

**Appendix A: Converse County Oil and Gas Development Project  
Final Environmental Impact Statement Responses to Public Comments**

<b>Document ID</b>	<b>Comment ID</b>	<b>Comment</b>	<b>Response</b>
<b>W.I. Moore Ranch Company</b>			
B19F	1	This final EIS states that the companies will use between 153,000 to 203,000 barrels of water to drill each well. (Paragraph 2.2.2.4 of the Final EIS.) What may not be widely known is that the companies have to report to the Wyoming Oil and Gas Conservation Commission how much water they use to drill, frack and complete each well and the Commission makes this information publicly available on their website. I have attached a spreadsheet showing a random sampling of a well drilled, fracked and completed by each Operator in this EIS in the last two years. You will see that EOG reported using 529,000 barrels, Devon reported using 5,510,840, Chesapeake reported 1,852,566, Anadarko reported 246,409, and Northwoods reported 421,040. These numbers are exponentially larger than what the Operators have provided to the authors of the EIS to analyze. Due to the extremely large range of water usage reported to the WOGCC, it is difficult to gauge exactly how far the calculated additional water usage for Alternative B, above and beyond the water usage for Alternative A, is. However, if we give the Operators the benefit of the doubt and state they are only going to use 500,000 barrels for each well, this would result in a actual water usage of at least 2.5 times greater water usage than what was analyzed. This equates to 300,000 barrels per well, times 5,000 wells, equals 1.5 billion barrels of water usage that there was no analysis on in this EIS. Therefore, any analysis done on the numbers provided by the Operators in regards to water use is not valid and should be rejected as wholly insufficient under the NEPA requirements.	This comment seems to reference Section 2.2.2.4 Water Requirements, Supply, and Use. The BLM agrees that there is a wide range of data concerning water supply and usage. The BLM worked to confirm data that was submitted by the Operator Group (OG) was as accurate as possible. Of note is that this EIS was also written in 2015 and 2016 and the data was assembled previous to that. The BLM worked throughout the process to analyze and model water within the project area as things changed up until the issuance of the Draft Environmental Impact Statement (EIS). As added to the Final EIS based on comments received on the Draft EIS in Section 2.2.2.4, page 2-13 top of the page, "The BLM also expects that additional sources of water would be derived from water recycling and leasing of supplemental surface water (North Platte River)."
<b>Wyoming Game and Fish Department (WGFD)</b>			
S11F	1	We continue to recommend the BLM consider surface disturbance reducing measures to apply to the preferred alternative such as well pad and infrastructure reduction, linear infrastructure co-location, closed-loop drilling, consolidation of production facilities, and the application of interim and final reclamation in accordance with BLM's authority.	The BLM may consider and encourage operators to apply these best management practices (BMP), as practicable, at the APD stage. Further, many of the BMPs noted by the commenter are Required Design Features of the 2015 Wyoming Greater Sage-Grouse RMP Amendment and would be required for development within PHMA. Finally, BLM can and does require interim and final reclamation in cases where BLM maintains authority to regulate the surface impacts from federal oil and gas lease operations, i.e., federal surface and split estate situations.
S11F	2	The impact analysis for Greater sage-grouse in Chapter 4 and the cumulative effects analysis for special status terrestrial species in Chapter 5 (FEIS Section 5.3.18.3) inaccurately describes impacts associated with exception requests for seasonal stipulations in sage-grouse non-core area. The analyses indicate that more surface disturbance will occur within the two mile buffer of occupied sage-grouse leks as a result of exceptions being granted. The State's process for reviewing and granting exception requests for sage-grouse stipulations is outlined in the State of Wyoming Greater Sage-Grouse Core Area Protection Executive Order 2019-3 (EO 2019-3). Given the Department's experience with reviewing exception requests from operators on a statewide basis, the Department disagrees that additional surface disturbance	The analysis contained within the sections referenced by the commenter are based, in part, on analytical assumptions appropriate for a large-scale programmatic EIS of this nature. The actual impacts to sage grouse habitat would not be fully realized until specific proposals are submitted. At that time, exceptions to Greater Sage-Grouse TLS may be considered and granted on a case-by-case basis in conjunction with the Wyoming Game and Fish Department.

		results within the two mile buffer of occupied, non-core area leks as a result of approved seasonal stipulation exceptions.	
S11F	3	Chapter 6 Section 6.2.1 of the FEIS describes “avoidance” measures that will be applied in the CCPA consistent with the BLM Casper Field Office Resource Management Plan, the U.S. Forest Service (USFS) Thunder Basin National Grassland Land Use Plan, and sage-grouse amendments to both the BLM and USFS plans. We recommend clarifying that a 0.6 mile No Surface Occupancy buffer applies to occupied sage-grouse leks in core area (Priority Habitat Management Area), and a 0.25 mile No Surface Occupancy buffer applies to occupied sage-grouse leks in non-core area (General Habitat Management Area).	Text has been added to Section 8 of the ROD to clarify that, in accordance with the Governor's Core Area Strategy and BLM's 2015 Wyoming Greater Sage-Grouse RMPA, the 0.6 mile NSO buffer applies to leks in PHMA, and the 0.25 mile NSO buffer applies to leks in GHMA.
S11F	4	In Section 6.6.2, which describes the BLM’s general approach to wildlife mitigation, we recommend clarifying that the State of Wyoming requires (i.e., is not voluntary) compensatory mitigation for operators with state-issued permits in sage-grouse core, connectivity, winter concentration, and non-core areas when EO 2019-3 stipulations for development are exceeded or not adhered to for a site-specific development. The application of avoidance and minimization measures is required prior to consideration for compensatory mitigation.	The ROD clarifies that, although the BLM cannot require compensatory mitigation, any operator would need to adhere to the stipulations of their State of Wyoming issued APD, which would require signoff from the WGFD. If granted, the State of Wyoming's process could require compensatory mitigation for Greater Sage-Grouse.
S11F	5	Additionally, we recommend specifying that agencies of the State of Wyoming are responsible for calculating debits and credits consistent with Appendix F of EO 2019-3.	Text has been added to Section 8 of the ROD to clarify that the State of Wyoming could require compensatory mitigation for Greater Sage-Grouse, which would entail the responsibility of calculating debits and credits. No additional clarification is needed.
S11F	6	The selection of nest terminology in the FEIS is incomplete (i.e., does not include all pertinent terms), and also the terminology and definitions pertaining to raptor nests have been updated in recent years. The Department has worked closely over several years with a subgroup of the Statewide Raptor Working Group, including BLM, to develop a standardized raptor survey data sheet using standardized terminology in order to facilitate consistent data collection and ultimately conservation of these species. This subgroup was formed after the first Raptor Symposium hosted by Campbell County in 2015 to achieve the task of developing a standardized data sheet and data codes (i.e., terms and definitions) for use in the field when conducting raptor nest surveys. The data sheet, including agreed upon terms and definitions, was finalized for use in April 2020, which was several months after the BLM met with cooperating agencies for the final time in January regarding the Preliminary FEIS. We encourage the BLM and OG to use this standardized data sheet for all raptor survey efforts moving forward.	The BLM Casper Field Office was not made aware of this change prior to publication of the FEIS. However, the BLM will consider utilizing the new standardized data sheet and terminology during the implementation stage of this project.
S11F	7	We support the use of the term “occupied active” to describe nests, and recommend this term is used consistently throughout the FEIS. An “occupied active” nest status accounts for nests where a breeding attempt is made as evidenced by various conditions associated with the nest	Thank you for your comment.
S11F	8	We also recommend there is an opportunity to review and discuss annual reports produced by operators that have used stipulation relief in the CCPA (i.e., report that is required under Option 6 by August 30th annually)	Operator-submitted monitoring reports will be reviewed and discussed during the annual operational meeting as described in Appendix C of the ROD.

S11F	9	We continue to recommend that the development of an adaptive management plan begins immediately after the ROD is signed.	Please see response to comment B18F-21.
<b>US Environmental Protection Agency (EPA)</b>			
F07F	1	Key sections of the Final EIS (i.e., Chapter 4 and Appendix A) inaccurately present and apply EPA's analytical methods for comparing the air quality model results to the NAAQS for some pollutants and model scenarios (see p. 4.1-7, 4.1-10, 4.1-15). These sections state that the model results were processed in accordance with the form of the NAAQS. However, some of the model results relied upon for disclosing impacts and supporting management actions were based on an alternative approach that did not align with EPA's methods. The alternative approach averaged a subset of model results from different model years and scenarios to disclose predicted impacts in these cases. For example, this alternative approach averaged model results from one year of construction, one year of completion, and one year of production for some pollutants. Appendix A of the Final EIS states that this approach attempted to account for the expectation that the various activities will span over a 3-year period (see Appendix A, p. 3-78). This approach also attempted to represent the temporal nature of the activities (see Appendix A, p. 3-78). While these activities may not operate for extended periods of time, this alternative approach does not account for instances when these activities could occur during the same year (i.e., in a single model scenario). Further, this approach does not preserve the statistical form of the standards for comparing model results to the NAAQS.	See comment response F02 - 22 in Appendix H of the FEIS.
F07F	2	To be consistent with EPA's Guideline on Air Quality Models and additional guidance, <sup>1,2,3</sup> all of the model results disclosed in Chapter 4 should have been based on potential maximum operating conditions and preserved the form of the NAAQS. The relevance of those predicted impacts could then be assessed in context of the duration of the activity and any other factors that may influence air quality. Specifically, the assessment included in Chapter 4 should have disclosed model results that assumed a single emission profile representative of maximum operating conditions that remained constant for all model years. The analytical approach used to process the model results for comparison to the NAAQS should have also been based on an average across all the years modeled, while maintaining the form of the standards to align with EPA's methods. Doing so would capture a statistical representation of potential maximum impacts over a range of meteorological conditions. This approach would also account for the uncertainty at the project planning stage regarding how long each activity will take and how the field will be developed over the life of the project. Given that the future meteorological conditions may vary from the meteorological data used in the model, this approach would also assist in interpreting the model results because the variables represented by meteorology and emissions profiles are changed independently. This allows an understanding of the air quality impacts of the individual or combined operations without the meteorological conditions influencing the interpretation of the results. For this project, the predicted air quality impacts using this approach for specific pollutants are higher than those reported in Chapter 4 and used for management actions, where the impacts would further exceed the 1-hour NO <sub>2</sub> , 24-hour PM <sub>2.5</sub> , and 24-hour PM <sub>10</sub> NAAQS.	See comment response F02 - 22 in Appendix H of the FEIS.

F07F	3	To address the NAAQS exceedances, we continue to recommend that the applicant committed measures include consideration of Tier 4 fracturing pump engine technology, turbine generation or grid powered electric fracturing fleets, and NOx and PM reduction technology available for retrofit on Tier 2 equipment	This mitigation was not carried forward because the Operator Group has committed to use Tier 2 engines. The BLM may rely on the State of Wyoming, which is subject to oversight by the EPA, to ensure permitted activities do not exceed or violate any state or federal air quality standards under the Clean Air Act.
F07F	4	We also recommend considering setbacks from occupied structures and concentrated use areas based on the modeling results in Attachment D to the Air Quality Technical Support Document (i.e., Appendix A). These measures would reduce the elevated NO2 and PM concentrations and would have co-benefits for reducing the deposition impacts predicted in the air quality assessment.	To mitigate concerns with near-field 1-hour NO2 impacts, the Operator Group has agreed to comply with the Wyoming Oil and Gas Conservation Commission's 500-foot setback rule for well sites. Please see Table 3-1 of the ROD.
F07F	5	Finally, we encourage collaboration with private landowners, state and other federal agencies to implement the recommendations and mitigation measures (e.g., new water well setbacks) outlined in the Final EIS to protect environmental resources on federal surface acres and to the extent possible on private surface acres. Because water and other natural resources cross ownership boundaries, these measures could help to protect federally-managed lands and resources.	Thank you for your comment. The BLM will continue to collaborate with federal, state, and local agencies and other partners (including private landowners in the project area), in accordance with BLM regulations and policies, including for the management of federal oil and gas lease operations located on split estate private surface.
<b>Operator Group</b>			
B18F	1	In the ROD, BLM must recognize that no land use plan amendment option would authorize incidental take of non-eagle raptors because no land use plan amendment would authorize an oil and gas operator to initiate development within the spatial buffer of a nest that actually contains eggs, young, or an incubating raptor (i.e., an occupied active nest).	The BLM does not regulate take of MBTA-listed species, and cannot authorize incidental take of non-eagle raptors; incidental take of non-eagle raptors is not expressly proposed under any of the action alternatives being considered in the FEIS.  For further discussion of "incidental take", please see FEIS Sections 3.18.2.1 (Migratory Birds) Regulatory Background (at page 3.18-19) and 3.18.3.1 (Special Status Wildlife Species) Regulatory Background, under Federal Regulations, Endangered Species Act (at page 3.18-40).
B18F	2	BLM must revise the proposed amendment to Decision No. 4047 in the Casper Resource Management Plan (RMP) (2007) and Appendix G4. First, BLM must clarify the availability of "stipulation relief" for non-eagle raptor nests that were occupied active in the prior season and the process applicable to such nests that were previously unoccupied. Second, BLM must revise Option 6 to provide operators more flexibility to operate in spatial buffers throughout the year. Third, the process for stipulation relief under Option 6 is unclear. Fourth, the adaptive management provisions of Appendix G4 should clarify BLM's specific management objectives and direct timely finalization of the plan. Finally, BLM should use consistent references to "occupied active" nests in the ROD.  Without these clarifications, adoption of Option 6 as proposed in the PRMPA/FEIS would adversely affect the Operator Group because it may lead to development delays for actions that BLM has already analyzed and authorized and inconsistent implementation of the PRMPA over the life of the Project.  For BLM's convenience, the Operator Group's proposed revisions to Decision No. 4047 are summarized as follows:  Within the Converse County Project Area (CCPA), as delineated in the Record of	The BLM has incorporated Appendix C, Non-Eagle Raptor Timing Limitation Stipulation Relief Process, to this ROD to describe the process for how TLS reliefs are obtained. Further, language has been added in Section 3.1.3 of the ROD to clarify the requirement to develop an adaptive management plan (AMP), to include a general framework for when the AMP would be started and finished, as well as how it would inform future decisions.

		<p>Decision (ROD) for the Converse County Oil and Gas Project Environmental Impact Statement (CC EIS) dated XX/XX/XXXX, if the operator commits to implement all of the measures contained in Section 1 of RMP Appendix [G4], one timing limitation stipulation relief</p> <p>request for nests that were occupied active during the prior breeding season will be granted for a well pad and associated infrastructure for 1 year. The number of stipulation reliefs for such nests allowed for the CCPA through the 10-year development phase beginning on the signed date of the CCPA ROD will be 98. After 98 stipulation reliefs have been granted and used, additional reliefs for nests that were occupied active during the prior breeding season will only be granted upon implementation of an adaptive management plan that has been approved by BLM. This adaptive management plan will follow the guidance set forth in: "Adaptive Management: The U.S. Department of the Interior Technical Guide." For nests that were unoccupied during the prior breeding season, BLM will authorize operations within nest buffers ahead of the seasonal restriction period, or during the seasonal restriction period upon an operator's demonstration that the nest is unoccupied at the time the operator begins operations.</p>	
B18F	3	<p>The proposed language is ambiguous because it does not identify when "stipulation reliefs" will be used and if and when exceptions are available in the Project Area. To resolve these ambiguities, BLM must revise Decision No. 4047 and Appendix G4 to make several clarifications. First, Decision No. 4047 must specify that BLM will only grant "stipulation reliefs" to authorize development in the buffers of nests that were occupied active in the prior breeding season. Second and similarly, Appendix G4 must specify that its process only applies when an operator seeks one of the 98 stipulation reliefs for nests that were occupied active during the prior breeding season. Third, BLM must clarify that Decision No. 4047 would authorize development in buffers surrounding nests that were unoccupied during the prior breeding season. Fourth, BLM must clarify the difference between "stipulation reliefs" and "exceptions." Finally, BLM must revise Appendix G4 to eliminate incorrect references to "exceptions."</p>	<p>Thank you for your comment. Language has been added to Section 8 of the ROD clarifying that Appendix G4 of the FEIS incorrectly referred to "exceptions" to TLS. Rather, all uses of the word "exception" within that appendix should be replaced with "timing relief".</p> <p>Clarifying language has also been added to Appendix C of the ROD stating that, with this decision, the BLM retains the authority to grant exceptions to seasonal stipulations on a case-by-case basis, in accordance with Onshore Oil and Gas Order No. 1.</p>
B18F	4	<p>a. The RMPA Must Specify that the 98 Stipulation Reliefs are Only Available for Nests that Were Previously Occupied Active.</p> <p>The Operator Group bases its conclusion that the 98 stipulation reliefs are only available for nests that were previously occupied active on the analysis in the FEIS that explains how BLM arrived at the 98 stipulation relief threshold:  "Approximately 60 percent (298 of the 497 well pads potentially located within nest buffers) of the CCPA (6 percent BLM surface plus 54 percent split estate; see section 1.4.3) is under BLM management authority. Based on the analysis of nest use rate presented in Section 3.18.2.5 (Raptor Species subsection) only a portion of nests would be expected to be occupied at any given time. <b>Therefore, the BLM estimates that 33 percent of the 298 well pads under BLM management authority, or 98 well pads, would be expected to be located within the stipulation buffer for an occupied nest.</b>"</p> <p>FEIS at 4.18-30 (emphasis added). This analysis evidences that BLM did not intend that the 98 stipulation reliefs would apply to all nests. Rather, this analysis demonstrates that BLM would only apply these 98 stipulation reliefs to nests that had been occupied active previously, presumably during the prior breeding season. Given</p>	<p>Language has been added to Appendix C of the ROD to clarify that TLSs will only be applied to nests with a condition status other than Poor, Remnant or Destroyed.</p>

		<p>that, on average, only one-third of nests in the Project Area are occupied active any given year, FEIS at 4.18-30, and given that the finite number of stipulation reliefs (98) discourages operators from developing in nests that were occupied active the prior year, the Operator Group anticipates that BLM will infrequently grant these stipulation reliefs.</p> <p>Decision No. 4047, however, does not expressly recognize that the 98 stipulation reliefs only apply to nests that were previously occupied active and thus risks misinterpretation. Under this erroneous interpretation, the RMPA would authorize too few operations within non-eagle raptor buffers to meet the development level in the Proposed Action. The FEIS recognizes that to develop the 1,500 well pads proposed as part of the Project, the Operator Group may request approval to conduct operations within approximately 300 non-eagle raptor spatial buffers during the seasonal buffer period over the life of the Project. See FEIS at 4.18-30 (“Approximately 60 percent (298 of the 497 well pads potentially located within nest buffers) of the CCPA (6 percent BLM surface plus 54 percent split estate; see section 1.4.3) is under BLM management authority.”). Without the requested clarification, BLM potentially could apply the 98 stipulation reliefs to all nests, regardless of prior occupancy—thus only authorizing a third of the necessary operations within spatial buffers for non-eagle raptors during the seasonal buffer period. This result leaves the Operator Group without the necessary flexibility to develop in the Project Area. Not only does this result adversely affect the Operator Group, it is manifestly inconsistent with BLM’s intent to define a sound but narrow process for granting “stipulation relief” and the analysis set forth in the FEIS. See FEIS at 4.18-30.</p>	
B18F	5	<p>b. The RMPA Must Specify that Applicability of Stipulation Relief Depends on Whether a Nest was Occupied Active during the Prior Breeding Season.</p> <p>The Operator Group agrees with BLM’s preference to use the term “occupied active” nest. See FEIS at 3.18-28. Further, the Operator Group supports BLM’s definition of “occupied active” nest as “[a] nest or ledge in which eggs have been laid” and at least one of the following activities were documented: a) young were raised; b) eggs were laid; or 3) one adult was observed sitting low in the nest, presumably incubating. See id.</p> <p>The PRMPA and Appendix G4 do not, however, explain what information an operator must obtain to classify a nest as previously “occupied active” or unoccupied and to avail itself of the 98 stipulation reliefs. The Operator Group maintains that, to determine which process to follow, nest status should be based on the prior year’s survey data. Therefore, if a nest was occupied active during the prior season (for example, year 2019), an operator must follow the process in Appendix G4 to obtain one of the 98 stipulation reliefs to develop within the seasonal buffer during the following stipulation season (in this example, year 2020); the process in Appendix G4 ensures that an operator does not commence operations within the buffer of a nest that is actually occupied active. By contrast, if a nest was unoccupied during the prior season (2019), BLM will allow the operator to develop within the nest buffer during the stipulation season as long as the operator does not begin operations while the nest is occupied active.</p> <p>BLM should not require an operator to provide survey data older than the prior season to determine whether stipulation relief applies. Rather, BLM should rely on survey</p>	Please see comment response L23F-2.

		<p>data from the prior breeding season to determine occupancy. As the Operator Group detailed in its comments on the SDEIS, non-eagle raptor species in the Project Area do not exhibit high nest fidelity. See Operator Group Comments on SDEIS at 12–13.3 Therefore, evidence that a nest was occupied active or unoccupied before the preceding nest season should not determine whether one of the 98 stipulation reliefs will be used to authorize development within a nest buffer.</p> <p>Requested Change: The Operator Group maintains that BLM must make the following edits (bolded, italicized, and underlined text) to the final RMPA:      "Within the Converse County Project Area (CCPA), as delineated in the Record of Decision (ROD) for the Converse County Oil and Gas Project Environmental Impact Statement (CC EIS) dated XX/XX/XXXX, if the operator commits to implement all of the measures contained in Section 1 of RMP Appendix [G4], one timing limitation stipulation relief request for nests that were occupied active during the prior breeding season will be granted for a well pad for 1 year. The number of stipulation reliefs for such nests allowed for the CCPA through the 10-year development phase beginning on the signed date of the CCPA ROD will be 98. After 98 stipulation reliefs have been granted, additional reliefs for nests that were occupied active during the prior breeding season will only be granted upon implementation of an adaptive management plan that has been approved by BLM. This adaptive management plan will follow the guidance set forth in: "Adaptive Management: The U.S. Department of the Interior Technical Guide."</p>	
B18F	6	<p>2. BLM Must Revise Appendix G4 to Specify that Its Process Will Only be Applied to Nests that were Occupied Active During the Prior Breeding Season.</p> <p>Just as the proposed amendment to Decision No. 4047 does not specify that "stipulation reliefs" will be granted for nests that were occupied active during the prior breeding season, Appendix G4 does not explain that the process it outlines solely applies to obtain stipulation reliefs for nests that were occupied active during the prior breeding season. BLM must revise Appendix G4 to clarify that it only applies when an operator seeks stipulation relief in non-eagle raptor buffers surrounding nests that were previously occupied active. Further, BLM should define "unoccupied" nests as "not occupied active."</p> <p>Requested Changes: In the ROD, BLM must make the following edits (bolded, italicized, and underlined text) to the introductory paragraph of Appendix G4 clarifying its scope:      "This appendix presents the measures that the BLM will require an operator to implement in order to obtain relief from the timing limitation stipulation for development activities within a non-eagle raptor nest buffer for nests that were occupied active during the prior breeding season. These requirements do not apply to operations within a buffer for a non-eagle raptor nest that was unoccupied during the prior breeding season. An "unoccupied" nest is the same as a nest that was not occupied active."      Additionally, BLM must modify section C ("Reporting") on page G4-2 to state: "By August 30 of each year, any operator who has conducted development of wells within stipulation buffers surrounding non-eagle raptor nests that were occupied active during the prior breeding season <del>for non-eagle raptors</del> will submit "</p>	Please see response to comment B18F-4

B18F	7	<p>3. BLM Must Clarify the Process for Operations Near Nests that Were Unoccupied During the Prior Breeding Season.</p> <p>Because the 98 stipulations reliefs only apply to nests that were occupied active during the prior breeding season, the ROD must clarify that BLM will authorize development around nests that were unoccupied during the prior breeding season. The discussion on page 4.18-30 of the FEIS makes clear that BLM intends to authorize development around nests that were unoccupied during the prior breeding season. The proposed language to Decision Record No. 4047, however, does not explicitly state how BLM will authorize development within buffers of unoccupied nests during the seasonal restriction period. To ensure that operators do not commence operations in the buffers of nests that are currently occupied active, BLM should specify that operators either must commence operations ahead of the seasonal restriction period, or must demonstrate that the nest is currently unoccupied before commencing operations during the seasonal restriction period.</p> <p>The process in Appendix G4 to authorize development during the seasonal restriction period within buffers of nests that were occupied active during the prior breeding season confirms that no similar process applies to nests that were unoccupied during the prior breeding season. Therefore, an operator can operate within the buffers around nests that were previously unoccupied. Notably, the Operator Group recognizes that, in the unlikely event a previously unoccupied nest becomes occupied active, the operator cannot commence operations while the nest is occupied active. Therefore, for nests that were unoccupied during the prior year, an operator can begin operations within the nest buffer before the start of the breeding season. Alternatively, an operator can begin operations within the nest buffer during the breeding season upon a demonstration (through a nest check) that the nest is unoccupied at the time the operator begins operations.</p> <p>The Operator Group maintains that the operator may commence activities with advance notice to BLM.</p> <p>Requested Change: The Operator Group maintains that BLM add the following language to the end of the modification to Decision Record No. 4047:      "For nests that were unoccupied during the prior breeding season, BLM will authorize operations within nest buffers ahead of the seasonal restriction period, or during the seasonal restriction period upon an operator's demonstration that the nest is unoccupied at the time the operator begins operations."</p>	Please see response to comment B18F-4
B18F	8	<p>4. The ROD Must Distinguish between "Stipulation Reliefs" and "Exceptions."</p> <p>In the PRMPA, BLM introduces a new mechanism to address non-eagle raptor timing limitation stipulations attached as conditions of approval (COAs) to applications for permit to drill (APDs)—"stipulation reliefs"—but BLM does not clarify how stipulation reliefs are different than exceptions.</p> <p>From the PRMPA, the Operator Group infers that stipulation reliefs function the same as exceptions but, unlike exceptions, stipulation reliefs are automatic authorizations. Further, the process and criteria to obtain stipulation reliefs are different. The process and criteria to obtain exceptions are outlined in Appendix F of the Casper RMP, whereas the process and criteria to obtain stipulation reliefs are outlined in Appendix</p>	<p>The commenter's inference that the stipulation relief process functions similarly to the BLM's exception process is partially correct. However, the two processes are separate and the relief process requires that additional mitigation and monitoring measures be applied in order to be eligible to use automatic instances of TLS relief.</p> <p>Language has been added in Appendix C of the ROD to clarify that the BLM retains the authority to grant exceptions on a case-by-case basis.</p>



		<p>G4 of the PRMPA FEIS. The result, however, is the same – a timing limitation stipulation does not apply for one non-eagle raptor breeding season.</p> <p>Requested Change: In the ROD, BLM should clarify that stipulation reliefs function the same as exceptions because both relieve an operator from a non-eagle raptor timing limitation stipulation for one non-eagle raptor breeding season.</p>	
B18F	9	<p>5. BLM Must Revise Appendix G4 to Remove References to “Exceptions.” Although Appendix G4 appears to outline the process for stipulation reliefs, and not exceptions, Appendix G4 contains references to “exceptions.” The Operator Group understands that Appendix G4 should instead refer to “stipulation reliefs.” The references to “exceptions” compound the ambiguities as to when stipulation relief and exceptions apply and which process and criteria apply to each. BLM must revise Appendix G4 to use consistent terminology to avoid confusion as to which process applies to which authorization.</p> <p>Requested Changes: In the following statements in Appendix G4, the term “exception” should be replaced with “stipulation relief”:</p> <p>Ø “As discussed in the CCPA Final EIS, the BLM estimated that 98 exceptions stipulation reliefs or 6.5 percent of the proposed 1,500 well pads could be requested by operators for which the BLM would grant stipulation relief for non-eagle raptor nest buffers.”</p> <p>Ø The following commitments will be included in an application for permit to drill (APD) from the operator to allow for automatic exceptions stipulation reliefs:</p> <p>Ø Any operator(s) requesting to use an automatic exception stipulation relief will support and assist in the development of monitoring and studies of non-eagle raptors in the Powder River Basin to inform the framework and possible decision on an Adaptive Management Strategy referred to in Section 2 of this document.</p>	<p>The commenter is correct. Text has been added to Section 8 of the ROD to clarify that Appendix G4 of the FEIS incorrectly referred to "exceptions" to TLS, and that all references to exception within that appendix should be replaced with "timing relief".</p>
B18F	10	<p>6. BLM Must Specify If and When Exceptions Will be Applied to Non-Eagle Raptor Timing Limitation Stipulations within the Project Area.</p> <p>Decision Record No. 4047 does not specify whether BLM may grant exceptions to non-eagle raptor timing limitation stipulations within the Project Area in accordance with Appendix F of the Casper RMP (2007). If BLM will no longer grant exceptions to non-eagle raptor timing limitation stipulations in the Project Area, BLM should include an explicit statement of this intent in the ROD. If BLM intends to grant exceptions to non-eagle raptor timing limitation stipulations in the Project Area, then BLM should specifically identify the circumstances in which it will consider, and may grant, such exceptions.</p>	<p>Language has been added to the ROD to clarify that the BLM will retain the authority to grant exceptions on a case-by-case basis. Specifically, the Approved RMPA (Decision #4047) reads that "the authorized officer, on a case-by-case basis, may grant exceptions to seasonal stipulations in addition to the timing reliefs specific to the Converse County Project Area...". Appendix C of the ROD also reiterates that the exception process is retained.</p>
B18F	11	<p>1. BLM Should Revise Appendix G4 to Allow Operators to Begin Operations During the Seasonal Buffer Period When Nests are Currently Unoccupied.</p> <p>BLM must revise Option 6 to afford flexibility to operators to begin operations during the seasonal buffer period around nests that were occupied active during the prior breeding season. To receive relief from stipulations around such nests, Option 6 as drafted requires that operators “[c]ommence oil and gas development within the non-eagle raptor nest spatial buffer 30 days in advance of the seasonal buffer period documented in the APD conditions of approval . . . .” See FEIS at G4-2. Because the seasonal buffer period for most non-eagle raptors begins February 1, this requirement results in an operational start date no later than January 2.</p>	<p>Thank you for your comment. If oil and gas operators are not able to commence operations 30 days prior to the start of the TLS for non-eagle raptors, the exception process is available to them.</p>

		<p>This requirement is unnecessarily inflexible, inconsistent with the Operator Group’s proposed action for year-round drilling, and inconsistent with BLM’s intent to authorize year-round drilling under certain, well-considered conditions. This requirement is also inconsistent with analysis in the DEIS and FEIS that supports allowing operations to commence during the seasonal breeding season if the operator can demonstrate that the nest is currently unoccupied. For numerous reasons, including weather conditions, availability of equipment, and drill rig schedules, operators may be unable to commence operations in January in order to receive stipulation relief, which would undermine the FEIS’s stated intent to accommodate year-round development under limited and prescribed circumstances. Further, no conservation reason exists to prohibit operators from beginning operations during the seasonal buffer period if a nest is not being used by a non-eagle raptor, particularly given the low rate of occupied active nests in the Project Area (33 percent). BLM should instead revise Appendix G4 to authorize operators to commence operations any time during the breeding season if current nest monitoring demonstrates that a nest does not contain young, eggs, or an adult sitting low in the nest, presumably incubating, (i.e., an “occupied active” nest) prior to commencement of operations.</p> <p>Requested Change: BLM should revise the third bullet point on page G4-2 to delete the following sentence: “Commence oil and gas development within the non-eagle raptor nest spatial buffer 30 days in advance of the seasonal buffer period documented in the APD conditions of approval (COA) and maintain continuous operations throughout that seasonal buffer period.” In its place, BLM should add the following statement: “BLM will allow the operator to commence operations during the seasonal buffer period only when the operator can demonstrate, during the 7 days prior to commencement of operations, that the nest does not contain young, eggs, or an adult sitting low in the nest, presumably incubating.”</p>	
B18F	12	<p>2. BLM Should Revise Appendix G4 to Allow Operators to Resume Operations After a Break of More than 72 Hours.</p> <p>BLM must revise Option 6 to afford operators flexibility to resume operations after a break of more than 72 hours. Appendix G4 specifies that “[i]f a break in development operations occurs for more than 72 hours, all further development will cease until cessation of the seasonal buffer period referenced in the APD COA.” FEIS at G4-2.</p> <p>This limitation is overly restrictive and is based on no discernible conservation reason if a non-eagle raptor does not become “occupied active” during the break in operations. Further, the term “development operations” is not defined or used elsewhere in Appendix G4. BLM should revise Appendix G4 to allow operators to resume operations after a break of more than 72 hours if nest monitoring shows the nest does not contain young, eggs, or an adult sitting low in the nest, presumably incubating, prior to commencement of operations.</p> <p>Requested Change: BLM should revise page G4-2 as follows:      "If a break in development operations occurs for more than 72 hours and the operator can demonstrate the nest does not contain young, eggs, or an adult sitting low in the nest, presumably incubating, BLM will verbally allow the operator to resume operations, <del>all further development will cease until cessation of the seasonal buffer period referenced in the APD COA.</del>"</p>	<p>The BLM acknowledges that certain situations necessitating a break in operations may arise that are outside the operator's control (e.g., inclement weather) and may not warrant cessation of operations for the entire TLS season. Therefore, this Applicant Committed Measure is revised in Table 3-1 of the ROD, and would be included as a Condition of Approval to a federal APD as follows: "If a break in surface operations and occupancy occurs for more than 72 hours, all further federal oil and gas lease construction, drilling, and non-production/maintenance operations at the pad(s) will cease until the end of the TLS period referenced in the APD COA unless a nest check submitted to the BLM confirms that the nest is not occupied and grants approval to re-initiate operations under the federal APD. In the event that a raptor or raptors occupy a nest while operations are occurring, the continuous operations need not cease".</p>

B18F	13	<p>1. The ROD Should Specify that BLM May Apply Stipulation Reliefs to Already-Approved APDs. The ROD should specify that BLM may apply the stipulation reliefs authorized by Decision No. 4047 to already-approved APDs that contain a non-eagle timing limitation stipulation COA. The stipulation relief process should not be limited to future APD approvals. Requested Change: BLM should include language in the ROD specifying that the stipulation reliefs authorized by Decision No. 4047 may be applied to APDs approved before issuance of the ROD to grant relief from COAs attached to these APDs.</p>	Thank you for your comment. The BLM believes this has been clarified with the addition of Appendix C in the ROD.
B18F	14	<p>2. BLM Must Revise Decision No. 4047 to Specify that the Use, Rather than the Grant, of 98 Stipulation Reliefs Will Trigger Adaptive Management. BLM must revise the proposed amendment to Decision No. 4047 associated with Option 6 to specify that the use, rather than the grant, of 98 stipulation reliefs for occupied active nests will trigger adaptive management. The PRMPA for Option 6 states, “After 98 stipulation reliefs have been granted, additional reliefs will only be granted upon implementation of an adaptive management plan that has been approved by BLM.” FEIS at 2-37 (emphasis added). Conceivably, however, an operator may not use a stipulation relief because of unanticipated changes in drilling schedules. An unused stipulation relief should not be counted against the 98 reliefs or trigger adaptive management. Instead, BLM should “credit” the unused stipulation relief toward the stipulation reliefs available for future use, without triggering adaptive management. Requested Change: In the ROD, BLM should revise Decision No. 4047 to state: “After 98 stipulation reliefs have been granted and used for such <del>occupied active</del> nests</p>	The language in the Approved RMPA (Decision #4047) replaces the word "grant" with "allowed" since the use of instances of TLS relief are automatic, as long as Applicant Committed Measures are applied. Further, Appendix C has been included in the ROD to clarify the process for which instances of TLS relief are allowed. This process includes multiple opportunities to verify if and when an instance of relief has been used.
B18F	15	<p>3. BLM Must Revise Appendix G4 to Require an Operational Meeting After the Nesting Season for Non-Eagle Raptors, Rather than Before. BLM must revise Appendix G4 to provide that operators will participate in an operational meeting after the non-eagle raptor breeding season, rather than before. Currently, Appendix G4 provides that “BLM will conduct an operational meeting before the raptor nesting season as development of the project progresses” and that the meeting “will include all operators seeking to use stipulation relief.” FEIS at G4-2. At this meeting, BLM will provide “verbal approval” of “activities within non-eagle raptor buffer(s) during the forthcoming raptor season.” Id. The proposal to hold an operational meeting before the non-eagle raptor nesting season, rather than after, at which BLM will provide “verbal approval” of upcoming activities, presents a host of problems. First, because relief is “automatic,” see FEIS at G4-2, no need exists for the meeting to be held ahead of the non-eagle raptor nesting season. Second, Appendix G4 does not allow a pathway for BLM to consider relief for well pads where the need arises after the operational meeting. Finally, the proposal that BLM would provide “verbal approval” presents questions of process. Can BLM second-guess an operator’s siting decision presented at the meeting? Notably, Appendix G4 does not specify whether BLM can verbally disapprove an operator’s request for timing stipulation relief, suggesting that BLM cannot second-guess a siting decision when an operator has complied with the process and criteria in Appendix G4. Additionally, with respect to timing of APD submittals,</p>	Appendix C of the ROD clarifies that the annual operator meeting will occur each fall, post-TLS season. The BLM will invite all operators that used a TLS relief in the previous season, as well as any operator that has a non-eagle raptor TLS applied to their federal APD(s). The purpose of this meeting is not to approve or deny the use of TLS relief. Further, the BLM recognizes that it cannot compel operators to disclose confidential information. Rather, the focus of these operational meetings will be to review operators' activities in non-eagle raptor buffers the previous TLS season, raptor mitigations being implemented, raptor studies being conducted, and any monitoring data collected.

		<p>must operators wait for BLM’s verbal approval to submit an APD for activities within non-eagle raptor buffers, or must an APD be submitted before this meeting? Alternatively, Appendix G4 is unclear whether BLM will approve stipulation relief via a sundry notice and, if so, whether an operator must submit the sundry notice before or after the meeting.</p> <p>To avoid these issues, the Operator Group maintains that BLM must revise Appendix G4 to provide that the operational meeting will be held after the non-eagle raptor nesting season, rather than before. Alternatively, Appendix G4 should include a clear statement that BLM cannot disapprove stipulation relief if the requirements of Appendix G4 have been met. Additionally, BLM must clarify the timing of APD submission with BLM’s verbal approval.</p> <p>Requested Change: Modify section (A) of Appendix G4 to state, “The BLM will conduct an operational meeting after the raptor nesting season . . .” Delete the last sentence of section (A).</p> <p>Alternative Requested Change: Add the following text to the end of section (A), “Meetings with BLM,” on page G4-2: “If the operator has fulfilled the requirements of Appendix G4, the operator will receive automatic relief from the timing limitation attached as a COA for an APD(s) that is approved, pending, or submitted in the future; however, the relief is granted only for the upcoming season. BLM will document the relief in its records. BLM may consider requests for relief submitted after the operational meeting.”</p>	
B18F	16	<p>4. BLM Must Revise Appendix G4 to Require Individual Operator Meetings, Rather than a Joint Operator Meeting.</p> <p>BLM’s proposal to hold joint meetings with operators before the non-eagle raptor nesting season is inappropriate and inconsistent with BLM’s obligation to protect confidential commercial and financial information. See generally 5 U.S.C. § 552(b)(4). Appendix G4 directs that, “[d]uring the meeting, operators will be required to provide information all about possible activities within non-eagle raptor buffer(s) during the forthcoming raptor nesting season.” FEIS at G4-2. Operators closely guard information about their drilling plans, priorities, and schedules, and consider this information to be proprietary and confidential. Further, disclosure of this information to competitors raises anti-trust concerns. BLM cannot compel operators to disclose this information in the presence of their competitors.</p> <p>Even if BLM adjusts the operational meeting to be held after the non-eagle raptor nesting season, rather than before, a joint operational meeting among all operators still risks disclosure of confidential information, particularly if BLM questions an operators’ future plans. For this reason, BLM should eliminate the requirement of a joint operational meeting and provide that BLM will meet with operators individually.</p> <p>Requested Change: Modify section (A) of Appendix G4 to require that BLM hold meetings with individual operators:</p> <p>The BLM will conduct <del>an</del> operational meetings <del>before</del> after the raptor nesting season as development of the project progresses. BLM will hold <del>these</del> meetings will include with <del>all</del> individual operators seeking to use stipulation relief and other entities by invitation only. Discussions will center on the operators’s activities in non-eagle raptor buffers during the prior raptor nesting season, the operator’s documentation for</p>	Please see response to comment B18F-15.

		<p>placement of future APDs and efforts to avoid these buffers, any mitigations implemented, all studies conducted and any monitoring collected for the area.</p>	
<p>B18F</p>	<p>17</p>	<p>5. BLM Must Clarify that One Stipulation Relief Can Authorize Operations Near Multiple Non-Eagle Raptor Nests.</p> <p>BLM should include text in the ROD explaining that development of a single well pad and associated infrastructure will only result in one stipulation relief, even when the well pad and associated infrastructure are overlapped by the buffers of multiple non-eagle raptor nests that were previously occupied active. Similarly, multiple non-eagle raptor nests can exist within one spatial buffer.</p> <p>The PRMPA and FEIS currently contain conflicting language regarding the number of stipulations reliefs that will be required when a well pad has the potential to overlap multiple occupied active non-eagle raptor nests. The PRMPA for Option 6 suggests that relief will be granted on a well pad basis, stating “one timing limitation stipulation relief request will be granted for a well pad for 1 year.” See FEIS at 2-37. The FEIS, however, suggests that relief will be granted on a nest basis, stating, “Under this option there is an upper limit to the number of nests for which stipulation relief would be applied.” See FEIS at 4.18-33.</p> <p>Similarly, Appendix G4 contains conflicting language regarding the number of stipulations reliefs that will be required when a well pad has the potential to overlap multiple occupied active non- eagle raptor nests. In Appendix G4, BLM explained that, for the exceptions it granted between 2014 and 2019: “There were 35 individual well pads for which stipulation relief was approved by BLM and of these, 12 had multiple nests affecting the well pad and 17 had one nest buffer affecting the well pad.” FEIS at G4-1. Yet, in Appendix G4, BLM also stated: “Based on this review, the BLM assumes a single non-eagle raptor nest would be associated with each well pad to which non-eagle raptor stipulation relief is applied.” Id. These two statements conflict.</p> <p>The ROD should clarify that, when multiple nests that were previously occupied active are within one spatial buffer, or when a well pad is within multiple buffers of nests that were occupied active, BLM can grant stipulation relief and, further, that only one stipulation relief is necessary to authorize development for a location that is overlapped by multiple buffers (one stipulation relief per pad, not per occupied active nest).</p> <p>Requested Change: In the ROD, BLM must include narrative language explaining that, when multiple occupied active non-eagle raptor nests are within a spatial buffer or when a well pad is within multiple buffers for occupied active non-eagle raptor nests, BLM can grant stipulation relief and, further, that only one stipulation relief is necessary to authorize development. Additionally, BLM should delete the statement in Appendix G4 that, “Based on this review, the BLM assumes a single non- eagle raptor nest would be associated with each well pad to which non-eagle raptor stipulation relief is applied.”</p>	<p>As stated in the Approved RMPA, "...if the operator commits to implement all of the measures contained in Appendix C of the referenced CCEIS ROD, one timing limitation stipulation relief (timing) is allowed for a single well pad for one year." The allowance of an instance of TLS relief is regardless of the number of nest buffers intersected by the well pad. No additional clarification is needed in the ROD.</p>

B18F	18	<p>6. The ROD Should Clarify that Stipulation Relief for Well Pads Encompasses the Access Road and Associated Infrastructure.</p> <p>BLM should revise Decision No. 4047 to recognize that, when BLM grants stipulation relief for a well pad, that stipulation relief includes the access road and associated infrastructure. As a result, the operator need not separately seek stipulation relief for the well pad and associated infrastructure, including access roads and other infrastructure (such as temporary water lines). Therefore, BLM must revise Decision Record No. 4047 to expressly recognize that stipulation relief for a well pad also includes the access road and associated infrastructure.</p> <p>Requested Change: BLM must revise Decision Record No. 4047 to specify that a stipulation relief for a well pad will include relief for the access road and associated infrastructure:</p> <p>"Within the Converse County Project Area (CCPA), as delineated in the Record of Decision (ROD) for the Converse County Oil and Gas Project Environmental Impact Statement (CC EIS) dated XX/XX/XXXX, if the operator commits to implement all of the measures contained in Section 1 of RMP Appendix [G4], one timing limitation stipulation relief request for nests that were occupied active during the prior breeding season will be granted for a well pad and associated infrastructure for 1 year."</p>	Please see response to comment B18F-17.
B18F	19	<p>1. Appendix G4 Should Provide More Clarity Regarding an Adaptive Management Approach.</p> <p>The Operator Group agrees with BLM’s proposal to utilize adaptive management in administration of the Project. The Council on Environmental Quality (CEQ) has recognized the benefits of agencies incorporating a model of “predict, mitigate, implement, monitor, and adapt” into NEPA decision-making. See NEPA Task Force Report to the CEQ, Modernizing NEPA Implementation 45 (2003). This approach “give[s] agencies the flexibility to address unanticipated results of project implementation to adjust decisions for practical reasons.” Id. at 48.</p> <p>The approach proposed in Option 6, with the clarifications outlined in this protest, provides an opportunity for adaptive management. First, BLM has access to, and has analyzed, substantial historical data, and is requiring the Operator Group to collect future data and support future studies. These data and studies enable BLM to verify the anticipated impacts of the management decisions in the ROD. As the FEIS notes, BLM has non-eagle raptor nesting data for the Project Area dating back to 2005. See FEIS at 3.18-28. The Operator Group has provided non-eagle raptor nest survey data from 2016 to 2018 for a portion of the Project Area. Id. Further, in order to avail itself of stipulation relief, the Operator Group must conduct raptor surveys to determine whether a nest was occupied active or unoccupied in a given year to determine whether one of the 98 stipulation reliefs apply to the nest. Moreover, Appendix G4 calls for both the development of a monitoring framework and raptor studies during the lifetime of the Project. FEIS at G4-2. The existing historical data, future data collection efforts, and raptor studies render BLM particularly poised to confirm the expected impacts of its management decisions.</p> <p>Second, the assumptions in the FEIS are appropriate for evaluation through adaptive management. The FEIS assumes that of the 298 well pads that may be sited within the buffer of non- eagle raptor nests, 98 would be expected to be located within the stipulation buffers of nests that were occupied active during the prior breeding season.</p>	Thank you for your comment. This has been clarified in the ROD.

See FEIS at 4.18-30 (“BLM estimates that 33 percent of the 298 well pads under BLM management authority, or 98 well pads, would be expected to be located within the stipulation buffer for an occupied nest.”). BLM, however, recognizes the uncertainty in its assumptions:

While the total nests impacted were quantified based on the available historic nest data, there are unknowns associated with the historic data that could change the actual number of nests impacted. The dataset used to approximate impacts was developed by multiple sources (BLM, other governmental agencies, operators, and private consultants) in multiple areas within the CCPA. There has not been a comprehensive survey for the entirety of the CCPA creating the likelihood that unidentified nests occur within the CCPA. The quantitative estimate of well pad/nest buffer impact assumed equal spacing of the proposed 1,500 well pads throughout the CCPA area. Depending upon the actual placement and spacing of well pads it may be that the number of nests impacted could increase or decrease. FEIS at 4.18-31.

Thus, the adaptive management proposed under Option 6 serves to confirm BLM’s assumption that, over the Project’s lifetime, stipulation relief will be used for only 98 well pads within the stipulation buffers of nests that were occupied active during the prior breeding season. For clarity, however, BLM should expressly tie this assumption to its conclusion that Option 6 “has the potential to adversely impact non-eagle raptor species by causing nest abandonment, reduced reproductive success, and displacement of individuals from nesting territories.” FEIS at 5-66. Further, the WEST Memorandum anticipates that impacts from the Project, as measured by forgone fledglings (individuals that would have fledged from disturbed nests, had no disturbance occurred), will be less than 2.26% and 1.61% of the ferruginous hawk population in Wyoming and the Badlands and Prairies Bird Conservation Region, respectively. See WEST Memorandum at 7–8. If and when stipulation relief is used for 98 well pads within the stipulation buffers of nests that were occupied active during the prior breeding season, adaptive management should inform the effect of future stipulation relief on region-wide non-eagle raptor populations.

The Operator Group recommends that the ROD specify that the final adaptive management plan will evaluate the presence of oil and gas operations near nests of common non-eagle raptor species in the Project Area (namely ferruginous hawks) and whether these operations result in nest abandonment, reduced reproductive success, and/or displacement of individuals from nesting territories. Further, the ROD should specify that the final adaptive management plan will evaluate whether the presence of oil and gas operations near nests that were previously occupied active and, particularly, the stipulation reliefs authorized by the ROD result in an actual, measurable population-level impacts to non-eagle raptors in the Powder River Basin.

Finally, the ROD must articulate that the 98-well pad threshold will not constitute a hard cap on the stipulation relief that BLM may authorize under the ROD over the life of the Project. Unless the studies and monitoring data described above reveal actual, measurable population-level impact to non- eagle raptors in the Powder River Basin attributable to the Project, BLM should continue to grant stipulation reliefs in excess of the 98-well pad threshold identified in Decision No. 4047.

Requested Change: Section 2 of Appendix G4 should be revised to include the following statement:

		<p>"The final Adaptive Management Plan will evaluate whether the presence of oil and gas operations near nests of common non-eagle raptor species in the Project Area (namely ferruginous hawks) results in nest abandonment, reduced reproductive success, and displacement of individuals from nesting territories. Further, the Adaptive Management Plan will evaluate whether the stipulation reliefs authorized by the ROD result in actual, measurable population-level impacts to non-eagle raptors in the Powder River Basin. Until there have been actual, measurable population-level impacts to non-eagle raptors in the Powder River Basin, BLM will continue to grant stipulation reliefs beyond the 98- well pad threshold identified in Decision No. 4047."</p>	
B18F	20	<p>2. BLM Must Revise Appendix G4 to Provide Additional Information Regarding Stakeholders.</p> <p>Appendix G4 states that BLM will invite "other pertinent entities" to participate in finalization of the adaptive management plan. The Operator Group recommends that Appendix G4 specify that BLM will invite, at a minimum, the stakeholders that have been participating in this process for the past six years, which include the U.S. Fish and Wildlife Service, Wyoming Game and Fish Department, and Wyoming Governor's Office to participate in finalization of the adaptive management plan.</p> <p>Requested Change: Section 2 of Appendix G4 should be revised to state: The operators will participate with the BLM and any other pertinent entities that the BLM invites in the development of an Adaptive Management Plan using the "Adaptive Management, The U.S. Department of the Interior Technical Guide" <a href="https://www.doi.gov/sites/doi.gov/files/migrated/ppa/upload/TechGuide.pdf">https://www.doi.gov/sites/doi.gov/files/migrated/ppa/upload/TechGuide.pdf</a>. The other entities that the BLM will invite include, at a minimum, the U.S. Fish and Wildlife Service, Wyoming Game and Fish Department, and Wyoming Governor's Office.</p>	<p>Clarification is provided in Section 3.1.3 of the ROD. The BLM will develop the AMP in close coordination with the U.S. Fish and Wildlife Service and Wyoming Game and Fish Department. The BLM will also hold a public meeting to initiate the AMP and provide a comment review period prior to approval.</p>
B18F	21	<p>3. BLM Must Revise Appendix G4 to Direct Timely Approval of the Adaptive Management Plan.</p> <p>BLM must revise Appendix G4 to specify that BLM will finalize the adaptive management plan within one year of signing the ROD and following submission of the 2021 nest survey data. The Operator Group sees a risk to development within the Project Area if BLM delays finalization of the adaptive management plan until if and when 98 stipulation reliefs are used. Further, principles of administrative efficiency require that the adaptive management plan be finalized as soon as possible, by the same BLM personnel who analyzed and authorized the Project. These personnel understand not only the current baseline conditions based on the best available data but also the purpose of, justification for, and anticipated impact of the 98-stipulation reliefs. Therefore, BLM should include a statement in Appendix G4 directing that it will complete the adaptive management plan within a year of signing the ROD and following submission of the 2021 nest survey data.</p> <p>Requested Change: BLM must revise Section 2 of Appendix G4 to add the following language: "BLM will finalize and approve the Adaptive Management Plan within a year of the date it signs the Converse County Project ROD and after submission of the 2021 nest survey data."</p>	<p>Language has been added to Section 3.1.3 of the ROD to explain that the AMP will be initiated upon signing of the ROD. The BLM will publish the AMP prior to exhaustion of the 98 instances of TLS relief.</p>



4. The Adaptive Management Plan Should Recognize BLM's Limited Management Authority in the Project Area.

The adaptive management plan should provide for an adjustment to the number of stipulation reliefs that BLM may grant if BLM revisits its determination of its management authority over lands within the Project Area. BLM's adaptive management threshold of 98 stipulation reliefs is based on BLM's assessment of its management authority within the Project Area. If BLM determines it has management authority over a greater portion of the Project Area, then the adaptive management strategy should provide that the 98-well pad threshold for stipulation relief should be proportionately increased without application of additional conservation measures. In the FEIS, BLM recognized it has limited management authority on lands in which the federal government lacks a surface and mineral interest. Specifically, BLM explained:

BLM has no authority to manage development activities on non-federal surface underlain by non-federal minerals except where a well is drilled horizontally to access federal minerals, a scenario known as "Fee-Fee-Fed." As detailed in Permanent Instruction Memorandum (PIM) No. 2018-014 BLM's authority under a Fee-Fee-Fed scenario is limited to assuring production accountability from Federal mineral leases. Hence, the BLM has no involvement in the management of development activities on the surface estate including mitigation actions or reclamation plans.

FEIS at 1-7. Based on this assessment of its management authority, BLM determined that it has management authority over 60 percent of the Project Area and, thus, has management authority over 298 well pads that may be located within non-eagle nest buffers. BLM then concluded that, of these 298 well pads, 98 could be located within the buffers for occupied active nests:

Approximately 60 percent (298 of the 497 well pads potentially located within nest buffers) of the CCPA (6 percent BLM surface plus 54 percent split estate; see section 1.4.3) is under BLM management authority. Based on the analysis of nest use rate presented in Section 3.18.2.5 (Raptor Species subsection) only a portion of nests would be expected to be occupied at any given time. Therefore, the BLM estimates that 33 percent of the 298 well pads under BLM management authority, or 98 well pads, would be expected to be located within the stipulation buffer for an occupied nest. Approximately 36 percent of the CCPA (179 well pads potentially located within nest buffers) is not under BLM management authority. These lands are comprised of private and state surface estate with non-federal minerals where BLM's non-eagle raptor timing stipulations do not apply. Therefore, none of the Options analyzed below provide for the application of non-eagle raptor stipulations for this portion of the CCPA.

FEIS at 4.18-30.

The Operator Group agrees with BLM's assessment of its management authority. See Instruction Memorandum No. 2018-014 (June 12, 2018); accord 43 U.S.C. § 1701(a) (defining BLM's management authority as over the public lands); Instruction Memorandum No. 2009-078 (Feb. 20, 2009); BLM Wyoming State Director Review Decision No. WY-2011-010 (Feb. 25, 2011).

Accordingly, the Operator Group requests that BLM restate its determination in the ROD. Further, the adaptive management section in Appendix G4 should provide that,

Thank you for your comment. The BLM will continue to act within its express statutory authority, and recognizes that the BLM has limited authority to regulate aspects of oil and gas operations on certain lands within the Converse County Project Area, as noted by the commenter.

		<p>if BLM later determines it has management authority over a greater portion of the Project Area, the 98-well pad threshold should be proportionately increased without application of additional conservation measures.</p> <p>Requested Changes: The ROD should restate BLM’s assessment of its management authority on lands in the Project Area in which the United States lacks a surface or mineral interest:</p> <p>BLM has no authority to manage development activities on non-federal surface underlain by non-federal minerals except where a well is drilled horizontally to access federal minerals, a scenario known as “Fee-Fee-Fed.” BLM’s authority under a Fee-Fee-Fed scenario is limited to assuring production accountability from Federal mineral leases. Hence, the BLM has no involvement in the management of development activities on the surface estate including mitigation actions or reclamation plans. Additionally, BLM must revise Appendix G4 to provide that, should BLM later determine it has management authority over a greater portion of the Project Area, the 98-well pad threshold will be proportionately increased without application of additional conservation measures. Specifically, section 2 of Appendix G4 must include the following statement:</p> <p>The Adaptive Management Plan will recognize that the 98 stipulation relief threshold in Decision No. 4047 is based on BLM’s assessment that it has management authority over 60 percent of the CCPA. Should BLM determine that it has management authority over a greater portion of the CCPA, the Adaptive Management Plan will provide that BLM will proportionately increase the number of stipulation reliefs that it will grant without application of additional conservation measures.</p>	
B18F	23	<p>1. The ROD Must Specify Non-Eagle Raptor Survey Requirements.</p> <p>The FEIS suggests that BLM will require non-eagle raptor surveys but does not specify a survey requirement. Specifically, the FEIS states, “implementation of nesting surveys would be required, as opposed to voluntary, allowing for consistent implementation of nest surveys and the certainty that data would be collected to identify new nests.” FEIS at 4.18-32 (emphasis added). However, neither PRMPA, Appendix G4, nor any mitigation measure in the FEIS expressly articulates an obligation for operators to conduct non-eagle raptor surveys.</p> <p>The Operator Group recognizes that the PRMPA implicitly assumes that some surveys will occur because they are needed to establish whether a nest was occupied active or unoccupied during the prior breeding season and therefore whether BLM will grant one of the 98 stipulation reliefs. The PRMPA and FEIS, however, do not expressly establish a requirement that operators perform surveys.</p> <p>Requested Change: BLM revise the ROD to specify any applicable survey requirements.</p>	<p>Non-eagle raptor monitoring requirements are described in Appendix C of the ROD.</p>

B18F	24	<p>2. The ROD Must Consistently Refer to “Occupied Active” Nests.</p> <p>Despite BLM’s preference for the term “occupied active” nest over the term “active” nest, see FEIS at 3.18-28, the FEIS continues to use the term “active” nest. See FEIS at 2-38, 3.18-29, 4.18-31, 4.18-32, 4.18-36, 6-29, G1-1, G1-2, G1-3. Elsewhere, the FEIS uses the term “occupied” nest. See FEIS at 3.18-24, 4.18-30, 4.18-31, 4.18-32, 4.18-33. Inconsistent use of these terms leads to ambiguity and confusion. In the ROD, BLM must consistently use the term “occupied active” nests.</p> <p>Requested Change: The ROD must consistently use the term “occupied active” nests.</p>	Please see response to comment L23F-2.
B18F	25	<p>The Operator Group agrees with BLM’s statement that it lacks authority to require application of certain air quality mitigation measures. See FEIS at 4.1-28. Further, the Operator Group previously evaluated these measures and informed BLM that they are not technically or economically feasible in Wyoming; further, in some cases, the necessary technology may not be available. Accordingly, BLM should not adopt these mitigation measures in the ROD.</p>	Thank you for your comment. Please see Section 3.3 of the ROD for a discussion of mitigation measures not carried forward in the BLM's decision.
B18F	26	<p>1. BLM Lacks Authority to Regulate Air Quality.</p> <p>The Operator Group agrees with BLM’s statement that it lacks authority to require application of air quality mitigation measures. See FEIS at 4.1-28. Accordingly, BLM should not adopt these mitigation measures in the ROD.</p> <p>Under the express terms of the Clean Air Act, the U.S. Environmental Protection Agency (EPA), and not BLM, has the authority to regulate air emissions. In Wyoming, the EPA has delegated its authority to the Wyoming Department of Environmental Quality (WDEQ). See 42 U.S.C. §§ 7401– 7671q; 40 C.F.R. pts. 50–99; 40 C.F.R. § 52.2620 (Wyoming’s State Implementation Plan); Wyo. Stat. Ann. §§ 35-11-201–214; Wyo. Air Quality Stds. &amp; Regs. chs. 1–14. The law is well-settled that WDEQ, rather than BLM, manages air quality in Wyoming. See, e.g., WildEarth Guardians v. Bureau of Land Mgmt., 8 F. Supp. 3d 17, 38 (D. D.C. 2014); Powder River Basin Resource Council, 183 IBLA 83, 94–95 (2012); Wyo. Outdoor Council, 176 IBLA 15, 26 (2008).</p> <p>For that reason, BLM may not impose the air quality mitigation measures analyzed in the FEIS. As BLM is aware, NEPA is a procedural statute intended to produce informed decision-making by federal agencies. Dep’t of Transp., 541 U.S. 752, 756–57 (2004); WildEarth Guardians v. U.S. Fish &amp; Wildlife Serv., 784 F.3d 677, 690 (10th Cir. 2015). Although NEPA mandates that agencies follow specific procedures when reaching decisions that significantly affect the environment, NEPA does not impose any requirement on agencies to reach a particular decision. Dep’t of Transp., 541 U.S. at 756– 57; Robertson v. Methow Valley Citizens Council, 490 U.S. 332, 350-51 (1989); WildEarth Guardians, 784 F.3d at 690. Moreover, NEPA does not require agencies “to elevate environmental concerns over other valid concerns.” Lee v. U.S. Air Force, 354 F.3d 1229, 1237 (10th Cir. 2004) (citing Utahns for Better Transp. v. U.S. Dep’t of Transp., 305 F.3d 1152, 1162 (10th Cir. 2004)). Once the agency adequately identifies and evaluates environmental concerns, “NEPA places no further constraint on agency actions.” Pennaco Energy, Inc. v. U.S. Dep’t of the Interior, 377</p>	Please see response to comment B18F-26.

		<p>F.3d 1147, 1150 (10th Cir. 2004). Although agencies must analyze mitigation measures as part of EISs, even when the agency lacks authority to implement such mitigation measures, the agencies' obligations begin and end with this analysis. See Forty Most Asked Questions Concerning CEQ's National Environmental Policy Regulations, 46 Fed. Reg. 18,026, 18,031 (Mar. 23, 1981) (Question 19b); see generally 40 C.F.R. §§ 1502.14(f), 1502.16(h), 1505.2(c) (requiring agencies to analyze mitigation measures in EISs). Accordingly, the fact that BLM analyzed air quality mitigation measures in the FEIS does not empower BLM to regulate air quality or obligate BLM to adopt air quality mitigation measures.</p> <p>For these reasons, the Operator Group agrees with BLM's determination that it lacks authority to require application of the air quality mitigation measures. Therefore, BLM may not adopt them in the ROD.</p>	
B18F	27	<p>2. Mitigation Measure AQ-1 (FEIS at 4.1-28, 6-23)</p> <p>If located on BLM surface estate, gas plants and compressor stations will be located at least 2,000 meters from residences or other occupied dwellings.</p> <p>BLM must revise AQ-1 to clearly state it does not apply to well pads and production facilities, including but not limited to pumps, pumping units, generators, gas flares, treaters, separators, storage tanks, and pits. The Operator Group also notes that a 500-foot setback for well pads, and production facilities, including but not limited to pumps, pumping units, compressors, generators, gas flares, treaters, separators, storage tanks, and pits, is already required by Wyoming Oil and Gas Conservation Commission rules.</p>	This mitigation measure was not carried forward in the BLM's decision. Please see Section 3.3 of the ROD for more information.
B18F	28	<p>3. Mitigation Measure AQ-2 (FEIS at 4.1-28, 6-23)</p> <p>USEPA, NPS, and Powder River Basin Resource Council (PRBRC) recommended the use of Tier 4 diesel drill rig engines to reduce NOx emissions. NOx emission reductions can mitigate nitrogen deposition and visibility impacts and near-field short-term NO2 impacts.</p> <p>Not only does BLM lack authority to adopt Mitigation Measure AQ-2 in the ROD, this mitigation measure is not technically and economically feasible. Tier 4 drill rigs are not available in sufficient numbers, particularly in Wyoming, for widespread use throughout the Project Area. Current commodity prices and the current economic environment make this equipment even more difficult to secure.</p>	This mitigation measure was not carried forward in the BLM's decision. Please see Section 3.3 of the ROD for more information.

B18F	29	<p>4. Mitigation Measure AQ-3 (FEIS at 4.1-28, 6-23)  USEPA, NPS, and PRBRC recommended the use of Tier 4 diesel engines for all engines used during well completion to reduce NOx emissions. NOx emission reductions can mitigate nitrogen deposition and visibility impacts and near-field short-term NO2 impacts.</p> <p>Not only does BLM lack authority to adopt Mitigation Measure AQ-3 in the ROD, this mitigation measure is not technically and economically feasible. Tier 4 drill rigs are not available in sufficient numbers, particularly in Wyoming, for widespread use throughout the Project Area. Current commodity prices and the current economic environment make this equipment even more difficult to secure.</p>	This mitigation measure was not carried forward in the BLM's decision. Please see Section 3.3 of the ROD for more information.
B18F	30	<p>5. Mitigation Measure AQ-5  USEPA and WOC recommended the electrification of compressor engines at the compressor stations to reduce NOx emissions. NOx emission reductions can mitigate nitrogen deposition and visibility impacts.</p> <p>Logistical and technical issues make this mitigation measure infeasible, particularly on all locations throughout the Project Area. The load required for these engines is significant and power availability would be an issue. In addition to limited availability of grid power, right of way issues to run line power, either above or below ground, would not be logistically feasible or cost-effective for temporary sources in all sources.</p>	This mitigation measure was not carried forward in the BLM's decision. Please see Section 3.3 of the ROD for more information.
B18F	31	<p>6. Mitigation Measure AQ-6  USEPA and NPS recommended the electrification of drill rig engines to reduce NOx emissions. NOx emission reductions can mitigate nitrogen deposition and visibility impacts and near-field short-term NO2 impacts.</p> <p>Logistical and technical issues make this mitigation measure infeasible, particularly on all locations throughout the Project Area. The load required for these engines is significant and power availability would be an issue. In addition to limited availability of grid power, right of way issues to run line power, either above or below ground, would not be logistically feasible or cost-effective for temporary sources in all sources.</p>	This mitigation measure was not carried forward in the BLM's decision. Please see Section 3.3 of the ROD for more information.
B18F	32	<p>7. Mitigation Measure AQ-7  USEPA and NPS recommended the electrification of frac pumping operations during completion operation to reduce NOx emissions. NOx emission reductions can mitigate nitrogen deposition and visibility impacts and near-field short-term NO2 impacts.</p> <p>Logistical and technical issues make this mitigation measure infeasible, particularly on all locations throughout the Project Area. The load required for these engines is significant and power availability would be an issue. In addition to limited availability of grid power, right of way issues to run line power, either above or below ground, would not be logistically feasible or cost-effective for temporary sources in all sources.</p>	This mitigation measure was not carried forward in the BLM's decision. Please see Section 3.3 of the ROD for more information.

B18F	33	<p>8. Mitigation Measure AQ-11 (FEIS at 4.1-35, 6-23)</p> <p>For heater treaters, NPS recommended lowering the heater treater temperature and/or installing insulation on the separator to reduce NOx emissions. NOx emission reductions can mitigate nitrogen deposition and visibility impacts.</p> <p>Not only does BLM lack authority to adopt Mitigation Measure AQ-11 in the ROD, this mitigation measure would increase, rather than lower, nitrogen oxide (NOx) emissions. Reducing heater treater temperature would increase emissions of volatile organic compounds (VOCs) from storage tanks, which would then increase NOx emissions at the storage tank control devices. The result would be higher NOx emissions than if this mitigation measure was not implemented. Accordingly, Mitigation Measure AQ-11 will not achieve the objective of reducing impacts to air quality.</p>	This mitigation measure was not carried forward in the BLM's decision. Please see Section 3.3 of the ROD for more information.
B18F	34	<p>B. Mitigation Measure CR-1 (FEIS at 4.2-9, 6-24)</p> <p>A qualified professional archaeologist will monitor surface disturbing activities during construction in areas that have been determined, through the NHPA process, to be likely to contain buried cultural resources. A monitoring and discovery plan may be developed for large or complex undertakings or areas known to contain buried cultural sites.</p> <p>This mitigation measure fails to recognize land ownership patterns in the Project Area. Only 10 percent of the surface lands in the Project Area are federally owned, and 83 percent of the surface lands in the Project Area are privately owned. Moreover, BLM has recognized that it lacks the authority to enter non-federal lands without the landowner's consent and has instructed its personnel of alternative methods of gathering information necessary to fulfill the agency's obligations under section 106. See Instruction Memorandum No. 2018-014 (June 12, 2018); Onshore Order No. 1, 72 Fed. Reg. 10,307, 10,336 (Mar. 7, 2007). Given landowner sensitivities regarding cultural resources, BLM should not impose a broad, generic requirement for construction monitoring.</p> <p>Furthermore, this mitigation measure fails to recognize BLM's limited authority to require cultural resource monitoring when wells are developed from off-lease pads on fee surface overlying fee minerals. BLM has recognized that in these "fee-fee-fed" situations, BLM's review of effects under section 106 will be limited only to downhole effects when development of the federal well would not cause new surface disturbance. See Instruction Memorandum No. 2018-014. Given that lands with non-federal surface and non-federal minerals comprise 36 percent of the Project Area, see FEIS at 1-7, a requirement for construction monitoring may have limited effect.</p> <p>Finally, BLM has not identified any heightened need for construction monitoring. BLM's guidance on managing for cultural resources does not require or even mention the need for archaeological monitoring during surface disturbing activities. See BLM Manual 8100 – The Foundations for Managing Cultural Resources (Rel. 8-72 Dec. 3, 2004); BLM Manual 8140 – Protecting Cultural Resources (Rel. 8-77 Dec. 3, 2004). BLM estimates the Proposed Action will affect only 52 eligible cultural resources. FEIS at 4.2-7. Accordingly, a requirement for construction monitoring appears unnecessary given the low likelihood for cultural resources in the Project Area. For these reasons, BLM should not adopt a requirement for construction monitoring in the Project Area. Instead, BLM should only require construction monitoring when</p>	Please see comment response B01-34 in Appendix H of the FEIS.

		<p>essential to fulfill its obligations under section 106 and, further, with landowner consent. Accordingly, BLM should not adopt Mitigation Measure CR-1 in the ROD.</p>	
B18F	35	<p>C. Mitigation Measure CR-4 (FEIS at 4.2-10, 6-24)  A qualified tribal monitor will monitor sediment-disturbing activities during construction in areas that have been determined, through tribal consultation and the NHPA process, to contain or be likely to contain Indian sacred sites and/or TCPs. A monitoring and discovery plan may be developed for large or complex undertakings or areas known to contain such resources.  Like Mitigation Measure CR-1, Mitigation Measure CR-4 fails to recognize land ownership patterns in the Project Area and the role of landowner consent to access. Only 10 percent of the surface lands in the Project Area are federally owned, and 83 percent of the surface lands in the Project Area are privately owned. BLM has recognized that it lacks the authority to enter non-federal lands without the landowner's consent and has instructed its personnel of alternative methods of gathering information necessary to fulfill the agency's obligations under section 106. See Instruction Memorandum No. 2018-014. Further, BLM has determined that the section 106 regulations "do[ ] not require that the tribes have access to a site when the agency official cannot reasonably provide such access." Id. (citing 36 C.F.R. § 800.2(c)(2)). Given these limitations, BLM should not impose a broad, generic requirement for tribal monitoring.  Furthermore, this mitigation measure fails to recognize BLM's limited authority to require cultural resource monitoring when wells are developed from off-lease pads on fee surface overlying fee minerals. BLM has recognized that in these "fee-fee-fed" situations, BLM's review of effects under section 106 may be limited, depending on whether or not development of the federal well would cause new surface disturbance. See Instruction Memorandum No. 2018-014. Given that lands with non- federal surface and non-federal minerals comprise 36 percent of the Project Area, see FEIS at 1-7, a requirement for monitoring may have limited effect.  Finally, BLM has not identified any heightened need for tribal monitoring. BLM's guidance on managing for tribal and cultural resources does not require or even mention the need for tribal monitoring during surface disturbing activities. See BLM Manual 1780 Tribal Relations (Re. 1-1780 Dec. 15, 2016); BLM Manual 8100 – The Foundations for Managing Cultural Resources (Rel. 8-72 Dec. 3, 2004); BLM Manual 8140 – Protecting Cultural Resources (Rel. 8-77 Dec. 3, 2004).  Because approximately 90 percent of the Project Area consists of non-federal surface</p>	<p>This comment was responded to previously. Please see response to comment L05-005 in Appendix H of the FEIS.</p>

		for which landowner consent is required for access, BLM should not adopt a blanket requirement for tribal monitoring in the Project Area. Accordingly, BLM should not adopt Mitigation Measure CR-4.	
B18F	36	<p>D. Mitigation Measure PALEO-2 (FEIS at 4.8-2, 6-24)</p> <p>The operator will suspend all activities in the vicinity of such discovery until notified to proceed by the BLM AO and will protect the discovery from damage or looting. However, the operator may not be required to suspend all operations if activities can be adjusted to be continued elsewhere or otherwise avoid further impacts to a discovered locality.</p> <p>We suggest revising the second sentence to: “However, the operator will not be required to suspend all operations if activities can be adjusted to be continued elsewhere or otherwise avoid further impacts to a discovered locality.” If further impacts to the discovery can be avoided, suspension of operations should not be required.</p>	For consistency with current BLM policy (Instruction Memorandum 2009-011), mitigation measure PALEO-2 is carried forward in the ROD as written in the FEIS at Section 4.8.2.2. If paleontological resources are discovered as a result of operations, the BLM Authorized Officer will evaluate and determine appropriate mitigation measures for mitigating impacts to the fossil resource. As written, the operator may not be required to suspend operations; however, approval by the AO is required before proceeding.
B18F	37	<p>E. Mitigation Measures WLF-1 and WLF-2 (FEIS at 4.8-14, 6-28)</p> <p>WLF-1: Surface disturbance will be avoided at wildlife water (excluding freshwater pits) developments during final siting and development. If avoidance is not possible, the loss of any permanently impacted wildlife water developments will be offset by installing new developments of equal capacity, in coordination with the appropriate state wildlife agency and federal land management agencies.</p> <p>WLF-2: In accordance with BLM, USFS, and USFWS BMPs for preventing wildlife mortality as a result of fluid mineral practices, all stacks, trenches, and other open structures (including water tanks) will be covered with wildlife enclosure covers and/or wildlife escape ramps will be installed in pits, trenches, and tanks to prevent entrapment and/or drowning. Any existing or proposed open poles or fence posts will be covered or filled with sand, soil, or gravel to prevent entrapment. “Bird cones” will be installed on open- vent stacks.</p> <p>In comments on the DEIS, the Operator Group had requested that BLM revise WLF-2 to exclude freshwater pits from the requirement to net pits. BLM appears to have included this exclusion in WLF-1 rather than WLF-2. The Operator Group requests that BLM revise WLF-2 to exclude freshwater pits from the requirement to net pits.</p>	Mitigation measures WLF-1 and WLF-2 have been clarified in the ROD.



B18F	38	<p>F. Mitigation Measure WLF-5 (FEIS at 4.8-14, 6-28)</p> <p>Noise reduction mufflers will be used on construction equipment, drilling equipment, and other motors/compressor used during drilling and production. Also, temporary walls and distance will be considered for use to reduce sound levels in important habitats.</p> <p>The requirement that temporary walls “will be considered” to reduce sound levels should be eliminated because it is vague and unjustified. The mitigation measure provides no direction as to when temporary walls should be used or for which “important habitats.” Without more guidance, the mitigation measure will be applied unnecessarily and inconsistently. Furthermore, this general requirement may not benefit wildlife. Although operations generating noise may, under certain conditions, have the potential to disrupt normal behavior patterns of wildlife, correlating actual disruption of behavior patterns to noise is extremely uncertain. Further, wildlife may rapidly habituate to noises that they learn do not pose a threat. Temporary walls may also present a collision hazard.</p> <p>Accordingly, BLM should not adopt Mitigation Measure WLF-5.</p>	This comment was responded to previously. Please see response to comment B01-49 in Appendix H of the FEIS.
B18F	39	<p>G. Mitigation Measure MIG-1 (FEIS at 4.18-36, 6-28)</p> <p>When surface-disturbing activities must occur during the avian breeding season (February 1 to July 31), a qualified biologist will conduct nest searches no more than 7 days prior to these activities. Occupied active nests will be identified and protected in accordance with the applicable BLM, USFS, USFWS, and/or the WGFD guidance. MIG-1 was originally proposed in the DEIS, before BLM proposed Options 1 through 6 as possible amendments to the Casper RMP. See DEIS at 4.18-33, 6-27. BLM should evaluate MIG-1 in light of the RMPA that BLM adopts in the ROD to ensure consistency in the process. The requirement in MIG-1 that an operator perform a nest check is consistent with the Operator Group’s requested revisions to Decision No. 4047 and Appendix G4. Further, because a nest check is an element of Option 3, the analysis in the FEIS supports a nest check requirement.</p> <p>By contrast, however, MIG-1 is unnecessary to the process proposed in Option 6 in the PRMPA/FEIS. As Option 6 is proposed in the PRMPA/FEIS, it does not expressly allow activities to commence during the breeding season. See FEIS, Appx. G4. Option 6 would require that surface- disturbing activities commence 30 days before the start of the seasonal buffer period, thus rendering a nest check unnecessary. See FEIS at G4-2 (“Commence oil and gas development within the non-eagle raptor nest spatial buffer 30 days in advance of the seasonal buffer period documented in the APD conditions of approval (COA) and maintain continuous operations throughout that seasonal buffer period.”). Therefore, as Option 6 is proposed in the PRMPA/FEIS, MIG-1 would be unnecessary.</p> <p>Before adopting MIG-1, BLM should confirm it aligns with the RMPA selected in the ROD.</p> <p>Further, BLM should clarify whether MIG-1, if adopted, would attach to all APDs within the Project Area or just those APDs with surface locations inside spatial non-eagle raptor buffers. The FEIS suggests that MIG-1 would only apply to well pads within spatial non-eagle raptor buffers, but the FEIS does not include an express statement to this effect.</p>	MIG-1 is applicable to all birds, not just non-eagle raptors. It also ensures there is not take of Migratory Bird Nests during construction.

B18F	40	<p>H. Mitigation Measure MIG-2 (FEIS at 4.18-36, 6-28)  Disturbance within portions of the CCPA that are identified by federal or state wildlife management agency biologists as located in forest and woodland habitat areas will be avoided. At the time of development, the retention of snags, dead-topped trees, and live trees with cavities will be left in place if a safety concern is not present. BLM should not adopt this mitigation measure. Neither the Casper RMP nor the Land and Resource Management Plan (LRMP) for the Thunder Basin National Grassland requires avoidance of forest and woodland habitat areas. See Casper RMP at 2-20 – 2-25; Thunder Basin National Grassland LRMP ROD 4, 23 (2002); Thunder Basin National Grassland LRMP at chs. 2, 3, Appx. D (2001); ROD Oil &amp; Gas Leasing— West of Wyodak Coal Outcrop 8 (2006). BLM must eliminate this mitigation measure because it is not consistent with the governing resource management plans. See 36 C.F.R. § 219.15 (requiring that U.S. Forest Service authorizations be consistent with management plan); 43 C.F.R. § 1610.5-3(a) (requiring that BLM approval conform to the governing RMP). Additionally, this measure is vague because the FEIS does not map these areas, creating a risk of arbitrary identification of areas to be avoided. Finally, because BLM and USFS can protect areas on a site-specific basis, a broad avoidance measure is unnecessary.</p>	<p>The purpose of this mitigation is to mitigate for impacts to conifer habitat within the project area analyzed in Section 4.18.2.2, Impacts to Migratory Bird Species from Alternative B - Proposed Action as depicted Table 4.18-13 and detailed in the Forest and Woodlands Species subsection on page 4.18-35. It does not conflict with either land use plan referenced.</p>
B18F	41	<p>I. Mitigation Measure SSWS-2 (FEIS at 4.18-72, 6-29)  A Raven Management Plan will be developed that outlines active adaptive management strategies for controlling raven predation and nesting within the CCPA, including the post- construction monitoring for ravens and removal of raven nests. BLM should not adopt this mitigation measure, for several reasons. Development of a raven management plan would be an onerous undertaking with no benefit given that ravens do not pose a significant predation threat in this part of Wyoming. See generally FEIS, ch.3; Casper RMP FEIS (2007) (not addressing ravens or prescribing raven management measures). Further, the removal of raven nests will be ineffective because non-eagle raptors and ravens can use the same nests. Moreover, BLM's RMP amendments for the greater sage-grouse did not identify the development of a raven management plan as a necessary mitigation measure for the greater sage-grouse. See generally Wyoming 9-Plan RMPA. Given that BLM spent years revising its RMPs to incorporate greater sage- grouse conservation measures and did not identify this measure, BLM should not now attempt to impose it in a project-specific NEPA document. Finally, this mitigation measure appears to value sage grouse over ravens— that is a subjective value judgment regarding one avian species over another—one special status species (sage grouse) and one an MBTA-protected species (raven).</p>	<p>SSWS-2 was not carried forward as a mitigation measure in the BLM's decision, as the BLM does not manage raven populations. Any plans would have to be developed, in this case, with the WGFD and the USFWS. Please refer to Section 3.3 of the ROD.</p>

III. The FEIS Incorrectly Suggests that Operators Will Not Request Exceptions to Timing Limitation Stipulations on Lands Managed by the U.S. Forest Service. The Operator Group disagrees with BLM's unfounded conclusion that operators will not request exceptions to timing limitation stipulations on lands managed by the U.S. Forest Service (USFS). The FEIS assumes that the OG will not request case-by-case exceptions to timing limitation stipulations on USFS lands, stating: "Relief from timing stipulations generally would not be requested on lands administered by USFS," FEIS at 4.18-11 (emphasis added), and "Adherence to timing limitation stipulations would still apply for eagle nests, [no surface occupancy] areas, and on the [Thunder Basin National Grassland]," id. at 4.18-27. Although the Operator Group did not pursue an amendment to the Thunder Basin National Grassland LRMP to allow for programmatic relief from timing limitation stipulations, the lack of programmatic relief does not preclude operators from seeking stipulation relief on a case-by-case basis in accordance with USFS procedures under the applicable LRMP.

The LRMP for the Thunder Basin National Grassland explicitly states that "[w]aivers, exceptions, or modifications will be considered in accordance with the requirements of 36 CFR 228.104." LRMP for the Thunder Basin National Grassland at D-1 (2001) (emphasis added). It recognizes that operators may request, and the Forest Service may grant, exceptions to timing limitation stipulations to protect ferruginous hawks and other non-eagle raptors, stating, "The authorizing officer may grant an exception to this stipulation if the operator submits a plan that demonstrates impacts from the proposed action are acceptable or can be adequately mitigated." Id. at D-16. In the ROD, BLM cannot unilaterally constrain operators' ability to seek exceptions consistent with the LRMP for the Thunder Basin National Grassland.

Therefore, the ROD should not include any statements that limit operators' ability to seek exceptions to timing limitation stipulations on USFS-managed lands and, further, should expressly recognize that operators may request such exceptions on a case-by-case basis.

The statement referenced by the commenter at page 4.18-11 of the FEIS was added to clarify that Alternative B does not include automatic TLS relief for lands administered by the USFS. The BLM acknowledges that operators may request exceptions to TLS in accordance with the USFS's LRMP for the Thunder Basin National Grassland, and the BLM's ROD does not make any decisions that would limit an operator's ability to seek exceptions from the USFS.

B18F	43	<p>A. The FEIS Incorrectly Suggests that No New Surface Disturbance Will be Permitted in Certain Priority Habitat Management Areas.</p> <p>The FEIS incorrectly suggests that BLM will not authorize new surface disturbance in greater sage-grouse priority habitat management areas (PHMA) where disturbance exceeds five percent.</p> <p>Specifically, the FEIS states:</p> <p>Ø “Due to the current 5 percent disturbance cap being exceeded, further surface disturbance would be prohibited in three of the PHMAs (Douglas, North Glenrock, and Thunder Basin).” FEIS at 4.18-50 (Alternative A).</p> <p>Ø “Based on existing disturbance in DDCT assessment areas that already exceed 5 percent disturbance for three of the five PHMAs, new surface disturbance could only be considered within the Bill and M Creek PHMAs.” FEIS at 4.18-56 (Alternative A).</p> <p>Ø 1,126 acres of new surface disturbance in M Creek PHMA only under Alternative B. See FEIS at 4.18-71 (tbl. 4.18-31).</p> <p>These statements are inconsistent with the Wyoming ARMPA for the greater sage-grouse, which recognizes that surface disturbance caps in PHMA are subject to valid existing rights. See ROD and ARMPA for the Rocky Mountain Region at I-23 (2015); Casper, Kemmerer, Newcastle, Pinedale, Rawlins, and Rock Springs Field Offices ARMPA for the Greater Sage-Grouse at 34 (2015) (MD SSS 2). In the ROD, BLM should recognize that authorizations for disturbance in PHMA will be assessed in accordance with the governing greater sage-grouse RMPA and that BLM is obligated to recognize valid existing rights.</p>	<p>The BLM recognizes that it is obligated to honor valid existing rights, and the BLM's ROD does not make any decisions that would abrogate the rights conveyed in existing oil and gas leases.</p> <p>A preliminary DDCT analysis was completed in the FEIS to provide additional data to inform the analysis regarding potential effects to Greater Sage-Grouse habitats from future authorizations that would result in surface disturbance. See FEIS at page 3.18-55. As stated in this section, a formal DDCT policy review process would not be conducted until site-specific disturbance is identified prior to project permitting. Any future, proposed development within Greater Sage-Grouse PHMA would be analyzed in coordination with the Wyoming Game and Fish Department to ensure BLM's authorizations conform to the BLM Wyoming Greater Sage-Grouse RMP Amendment as well as the Governor's Core Area Policy.</p>
B18F	44	<p>B. The FEIS Does Not Recognize Updated State of Wyoming Core Area Maps.</p> <p>The FEIS analyzes impacts to PHMA using Wyoming Game and Fish Department (WGFD) Core Area Version 3 Maps. See FEIS at 4.18-64. As the Operator Group explained in its comments on the DEIS, WGFD updated these maps to Version 4, and the Wyoming State Office adopted the updated maps in an October 27, 2017 maintenance action. See Operator Group Comments on DEIS at 15.</p> <p>In the response to comments on the DEIS, BLM declined to update the maps from Version 3 to Version 4, explaining “direction to analyze Version 3 Core Area Maps is based on the ARMPA and BLM managed lands and mineral estates within the Project Area.” FEIS at H-17 (comment no. 058). This explanation contradicts the maintenance action. The Wyoming ARMPA for the greater sage-grouse no longer utilizes the Version 3 Core Area maps because they have been formally superseded by Version 4 through the maintenance action. See 43 C.F.R. § 1610.5-4. BLM should include a statement in the ROD recognizing that the Wyoming ARMPA for the greater sage-grouse may be updated periodically pursuant to maintenance actions in accordance with 43 C.F.R. § 1610.5-4 and that management decisions throughout the life of the Project will adhere to the most current plan, including the most current version of Core Area maps.</p>	<p>For the purpose of analysis, State of Wyoming Core Area Version 4 boundaries were incorporated and considered within Alternative C and were compared alongside Version 3 boundaries in the BLM's impacts analysis. The BLM recognizes that Wyoming's Version 4 boundaries were formally adopted through plan maintenance (DOI-BLM-WY-0000-2018-0001-CX). The BLM will adhere to this change at the site-specific scale.</p>

VI. BLM May Tier to the Converse County FEIS When Determining Whether to Modify Existing Oil and Gas Leasing Stipulations.

The Operator Group observes that BLM declined to analyze an alternative in the DEIS, SDEIS, and FEIS that allowed BLM to modify timing limitation stipulations attached to existing leases within the Project Area. BLM made this decision even though modification of existing lease stipulations is well within the scope of the Proposed Action. See DEIS at 2-1 (describing the Proposed Action as “year-round development in areas where timing limitation restrictions serve to protect several wildlife species”). As justification, BLM explained that “modification of leases is a function under the [oil and gas] regulations that have a very stringent process with strict criteria for modification of leases. NEPA cannot be used to shortcut that process as NEPA is for disclosure of impacts.” See FEIS at I-10.

The Operator Group observes that, should an operator seek modification or waiver of a timing limitation stipulation attached to an oil and gas lease in the Project Area, BLM may tier to the analysis in the Converse County FEIS when evaluating whether to modify or waive the stipulation. BLM’s criteria to modify or waive leases is found at 43 C.F.R. § 3101.1-4. It provides that “[a] stipulation included in an oil and gas lease shall be subject to modification or waiver only if the authorized officer determines that the factors leading to its inclusion in the lease have changed sufficiently to make the protection provided by the stipulation no longer justified or if proposed operations would not cause unacceptable impacts.” The conservation measures adopted as part of the amendment to the Casper RMP could serve as the basis for BLM to determine that a lease modification or waiver would not cause “unacceptable impacts.”

BLM’s National Office has recognized that “[t]he criteria for approval of exceptions, waivers, and modifications should be supported by National Environmental Policy Act (NEPA) analysis, either through the land use planning process or site-specific environmental review.” BLM Instruction Memorandum No. 2008-032, Attachment 1 (Nov. 19, 2007) (emphasis added). Therefore, should an operator seek modification or waiver of a timing limitation stipulation attached to an oil and gas lease in the Project Area, BLM may tier to the analysis in the Converse County FEIS.

For these reasons, the ROD must include a statement recognizing that BLM may tier to the analysis in the Converse County FEIS when fulfilling NEPA obligations associated with a modification or waiver of a timing limitation stipulation.

The BLM recognizes that, as applicable, the Converse County EIS, and/or the analysis contained within it, could be tiered to or incorporated by reference in the preparation of subsequent NEPA documents, to include the consideration of a modification or waiver of lease stipulations. The BLM will follow existing regulation and policies when considering modification or waivers to lease stipulations, and will apply the appropriate NEPA analysis when doing so.

B18F	46	<p>A. Greater Sage-Grouse Management</p> <p>In the ROD, BLM should provide flexibility to manage the Project Area under the terms of any new land use plan amendments, including those for the greater sage-grouse, without the need for additional programmatic NEPA of the Project. The Operator Group notes the following language appeared in BLM's ROD for the Moneta Divide Natural Gas and Oil Development Project:</p> <p>For the management of Greater Sage-Grouse habitat, the management decisions, as presented in the Moneta Divide ROD, are in conformance with the BLM Wyoming ROD for Greater Sage-Grouse (2019). The BLM is currently enjoined from implementing the decisions in the 2019 Greater Sage-Grouse RODs and is relying on the 2015 Greater Sage- Grouse RODs for implementation of Greater Sage-Grouse management actions. Depending on the court's resolution of the ongoing litigation, the BLM will implement the appropriate management for Greater Sage-Grouse. See Moneta Divide Natural Gas and Oil Development Project ROD 16 (2020). The Operator Group supports inclusion of a similar statement into the ROD for the Project.</p>	<p>No further clarification is needed. Similar to the Moneta Divide EIS and ROD, the Converse County ROD conforms to the Approved Wyoming Greater Sage-Grouse RMP Amendment RODs. The BLM will ensure conformance with the Approved RMP, as amended (including for management of Greater Sage-Grouse habitats on public lands), at the time actual operations are proposed and authorized.</p>
B18F	47	<p>B. BLM Should Correct Typographic Errors in Its Discussion of Greenhouse Gas Emissions.</p> <p>In the FEIS, BLM did not update the greenhouse gas emissions for year 10 of the Project under each alternative that are listed in the summaries in Table ES-2 (page ES-14) and Table 2.7-2 (page 2- 58). These figures reflect the figures listed in the DEIS; however, they do not match the analysis in Tables 4.1-16 and 4.1-17 of the FEIS (pages 4.1-40 – 4.1-41 and 4.1-42 – 4.1-43) and page 2-4 of Appendix A. In the ROD, BLM should clarify that the figures in Table ES-2 and Table 2.7-2 should be consistent with the analysis elsewhere in the FEIS.</p>	<p>The commentor is correct, the tables listed (Table ES-2 and Table 2.7-2 should have the following numbers replaced under the row "Greenhouse Gas (GHG) Emissions (total 10 tonne carbon Dioxide [CO<sub>2</sub>] equivalents [CO<sub>2</sub>e]/year in year 10" for Alternative A: 11.88 to be replaced with 16.0; and for Alternatives B and C: 50.44 replaced with 69.5.</p>
B18F	48	<p>C. BLM Should Fully Identify All Scientific Literature Referenced in the FEIS.</p> <p>BLM should review the FEIS and confirm that citations to all referenced literature appear in section 8.0, References. Page 3.18-31 of the FEIS cites U.S. Fish and Wildlife Service literature from 2019, but no correspondence reference appears in section 8. Specifically, page 3.18-31 states:</p> <p>These disturbances could represent long-term impacts that limit nesting potential in the CCPA (USFWS 2019). Oil and gas combined with other types of human disturbance could lead to population level declines in the northern Great Plains Badlands and Prairies region (USFWS 2019).</p> <p>In the ROD or an erratum to the FEIS, BLM should identify the literature referenced in section 3.18-31.</p>	<p>This reference was inadvertently excluded from Chapter 8 of the FEIS. On page 8-44, as the first reference for the U.S. Fish and Wildlife Service list should read U.S. Fish and Wildlife Service (USFWS). 2019. Email USFWS Comments on the West Report. Submitted to the BLM on November 7, 2019, from USFWS.</p>
B18F	49	<p>D. The FEIS Should Use Terminology that Aligns with the RMPA.</p> <p>Page 4.18-38 of the FEIS suggests that exceptions, rather than stipulation relief, will be granted for operations near occupied active nests (emphasis added):</p> <p>Alternative B includes the potential for exceptions to timing limit stipulations in the vicinity of occupied raptor nests. Potential disturbance to nesting raptors would impact local raptor species and populations as a result of nest abandonment, dependent on the drilling schedule for each pad over the course of development. Relief from timing limit stipulations would not be requested for the remainder of migratory bird nests, which would be protected by MIG-1. and the application of avoidance and minimization mitigation, OG- committed design features and the additional mitigation measures (Section 4.18.2.3).</p>	<p>The commenter is correct. Please see response to comment B18F-9.</p>

		The PRMPA and Appendix G4, however, provide that stipulation relief, rather than exceptions, will be granted for operations near occupied active nests. To be consistent with the RMPA and Appendix G4, BLM should issue an erratum to the FEIS that replaces the language “exceptions to” with “relief from.”	
B18F	50	E. Produced Water Management On page 2-14, the FEIS states, “There will be no point source discharge of flowback water, produced water, or any other waste streams to surface water.” BLM appears to have included this statement at the request of the Wyoming Department of Environmental Quality. See FEIS at H-165. This statement implies, however, that BLM intends to prohibit surface water discharges as a condition of the ROD. BLM cannot use the FEIS to prohibit water discharges, which are allowed by EPA’s regulations at 40 C.F.R. subpart E and BLM’s Onshore Order 7. The Operator Group recognizes that BLM and WDEQ likely intended to capture the fact that the Proposed Action did not include a proposal for discharges into surface water. The Operator Group requests that BLM must clarify this statement in the ROD by noting that the Proposed Action did not include a proposal for discharges into surface water and that, by approving the ROD, BLM does not approve such discharges.	The commenter is correct; the BLM does not intend to prohibit or regulate produced water discharges through this ROD. This statement was intended to clarify that the proposed action alternative did not include discharges into surface waters. If a federal oil and gas lease operator were to propose surface discharge for operations in the project area, the BLM would follow the requirements of Onshore Oil and Gas Order No. 7.
B18F	51	F. Water Requirements, Supply, and Use The Operator Group observes that BLM adjusted the volume of water per well associated with drillings and completions. See FEIS at 2-28. The Operator Group agrees with the overall water usage anticipated for the Project. The Operator Group further agrees with the statement on page 2-28 of the FEIS that “actual water needs for drilling and completions may vary depending on the length of the lateral and the number of fracturing stages” but that “the overall estimated water needs for the Project would not change as longer laterals would result in fewer wells within a given area.”	Thank you for your comment.
B18F	52	G. WOGCC Permitting Authority Table 1-13 on page 1-13 of the FEIS omits that the Wyoming Oil and Gas Conservation Commission (WOGCC) has permitting authority over commercial disposal wells for oil and gas wastes. The Wyoming Legislature passed Senate Enrolled Act 0012 (SEA No. 0012) during the 2020 Budget Session. SEA No. 0012 amends the WOGCC’s authority to regulate underground disposal, adding the authority to regulate commercial disposal wells. The WOGCC is currently amending its rules to implement SEA No. 0012.	It appears that this change occurred just before the BLM released the Final EIS. The BLM will adjust any and all changes as necessary at implementation of specific projects.
<b>Campbell County</b>			
L21F	2	" ... the BLM analyzed potential land use plan (LUP) amendments to the Casper RMP that would provide relief from non-eagle raptor timing limit stipulations ... " The County supports Alternative B along with a modified Option 6 as a plan amendment to the Casper Resource Management Plan (RMP). While Option 6 does outline a separate process for obtaining an automatic, non-eagle raptor timing limitation stipulation relief instance if operators comply with the mitigation measures in Appendix G4, it should be made clear that the existing timing limitation stipulation (TLS) exception process still exists through the Casper RMP. BLM should emphasize that this plan amendment does not eliminate the current exception process in the RMP.	Please see response to comment B18F-10.

L21F	3	<p>" ... one timing limitation stipulation relief request will be granted for a well pad for I year ... "</p> <p>BLM only clarifies the use of the 98-relief instances as being applicable to the well pad and does not mention the timing relief stipulation as being applicable to the access road as well. BLM should clarify that one timing limitation stipulation relief allowance will be granted for the well pad, access road and associated facilities.</p>	Please see response to comment L22F-10.
L21F	4	<p>"Occupied active nest: A nest or ledge in which eggs have been laid. At least I activity pattern (I, ii, or iii) must be documented."</p> <p>For consistency purposes, the County supports the use of the "occupied active" definition used in this section as defined by the Wyoming Game and Fish Department and should be made consistent throughout the document.</p>	Please see comment response L23F-2
L21F	5	<p>" ... Therefore, the BLM estimates that 33 percent of the 298 well pads under BLM management authority, or 98 well pads, would be expected to be located within the stipulation buffer for an occupied nest."</p> <p>The language stated here and throughout the document as it pertains to Option 6 is confusing and clarification is necessary to fully understand BLMs intent as to how to calculate actual instances that would be applicable to the 98-timing limitation stipulation relief allowances.</p> <p>BLM does not specify whether the 98 well pads relate to occupied active nests and/or unoccupied inactive nests. This is a critical component of Option 6 as it was the County's understanding during cooperating agency meetings that the 98-timing limitation stipulation relief instances would only include nests that were occupied active.</p> <p>For all intents and purposes, nests that BLM has identified in their database over time creates, in essence, an automatic "reset" for the timing stipulations for raptor buffers every year whether the nest was occupied active or not. It is rare for a nest to be deleted from the system even if it is observed as being damaged or destroyed. We, therefore, protect far more nests than may actually be used every year. Because of this, the County recommends the following language be considered to provide clarification as to the application of the 98-relief allowances:</p> <p>The operator must commit to and implement all of the measures contained in Appendix G4 of the Final Environmental Impact Statement and Record of Decision to receive an automatic 98-timing limitation stipulation relief instance.</p> <ul style="list-style-type: none"> <li>o BLM will classify a nest as "occupied active" or "unoccupied" based on survey data collected during the year prior to breeding season or within the year in which operations occur inside a non-eagle raptor timing limitation stipulation buffer as documented on the APO. Survey data must be collected during the applicable time frame as determined by BLM to make a determination of the non-eagle raptor nest status.</li> <li>o Use of one of the 98-relief allowances will be determined by continuous operations within a non-eagle raptor buffer that was either 1) "occupied active" the prior year or 2) becomes "occupied active" during continuous operations. With two years of nest status survey information (prior and current year), this data should be sufficient to determine nest status and whether the nest is occupied active or unoccupied. BLM should clarify that one timing limitation stipulation relief request for nests that were</li> </ul>	Please see comment response L23F-2



		<p>occupied active during the prior breeding season will be granted for a well pad and associated infrastructure for one year.</p> <ul style="list-style-type: none"> <li>o Continuous operations within a non-eagle raptor buffer that was 1) "unoccupied" the prior year and 2) remains "unoccupied" during continuous operations will not be considered as one of the 98-relief instances.</li> <li>o For nests that were unoccupied during the prior breeding season, BLM will authorize operations within nest buffers ahead of the seasonal restriction period or during the seasonal restriction period upon an operator's demonstration that the nest is unoccupied at the time of the operator begins operations. The unoccupied nest will not be required to utilize a 98-relief instance unless the nest becomes active after operations begin and then the 72-hour continuous operations mitigation requirement would be followed. Including clarification for this approach provides incentive to operators to pursue year-round operations in TLS buffers that have not been used by non-eagle raptors the prior year and likely less desired by the non-eagle raptors in the territory.</li> </ul>	
L21F	6	<p>This mitigation measure does not seem to be consistent with Option 6 either in the use of its definition or its requirement to conduct nest searches and should be clarified or removed from this section.</p>	<p>MIG-1 is retained in the BLM's decision because this mitigation measure is not specific to Option 6 (BLM's selected alternative); rather, MIG-1 applies to all birds, not just non-eagle raptors.</p>
L21F	7	<p>" ... If a break in development operations occurs for more than 72 hours, all further development will cease until cessation of the seasonal buffer period referenced in the APO COA ... "</p> <p>Again, it was the County's understanding during the cooperating agency meetings that this language would be adopted from Option 3 to Option 6. As provided in the FEIS, the language has deviated from Option 3 and provides for difficulty in implementation and thereby promoting year-round development opportunities.</p> <p>The County recommends that BLM adopt the language in Option 3 or modify the Option 6 language to read "If operations break for more than 72 hours and the operator can demonstrate that the nest does not contain young eggs or there is an adult sitting low in the nest presumably incubating, BLM will verbally allow the operator to resume operations."</p>	<p>Please see response to comment B18F-12.</p>
L21F	8	<p>" ... During the meeting, operators will be required to provide information all about possible activities within non-eagle raptor buffer(s) during the forthcoming raptor nesting season to receive verbal approval from the authorized officer at this meeting." Under Section (B) "Monitoring and Raptor Studies" in Appendix G4, BLM recognizes that "Any operator(s) requesting to use an automatic exception will support and assist in the development of monitoring and studies ... " If the operator complies with the requirements of Appendix G4 and the 98-relief instances are considered "automatic" then there is no reason to require "verbal approval" during the annual meeting. First, an operator's plans of development shift continuously based on market conditions, success or failure of previous development, changes to internal budgets etc. and cannot be expected to remain static for 6 months (August) prior to drilling commencing in January. Second, if an operator does not request verbal approval at the annual meeting, there is no separate opportunity offered to request the 98-relief instance while meeting the requirements of the agency.</p> <p>To clarify the process, BLM should modify this section to delete the verbal approval language and allow the 98-relief instances to be "automatic" if the operators are in</p>	<p>Please See response to comment L22F-8.</p>

		compliance with the requirements in Appendix G4, which will be the same as an approved exception. Language recommendations could include "if the operator has fulfilled the requirements of Appendix G4, the operator will receive automatic relief from the timing limitation attached as a COA for an APD(s) that is approved, pending, or submitted in the future; however, the relief is granted only for the upcoming season. BLM may consider requests for relief submitted after the annual meeting."	
L21F	9	" ... This reporting requirement will apply to all operators in the CCPA in order to qualify for the following year's stipulation relief." The County supports the implementation of a reasonable monitoring and reporting structure to provide accountability and obtain monitoring data to improve management decisions. However, BLM should clarify that if an operator does not participate in the annual meeting, is there another means to provide information to the agency that will satisfy this requirement or will the operator be subject to the process outlined in Appendix F of the Casper Resource Management Plan (2007) for that year.	Please see response to comment L22F-9.
L21F	10	BLM does not address how a 98-timing limitation stipulation relief will be granted if there are multiple nests within a buffer or if the well pad and access road are within multiple non-eagle raptor buffers. BLM should clarify that where there are multiple occupied active nests within the buffer of the well pad or access road, only one 98-relief instance would be granted under these circumstances.	Please see response to comment L22F-10.
L21F	11	" ... The operators will participate with the BLM and any other pertinent entities that the BLM invites in the development of an Adaptive Management Plan ... " Campbell County has gone on record requesting to be listed as a participating cooperating agency for the development of the Adaptive Management Plan and not just referred to as a "pertinent entity." We again request to be listed as a participating agency in this process to develop an Adaptive Management Plan.	Thank you for your comment. Please see response to comment L22F-11.
L21F	12	BLM should include some additional language in this section that outlines the basic framework and expectations for the development of the Adaptive Management Plan. A statement should be included that the development of the plan must be initiated immediately upon the Record of Decision being issued. The Adaptive Management Plan must be based on long-term sustainability and should be structured to survive both economic and policy changes. The Adaptive Management Plan must provide certainty and predictability for oil and gas operators as that assists with planning efforts for counties and surrounding communities. The Adaptive Management Plan must not be structured in a way that causes delay or uncertainty.	Please see response to comment B18F-21.
L21F	13	BLM does not acknowledge or make reference to the WEST report that was submitted by the operator group and should consider referencing and including the document in the Record of Decision.	Please see response to comment L22F-13.
L21F	14	The Board appreciates BLMs consideration of these comments and we encourage their incorporation into the Record of Decision as a Casper RMP Amendment to provide consistency and efficiency in the execution of the plan components as we move forward.	Thank you for your comment.
<b>Converse County</b>			
L22F	2	" ... the BLM analyzed potential land use plan (LUP) amendments to the Casper RMP that would provide relief from non-eagle raptor timing limit stipulations ... " The County supports Alternative B along with a modified Option 6 as a plan amendment to the Casper Resource Management Plan (RMP). While Option 6 does	Please see response to comment B18F-10.

		outline a separate process for obtaining an automatic, non-eagle raptor timing limitation stipulation relief instance if operators comply with the mitigation measures in Appendix G4, it should be made clear that the existing timing limitation stipulation (TLS) exception process still exists through the Casper RMP. BLM should emphasize that this plan amendment does not eliminate the current exception process in the RMP.	
L22F	3	" ... one timing limitation stipulation relief request will be granted for a well pad for I year ... " BLM only clarifies the use of the 98-relief instances as being applicable to the well pad and does not mention the timing relief stipulation as being applicable to the access road as well. BLM should clarify that one timing limitation stipulation relief allowance will be granted for the well pad, access road and associated facilities.	Thank you for your comment. The BLM has clarified in the ROD that TLS reliefs are not limited to just the well pad, but also the related infrastructure associated with that approved APD.
L22F	4	"Occupied active nest: A nest or ledge in which eggs have been laid. At least I activity pattern (I, ii, or iii) must be documented." For consistency purposes, the County supports the use of the "occupied active" definition used in this section as defined by the Wyoming Game and Fish Department and should be made consistent throughout the document.	Please see comment response L23F-2
L22F	5	" ... Therefore, the BLM estimates that 33 percent of the 298 well pads under BLM management authority, or 98 well pads, would be expected to be located within the stipulation buffer for an occupied nest." The language stated here and throughout the document as it pertains to Option 6 is confusing and clarification is necessary to fully understand BLMs intent as to how to calculate actual instances that would be applicable to the 98-timing limitation stipulation relief allowances. BLM does not specify whether the 98 well pads relate to occupied active nests and/or unoccupied inactive nests. This is a critical component of Option 6 as it was the County's understanding during cooperating agency meetings that the 98-timing limitation stipulation relief instances would only include nests that were occupied active. For all intents and purposes, nests that BLM has identified in their database over time creates, in essence, an automatic "reset" for the timing stipulations for raptor buffers every year whether the nest was occupied active or not. It is rare for a nest to be deleted from the system even if it is observed as being damaged or destroyed. We, therefore, protect far more nests than may actually be used every year. Because of this, the County recommends the following language be considered to provide clarification as to the application of the 98-relief allowances: The operator must commit to and implement all of the measures contained in Appendix G4 of the Final Environmental Impact Statement and Record of Decision to receive an automatic 98-timing limitation stipulation relief instance. o BLM will classify a nest as "occupied active" or "unoccupied" based on survey data collected during the year prior to breeding season or within the year in which operations occur inside a non-eagle raptor timing limitation stipulation buffer as documented on the APO. Survey data must be collected during the applicable time frame as determined by BLM to make a determination of the non-eagle raptor nest status. o Use of one of the 98-relief allowances will be determined by continuous operations within a non-eagle raptor buffer that was either 1) "occupied active" the prior year or	Please see comment response L23F-2.

		<p>2) becomes "occupied active" during continuous operations. With two years of nest status survey information (prior and current year), this data should be sufficient to determine nest status and whether the nest is occupied active or unoccupied. BLM should clarify that one timing limitation stipulation relief request for nests that were occupied active during the prior breeding season will be granted for a well pad and associated infrastructure for one year.</p> <p>o Continuous operations within a non-eagle raptor buffer that was 1) "unoccupied" the prior year and 2) remains "unoccupied" during continuous operations will not be considered as one of the 98-relief instances.</p> <p>o For nests that were unoccupied during the prior breeding season, BLM will authorize operations within nest buffers ahead of the seasonal restriction period or during the seasonal restriction period upon an operator's demonstration that the nest is unoccupied at the time of the operator begins operations. The unoccupied nest will not be required to utilize a 98-relief instance unless the nest becomes active after operations begin and then the 72-hour continuous operations mitigation requirement would be followed. It needs to be made clear in the ROD that if an operator can demonstrate that a nest has been unoccupied the previous year and the current year prior to commencement of operations, neither a TLS nor a 98-relief instance is required from the BLM. Including clarification for this approach provides incentive to operators to pursue year-round operations in TLS buffers that have not been used by non-eagle raptors the prior year and likely less desired by the non-eagle raptors in the territory.</p>	
L22F	6	<p>This mitigation measure does not seem to be consistent with Option 6 either in the use of its definition or its requirement to conduct nest searches and should be clarified or removed from this section.</p>	See L21F-6 above for clarification.
L22F	7	<p>" ... If a break in development operations occurs for more than 72 hours, all further development will cease until cessation of the seasonal buffer period referenced in the APO COA ... "</p> <p>It was the County's understanding during the cooperating agency meetings that this language would be adopted from Option 3 to Option 6. As provided in the FEIS, the language has deviated from Option 3 and provides for difficulty in implementation and thereby promoting year-round development opportunities.</p> <p>The County recommends that BLM adopt the language in Option 3 or modify the Option 6 language to read "If operations break for more than 72 hours and the operator can demonstrate that the nest does not contain young eggs or there is an adult sitting low in the nest presumably incubating, BLM will verbally allow the operator to resume operations."</p>	Please see response to comment B18F-12.
L22F	8	<p>" ... During the meeting, operators will be required to provide information all about possible activities within non-eagle raptor buffer(s) during the forthcoming raptor nesting season to receive verbal approval from the authorized officer at this meeting." Under Section (B) "Monitoring and Raptor Studies" in Appendix G4, BLM recognizes that "Any operator(s) requesting to use an automatic exception will support and assist in the development of monitoring and studies ... " If the operator complies with the requirements of Appendix G4 and the 98-relief instances are considered "automatic" then there is no reason to require "verbal approval" during the annual meeting. First, an operator's plans of development shift continuously based on market conditions, success</p>	The intent of the annual operational meeting is not to grant approval to use automatic instances of TLS relief. Discussion of the annual operational meeting has been revised in Appendix C of the ROD to clarify that the meeting will occur post TLS season and will focus primarily on activities from the previous TLS season, including instances of relief that were used and the monitoring that is taking place. Please see Appendix C of the ROD for more explanation of the TLS relief process.

		<p>or failure of previous development, changes to internal budgets etc. and cannot be expected to remain static for 6 months (August) prior to drilling commencing in January. Second, if an operator does not request verbal approval at the annual meeting, there is no separate opportunity offered to request the 98-relief instance while meeting the requirements of the agency.</p> <p>To clarify the process, BLM should modify this section to delete the verbal approval language and allow the 98-relief instances to be "automatic" if the operators are in compliance with the requirements in Appendix G4, which will be the same as an approved exception. Language recommendations could include "if the operator has fulfilled the requirements of Appendix G4, the operator will receive automatic relief from the timing limitation attached as a COA for an APD(s) that is approved, pending, or submitted in the future; however, the relief is granted only for the upcoming season. BLM may consider requests for relief submitted after the annual meeting."</p>	
L22F	9	<p>" ... This reporting requirement will apply to all operators in the CCPA in order to qualify for the following year's stipulation relief."</p> <p>The County supports the implementation of a reasonable monitoring and reporting structure to provide accountability and obtain monitoring data to improve management decisions. However, BLM should clarify that if an operator does not participate in the annual meeting, is there another means to provide information to the agency that will satisfy this requirement or will the operator be subject to the process outlined in Appendix F of the Casper Resource Management Plan (2007) for that year.</p>	Any operator that uses an instance of TLS relief is responsible for submitting the required monitoring data and following the requirements detailed in Appendix C of the ROD. This requirement includes the monitoring (and reporting) of nest(s) monthly throughout the TLS season.
L22F	10	<p>BLM does not address how a 98-timing limitation stipulation relief will be granted if there are multiple nests within a buffer or if the well pad and access road are within multiple non-eagle raptor buffers. BLM should clarify that where there are multiple occupied active nests within the buffer of the well pad or access road, only one 98-relief instance would be granted under these circumstances.</p>	The Approved RMPA (Decision #4047) states that one timing limitation stipulation relief is allowed for a single well pad for one year. This has been further clarified within Appendix C of the ROD.
L22F	11	<p>" ... The operators will participate with the BLM and any other pertinent entities that the BLM invites in the development of an Adaptive Management Plan ... "</p> <p>Campbell County has gone on record requesting to be listed as a participating cooperating agency for the development of the Adaptive Management Plan and not just referred to as a "pertinent entity." Converse County is more than a "pertinent entity", we are essential. The Adaptive Management Plan must be crafted to recognize the same social economic concerns addressed in the EIS; and it is therefore critical that Converse County be part of the Adaptive Management Plan development.</p> <p>Additionally, to ignore the social economic aspects in the Adaptive Management Plan is contrary to the NEPA process. We again request to be listed as a participating agency in this process to develop an Adaptive Management Plan.</p>	The BLM recognizes the importance of Campbell and Converse counties as partners in the BLM's processes. The language referenced by the commenter has been changed to state that the BLM will develop the AMP in close coordination with the USFWS and WGFD, and that the draft AMP and NEPA compliance document will be provided for public review and input.
L22F	12	<p>A statement should be included that the development of the plan must be initiated immediately upon the Record of Decision being issued. BLM should include some additional language in this section that outlines the basic framework and expectations for the development of the Adaptive Management Plan. A statement should be included that the development of the plan must be initiated immediately upon the Record of Decision being issued. The Adaptive Management Plan must be based on long-term sustainability and should be structured to survive both economic and policy changes. The Adaptive Management Plan must provide certainty and predictability for</p>	Please see response to comment B18F-21.

		oil and gas operators as that assists with planning efforts for counties and surrounding communities. The Adaptive Management Plan must not be structured in a way that causes delay or uncertainty.	
L22F	13	BLM does not acknowledge or make reference to the WEST report that was submitted by the operator group and should consider referencing and including the document in the Record of Decision.	The WEST report is referenced in the ROD as an example that could be used as data in the BLM's Adaptive Management Plan.
<b>City of Douglas</b>			
L23F	1	Although we support the BLM's preferred Option 6, it is confusing as it relates to the calculating of timing reliefs and whether they apply to non-active nests. Up until the Final, it was our understanding that the 98 reliefs only applied to active nests. This needs clarification.	The BLM has provided clarification in the ROD to describe the process for how timing reliefs are obtained.
L23F	2	The City of Douglas continues to maintain that any protection measures should only apply to "active" nests. Buffers already take up two-thirds of the project area. It has been shown that most nests within the project boundary are inactive or abandoned (78%), without any cause of disturbance from O&G activity. These protections are arbitrarily applied to nests that do not contain nesting birds and thus yield minimal, if any, ecological benefit.	A TLS stipulation will be applied to a non- eagle Raptor nest that has a nest condition other than poor, remnant or destroyed.
L23F	3	We again ask that the BLM adopt a 3-year non-use standard before declaring nest abandonment. This standard is based upon similar standards that have been applied in other administrative areas for more than 20 years and has withstood legal challenge or violations of "Take" under the Migratory Bird Treaty Act or the Eagle Protection Act.	Please see comment response L23F-2
L23F	4	Option 6 leaves open the question of what happens if a bird occupies a nest after drilling has started. The City of Douglas concurs with Option 3's assumption that a raptor that re-populates a nest after commencement of development activities is tolerant to that disturbance. Else it would not have located there. We do not believe it should count towards one of the 98-relief instances.	This situation is addressed in the Applicant Committed Measures described in Table 3-1 of the ROD.
L23F	5	Option 6 provides that development activities must be maintained continuously without a break of more than 72 contiguous hours. If a break exceeds 72 hours, all further development must cease, even if the nest does not become occupied. There needs to be some flexibility to resume operations after cessation of more than 72 hours. We ask that the BLM verbally allow operators to resume operations if it can be demonstrated that eggs had not been laid in the nest.	Please see response to comment B18F-12.
L23F	6	There also needs to be some flexibility during the breeding season if the monitoring shows the nest in not active. Option 6 requires that operators commence within 30 days of the start of the seasonal buffer period. This means a January 1 <sup>st</sup> start date. We believe this is unnecessarily inflexible. We ask that the BLM allow the commencement of operations if the operator can demonstrate that, during the 7 days prior to commencement of operations, eggs had not been laid in the nest.	Please see response to comment L22F-9.
<b>Great Plains Tribal Water Alliance, Inc.</b>			

N32F	2	The BLM significantly increased the estimate of ground and surface water withdrawals required for 5,000 wells, from the draft EIS (page 3.16-20, "Based on a Water White Paper provided by the OG (owner group) for the Project, water requirements per well can range from 6.1 to 12.3 acre-feet.") to the Final EIS. The new estimate also sounds tentative, and lacks clarity and supporting documentation: "Water requirements may well range from 19.7 to 26.2 acre-feet." Final EIS, p. 3.16-20. That is a too wide of a range, so as to fail to disclose the actual impact of water withdrawals for oil and gas wells	Please see response to comment B19F-1.
N32F	3	This significantly underestimates the chance of migration from a fracked well, and ignores the significant environmental risk posed by the injection of waste fluid. The BLM utilizes the 0.5 percent figure for estimating well failures. Based upon that figure, BLM concludes that "no impacts to usable waters from hydraulic fracturing would be expected." (Id. p. 4.16-15). That conclusion is contradicted by data and is erroneous. The 0.5 percent estimate for well failures is too low. According to Anthony R. Ingraffea, a recognized expert at Cornell University, the frequency of well casing failures in the Marcellus Shale may be as high as 7 percent - 14 times higher than BLM's estimate for Converse County.	This comment was responded to previously. Please see response to comment N04-14 in Appendix H of the FEIS.
N32F	4	Additionally, the cumulative impacts of state and federally-approved mining operations in the Black Hills have not been properly evaluated by BLM in the Final EIS.	Comment is unclear as to which mining operations they are referring to nor the types of impacts that need to be evaluated.
<b>Western Energy Alliance</b>			
N33F	1	However, we believe there are several issues that require additional modification and clarification before BLM approves the Record of Decision for the project. We are specifically concerned that the non-eagle raptor nest protection and stipulation relief process is not entirely clear and request that BLM make specific changes to address that ambiguity, consistent with the OG's protest letter and comments.	Thank you for your comment.
<b>Wyoming Outdoor Council</b>			
N35F	1	However, BLM did not adopt the option recommended by the USFWS or the other option that the USFWS found would conserve migratory birds. Instead, the BLM has chosen a substantially less protective approach, Option 6 (as described in more detail above), which would relieve the operators from timing limitations that protect non-eagle raptors "if the applicant applies the conservation measures set forth in Appendix G4." Final EIS, p. 1-6. Further, BLM repeatedly confirms that: "The Migratory Bird Conservation Strategy (MBCS) being developed between the Operator Group and USFWS has been placed on hold and is not available for review." See, e.g., response to comment B-01-09, Final EIS, Appendix H, p. H-1. Selection of this alternative does not comply with the initial recommendations of the USFWS to prevent incidental take of migratory birds and is not consistent with the MBTA. Notably, in selecting this new alternative, BLM was operating within the constraints imposed by Opinion M- 37050, which was binding on all agencies within the Department of the Interior.	The Migratory Bird Conservation Plan, as described in Section 2.4.9 of the FEIS (page 2-38), would have provided a life-of-project framework for identifying and implementing actions to conserve migratory birds. However, the Migratory Bird Treaty Act does not require the development of an MBCP. Rather, development of the MBCP would be the responsibility of the project developers and operators to develop. The BLM cannot require that the Operator Group develop and submit a MBCP to the US Fish and Wildlife Service.

N35F	2	<p>Quoting the Interior Board of Land Appeals, the IM notes that BLM's exercise of discretion in deciding not to lease lands described in an oil and gas lease sale must be supported by a rational basis. A rational basis may include deciding not to lease lands when the public interest favors other resource considerations, such as wildlife, endangered species preservation, recreational use, and aesthetic or scenic values. <i>Id.</i> at 2. While the guidance from the Montana/Dakotas office is specific to lease sales, its principles apply at the project level as well. In order to comply with the 2015 Plans, the Wyoming BLM should issue and follow similar guidance to ensure the agency follows the mitigation hierarchy and first avoids development in PHMA and GHMA, particularly within the applicable lek buffer distances, followed by appropriate minimization and mitigation of impacts. BLM should clearly acknowledge its authority to prohibit and condition development in sage-grouse habitat. Where the BLM does allow development in grouse habitat it must fully consider the importance of intact landscapes, and evaluate the reasonable development potential for the project. Where impacts cannot be avoided or minimized, they must be effectively mitigated through compensatory mitigation to achieve a net conservation gain.</p>	<p>All APDs will be in conformance with the RMP, as amended. Clarification is provided in the ROD to explain that any operator would need to adhere to the stipulations of their State of Wyoming-issued APD, which would require signoff from the Wyoming Game and Fish Department. If granted, the State of Wyoming's process could require compensatory mitigation.</p>
N35F	3	<p>The BLM's decision to allow conditional relief from TLS is arbitrary and capricious. BLM and USFWS evaluated risks to raptors in the 2007 Casper RMP FEIS and, based on the science available at that time, determined that TLS were necessary; the TLS were not weakened through subsequent amendments and maintenance actions. See FEIS for the Casper FO (2007) and the Casper Final Biological Assessment (BA) (2007). Since then, significant new data has emerged on the importance of adequate regulatory mechanisms to conserve migratory bird species. See, e.g., Amano, Tatsuya et. al, "Successful conservation of global waterbird populations depends on effective governance," <i>Nature</i> vol. 553, 199-202 (Jan. 11, 2018) [hereinafter "Amano"].<sup>7</sup> These data reinforce the need for strong protections amid widespread and severe global declines in biodiversity.</p>	<p>This comment was responded to previously. Please see comment response in FEIS, Appendix I, N31S-1.</p>
N35F	4	<p>While BLM responded that it was not relying on this opinion in its decision-making, the selected alternative ultimately belies this claim. The alternative selected by BLM does not require a Migratory Bird Conservation Plan originally recommended by USFWS or a Migratory Bird Conservation Strategy that the operators originally agreed to develop with the USFWS</p>	<p>Please see response to comment N35F-1.</p>
N35F	5	<p>To get a better picture of the actual on-the-ground impacts, we recommend that BLM prepare additional environmental analyses on a finer scale, for example, on a watershed level, and prepare Master Development Plans that would analyze impacts from specific, multi-well projects when locations of well pads, access roads, pipelines, powerlines, and other facilities are known. Because the BLM typically categorically excludes individual drilling permits from NEPA review under Section 390 of the Energy Policy Act, no further public review or comment opportunity will be provided for most of the wells proposed by the operator group. Sage-grouse require intact, connected landscapes for the species' survival. In order to reasonably consider the likely impacts to sage-grouse from the Converse County Project as NEPA requires, the BLM must analyze a realistic distribution of infrastructure at the EIS stage, and fully account for the factors addressed in Dr. Holloran's report.</p>	<p>The Converse County FEIS is programmatic in nature, and as such, the BLM will complete a site-specific evaluation of each APD or Sundry Notice proposing actual federal oil and gas lease operations, in compliance with 43 CFR 3162.5-1(a), and will prepare an "environmental record of review" that includes analysis of potentially-affected resources by an interdisciplinary team of BLM resource specialists. The BLM may rightfully conclude that an action (particularly when existing NEPA analyses have already analyzed oil and gas exploration and development operations) is categorically excluded from further NEPA analysis. But those actions still undergo BLM analysis, including public participation requirements such as those provided for under 43 CFR 3162.3-1(g), at a minimum, and the public is duly notified of the BLM's decisions (which are also subject to special provisions for administrative challenge, under 43 CFR 3165.3(b), if an adversely-affected party believes the BLM has failed to comply with the BLM's requirements, including for NEPA compliance).</p>



N35F	6	<p>Under Alternative B, the oil and gas Operator Group would seek exceptions to BLM timing stipulations for greater sage-grouse leks outside of PHMA. Because the FEIS discloses significant impacts from project activities to greater sage-grouse, we recommend that all stipulations, required design features, and other conservation measures included in the 2015 Plans designed to protect sage- grouse be honored and enforced in the project area. Due to the unnecessary or undue degradation that would result, we oppose any and all efforts to circumvent timing stipulations that apply to greater sage- grouse in general habitat management areas. The 2015 Plans, Thunder Basin National Grassland plan, and Wyoming EO should be fully complied with.</p>	<p>The decision described in the ROD conforms to the Wyoming Greater Sage-Grouse RMP Amendment(s). When applicable, the requirements of the plans will be reviewed at the time actual operations are proposed to the BLM, in order to ensure applicable requirements are met for site-specific federal oil and gas lease operations, including for exception requests that may be submitted to the BLM in the future for Greater Sage-Grouse timing limitations.</p>
N35F	7	<p>While BLM has evaluated the benefits of year-round drilling for the Operator Group and for certain other types of impacts, the agency has not sufficiently addressed the impacts to raptors. Removing TLS contradicts accepted science and is not justified anywhere in BLM's analysis. Further, BLM has not addressed how proposed Option 6 would sufficiently protect raptors. In fact, while purporting to set out criteria for limiting when TLS could be waived, avoidance and minimization efforts are essentially voluntary. As addressed above, Option 6 merely requires operators to "consider alternative locations outside of the non-eagle raptor buffer," and "discuss" their "efforts" to avoid buffers with BLM. FEIS at Appendix G4. Operators are required to "participate with the BLM" in designing an Adaptive Management Plan, no details of which are included in the FEIS. Id. USFWS and WGFD are not mentioned in Appendix G4, and the appendix merely suggests that "any other pertinent entities that the BLM invites" may participate in the development of an Adaptive Management Plan.</p>	<p>The Adaptive Management Plan and TLS relief processes are described in the ROD. Avoidance and minimization of impacts to non-eagle raptors is considered the first step of the TLS relief process, to be considered prior to siting projects within non-eagle raptor buffers.</p> <p>Clarification has been added to Section 3.1.3 of the ROD to explain that BLM will coordinate with the U.S. Fish and Wildlife Service and Wyoming Game and Fish Department of the development of the AMP.</p>
N35F	8	<p>Here, the Converse County Project proposal violates FLPMA because, as in the above cited case, it "either explicitly, or in effect, follow[s] the same rationale as the 2018 IM," by failing to prioritize development outside of PHMA and GHMA. Id. at 26. As in the vacated lease sales, "the errors here occurred at the beginning of the [project's] process, infecting everything that followed." Id. at 31. Rather than prioritizing development outside of grouse habitat as required, the BLM accepted the Operator Group's proposed action as the agency preferred alternative without reconciling the alternative with the 2015 plans. Thus, the agency's preferred alternative permits extensive development in grouse habitat and would exempt operators from protections necessary to protect grouse and their habitat.</p>	<p>This comment was responded to previously. Please see comment response in FEIS, Appendix H, N15-B-28.</p>
N35F	9	<p>The proposed development does not comply with the State of Wyoming's sage- grouse executive order to the extent possible. The Wyoming executive order for sage grouse also includes a prioritization requirement. The BLM fails to achieve prioritization outside of sage-grouse habitat here. Thus the proposed action is in violation of both state law and FLPMA, which requires BLM land use planning to comply with state law to the "maximum extent" consistent with federal law. The EO states in relevant part: Agencies and departments of the State of Wyoming (including, but not limited to: Wyoming Game and Fish Department, Office of State Land and Investments, Department of Environmental Quality, State Engineer's Office, Industrial Siting Council, Department of Transportation, Oil and Gas Conservation Commission) shall, consistent with their statutory authority, prioritize the maintenance and enhancement of</p>	<p>This comment was responded to previously. Please see comment response in FEIS, Appendix H, N15-B-28.</p>

		<p>Greater sage-grouse habitats and populations inside Core Population Areas, Connectivity Areas, and Winter Concentration Areas... Development shall be conducted in a manner that recognizes and achieves an order of avoidance, minimization and where appropriate, compensatory mitigation to assure the long-term sustainability of Greater sage-grouse populations and habitats. Development consistent with the stipulations set forth this Executive Order shall be deemed sufficient to demonstrate that the activity will not exceed Greater sage-grouse thresholds And that State and federal agencies, including the U.S. Fish and Wildlife Service, Bureau of Land Management, U.S. Forest Service, Wyoming Game and Fish Department, and other stakeholders shall work collaboratively to ensure a uniform and consistent application of this Executive Order to maintain and enhance Greater sage-grouse habitats and populations Wyoming EO 2019-3 at 2-5 (emphasis added). BLM's proposed action does not prioritize the maintenance and enhancement of core habitat, fails to apply the appropriate mitigation hierarchy to assure long term sustainability of grouse populations and habitat, is inconsistent with the stipulations set forth in the EO, exceeds sage-grouse thresholds in four out of five assessment areas, and circumvents necessary collaboration with both the U.S. Fish and Wildlife Service, and the Wyoming Game and Fish Department. As such, the project violates the Wyoming EO and thus violates FLPMA.</p>	
N35F	10	<p>The BLM has not prioritized development outside of core-sage grouse habitat, as required by the federal 2015 plans and the Wyoming sage-grouse executive order. FLPMA and its implementing regulations require that BLM manage public lands in accordance with land use plans, and that subsequent authorizations and actions conform to those plans. Norton v. S. Utah Wilderness All., 542 U.S. 55, 69 (2004). Thus, the BLM is prohibited from taking actions "inconsistent with the provisions of a land use plan." Id. FLPMA further provides that "[l]and use plans of the Secretary under this section shall be consistent with State and local plans to the maximum extent he finds consistent with Federal law and the purposes of this Act." 43 U.S.C. 1712 (b). The proposed action, however, is inconsistent with both the relevant land use plan amendments for the conservation of greater sage-grouse (the 2015 plans), and the State of Wyoming executive order for the conservation of sage-grouse and as such violates FLPMA</p>	<p>This comment was responded to previously. Please see comment response in FEIS, Appendix H, N15-B-28.</p>
N35F	13	<p>The proposed action does not adhere to the federal 2015 Plans in violation of FLPMA. The 2015 Plans establish a "Prioritization Objective" for oil and gas development in order to avoid, minimize, and mitigate impacts to sage-grouse: Prioritization Objective-In addition to allocations that limit disturbance in PHMAs and GHMAs, the ARMPs and ARMPAs prioritize oil and gas leasing and development outside of identified PHMAs and GHMAs. This is to further limit future surface disturbance and encourage new development in areas that would not conflict with GRSG. This objective is intended to guide development to lower conflict areas and as such protect important habitat and reduce the time and cost associated with oil and gas leasing development by avoiding sensitive areas, reducing the complexity of environmental review and analysis of potential impacts on sensitive species, and decreasing the need for compensatory mitigation. 2015 Plans at I-25. The BLM's duties under the prioritization objective were recently clarified in federal court. On May 22, 2020 the federal district court in Montana ruled in favor of sage-grouse</p>	<p>This comment was responded to previously. Please see comment response in FEIS, Appendix H, N15-B-28.</p>

		protection in a case brought by Montana Wildlife Federation, Montana Audubon, National Audubon Society, National Wildlife Federation and The Wilderness Society.	
N35F	14	The BLM should also consider an alternative that protects non-eagle raptor species, ensuring close coordination with state and federal wildlife agencies. No such alternative is evaluated in the FEIS.	BLM did consider an option that incorporated a Migratory Bird Conservation Plan, as proposed by the US Fish and Wildlife Service (Alternative B, Amendment Option 5). Please see Table 2.4-6 of the FEIS for a description of Option 5.
N35F	15	The proposed action violates NEPA by failing to fully consider the direct and indirect impacts to sage-grouse. The FEIS inaccurately minimizes the impacts to sage grouse by applying the site specific Density and Disturbance Calculation Tool (DDCT) at the landscape level, failing to accurately account for habitat fragmentation, unreasonably assuming a uniform distribution of infrastructure throughout the project area, and estimating impacts based on infrastructure density instead of considering factors like distance-effect and the spatial configuration of infrastructure. In addition, the BLM has not thoroughly assessed the impacts to sage-grouse from invasive plants like cheatgrass (unreasonably assuming impacts from invasives will be temporary, localized, and reversible), residual impacts (characterizing them as localized where they would likely be widespread and potentially extend beyond the project area), and ineffective mitigation (failing to establish mitigation sufficient to achieve a "net conservation gain" as required by the 2015 Plans).	<p>Please refer to Sections 4.18.3.2, Impacts to Special Status Wildlife Species from Alternative B, and 5.3.18, Wildlife and Aquatic Biological Resources, for discussion of direct, indirect, and cumulative impacts to sage grouse.</p> <p>A preliminary DDCT was completed in the FEIS to provide additional data to inform the analysis regarding potential effects to Greater Sage-Grouse habitats from anticipated future authorizations that would result in surface disturbance. See FEIS at page 3.18-55. "Preliminary DDCT assessment areas were created for this project to identify existing and potential disturbance in these areas for impacts analysis; however, the formal DDCT policy review process would not be conducted until site-specific disturbance is identified prior to project permitting." Future DDCT analysis of site-specific disturbances would ensure BLM authorizations conform to the approved RMPs, including their limitations on applicable disturbance densities and the cumulative extents of surface disturbance.</p>
N35F	16	The FEIS for the Converse County Project must consider an option that conserves greater sage- grouse in accordance with the objectives and direction in the federal 2015 Plans [hereinafter "2015 plans"] <sup>2</sup> and the Wyoming sage grouse executive order [hereinafter "Wyoming EO"]. The FEIS analyzes three alternatives - a no action alternative (Alternative A), the Operator Group proposed action (Alternative B) which considers six Land Use Plan (LUP) amendment options offering operators relief from timing limitation stipulations for sage-grouse and raptors, and a third alternative designed alongside cooperating agencies to reduce surface disturbance by concentrating wells on fewer well pads (Alternative C). In developing these alternatives, the FEIS states that the BLM followed guidance set forth in 40 CFR 1500-1508 and the BLM NEPA Handbook H-1790-1. The BLM selected the Operator Group proposed alternative as the agency preferred alternative. FEIS at ES-5. While several other alternatives were considered, but eliminated from detailed analysis, none of those alternatives were designed to conserve greater sage-grouse and their habitat.	This comment was also responded to previously. Please see response to comment N15-B-23 in Appendix H of the FEIS. Also see 2.6.6 Full Resource Protection Alternative description.
N35F	17	Neither Alternative A nor B considers reasonable measures to protect sage-grouse. Numerous public comments called for an alternative protecting sage-grouse and suggested a wide range of conservation measures that should have been considered in an alternative. Suggestions included following the avoid, minimize, mitigate hierarchy of mitigation priorities to limit and mitigate loss of habitat function, applying best management practices, considering protection from surface disturbance in winter concentration areas from November 15 to April 30 while sage-grouse occupy their winter concentration areas, a moratoria on vehicle traffic and other anthropogenic disturbance from the project in sensitive wildlife habitat, specifying both interim and reclamation measures for habitat management, providing for regular inventories and monitoring of sage grouse populations, establishing a disturbance limit in certain areas of the project - for example to protect leks in GHMA to offset the disturbance in	This comment was responded to previously. Please see response to comment N03-33 in Appendix H of the FEIS. Also see 2.6.6 Full Resource Protection Alternative description.

		PHMA, permitting a fewer number of wells, and drilling fewer wells each year. While Alternative B and Alternative C have some superficial differences, both propose drilling the same number of wells at the same drilling rate. Both would significantly impact greater sage-grouse populations, likely leading to the abandonment of all 54 leks within the project area and its two-mile buffer. In this regard, the alternatives are exactly the same. The BLM's approach cannot satisfy NEPA's mandate to consider a reasonable range of alternatives. The BLM must consider an alternative that conserves greater sage-grouse	
N35F	18	The BLM violated NEPA's hard look mandate in its review of impacts to sage-grouse. The FEIS does not adequately disclose and review direct and indirect impacts to sage-grouse because it does not consider the best available science and metrics in its evaluation of risks to sage-grouse populations. Further, the FEIS does not accurately account for cumulative impacts to sage-grouse from displacement and destruction of habitat.	Please see response to comment N35F-15.
N35F	19	Here, BLM did not consider a reasonable range of alternatives because the agency did not evaluate an option including both a Decision Matrix and an MBCP, and did not "rigorously explore and objectively evaluate" the MBCP option in its FEIS in order to make an informed decision and facilitate public understanding.	This comment was responded to previously. Please see comment response in FEIS, Appendix I, N31S-4.
N35F	20	In conversations with WGFD, we have learned that the department has grave concerns about adverse impacts to raptors. Specifically, WGFD is concerned that the BLM's raptor protection plan lacks clarity, that no technical team has been established to monitor and report publicly on raptors' response to energy development, that coordination between BLM and WGFD has not been spelled out, that nebulous concepts in BLM's options remain undefined, and that the preferred action risks significant impacts to ferruginous hawks, which have been identified by both WGFD and USFWS as a species of conservation concern.	The BLM has worked closely with the Wyoming Game and Fish Department in the development of this project and have addressed their comments and concerns to the fullest extent possible. The BLM will continue to collaborate with the WGFD in the implementation of the project, as described in the ROD.
N35F	21	Further, a complete MBCP is required to meaningfully compare the LUP amendment options and their potential impacts. Under the BLM's preferred option, operators would benefit from TLS relief, but raptors and the public would not. The BLM must evaluate an alternative that rigorously explores and evaluates the MBCP option (and actually reviews a draft of the MBCP and its potential impacts), provides for robust and ongoing consultation with state and federal wildlife agencies, and establishes a decision-making framework for TLS relief. Until the BLM has done so, it has not analyzed a reasonable range of alternatives in violation of NEPA.	Please see response to comments N35F-1 and 14.
N35F	22	NEPA requires a detailed analysis of "cumulative" effects, which are "the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions." 40 C.F.R. §§ 1508.7, 1508.25(c).6 Analysis of cumulative impacts protects against "the tyranny of small decisions" by confronting the possibility that agency action may contribute to cumulatively significant effects even where impacts appear insignificant in isolation. Kern v. BLM, 284 F.3d 1062, 1078 (9th Cir. 2002); 40 C.F.R. §§ 1508.7, 1508.27(b)(2). Here, BLM violated this requirement by failing to consider the cumulative, incremental contribution of past, present and reasonably foreseeable non-project oil and gas development within and in close proximity to the project area....BLM's cumulative impacts analysis of oil and gas activity falls short in	This comment was responded to previously. Please see comment response in FEIS, Appendix H, F03-02.

		<p>two main ways. First, BLM uses an arbitrary cut-off date for cumulative impacts analysis of December 31, 2015, which is a full four and a half years before the FEIS was released. Second, the BLM’s cumulative impacts analysis contains a much too conservative estimate of anticipated non-project oil and gas development in the area. First, as it explains in its response to the Resource Council’s comments, for analysis of past and present cumulative impacts, BLM only includes oil and gas wells as of December 31, 2015. This arbitrary cut-off date causes a dramatic undercount in the wells that are presently operating in and nearby to the project area and therefore dramatically under analyzes cumulative impacts.</p> <p>As the attached data from the Wyoming Oil and Gas Conservation Commission (“WOGCC”) website show, there are 3,854 horizontal wells that have started producing in Converse County since January 1, 2016. See Table: Converse County Wells 2016 (attached as Exhibit 2) 1,149 of these wells came online in 2016 and 2017, allowing sufficient time for their incorporation into the DEIS analysis, and an additional 1,703 wells came started producing in 2018 and 2019, allowing sufficient time for their incorporation into the SEIS analysis. In its response to comments, BLM says it used the WOGCC data to estimate wells and there is no doubt the agency was familiar with the extent of the drilling that occurred since 2015 in the WOGCC’s data. Yet, by sticking with its 2015 cut-off date, long after the project’s NEPA analysis was delayed by multiple years, BLM ignored the true scope of oil and gas activity already occurring in the project area – activity that is already creating significant cumulative impacts.</p>	
N35F	23	<p>Regarding reasonably foreseeable future development, the third important prong of cumulative impacts, BLM underestimates the amount of development that will occur. In its response to comments, BLM admits its cumulative impacts analysis assumed a “conservative” estimate of a drilling rate of approximately 110 wells per year. This estimate is far too conservative for an accurate assessment of cumulative impacts. The attached data shows that around 1,000 wells – in addition to those covered by this EIS – are typically drilled annually in Converse County. WOGCC’s data shows that thousands more wells will be drilled in and nearby the project area as total horizontal well permits in County now total 17,696 (data current as of August 25, 2020). Permitted wells are reasonably foreseeable and the impacts of the wells permitted by the WOGCC and associated development must be considered within the scope of BLM’s EIS.</p>	<p>This comment was responded to previously in response to comment N11-45 in Appendix H of the FEIS. In regard to the 17,696 wells noted by the commenter, the BLM's analysis, to include WOGCC data, does not indicate drilling activity consistent with that number. That number could not be replicated with the data available to the BLM.</p>
<b>Western Watersheds Project</b>			
N34F	1	<p>However, BLM cannot make a blanket approval of exceptions to sage-grouse timing limitations outside of core areas without violating the 2015 Wyoming ARMPA. Where the 2015 Wyoming ARMPA allows exceptions to timing restrictions at all, it requires them to be made on a case-by-case basis after demonstrating that they meet the ARMPA’s criteria.</p>	<p>Language has been added to the ROD to clarify that the BLM's decision does not authorize automatic waivers or exceptions of TLS for Greater Sage-Grouse. Exceptions to sage grouse TLS will continue to be considered and allowed on a case-by-case basis as prescribed by the 2015 Approved RMPA.</p>
N34F	2	<p>However, the Converse County FEIS includes new text that was not in the DEIS abandoning the conservation side of this approach. The FEIS states, The OG [Operator Group] holds oil and gas leases in the CCPA [Converse County Project Area]. An oil and gas lease is a contract between the federal government and the lessee, under which the lessee has certain rights, and neither the ROD nor any decisions implementing the</p>	<p>The BLM believes the statement referenced by the commenter and MR 3 of the 2015 Approved RMPA to be consistent. The BLM is required to honor all valid existing rights and cannot make decisions that would repeal the rights conveyed in existing oil and gas leases. The 2015 Approved RMPA is also subject to this obligation and acknowledges it repeatedly throughout the document.</p>

		<p>ROD will limit, restrain, or unreasonably interfere with these rights. FEIS at 1-7, emphasis original (text new to the FEIS is italicized and bolded). This conflicts with the 2015 Wyoming ARMPA’s MD MR 3, which seeks to respect valid leasing rights while still implementing grouse conservation. By conflicting with MD MR 3, the new FEIS text conflicts with the 2015 Wyoming ARMPA’s conformity requirement.</p>	
N34F	3	<p>Third, we raised concerns in our DEIS and SDEIS comments about disturbance of greater sage-grouse habitat, especially inside greater sage-grouse PHMA/Core Areas. DEIS Comments at 9, 10 and SDEIS Comments at 8. According to the FEIS, three of five Density and Disturbance Calculation Tool (DDCT) Assessment Areas within greater sage-grouse PHMA have existing disturbance greater than 5 percent: Douglas (26.5%), North Glenrock (10.3%), and Thunder Basin (9.7%). FEIS at 4.18-50. For Alternative A (the No Action alternative) the FEIS further states, “Due to the current 5 percent disturbance cap being exceeded, further surface disturbance would be prohibited in three of the PHMAs (Douglas, North Glenrock, and Thunder Basin).” FEIS at 4.18-50.</p> <p>However, for Alternative B (the Proposed Action and BLM’s Preferred Alternative) the FEIS states, “[U]nder Alternative B, development could be approved on a site-specific basis consistent with the Wyoming EO 2019-3 and the DDCT process if found to be under the 5 percent cap.” FEIS at 4.18-65 (emphasis in original). The FEIS estimates that under Alternative B, existing and new disturbance totals will climb past 5% for four of the five PHMA/Core Areas: Bill (5.1%), Douglas (30%), North Glenrock (13.8%), and Thunder Basin (13.2%). FEIS at 4.18-64. This is higher than the estimated existing and new disturbances totals for Alternative A (No Action): Bill (2.3%), Douglas (27%), North Glenrock (10.9%), and Thunder Basin (10.4%). FEIS at 4.18-50.</p> <p>This increased disturbance under Alternative B compared to Alternative A is directly attributable to the Project. That means BLM is in fact considering approving development over the 5% disturbance caps, which is prohibited by the 2015 Wyoming ARMPA,14 despite the FEIS’s claim that it will not do.</p> <p>Fourth, MD SSS 4 states: “Within PHMAs, specific to management for GRSG, all RMPs are amended as follows:”</p> <p>In undertaking BLM management actions, and, consistent with valid existing rights and applicable law, in authorizing third-party actions that result in habitat loss and degradation in PHMAs, the BLM will require and ensure mitigation that provides a net conservation gain to the species including accounting for any uncertainty associated with the effectiveness of such mitigation. This will be achieved by avoiding, minimizing, and compensating for impacts by applying beneficial mitigation actions. In Wyoming, the USFWS has found that “the core area strategy, if implemented by all landowners via regulatory mechanism, would provide adequate protection for sage-grouse and their habitats in the state.” The BLM will implement actions to achieve the goal of net conservation gain consistent with the Wyoming Strategy (EO2015-4) that includes “compensatory mitigation as a strategy that should be used when avoidance and minimization are inadequate to protect Core Population Area Greater sage-grouse.”</p> <p>WY ARMPA at 35, emphasis added.</p>	<p>In Appendix H of the FEIS, Comments N15B-30 thru 32 reference a section that is no longer in the FEIS as the comment states, but section 6.6.2 still responds to these comments. Please see Appendix H, Comment N15B-28 in response to this comment.</p>

		<p>In addition, the 2015 Wyoming ARMPA’s MD GMD 2 states: Field offices will work with project proponents, partners, and stakeholders to avoid or minimize impacts and/or implement direct mitigation (e.g., relocating disturbance, timing restrictions, etc.), and utilize best management practices (BMP). When necessary, offsite compensatory mitigation will be applied consistent with Wyoming’s Core Area Strategy.</p> <p>Despite these requirements and the requirements of NEPA’s implementing regulations, the FEIS does not address the questions about compensatory mitigation for greater sage-grouse that we asked in our DEIS comments:</p> <ul style="list-style-type: none"> <li>• How will the Project’s sage-grouse compensatory mitigation be constructed to be durable and timely?</li> <li>• How will BLM and Forest Service ensure the Project’s sage-grouse compensatory mitigation takes place, and how will the agencies monitor its effectiveness?</li> <li>• How will BLM and Forest Service ensure that the Project’s sage-grouse compensatory mitigation is in addition to any other mitigation that would take place? (In other words, how will the agencies know that it is truly compensatory?)</li> </ul> <p>DEIS Comments at 11. The FEIS responds to each of these questions with “See section 6.6.2.2.” This does not address our comments because there is no section 6.6.2.2 in the FEIS. See FEIS at H-125 and 6-31 to 6-32. In addition, the FEIS’s section 6.6.2 (Wildlife Mitigation) includes two paragraphs on voluntary compensatory mitigation, but our DEIS comments were about compensatory mitigation for greater sage-grouse, which is required under the 2015 Wyoming ARMPA in PHMA. See FEIS at 6-31 and 6-32 and 2015 Wyoming ARMPA at 35. Therefore, BLM has not responded to our comments as required by NEPA’s implementing regulations.</p>	
N34F	4	<p>BLM has in fact worsened the EIS’s Wildlife Mitigation section, apparently responding to industry commenters who complained about compensatory mitigation requirements. (See Appendix H, Responses to DEIS Comments.) In contrast, the Wildlife Mitigation section of the DEIS included a statement about compensatory mitigation and the 2015 Wyoming ARMPA:</p> <p>The Record of Decision and Approved RMP Amendment (BLM 2015b) states that when authorizing third-party actions that would result in greater sage-grouse habitat loss and degradation, the BLM would require and ensure mitigation that would provide a net conservation gain to the species (i.e., the actual benefit or gain above baseline conditions). For this reason and because the PHMAs (as mapped in Core Area Version 3) are already well above the 5 percent disturbance threshold, compensatory mitigation applied to the PHMAs must be considered for Alternative B to achieve a net conservation gain.</p> <p>DEIS at 6-30. Although compensatory mitigation cannot be used as a justification for approving development in PHMAs above the 5% disturbance cap because it conflicts with the 2015 Wyoming ARMPA, the DEIS was correct that the 2015 Wyoming ARMPA and its ROD contain requirements for compensatory mitigation, including a net conservation gain to greater sage-grouse. See 2015 Wyoming ARMPA at 26, 35 and ROD at 1-26 and 1-27.16 Also present in the Converse County Oil and Gas Project DEIS was a description of compensatory mitigation that BLM would accept, a requirement for compensatory mitigation plans containing certain elements, and reference to net conservation gain for greater sage-grouse. DEIS at 6-30. In the FEIS,</p>	<p>Please see Section 6.6.2 of the FEIS.</p> <p>Also see response to comment S11F-4 above for further clarification.</p>

		<p>compensatory mitigation is now voluntary and the reference to net conservation gain was removed. FEIS at 6-31 to 6-32. Making compensatory mitigation for greater sage-grouse voluntary and removing reference to net conservation gain in the FEIS does not remove BLM's and the Operator Group's obligations to follow the 2015 Wyoming ARMPA and ROD. Nor can BLM amend the 2015 Wyoming ARMPA through the EIS for the Converse County Oil and Gas Project.</p>	
<b>Oglala Sioux Tribe</b>			
T01F	1	<p>This does not legally relieve the BLM with the mandates of NEPA because of the economic impact this project will have for Wyoming. OST points to the responsible authorizing Federal Officer Stephanie Connelly and the staff of the BLM Wyoming office for developing the DEIS to consider information collected during this EIS timeline but failed their duty; and BLM failed to list the required tribal consultation input outlining OST and other tribes expected impacts including the environmental impacts with this project.</p> <p>In the FEIS it states that: The purpose of this EIS is to evaluate potential impacts resulting from implementing future plans and applications related to this proposal; to facilitate the decision-making process to approve, approve with modifications, or disapprove the proposed project or project components based on an evaluation of the expected impacts; and to the extent possible, minimize or avoid environmental impacts.</p> <p>OST contends that there are potentially thousands of un-recorded/unidentified cultural resources and burials within the entire area of CCP A. OST also objects to the five applicants listed as the Operator's Group, using only archaeology to control the identification process. OST and other tribes want a certified Indigenous Cultural Resource Management (CRM firm) to conduct the tribal identification phase survey(s) per 36 CFR 800 Subpart B, and § 800.3 -to - § 800.6 contained in the regulations.</p> <p>The inevitable destructive and damage may well be perpetrated upon non-renewable cultural, religious, historic-prehistoric resources, along with the destruction of our sacred sites and burials because of the limiting the comments by OST and other tribes</p> <p>The OST alleges in this "Protest" that compliance to these sections presented here also are not visible within the DEIS, the SEIS and the FEIS. Based on our evidence to support a "Protest" of OST and other tribes, outlining the purposes stated here why this is "deficient," the FEIS cannot proceed to a Record of Decision.</p>	<p>Please see Section 3.2.2, Resources of Native American Concern, specifically the last paragraph and Section 4.2.2.3 Impacts to Resources of Native American Concern. For mitigations see Section 4.2.2.4, specifically page 4.2-10, CR-4.</p>



## 10.) Final EIS section 3.2.3.4: Tribal History Overview

The FEIS section 3.2.3.4. contains erroneous language titled "Sioux" and deliberately disenfranchise the Lakota to Unci Make (Grandmother Earth) and changes the presence and occupation of the Lakota/Dakota/Nakota of Oceti Sakowin (Seven Camp Fire People) attempting to change the Lakota narrative on who we are as a people and where the Lakota/Dakota/Nakota originated. These individuals making this statement (Kaelin and the Pikes Peak Society 2008) cannot justify their position when the archaeological record of Converse County tells a different story ... of human occupation within the areas in Converse County "well over 10,000 years." That refers to the Indigenous populations still within this area.

"Our creation story of the Lakota tells us we originated from the southern Black Hills coming from Wind Cave" (Johnson Holy Rock, Reginal Cedar Face 1976, Members Black Hills Sioux Nation Council). At this meeting with the elders, Vine Deloria Jr. stated "because the anthropologists and archaeologist want to control our story where we originated they came up with this silly notion that we came from North and South Carolina and migrated to the Midwest and eventually into the Black Hills area," which Vine Deloria Jr. stated was false. This was some of the reasons that moved him to make it his lifetime goal to straighten out the academic record. "It was the opposite, the Lakota and Dakota moved from the Black Hills region outward, still holding a continuous presence and control of the Black Hills area and moved out seeking and discovering other Indigenous people as they moved into the cardinal directions away from the Black Hills (Vine Deloria Jr. 1976)." We understood because we encountered other Indigenous people in all directions and the presence of our language remained there.

Leonard Little Finger~ a Lakota spiritual leader told about his family's spiritual connection to the Black Hills for the past 500 years as follows: In 1883, my grandfather, Saste, was a child of seven years. With his parents, he traveled in a group into the Black Hills in South Dakota for a sacred prayer journey to Washun Niye, a site from which Mother Earth breathes. \*\*\*My grandfather and I are from a sub-band of the Teton, a member of the Nation of the Seven Council Fires. We are called the Mniconjou, or People Who Plant Near the Water. In the 1500s, one of our villages was the location of present day Rapid City along the streams of M11i/11zaha11 Creek, or Rapid Creek. which is today's northern gateway to the Black Hills of South Dakota. Our family has fwd a spiritual relationship with this special land for over 500 years. 15 (emphasis supplied).

Pete Catches who described the Sacredness of the Black Hills to the Lakota people in this way: To the Indian spiritual way of life, the Black Hills is the center of the Lakota people. There, ages ago, before Columbus traveled over the sea, seven spirits came to the Black Hills. They selected that area, the beginning of sacredness to the Lakota people. Each spirt brought a gift to the Lakota people. Our people that have passed on, their spirits are contained in the Black Hills. This is why it is the center of the universe, and this is why it is sacred to the Oglala Sioux. In this life and the life hereafter, the two are together.

Our Elders have a continuous repeating memory of the knowledge of the Black Hills and surrounding area that includes Converse County in Wyoming long before

BLM did not intentionally include information in the FEIS that conflicts with OST history. The BLM strives to involve the tribes and sends the documents as they are publicly available as detailed in Section 7.2.1. No comments were made during previous public comment periods; therefore, the BLM used the best available information at the time.

		<p>statehood. This statement(s) in the Draft EIS and FEIS referencing section 3.2.3.4 is not correct and must be eliminated.</p> <p>The Oglala Sioux Tribe along with other Sioux Tribe, request again a government-to-government consultation meeting on certain sections of the FEIS; If the only purpose of the language contained in this FEIS is to change history of a people it will not go unchallenged. This ethnocentric approach went out the door in the 1990's and the language in this section is one example of the concern OST has when someone wants to dis-possess us from our world view using discretionary verbiage and challenges our collective memory of our land included in Converse County.</p> <p>The following language is taken out of the FEIS which states in part: "Sioux The Sioux are Siouan language speakers who may have originated in North Carolina but were first historically documented in 1640 in Minnesota (Kaelin and the Pikes Peak Society 2008) .... "</p> <p>The OST responded to this erroneous and speculative comment on pgs. 3-4 and 22-23 herein.</p>	
T01F	4	<p>12. To further support our argument with Section 3.2.3.4 we list the following: Sioux aboriginal title to Converse County. In Section 3.2.3.4 Tribal History Overview (page 3.2- 29 of the FEISJ), states in part that: The Sioux are Siouan language speakers who may have originated in North Carolina but were first historically documented in 1640 in Minnesota (Kaelin and the Pikes Peak Society 2008). * * * After their enemies, the Chippewa, obtained firearms from Canadian traders in the 1700s, the Sioux moved westward to the Black Hills of western South Dakota * * * By the 1830s the Oglala and Brule moved into eastern Wyoming (Deaver 1996), pushed west by EuroAmerican settlers.</p> <p>Merriam-Webster on-line dictionary defines the word "Siouan," as (1) an American Indian language family of central and southeastern North America, and (2) a member of any of the peoples speaking Siouan languages. 17 Tribes belonging to the Siouan linguistic stock in the Upper Missouri River watershed area include the following: Sioux (Dakota/Lakota/Nakota); Crow; Mandan, Hidatsa; Winnebago; Otoe; Osage; Iowa; Missouri; Kansas; and others.</p> <p>The origin and migration theory of the Sioux Indians by historians such as Kaelin, Pikes Peak Society and Deaver is based primarily a paradigm created by James Mooney in his manuscript "The Siouan tribes of the East" (Mooney, 1895). 18 The OST protests BLM's reliance on the Sioux origin and migration theory as included in the FEIS since it is based mostly on speculation and conjecture and contradicts other origin theories of other Siouan speaking people like the Mandans: Ethnologists and scholars studying the Mandan subscribe to the theory that, like other Siouan-speaking people (possibly including the Hidatsa), they originated in the area of the mid-Mississippi River and the Ohio River valleys in present-day Ohio. * * * This migration is believed to have occurred possibly as early as the 7th century but probably between 1000 CE and the 13th century, after the cultivation of maize was adopted.[13] It was a period of a major climatic shift, creating warmer, wetter conditions that favored their agricultural production.19 * * * Later the Pawnee and Arikara moved from the Republican River north along the Missouri River. [emphasis supplied].</p> <p>This would place the Mandans, a Siouan speaking people, migrating to the Missouri River in 600 A.D. or 900-1200 A.O. Again, origin theories of Siouan speaking people</p>	<p>This comment was responded to previously. Please see comment response in FEIS, Appendix H, N04-02.</p>

by white historians are based on speculation and conjecture.

The FEIS should have included Lakota spiritual leaders, like Pete Catches who described the Sacredness of the Black Hills to the Lakota people in this way: To the Indian spiritual way of life, the Black Hills is the center of the Lakota people. There, ages ago, before Columbus traveled over the sea, seven spirits came to the Black Hills. They selected that area, the beginning of sacredness to the Lakota people. Each spirit brought a gift to the Lakota people. Our people that have passed on, their spirits are contained in the Black Hills. This is why it is the center of the universe, and this is why it is sacred to the Oglala Sioux. In this life and the life hereafter, the two are together.

The OST protests the inclusion of the Sioux origin and migration theory from North Carolina in the FEIS on the basis that it is based on speculation and conjecture. The origins of the Sioux in the FEIS should have been based on the history and testimony from Lakota spiritual leaders such as Pete Catches.

The Teton and Yankton Sioux bands did not migrate from North Carolina to Minnesota. This is complete nonsense. Nor did the Teton and Yankton Sioux get pushed out of Minnesota by the Chippewa in the 1700s; they were already in Dakotas and the Black Hills area prior to the 1700s.

Charles Pierre Le Sueur, a French fur trader, visited the Upper Mississippi - Missouri River country as early as 1683, and the Missouri River Basin in what is now central South Dakota around 1699. When he returned to France in 1701, he had a French geographer named De l'Isle make a map of areas he visited including central South Dakota. The map shows Teton and Yankton Sioux residing on the east side of the Missouri River in the late 1600s. A copy of the De l'Isle map is attached hereto as Exhibit "E" and incorporated herein by reference.

In this regard, it should also be kept in mind that Siouan speaking Mandans were already residing along the Missouri for 1,000 years before Le Sueur visited the Missouri River in the late 1600s. The Teton Sioux, as shown on the Le Sueur/De l'Isle map, were already residing along the Missouri River many years prior to when the Yankton Sioux settled at the confluence of the James River and Missouri River in South Dakota. So, it is possible that the Sioux, like the Siouan speaking Mandans, were probably already residing along the Missouri River in present day South Dakota several hundred years before Le Sueur's visit to the Missouri River. This would even be before the Arikara came up the Missouri River from the south.

Aside from the inconsistent speculation and conjecture of white historians on when the Sioux occupied the Missouri River, Black Hills and Converse County areas, from a legal perspective, it cannot be disputed that the Teton and Yankton Sioux were signatories to the 1851 Treaty, and that the treaty defined 60 million acres of territory that included Converse County as Sioux territory. And that the 1851 Treaty recognized underlying Sioux aboriginal title to the areas. And it cannot be denied that the 1851 Treaty also contained the following language at the end of Article 5: It is, however, understood that, in making this recognition and acknowledgement, the aforesaid Indian nations do not hereby abandon or prejudice any rights or claims they may have to other lands; and further, that they do not surrender the privilege of hunting, fishing, or passing over any of the tracts of country heretofore described.

What this meant was that, even though the 1851 Treaty recognized the Little Big Horn River and Yellowstone River areas as Crow territory, the Sioux still reserved the right

	<p>to hunt, fish, and pass over those areas under Article 5 of the Treaty. Also, the 1868 Treaty re-recognized the right of the Sioux bands to hunt in those areas under Articles 11 and 16 of the Treaty.</p> <p>So, who "owns" the cultural resources, including rock features, in Converse County? The answer is simple. Converse County was identified as "unceded" Sioux territory under Article 16 of the 1868 Treaty. The Indian Claims Commission (ICC) considered it as unceded Sioux territory in Docket 74.</p>	
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