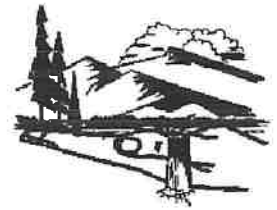




Department of Environmental Quality

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

May 13, 2025

District Ranger Todd Stiles
Bridger-Teton National Forest – Jackson Ranger District
Attn: Shadow Mountain Habitat Enhancement
PO Box 1689
Jackson, WY 83001

Submitted electronically via www.fs.usda.gov

RE: Wyoming Department of Environmental Quality Comments – USFS Shadow Mountain Habitat Enhancement Scoping

Dear Mr. Stiles

On behalf of the Wyoming Department of Environmental Quality (WDEQ), we appreciate the opportunity to comment on the Shadow Mountain Habitat Enhancement project scoping. 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:

Air Quality

- **Chapter 6, Permitting:** If generators or other pollution-emitting sources will be utilized during the project, it is recommended that the New Source Review (NSR) Program be contacted to ascertain whether a permit is required. This should be done prior to the installation of the sources. Notably, flame-cap kilns and air curtain burners have historically required permits.
- **Chapter 3, Section 2(f)(i-ii), Dust:** Fugitive dust must be controlled and minimized when clearing or leveling land. For activities such as earthmoving, excavation, movement of trucks, cutting of pavement, or movement of construction equipment over access roads or cleared land, or for demolition, frequent watering and/or chemical stabilization is required. For particularly large areas of dirt exposed to wind, the installation of silt fencing as a windbreak is recommended, especially near residential areas and local businesses. A fugitive dust plan should be implemented in accordance with the above-mentioned regulations.

- **Chapter 10, Burning:** For large-scale burning in accordance with the requirements in Chapter 10, Section 4 of the WAQSR, burners conducting large scale vegetative burning (slash piles, broadcast burns, wildland fires, with emissions >0.25 tons PM10 per day), are required to register these burns with the AQD. Burners must receive a burn ID from the AQD prior to conducting the burns. Small-scale burning operations are covered under Chapter 10, Section 2. In addition to the regulations for small-scale open burning, the AQD offers these broader considerations:
 - Notice of the date(s) and time(s) of any burns should be provided to nearby residents and businesses.
 - To minimize the impact from smoke, burns should not be conducted closer than 500 feet from another property.
 - Burns should be conducted during daytime hours between one hour after sunrise and two hours before sunset.
 - The wind direction should be checked and burns should not be conducted if wind would cause smoke to blow toward a neighboring residence, workplace or other place where people congregate.
 - Burns should not be conducted on very calm or cold days when there is likely to be an atmospheric inversion that will trap smoke near the ground.
 - Burns should be conducted in the morning when winds are minimal, so smoke will blow away with higher afternoon winds.
 - Burns should be observed and monitored at all times and appropriate actions should be taken (extinguishing the burn or notifying neighbors) if the smoke changes direction and may adversely impact neighbors.

Disposal of any trade wastes, including wood, construction materials, or any other discarded materials by open burning is generally prohibited. All such materials generated by the project should be disposed of by an alternative means, typically the local landfill.

- **Class II Wilderness Area:** It should be noted that the project is located adjacent to a Class II wilderness area and any deterioration in air quality within this area must adhere to the National Ambient Air Quality standards (NAAQS).

Water Quality

- **WDEQ-Water Quality Division (WQD) Regulations:** 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 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).

Additionally, these comments are intended to help inform the appropriate level of analysis and identify all water resources potentially impacted by the Project, the type(s) of potential impacts, the steps to avoid or minimize impacts, potential mitigation measures, and applicable local, state, and federal permits that may be necessary for the Project. It is incumbent upon the Bridger-Teton National Forest (BTNF) to conduct additional research to ensure the Project analysis accurately describes water resources and WQD requirements.

- 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 Brush Creek, Carpenter Draw Creek, Ditch Creek, South Fork Ditch Creek, and multiple unnamed drainages in proximity to the Project area. Wyoming Water Quality Rules, Chapter 1 (Wyoming's Surface Water Quality Standards) classifies Ditch Creek and South Fork Ditch Creek as Class 2AB waters, for which 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. Wyoming's Surface Water Quality Standards classifies Brush Creek, Carpenter Draw Creek, and the multiple unnamed drainages as Class 3B waters, for which the water quality is protected to support aquatic life other than fish, recreation, wildlife, industry, agriculture, and scenic value designated uses. Additionally, all of the waters listed above are direct tributaries to Class 1 waters. As a result, and in accordance with Section 7(c), Chapter 1 (Wyoming's Surface Water Quality Standards), nonpoint sources of pollution to these direct tributaries should be controlled through the use of best management practices to maintain the existing quality and uses of the downstream Class 1 waters that were present at the time of their designation July 17, 1979. The water quality criteria and antidegradation provisions established for the protection of these designated uses is further described in Wyoming's Surface Water Quality Standards. Information on Wyoming's Surface Water Quality Standards can be found at <https://deq.wyoming.gov/water-quality/watershed-protection/surface-water-quality-standards/>.
- **Sensitive Aquifers.** The project area encompasses several shallow sensitive aquifers and is proximal to several Public Water Supply wells and intake points. In addition, a Source Water Protection (SWP) Zone Two area overlaps a large portion of the project area. Sensitive aquifers are vulnerable to contamination due to their proximity to the surface and the absence of an overlying aquitard. Groundwater in these aquifers tends to flow rapidly through unconsolidated alluvial deposits, which can lead to the rapid spread of any contamination. As such, the WDEQ-WQD recommends the project proponent identify and minimize potential impacts to groundwater through measures such as implementation of best management practices (BMPs) to prevent surface spills in these areas during construction and operation. Additional information is available at <https://deq.wyoming.gov/water-quality/groundwater/>.
- **Public Water Supply and Source Water Protection Area.** WDEQ-WQD's records indicate that the Project is in proximity to a public water supply (PWS) intake and associated source water protection area. Please contact the WDEQ-WQD to obtain further information about the identified PWS and source water protection area. We recommend the Project sponsor coordinate directly with the PWS regarding potential impacts. The environmental document should identify the PWS and source water protection area, evaluate potential impacts to the PWS and source water protection area, and describe actions that will be implemented to protect the PWS and the source water protection area.
- The WDEQ would also like to highlight the following common water quality related permits and requirements that may apply to the Project, depending on the eventual scope. However, please note that this is not a comprehensive list of all applicable local, state, and federal permits that may be needed for the project. Additional research may be necessary to ensure that all applicable local, state, and federal permits are obtained:
 - **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/>.
- **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 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: <https://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, and/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 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/>.
- **Groundwater Permits and Requirements.**
 - **Groundwater Classification.** Water Quality Rules Chapter 8, Section 5(b) Underground water quality shall be classified for an aquifer which is or may be affected by a subsurface discharge or other activity as identified in Water Quality Rules Chapter 8 Section 4.a. Please contact the Water Quality Division, Groundwater Section at (307) 777-7781 to complete a groundwater classification for your project. Additional information is available at <http://deq.wyoming.gov/wqd/groundwater/>.
- **Spills Reporting.** Wyoming Water Quality Rules, Chapter 4 requires, unless specifically exempted, 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 the 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 <https://wyospills.org/>.
- **Nonpoint Source (NPS) Pollution.** For activities that do not require WDEQ-issued permits, the WDEQ-WQD encourages the BTNF to minimize potential impacts to surface and groundwater quality through the implementation of best management practices (BMPs). 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. Further information about the Wyoming NPS Program can be found at <https://deq.wyoming.gov/water-quality/watershed-protection/nonpoint-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,



Todd Parfitt
Director
Wyoming Department of Environmental Quality

Cc: Keith Guille – Outreach Program Manager