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**VIA FACSIMILE AND FEDERAL
EXPRESS**

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***RE: Comments on Environmental Assessment No. WY-030-08-EA-240 (Doty
Mountain "C" POD) and Objection to Proposed Action***

We file these comments, on behalf of the Theodore Roosevelt Conservation Partnership ("TRCP"), concerning the Bureau of Land Management's ("BLM") Proposed Action identified in Environmental Assessment No. WY-030-08-EA-240 (the "EA"). BLM should not approve the Proposed Action as currently configured because it conflicts with the Record of Decision approving the Atlantic Rim Natural Gas Field Development Project (March 2007) ("ROD") and authorizes activity not analyzed in the Final Environmental Impact Statement for the Atlantic Rim Natural Gas Field Development Project (Nov. 2006) ("FEIS"). Accordingly, the EA may not lawfully "tier" from the FEIS.

Specifically, three wells identified as part of the Proposed Action would be located within a narrow (0.5 mile) mule deer migration corridor, the functionality of which must be maintained to connect key areas of crucial winter range in the Atlantic Rim Project Area ("ARPA"). The location of these proposed wells cannot be squared with the ROD's requirement to "maintain functional migration routes through or around development areas." ROD at 19. This is particularly so, considering that much of the area around the POD already has been developed or is privately held. The cumulative impact of existing and reasonably foreseeable development in and around the affected migration corridor will be to restrict the corridor to the point it is rendered dysfunctional.

Background on TRCP

TRCP is a national non-profit (26 U.S.C. § 501(c)(3)) conservation organization dedicated to guaranteeing every American a place to hunt and fish, particularly on public lands. TRCP accomplishes its goal three ways: 1) Ensuring access to public lands, 2) ensuring adequate funding for natural resource agencies, and 3) helping to conserve fish and wildlife habitats. TRCP has formed, with various partners, a Fish, Wildlife, and Energy Working Group,

comprised of some of the country's oldest and most respected hunting, fishing, and conservation organizations. TRCP is working hard to ensure that the development of oil and gas resources on public lands in the West is balanced with the needs of fish and wildlife resources, but is concerned that the rapid pace of development is precluding BLM from managing these resources as required by the Federal Land Policy and Management Act ("FLPMA"), 43 U.S.C. § 1701 et seq.

The economic value of recreational hunting in the western United States is profound. As recently identified by the Western Governors' Association:

Wildlife-associated recreation brings important economic benefits to communities throughout the West. Small communities in particular benefit from the revenue that comes with tourism, hunting and fishing, and other forms of outdoor recreation. Retail tax revenue for many small towns is provided to a large degree during the key hunting and fishing seasons. In the contiguous Western states, more than 43.6 million people participated in hunting, fishing or wildlife watching in 2006, spending almost \$33.6 billion. This revenue is dependent on significant, reliable wildlife populations, ***which in turn depend on quality habitat and corridor movement.***

Western Governors' Association, Wildlife Corridors Initiative, Oil and Gas Working Group Report (Dec. 2007) (emphasis supplied).

In addition, TRCP initiated litigation in the United States District Court for the District of Columbia challenging the ROD in August 2007. That litigation remains pending as *TRCP v. Kempthorne*, 1:07-CV-1486-RJL (D.D.C.). TRCP filed that litigation, in part, over concerns that the ROD's vague adaptive management principles were unenforceable and could not be implemented effectively. The Proposed Action represents a vivid realization of that concern. However, to be clear, TRCP's instant objection is based not on its disagreement with the ROD or the FEIS, but rather with the fact that BLM is not even adhering to the marginal commitments made in those documents.

Significance of the Baggs Heard Unit and the Importance of Migration Corridors

The ARPA is located within the eastern portion of the 3,440-mile Baggs Herd Unit. This area is one of few areas in Wyoming that supports deer at the state's management objective levels. FEIS at 3-86. This is a reflection of the herd's productivity and the quality of the habitats that supports it. *Id.* The Baggs Herd Unit has, in fact, "traditionally supported one of the largest mule deer populations in the state and provided sportsmen with excellent recreational opportunities (WGFD 2005)." Sawyer, *Identifying Mule Deer Migration Routes in the Atlantic Rim Project Area* (April 2008) ("Sawyer 08"). Beginning in 2007, BLM approved the

development of 2,000 gas wells in the ARPA, which is situated in the middle of the Baggs Herd Unit and includes key winter and transitional ranges, as well as documented migration corridors.

The Wyoming Game and Fish Department has explained the critically important role functional migration corridors play in the life of mule deer populations generally:

Long-term displacement of wildlife from preferred habitats and disruption of migration routes could, in the extreme case, eliminate “migration memory” that required several thousand years to evolve. Each successive cohort of young ungulates learns the locations of suitable winter habitats and migration routes from older, experienced females that lead them (e.g., Baker 1978, Mackie et al. 1998:44). Extended disruptions of migration or habitat use can result in loss of learned behavior from entire cohorts of young animals, breaking the tradition of migration to the most suitable winter habitats.

Wyoming Game and Fish Department Recommendations for Development of Oil and Gas Resources within Crucial and Important Wildlife Habitats (Dec. 2004) (“WGFD Recommendations”) at 8. If this migration memory is lost, animals can become disoriented and perish as they attempt to migrate to crucial winter ranges in the ARPA.

Further, at the 2008 meeting of the Western Governors Association (“WGA”), in Jackson, Wyoming, the governors approved a wildlife corridors initiative report offering a series of recommendations, including identification of important corridors and the critical habitats they connect, collaborative planning to keep the corridors intact and a standardized mapping and data-collection system to be used across the region. As noted in the report: “Large, open spaces have long been emblematic of the West, but our burgeoning network of highways, canals, urbanization, energy development, and other land uses now threaten to fragment our grand landscapes, cutting off pathways linking crucial habitats and reducing the ecological value of the remaining crucial habitats.” The process to assess the impacts to wildlife and their habitats began in February 2007, when the governors approved the *Protecting Wildlife Migration Corridors and Crucial Wildlife Habitat in the West* (Resolution No. 07-01). Notably, Governor Freudenthal headed this effort. Overall, the initiative is based on the recognition that large intact and functioning ecosystems, healthy fish and wildlife populations, and abundant public access to natural landscapes that define the West and that, in their own right, draw people to the region.

As explained in the WGA’s Oil and Gas Working Group Report (Dec. 2007):

Care in early stages of planning oil and gas development is important to avoid damage that can take decades to overcome. The Governors’ policy resolution specifically identifies the importance of crucial habitats and corridors to healthy wildlife populations and recognizes the need to mitigate the impacts of energy development on these important resources. The reason behind the Governors’

focus is clear -- both energy development and wildlife are crucial to a healthy economy and high quality of life in the West. Therefore, accommodating oil and gas development, while minimizing impacts to wildlife habitat, is essential.

In light of their extraordinary importance to the biological wellbeing of mule deer, due care must be taken to protect migration corridors in the ARPA, as recognized by the ROD.

Problems with the Proposed Action

The Proposed Action includes 5 coal bed methane gas production wells and one water re-injection well, along with ancillary access roads, utility corridors and related facilities. Three of these wells will be within an identified migration corridor. *See* maps attached to EA. The impact of the Proposed Action alone will be significant, but when compounded with the existing wells already within or pending approval within the route, it is clear that the affected migration corridor is close to being severed altogether. *See* Exhibit A attached. Notwithstanding this fact, “there are currently no proposed stipulations or mitigation measures for mule deer migration routes, which are currently under study and consideration.” EA at 8. TRCP infers that BLM believes there remains an insufficient basis on which to base management restrictions to protect migration corridors. This position is without merit.

An extraordinary and irrefutable volume of science demonstrates the importance of migration corridors to the long-term viability of mule deer. *See, e.g.,* Berger, J., *The Last Mile: How to Sustain Long-Distance Migration in Mammals*, Conservation Biology 18:320-331 (2004); Berger et al., *Wildlife and Energy Development: Pronghorn of the Upper Green River Basin – Year 1 Summary*, Wildlife Conservation Society (2006); Berger et al., *Connecting the Dots: an Invariant Migration Corridor Links the Holocene to the Present*, Biology Letters 2:528-531; Sawyer et al., *Potential Effects of Oil and Gas Development on Mule Deer and Pronghorn Populations in Western Wyoming*, Trans. of the 67th NA Wildlife and Natural Resources Conference 67:350-365 (2002); Sawyer et al., *Mule Deer and Pronghorn Migration in Western Wyoming*, The Wildlife Society Bulletin 33:1266-1273 (2005) (energy and related development adversely affects migration routes).

Moreover, BLM is not acknowledging scientific conclusions derived from ***three years of study concerning the Atlantic Rim’s mule deer population***, the ostensible purpose of which is to delineate migration routes prior to gas development to “allow managers to develop proactive, rather than reactive, management prescriptions.” Sawyer 08 at 1. The EA indicates “BLM considered recently obtained data (including, Sawyer, 2006. Progress Report for the Atlantic Rim Mule Deer Study) regarding potential mule deer migration routes in the project area ...”). EA at 9. Inexplicably, however, the EA does not appear to account for the voluminous information identified above, or more importantly, the most recent information reported from the Atlantic Rim itself. *See* Sawyer, *Final Report for the Atlantic Rim Mule Deer Study* (April 2007) and Sawyer 08. In the latter document, Sawyer explains: “sustaining current mule deer

populations will require functional migration routes remain in tact.” *Id.* at 1. However, the Proposed Action ignores this admonition, which comes from BLM’s own analyst.

In commenting on the importance of migration corridors in the ARPA, WGFD has explained:

The BLM needs to incorporate current data from the Baggs Mule Deer project into the ROD so that important habitats and migration corridors are protected or mitigated. Based on study results, the migration corridor from the Wild Horse winter range (which crosses the north portion of the Brown Cow Pod), and the Dad winter range that connects with the Sand Hills and Atlantic Rim, should be protected.

See WGFD’s comments on the FEIS (Jan 4, 2007). The migration corridor affected in this case connects the Dad and Sand Hills winter ranges. Thus, WGFD has asked BLM to protect this corridor, and BLM should not ignore WGFD’s request.¹

Sawyer explains that “[a]mong the PODs, high-use migration routes occurred in Doty Mountain, Brown Cow and Muddy Mountain.” Sawyer 08 at 8. These high use areas “provide key foraging and resting habitat” according to Sawyer. *Id.* at 11. Among his more important conclusions is that “functional migration routes require that connectivity be maintained between high-use areas, such that deer have the ability to move between seasonal ranges.” *Id.* Clearly, Sawyer contemplates that adaptive management principles will be brought to bear to modify development using his data: “From a management perspective ... given that high-use areas provide foraging and resting habitat along the migration route, management strategies may be modified to minimize human disturbance (e.g., road construction) and habitat loss (e.g., infrastructure) in high-use areas.” *Id.* In fact, the report “encourage[s] agencies and industry to consider this information, in conjunction with the raw migration data (Figure 2), in development plans and management strategies associated with the ARPA.” *Id.* at 12.

Simply put, the FEIS promised: “When information is available from this research, additional mitigation would be placed on development for the protection of mule deer migration corridors.” FEIS at 4-74. Once again, BLM is breaking its promise to the American sportsmen by refusing to apply the best available science to land management in the ARPA.

¹ Better cooperation among BLM and State wildlife agencies is one of the key recommendations of the WGA’s wildlife corridors initiative. *See also* Testimony by John Emmerich, Deputy Director, WGFD, submitted at the Joint Oversight Hearing on Land Use Issues Associated with Onshore Oil and Gas Development conducted by the House Subcommittee on National Parks, Forests and Public Lands and the Subcommittee on Energy and Mineral Resources (April 26, 2007) (criticizing BLM’s pattern of neglecting to incorporate state wildlife agencies’ input).

The Proposed Action is Inconsistent with the ROD and Cannot Be “Tiered” from the FEIS

The ROD was prepared, ostensibly, in conformance with the Great Divide RMP, and the EA contends the Proposed Action is in conformance with both the RMP and the ROD, which was in turn analyzed in the FEIS. However, as already discussed above, the Proposed Action is not consistent with the ROD. Moreover, FLPMA requires that “[i]n managing the public lands the Secretary shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands.” 43 U.S.C. § 1732(b). By ignoring the requirements of the ROD and the best available science concerning the need to protect mule deer migration routes, BLM is allowing the public lands to be unnecessarily and unduly degraded.

On a related note, while subsequent analyses compelled by NEPA may be “tiered” from prior EISs, tiering is not appropriate in all cases. See 40 C.F.R. §§ 1500.4(i), 1502.20 and 1508.28. The purpose of tiering “from statements of broad scope to those of narrower scope, [is] to eliminate repetitive discussions of the same issues” 40 C.F.R. §§ 1500.4(i). The EA contends “[t]he affected environment and analysis of environmental impacts are discussed in the [F]EIS to which this EA is tiered.” EA at 7. However, the FEIS analyzed cumulative development under the ROD under an assumption, later rendered false by BLM when adopting the ROD, that best management practices, including no-surface occupancy (“NSO”) in narrow migration corridors would be required in all cases.

It is important to recognize that Appendix H of the FEIS (Required Best Management Practices) originally *mandated* protection of migration corridors in a manner consistent with recommendations by the WGFD Recommendations. With regard to management of narrow migration corridors, WGFD recommends: “No disturbance within narrow migration corridors or bottlenecks (<0.5 mi wide), avoid further constrictions of broader corridors.” *Id.* at 12. WGFD recommends, even in broader corridors (exceeding 0.5 miles), that well density not exceed four wells per section, as opposed to the six contemplated by the Proposed Action. *Id.* at 23-24.

Without further public review or NEPA process, BLM unilaterally modified Appendix H when it signed the ROD. At that time, BLM revised Appendix H, formerly titled “*Required Best Management Practices*,” to read simply “*Best Management Practices*” and made clear that the formerly mandatory management proscriptions would be employed simply “as appropriate.” ROD at 23-24 (*Errata*).

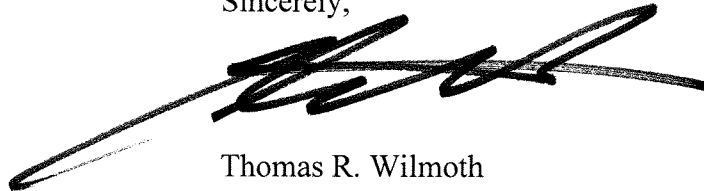
Development in the wake of BLM’s unilateral modification of Appendix H has never been analyzed under NEPA. The analysis in the FEIS cannot form the basis of subsequently “tiered” site-specific development where – contrary to prior NEPA analysis – best management practices will not be implemented. Since the Proposed Action is based on parameters never even contemplated in the FEIS, the Proposed Action cannot be authorized under a “tiered” environmental assessment. *Compare Wilderness Watch, et al.*, 168 IBLA 16, 37 (February 17, 2006) (“Were BLM to attempt to ‘tier’ the EA to the EIS, it would be clear that the impacts of

the chosen decision vastly exceed anything previously considered in the EIS.”); *Defenders of Wildlife and Wyoming Outdoor Council*, 169 IBLA 117, 130-32 (May 31, 2006) (an EA cannot tier from an EIS that failed to analyze relevant issues); *Safady v. Bureau of Land Management*, ___ F.Supp.2d ___, 2004 WL 2958422 (D. Or. 2004); *Kern v. U.S. Bureau of Land Management*, 284 F.3d 1062 (9th Cir. 2002); *Northcoast Environmental Center v. Glickman*, 136 F.3d 660 (9th Cir.1998).

Conclusion and Request for Relief

Based on the foregoing, TRCP respectfully requests that BLM reject the Proposed Action and require that a new alternative be explored, which includes NSO within the identified migration corridor. This alternative is the only alternative that is consistent with the ROD, the WGA’s recommendations and the requirements of FLPMA and NEPA.

Sincerely,

A handwritten signature in black ink, appearing to read 'Thomas R. Wilmoth', is written over a horizontal line.

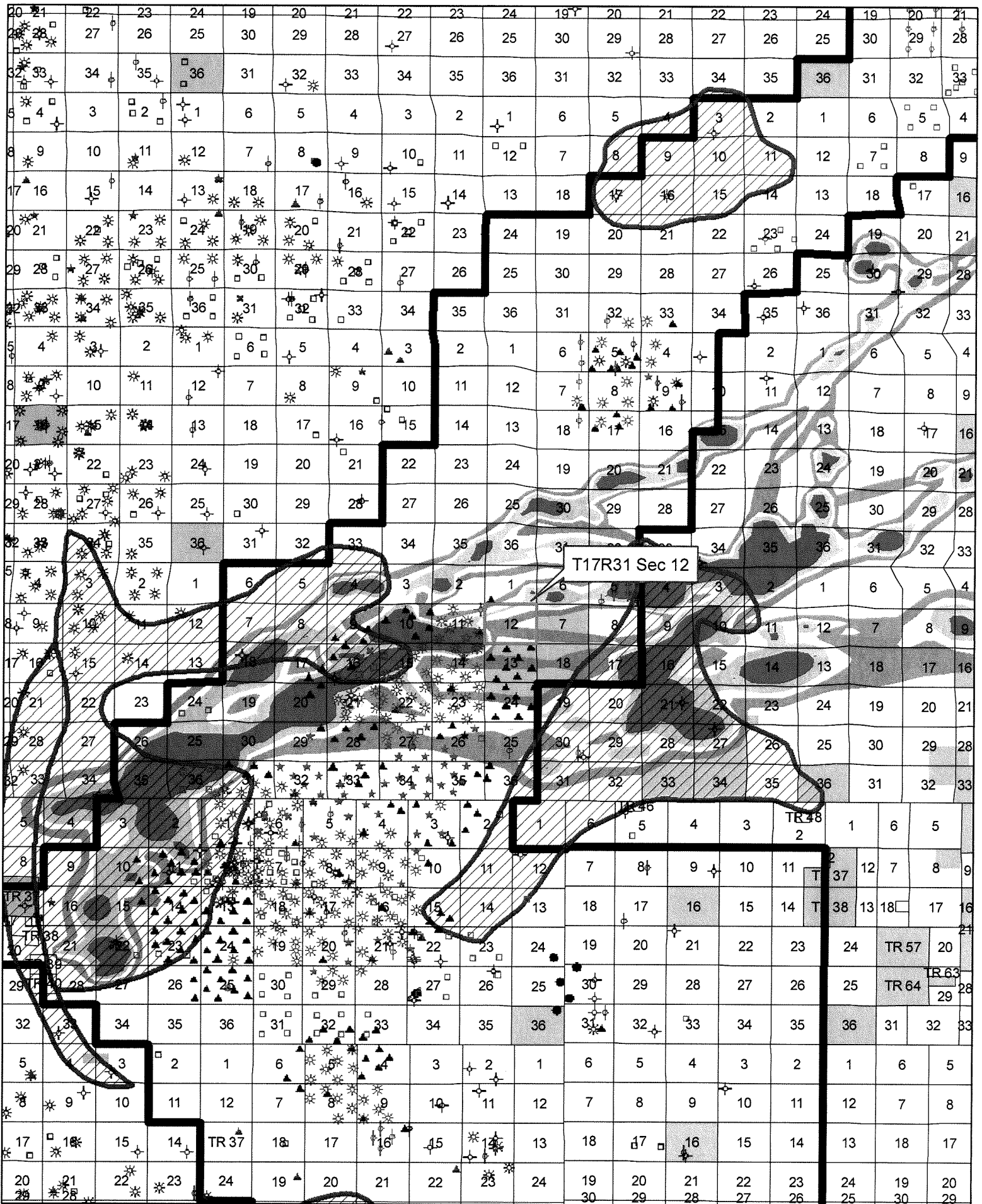
Thomas R. Wilmoth

TRW

Exhibit A

Development Activity - Mule Deer Migration Routes

Atlantic Rim Project Area (S12, T17N, R31W)




Development Activity - Mule Deer Migration Routes (Atlantic Rim Project Area)

Wells







VECTOR.SDELOAD.WELLS.SYMBOL


î	Error	∅	PA CBM Well	?	Error Disposal
●	Oil	#	APD CoalBed Well	●	Monitoring Well
□	ShutIn Oil	^	Drilling CoalBed Well	#	Monitoring Well
∅	PA Oil Well	'	Expired APD CBM	□	Shutting Monitoring Well
#	APD Oil Well	×	Denied CBM APD	∅	PA Monitoring Well
^	Drilling Oil Well	?	Error CBM	^	Drilling Monitoring Well
'	Expired APD Oil	↵	Injector	●	Monitoring Well
×	Denied Oil APD	□	ShutIn Injector	×	Monitoring Well
?	Error Oil	∅	PA Injection Well	?	Error Monitoring Well
Æ	Gas	#	APD Injector Well	●	Start Test
□	ShutIn Gas	^	Drilling Injector Well	∅	PA Start Test
∅	PA Gas Well	'	Expired APD Injector Well	#	Strat Test
#	APD Gas Well	×	Denied Injector APD	^	Drilling Strat Test
^	Drilling Gas Well	?	Error Injector	●	Expired Strat Test
'	Expired APD Gas	↵	Disposal	?	Start Test
×	Denied Gas APD	□	ShutIn Disposal	?	Error Start Test
?	Error Gas	∅	Pa Disposal Well	#	Confidential
Æ	CBM	#	APD Disposal Well	#	Confidential
□	ShutIn CBM	^	Drilling Disposal Well	#	Confidential
		'	Expired APD Disposal Well	r	Class 5
		×	Denied Disposal	r	Class 5

 Atlantic Rim Boundary

Mule Deer Migration Routes

GRIDCODE

-  Low use
-  Medium - low use
-  Medium - High use
-  High use
-  WY State Lands
-  BLM Lands

 Crucial Mule Deer Winter Range