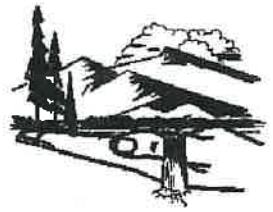




Department of Environmental Quality

To protect, conserve and enhance the quality of Wyoming's environment for the benefit of current and future generations.



Mark Gordon, Governor

Todd Parfitt, Director

January 13, 2025

Patrick Champa
Attn: Fort Project
Bearlodge Ranger District
P.O. Box 680
Sundance, WY 82729

RE: Wyoming Department of Environmental Quality Comments – Fort Forest Management Project

Dear Mr. Champa,

On behalf of the Wyoming Department of Environmental Quality (WDEQ), we appreciate the opportunity to comment on the Fort Forest Management Project. WDEQ is charged with conserving and enhancing the quality of Wyoming's environment for the benefit of current and future generations. We envision a future where vibrant economic development and prosperity are achieved while providing sound and sensible environmental protection that protects human health and the environment.

It is important to note as a foundation for our comments that WDEQ has been delegated primacy over multiple programs by the federal government – water, air, solid and hazardous waste, abandoned mine land reclamation, coal mining, and underground injection control (UIC) wells, including class VI, for the geologic sequestration of carbon dioxide. In addition, WDEQ permits and regulates all minerals mined in the state such as gravel and bentonite. WDEQ has also received an agreement state status with the Nuclear Regulatory Commission for uranium mining and processing in the State of Wyoming. Wyoming received primacy delegations and agreement status as a result of federal agencies agreeing that Wyoming and WDEQ have the environmental, permitting and regulatory structure in place to ensure that any activity within WDEQ's authority is handled in a manner that protects human health and environment.

WDEQ offers the following comments:

- The USFS should adhere to WDEQ's Smoke Management Program regulations including burn registration, and post burn reporting. More information on WDEQ's Smoke Management Program can be found here: <https://deq.wyoming.gov/aqd/smoke-management-and-open-burning/smoke-management/>
- In accordance with Title 35, Chapter 11 of the Wyoming Statutes and Wyoming's Water Quality Rules, the Wyoming Department of Environmental Quality – Water Quality Division (WDEQ-WQD) is responsible for the protection and restoration of the quality of waters of the state. The WDEQ-WQD also implements portions of the federal Clean Water Act, including development of surface water quality standards, identification of impaired waters, and development of total maximum daily loads

for impaired waters under Section 303; inventorying water quality under Section 305; discharge permitting under Section 402; water quality certifications under Section 401; and addressing nonpoint sources of pollution under Section 319. As such, WDEQ-WQD is providing the following comments to help facilitate the review of potential impacts to water quality and ensure the project analysis adequately reflects and adheres to Wyoming's Water Quality Rules and the commitments outlined in the 2021 Memorandum of Understanding (MOU) between the WDEQ-WQD and the United States Forest Service (USFS).

Our comments are not intended to be comprehensive; rather, they are intended to help inform the development of the EA to include all water resources potentially impacted by the Project; the type(s) of potential impacts; the steps to avoid or minimize impacts; proposed mitigation measures; and all applicable local, state, and federal permits necessary for the Project. Therefore, it is incumbent on the USFS to conduct additional research to ensure the EA sufficiently addresses water resources. To expand, the WDEQ-WQD recommends the analysis identify the following surface and ground waters in proximity to the Project area, the potential impacts to the quality of those waters from the Project, and the steps to minimize those impacts.

- *Surface Waters.* WDEQ-WQD identified Beaver Creek, Blacktail Creek, Cook Lake, Cub Creek, Deer Creek, East Fork, Fawn Creek, Hershey Creek, Lame John Creek, Little Creek, Lytle Creek, Togus Creek, Whitelaw Creek, Winchester Creek, and multiple unnamed drainages in proximity to the Project area. Wyoming Water Quality Rules, Chapter 1 (Wyoming Surface Water Quality Standards) classifies Beaver Creek, Blacktail Creek, Cook Lake, Cub Creek, East Fork Blacktail Creek, Lame John Creek, Lytle Creek, and Whitelaw Creek as Class 2AB waters where the water quality is protected to support drinking water, cold-water game fish, nongame fish, aquatic life other than fish, recreation, agriculture, industry, wildlife, and scenic value designated uses. Moreover, Wyoming's Surface Water Quality Standards classifies Deer Creek, Fawn Creek, Hershey Creek, Little Creek, Togus Creek, and various unnamed intermittent and ephemeral drainages as Class 3B waters where the water quality is protected to support aquatic life other than fish, recreation, wildlife, industry, agriculture, and scenic value designated uses. The water quality criteria and antidegradation provisions established for the protection of these designated uses are further described in Wyoming's Surface Water Quality Standards found at <https://deq.wyoming.gov/water-quality/watershed-protection/surface-water-quality-standards/>.
- *Assessed Waters.* WDEQ-WQD's Water Quality Assessment Program assesses whether surface waters of the state meet applicable Wyoming Surface Water Quality Standards. As directed by Sections 305(b) and 303(d) of the federal Clean Water Act, the findings from these assessments are compiled into Wyoming's Integrated 305(b) and 303(d) Report and submitted to the United States Environmental Protection Agency biennially. Assessed waters that are not attaining Wyoming Surface Water Quality Standards are included in the 303(d) List of impaired waters and prioritized for restoration planning. In 2006, the WDEQ-WQD identified the entire Beaver Creek (from the confluence with Lame Jones Creek to a point 32.1 miles upstream), Blacktail Creek watershed above the USFS boundary, Cub Creek (from the confluence with Beaver Creek to a point 2.2 miles upstream), Fawn Creek (from the confluence with Beaver Creek to a point 3.1 miles upstream), and Little Creek (from the confluence with Beaver creek to a point 1.3 miles upstream) as supporting their cold water game fish, aquatic life other than fish, agriculture, industry, and wildlife designated uses. This determination should be referenced in the EA and can be found at

<https://wdeq.maps.arcgis.com/apps/webappviewer/index.html?id=525b2fdaff494fbea0625c49c20263f1>.

- **Surface Water Quality Data.** WDEQ-WQD has collected data on Beaver Creek, Togus Creek, Cub Creek, Little Creek, Fawn Creek, Whitelaw Creek, and Blacktail Creek within the Project area. WDEQ-WQD can provide this data upon request if useful to the analysis. In addition, the WDEQ-WQD would like to highlight the following permits and requirements that may apply to the Project and should be noted in the EA, depending on the eventual scope.
- **Wyoming Pollutant Discharge Elimination System (WYPDES) Permits.** If the Project will result in the point source discharge of pollution into surface waters of the state, including those associated with wastewater or drinking treatment facilities, industrial facilities, mines, stormwater, temporary discharges associated with construction activities, discharges to and mitigation for isolated wetlands, pesticide applications, or other long-term discharges, the project will require coverage under one or more permits issued by the Wyoming Pollutant Discharge Elimination System (WYPDES) Program consistent with Wyoming Water Quality Rules, Chapter 2 (Permit Regulations for Discharges to Wyoming Surface Waters). Surface waters of the state include all perennial, intermittent, and ephemeral drainages, lakes, reservoirs, and wetlands which are not human-made retention ponds used for the treatment of municipal, agricultural, or industrial waste; and all other bodies of surface water, either public or private which are wholly or partially within the boundaries of the state. WYPDES permits contain effluent limits and conditions to ensure discharges of pollution comply with Wyoming Water Quality Rules, Chapter 1 (Wyoming Surface Water Quality Standards). Additional information is available at <https://deq.wyoming.gov/water-quality/wypdes/>. The following WYPDES permits may be applicable to the Project:
 - **Construction Stormwater General Permits.** For Project construction activities that will clear, grade, or otherwise disturb a cumulative one or more acres, coverage under a WYPDES Construction Stormwater General Permit is required. Disturbance includes construction of the project and associated access roads, construction of mitigation sites, borrow and stockpile areas, and equipment staging and maintenance areas. WYPDES offers two Construction Stormwater General Permits: Large Construction General Stormwater Permit (LCGP) and the Small Construction General Stormwater Permit (SCGP). Coverage under the LCGP is required for construction activities that cumulatively disturb five or more acres, whereas the SCGP is reserved for construction activities that cumulatively disturb between one and five acres. For coverage under the LCGP, a Notice of Intent and a complete Stormwater Pollution Prevention Plan (SWPPP) must be submitted prior to beginning construction activities. Additionally, if the project boundary falls within a Greater Sage-Grouse Core Area or a Mule Deer and Antelope Migration Corridor, the owner or operator must coordinate with the Wyoming Game and Fish Department to ensure that the project is consistent with the Governor's Executive Orders 2019-3 and 2020-1, respectively. A map of sage-grouse core areas in Wyoming is available at <https://wgfd.wyo.gov/Habitat/Sage-Grouse-Management/Sage-Grouse-Data>. A map of mule deer and antelope migration corridors can be found at <https://wgfd.wyo.gov/wyoming-wildlife/movement-matters/big-game-migration>. Additional information is available at <https://deq.wyoming.gov/water-quality/wypdes/discharge-monitoring-reports/storm-water-permitting/>
 - **Temporary Discharge Permits.** If the project involves the temporary discharge of pollution associated with, but not limited to, construction dewatering, disinfection of potable water lines, well pump testing, or pipeline hydrostatic testing into a surface water of the state, coverage under the WYPDES General Permit for Temporary Discharges Involving Construction Activities or the WYPDES General

Permit for Temporary Discharges Involving Groundwater Remediation is required. Additional information is available at <https://deq.wyoming.gov/water-quality/wypdes/discharge-permitting/>

- **General Permit for Wetland Mitigation.** If the project is not permitted for mining activities through the Wyoming Department of Environmental Quality – Land Quality Division and will result in the loss or destruction of more than one cumulative acre of (1) naturally occurring isolated wetlands or (2) human-made isolated wetlands used to mitigate the loss of naturally occurring wetlands, mitigation and a WYPDES General Permit for Wetland Mitigation is required. Isolated wetlands are those wetlands, as defined in Wyoming Statutes 35-11-103(c)(x), that do not meet the federal definition of Waters of the United States at 33 CFR Part 328 and 40 CFR Part 120 but do meet the state's definition of waters of the state, as defined in Wyoming Statutes 35-11-103(c)(vi). Additional information is available: <http://deq.wyoming.gov/wqd/discharge-permitting/>.
- **401 Water Quality Certification.** If the project will result in the discharge of a pollutant into a water of the United States that requires coverage under a federal license or permit, a Clean Water Act Section 401 Water Quality Certification from the WDEQ-WQD must be secured to ensure the discharge complies with Wyoming Water Quality Rules, Chapter 1 (Wyoming Surface Water Quality Standards). In Wyoming, 401 Water Quality Certifications are required for discharges that need coverage under a United States Army Corps of Engineer's Clean Water Act Section 404 dredge and fill permit, United States Army Corps of Engineer's Rivers and Harbors Act Section 10 permit, or Federal Energy Regulatory Commission (FERC) hydropower license. All conditions of the 401 Water Quality Certification are included as enforceable conditions of the federal permit or license. Additional information is available at <https://deq.wyoming.gov/water-quality/watershed-protection-2/cwa-section-401-turbidity-wetland/401-water-quality-certification/>.
- **Temporary Turbidity Waiver.** If construction of the project will result in an increase in turbidity for surface waters designated for protection as drinking water supplies and/or fisheries, a temporary turbidity waiver is recommended. In accordance with Wyoming Water Quality Rules, Chapter 1 (Wyoming Surface Water Quality Standards), the WDEQ-WQD Administrator may authorize temporary increases in turbidity above the numeric criteria on a case-by-case basis for construction related activities and may impose whatever controls, monitoring, and best management practices are necessary to maintain and protect all water uses. Additional information is available at <https://deq.wyoming.gov/water-quality/watershed-protection-2/cwa-section-401-turbidity-wetland/>.
- **Spill Reporting.** Wyoming Water Quality Rules, Chapter 4, unless specifically exempted, requires any person owning or having control over oil or a hazardous substance which, after release, enters, or threatens to enter waters of the state to immediately notify WDEQ-WQD of the type, quantity, and location of the release. Spills can be reported to WDEQ by phone at 307-777-7501 or online at <http://wyospills.org/>.
- **Nonpoint Source (NPS) Pollution.** WDEQ-WQD encourages the Black Hills National Forest to minimize potential impacts to surface and groundwater quality by implementing best management practices (BMPs) for activities that do not require WDEQ-issued permits. Per the 2021 MOU, the WDEQ-WQD supports implementation of the USFS's NPS strategy as complying with the Wyoming NPS Management Program and approves the use of USFS's National Core BMPs as meeting the requirements of BMPs in the Wyoming NPS Management Plan. In addition, the USFS committed to recognizing the Wyoming NPS Program's objectives and is responsible for implementing NPS pollution controls consistent with the Program on National Forest Service lands in Wyoming. The

WDEQ WQD notes that a Section 319 Nonpoint Source Success Story has been published by EPA for Whitelaw Creek and is available at https://19january2021snapshot.epa.gov/sites/static/files/2015-10/documents/wy_whitelaw.pdf. Further information about the Wyoming NPS Program can be found at [http://deq.wyoming.gov/wqd/non-point source/](http://deq.wyoming.gov/wqd/non-point-source/).

If you have any questions or need additional information, please feel free to contact Keith Guille at 307-777-6105 or keith.guille@wyo.gov.

Sincerely,



Alan Edwards
Deputy Director
Wyoming Department of Environmental Quality

Cc: Todd Parfitt – Director, Wyoming Department of Environmental Quality
Jennifer Zygmunt – Administrator, Water Quality Division
Nancy Vehr - Administrator, Air Quality Division
Keith Guille – Outreach Program Manager