastern-most parts of management areas 22, 23, 24, 25, and 26." Id. ([Ex. 18](#)). The prospect of coalbed methane development in these areas is very real: The BLM is currently considering an industry proposal to drill as many as 210 coalbed methane wells directly adjacent to the Bridger-Teton National Forest in the Riley Ridge-South Piney Creek area, near National Forest lands proposed for leasing in Management Area 26. See BLM, Scoping Notice, South Piney Natural Gas Development Project (Oct. 2002) ([Exhibit 19](#)).

The impacts of coalbed methane development are significantly different from those of traditional oil and gas development, in particular because coalbed methane development requires the pumping and disposal of large amounts of groundwater from underground aquifers. See Wyoming Outdoor Council, 156 I.B.L.A. 347, 358 (2002) (finding, inter alia, that "the magnitude of water production from [coalbed methane] extraction ... creates unique problems" not addressed in analysis of conventional oil and gas development), reconsideration denied, 157

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<sup>10</sup> The Forest Service's apparent attempt to rely upon the SIR and Supplemental Biological Assessment to satisfy its NEPA obligations with respect to wildlife impacts is also flawed because neither constitutes a NEPA document, and neither was announced or circulated to the public. See Pennaco Energy, No. 03-8062, 2004 WL 1776013, at \*12 (rejecting agency's attempt to comply with NEPA solely through creation of document that merely reviewed existing environmental analysis); 40 C.F.R. § 1506.6 ("Agencies shall ... [m]ake diligent efforts to involve the public in preparing and implementing their NEPA procedures[,] ... [p]rovide public notice of ... the availability of environmental documents so as to inform those persons ... who may be interested or affected[,] [and] ... [s]olicit appropriate information from the public.").

I.B.L.A. 259 (2002). The Forest Service must study the impacts of coalbed methane development in the Bridger-Teton National Forest – including the potentially severe impacts on water and associated plants and fish and wildlife species – before consenting to the proposed leasing. See Pennaco Energy, Inc., No. 03-8602, 2004 WL 1776013, at \*7 to \*12 (affirming requirement for NEPA analysis of probable coalbed methane development impacts before lease issuance).

#### **IV. THE CONSENT TO LEASING VIOLATES THE ENDANGERED SPECIES ACT**

For the same reasons that the Forest Service's failure to consider the impacts of post-leasing development on wildlife species such as the grizzly bear and lynx violates NEPA, this failure equally violates the Endangered Species Act ("ESA"), 16 U.S.C. § 1536(a)(2). Specifically, the Forest Service's failure in the Supplemental Biological Assessment to consider the wildlife impacts of projected post-leasing development violates the ESA's requirement for the Forest Service to "use the best scientific and commercial data available" in its biological assessments. Id.; see also Conner v. Burford, 848 F.2d at 1451-58 (requiring consideration of likely post-leasing development in ESA analysis of oil and gas leasing impacts). Further, neither the Forest Service's SIR for the proposed leasing nor your April 8, 2004 letter consenting to the proposed leasing offers any indication that the Forest Service has obtained a written concurrence from the U.S. Fish and Wildlife Service endorsing the Supplemental Biological Assessment's conclusion that the proposed leasing will have no effect on listed species. Absent such a written concurrence, the Forest Service's consent to leasing in reliance on the Supplemental Biological Assessment violates the ESA. See 50 C.F.R. § 402.14(b)(1); see also id. § 402.13(a). This letter provides the statutorily required 60 days notice of the Forest Service's ESA violation. See 16 U.S.C. § 1540(g)(2).

#### **V. THE CONSENT TO LEASING VIOLATES THE ROADLESS AREA CONSERVATION RULE**

Finally, the proposed leasing violates the Roadless Area Conservation Rule, 36 C.F.R. §§ 294.10 et seq. Of the 157,658 acres of National Forest land proposed for leasing, 92,018 acres are within inventoried roadless areas. Although the Forest Service has not yet provided exact acreage figures, it appears that approximately 36,000 acres of this roadless area leasing would convey rights for surface occupancy and development – including road development – on the leaseholds. See Map of Proposed Leasing in Roadless Areas ([Exhibit 20](#)).

Any such road development would violate the Roadless Area Conservation Rule. That rule prohibits road construction for oil and gas development in inventoried roadless areas except in connection with leases already in existence as of the effective date of the rule, or in connection with the renewal or extension of "a mineral lease on lands that are under lease by the Secretary of the Interior as of January 12, 2001." 36 C.F.R. § 294.12(b)(7). In other words, the Roadless Area Conservation Rule permits road construction for oil and gas development only on lands that were already under lease when the rule became effective. See Special Areas, Roadless Area Conservation, 66 Fed. Reg. 3,244, 3,256 (2001) (preamble to Roadless Area Conservation Rule explaining application to roads needed for mineral leasing). Yet here the Forest Service

apparently seeks to convey surface development rights – including the right to build roads – in inventoried roadless areas that were not under lease when the rule became effective.

In consenting to this leasing, the Forest Service appears to be relying on the decision of the Wyoming district court in Wyoming v. U.S. Department of Agriculture, 277 F. Supp. 2d 1197 (D. Wyo. 2003), which enjoined application of the Roadless Area Conservation Rule in Wyoming. However, as the Forest Service well knows, the Wyoming district court's ruling is now on appeal to the U.S. Court of Appeals for the Tenth Circuit. The proposed leasing authorizes surface development in inventoried roadless areas that would be illegal if the appeal is successful. Stay proceedings in the Tenth Circuit may be required to prevent such leasing if the Forest Service insists on moving forward.

I understand that Bridger-Teton National Forest officials have informally taken the position that any rights conveyed pursuant to the proposed leasing would become subject to the Roadless Area Conservation Rule if the Tenth Circuit ultimately reverses the Wyoming district court's decision. To avoid the necessity of Tenth Circuit stay proceedings, I ask that you clarify the Forest Service's position on this issue, including by identifying the precise legal authority that you believe would subject lease rights to the Roadless Area Conservation Rule if that rule is reinstated in Wyoming after the leases are issued. In this regard, I note that the clearest method of eliminating any conflict between the proposed leasing and the Roadless Area Conservation Rule would be to subject all inventoried roadless area leases to a NSO stipulation. I will appreciate your clarification of this issue.

## **VI. REQUEST FOR RELIEF**

For the foregoing reasons, I hereby request that you withdraw your consent to oil and gas leasing in Management Areas 12, 22, 23, 24, 25, 26, 31, 32 and 49 of the Bridger-Teton National Forest until all legal requirements for such leasing are satisfied. I also request an opportunity for myself and my clients to meet with you and Forest Service staff to discuss this matter further. Pursuant to 5 U.S.C. § 555(b), I further ask that you respond to this request as soon as possible, and, in any event, that you respond sufficiently in advance of the auction date for the proposed leases to avoid the necessity for expedited court proceedings if litigation should become necessary. See Friends of the Bow v. Thompson, 124 F.3d 1210, 1220-21 (10th Cir. 1997). I appreciate your prompt consideration of this request.

Sincerely yours,

Timothy J. Preso

cc: Dale Bosworth, Chief, U.S. Forest Service  
Carole "Kniffy" Hamilton, Supervisor, Bridger-Teton National Forest  
Bob Bennett, Wyoming State Director, Bureau of Land Management  
Ken Paur, USDA Office of General Counsel  
Margot Zallen, USDI Rocky Mountain Regional Solicitor's Office  
Mary Flanderka, Policy Analyst, Office of Wyoming Gov. Freudenthal