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Comments: Pursuant to 36 C.F.R. [sect] 218.8(d)(4), Montana Wilderness Association, d/b/a Wild Montana submits these timely objections to the U.S. Forest Service's Draft Decision Notice, Finding of No Significant Impact, and Environmental Assessment for the Tendoy Project, Project #48576.

The responsible official is Jamie Tripp, Dillon District Ranger of the

Beaverhead-Deerlodge National Forest (BDNF), 406-683-3935, jamie.tripp@usda.gov, 420 Barrett St. Dillon, MT 59725

The lead objector for Wild Montana is Aubrey Bertram, staff attorney, 406.530.9639, abertram@wildmontana.org. 80 S. Warren St. Helena, MT 59601.

Wild Montana files these objections in a timely manner. Notice was published in the paper of record, the Montana Standard, on May 14, 2021 with a comment deadline of 45 calendar days. The deadline to submit comments is therefore June 28, 2021.

Wild Montana has standing to file these objections. Wild Montana submitted comments on the draft EA on December 20, 2019 as Montana Wilderness Association. Those comments are incorporated by reference to these objections, pursuant to 218.8(b)(4).

Wild Montana unites and mobilizes communities to keep Montana wild. Since 1958, Wild Montana has been leading the effort to protect the wild public lands, waters, and wildlife that make Montana so wonderful. We have over 5,000 dues-paying members and thousands more supporters across the state and the country. Our members and supporters find the Beaverhead-Deerlodge National Forest and the Dillon BLM Planning Area to be of vast importance to Montana's outdoor way of life, particularly the Tendoy area. Our members and supporters hike, hunt, fish, and partake in wildlife viewing in the area. These activities and values are of particular importance because of the Tendoy's incredible wildlife habitat for numerous species, including elk, deer, lynx, grizzly bears, Westslope cutthroat trout, and more.

1.Summary of Proposed Action:

The Final EA states that the purpose and need of the Tendoy Project is "to assess the potential environmental

impacts associated with the submission of Applications for Permit to Drill by Lima Exploration [the project proponent]." Of the two proposed drill sites for the exploration, the Forest Service has proposed authorization of construction at the White Pine location, located on the BDNF just west of Lima, MT.

2. Summary of Objections:

Overall, Wild Montana asserts that the presented analysis violates the agency's duty under the National Environmental Policy Act (NEPA) by failing to take a hard look at the direct, indirect, and cumulative impacts on a range of issues posed by this project and therefore inappropriately concluding and inadequately stating that the proposed project will have no significant impact on the environment.

NEPA requires federal agencies to take a "hard look" at the direct, indirect, and cumulative environmental impacts of federal undertakings, and disclose those impacts to the public. Taking a "hard look" requires "a reasonably thorough discussion of the significant aspects of the probable environmental consequences." The hard look doctrine bars "[g]eneral statements about 'possible effects' and 'some risk' . . . absent a justification regarding why more definitive information could not be provided." As the Ninth Circuit held in *Kraayenbrink*, the NEPA hard look thus "must be taken objectively and in good faith, not as an exercise in form over substance, and not as a subterfuge designed to rationalize a decision already made," and must include a "discussion of adverse impacts that does not improperly minimize negative side effects."

Furthermore, NEPA requires particular attention be paid to project-level decisions. "At the project level, as compared to a programmatic decision, the required level of analysis is stringent." At the "implementation stage," the NEPA review is more tailored and detailed because the Forest Service is confronting "individual site specific projects." This proposed project therefore mandates stringent, site-specific, and individualized analysis.

Wild Montana specifically objects to the following elements of the proposed decision:

- * 01: The analysis fails to adequately address the industrial development associated with the proposed project.
- * 02: The analysis fails to adequately consider the climate change impacts of the proposed project.
- * 03: The analysis fails to adequately consider the impacts of the proposed project on wildlife in the area.
- * 04: The analysis fails to adequately consider the impacts of the proposed project on water quality and aquatic resources in the area.

1. Objections:

01: The analysis fails to adequately address the industrial development associated with the proposed project.

The Lima Tendoy landscape is in a corner of Montana that is still relatively undeveloped and wild, and as a result, it is an integral part of the state for wildlife, solitude, and primitive recreation, including hunting, hiking, and birdwatching. This landscape is also home to some of the most renowned streams in Montana that sustain a thriving angling economy, as well as the quality of life that makes living in southwest Montana so special. This proposed project - whether at the preferred White Pine or the Tendoy location - would be the first major development of this scale in the area.

The proposed project is a growth-inducing activity: its very purpose is to set the stage for commercial or industrial oil and gas-related development in the Tendoy. All of the impacts, including but not limited to those addressed in more detail below, are of first impression on the landscape, meaning their effects will be more heightened and more intense. The agency must meet these greater intensity impacts with greater analytical scrutiny by the agency in its hard look analysis. Wild Montana asserts that the agency has failed to fulfill its obligation to take a hard look at the direct, indirect, and cumulative impacts of the proposed project in this sensitive landscape.

The EA and related documents repeatedly state that the lease will be commercially developed if such resources exist after the proposed exploratory phase. Arguably the most explicit example of such is in the FONSI: "The decision would include [site-specific activities associated with exploration][hellip] and going to production if commercial resources are identified." Several points of the analysis also implicitly suggest that this EA sufficiently analyzed the effects associated with that potential commercial activity. These direct statements and implied conclusions directly conflict with other statements throughout the decision documents that this exploratory project and the decision to "go[] to production" do not "present a decision in principle about future considerations" and that any "future project must be evaluated on its own merits and effects."

Wild Montana stresses that while considering the downstream anticipated actions from the approval of this permit is essential to the agency's analysis, the agency cannot consider this EA sufficient analysis for any further development associated with the proposed action. It is also precisely because the agency declares that it is its intention to permit potential future production activities with this decision that the agency has explicitly committed itself to a robust analysis of said production in this decision. Wild Montana's more detailed objections below highlight not just the shortcomings of the analysis, not just for the limited scope of exploration, but for production as well. Because production is the direct, foreseeable - and in fact intended - outcome of this project, its impacts are within the scope of review for this project. The agency has failed to properly analyze and disclose the impacts of production at the proposed project site.

02: The analysis fails to adequately consider the climate change impacts of the proposed project.

Oil and gas exploration, which leads to commercial development, is directly tied to climate change. Indeed, the 'consequences' of oil and gas development are 'well established and predictable.' So too does exploration 'set in motion' the 'future effects' of development and increased carbon output. President Biden has committed the United States to: achieving a 50-52% reduction in GHG emissions from 2005 levels by 2030; create a carbon-free power sector by 2035; and achieve a net-zero emissions economy no later than 2050.

This project invests both industry and agency capital into a project that is in direct contradiction to these urgent goals. If, as the analysis considers, the production life of this project is up to 20 years with multiple production

wells, this project stands to contribute greenhouse gas (GHG) emissions through the 2040s. Approving this project that the agency is planning to lead to industrial production will put more GHGs in the air, directly contradicting those executive goals and society's pressing climate needs.

Like the draft EA, this final EA summarizes current local and regional climates. Still, any discussion of how climate change may affect those climates is lacking, and there is no acknowledgment that GHGs from this specific project will contribute to climate change.

First, while the EA gives a description of the agency's methodology for calculating GHG emissions associated with the "proposed action," the conclusions of that methodology are dubious. The EA fails to disclose precisely how it defines the "proposed action" in this particular context. As addressed earlier, these decision documents explicitly state that the project's scope is both one exploratory well and industrial production for an estimated 20 years with likely multiple wells. Second, the EA claims that "total projected increase in downstream GHG emissions from the proposed location is estimated to be 0.00 million metric tons per year if one well is developed." It is inconceivable that zero emissions will result from this project, especially from industrial production that could involve multiple producing wells. Again, the entire purpose of oil and gas exploration is development: development that produces and fuels GHG consumption.

Possibly, measuring output in million metric tons is the incorrect scale for this one exploratory well or the larger expected industrial project overall. If the agency is obscuring carbon output behind this scale, it is not fulfilling its obligation to disclose impacts and facilitate public engagement.

The EA also fails to adequately address the downstream impacts of fossil fuel development and consumption in southwest Montana specifically. The agency notes that "long-term precipitation changes have [] been observed in southwest Montana." One well-documented element of global climate change is changes to long-term precipitation patterns. Southwest Montana - as well as the rest of the world - is already feeling the effects of global warming and its associated climate change. By failing to accurately account for the true carbon cost of this exploration and development, the agency cannot consider or entertain the localized impacts increased GHG emissions will have in this already-stressed corner of Montana.

Finally, the EA improperly relies on past analyses and discussions of GHG emissions, failing to properly engage in a site-specific analysis for this particular project. Here, the EA routinely makes references to past analyses for other projects (like lease sales) and even programmatic documents. While the agency is not obliged to do redundant analysis at the project level where it has already completed a proper study, that does not discharge the agency's duty to ensure site-specific analysis: specifically, to conduct a full analysis of the GHG emissions associated with the total production development for up to 20 years this EA contemplates.

03: The analysis fails to adequately consider the climate change impacts of the proposed project.

Wild Montana objects to the inadequate analysis of the project and proposed site's impacts on wildlife. As discussed earlier, the larger Lima Tendoy area is an undeveloped, intact landscape that provides critical habitat

(secure general and winter habitat as well as corridors) for many key species, including bighorn sheep, elk, wolverine, lynx, numerous hawk and raptor species, and the Greater sage grouse.

The proposed action rests on the decision that the described design features, lease stipulations, project controls, interim reclamation, and similar project activities will result in no significant impact on wildlife populations or habitats. The agency's assertion is impossible to square with Montana Fish, Wildlife, and Park's reiterated concerns about this project's impacts on wildlife. FWP's comment letter states that the effect of this project cannot be mitigated, even with the proposed conditions, stipulations, and design elements. We therefore also agree with FWP's suggested additional mitigation efforts, and request that such measures be included in further detailed analysis.

The surface use limitations to protect wildlife at both project sites are only imposed during construction, a blink in the eye of the proposed 10-20 year life of a producing well. The EA fails even to consider surface use limitations during the production phase. While construction poses the most extensive phase of surface-disturbing activity in this project's projected timeline, ongoing maintenance and operational activities will require various forms and intensities of surface use throughout the project's life. The proposed decision places seasonal restrictions to use and surface disturbance from December to July at the White Pine location. There are no seasonal use limitations to maintenance efforts, but more importantly, to the production phase this EA contemplates. Likewise, the project proponent is prohibited from undertaking road construction activities from December to July.

Similarly, we object to the incomplete disclosure and inaccurate analysis of the real impact trucks pose to wildlife and the landscape. In the "Truck Traffic Estimate," the EA discusses the estimated number of trucks associated with the various phases of the project, from construction through production. This discussion offers estimates of various sized trucks and loads of workers, equipment, materials, and fluids, for eight specific phases of the project, from mobilization through construction. This analysis discusses only trucks that will be transporting things to and from the site. A few pages later, the EA separately discloses the use of pilot trucks ahead of each semi-truck during "the times of heavier truck traffic."

The use of a pilot truck ahead of particularly large trucks is a reasonable and smart design element. Wild Montana, however, must call into question the impact of truck traffic from this project. Because the use of pilot trucks is relegated to its own discussion in the analysis and not included in the "truck traffic estimate" data, Wild Montana must assume that the agency engaged with the number of trucks from that section, which implicitly does not include the estimated number of pilot trucks because of how the agency has constructed its analysis here. Therefore, there will be double the number of trucks on the road during the three phases of heaviest truck traffic than the analysis contemplates.

Similar to the seasonal closures, the disclosed routine truck traffic for production and maintenance would not be limited during these identified timeframes. Encounters with vehicles that result in disruption, displacement, and death are not limited just to the construction phase of this project. Every time a truck (accompanied by a pilot truck) travels to or from the project site, there is a risk of direct or indirect impacts on wildlife. Indirect impacts like displacement from habitat and changes in migration or localized seasonal use compound over time: the longer a road exists and the more traffic it sees - particularly in the very undeveloped Tendoy - the bigger the negative impact will be on surrounding wildlife.

Twice the number of trucks greatly changes the calculus of this project's impacts, from direct wildlife encounters to sedimentation to air quality.

04: The analysis fails to adequately consider the impacts of the proposed project on water quality and aquatic resources in the area.

The Lima Tendoy area supports several clean, cold, and high-value waterways, including Big and Little Sheep Creeks. Little Sheep Creek is a valuable native trout stream populated by a conservation population of upper Missouri River Basin westslope cutthroat trout. Westslope cutthroat trout are a Species of Concern for the state of Montana and a Forest Service and BLM Sensitive Species. Populations of Westslope cutthroat trout in the upper Missouri River Basin are especially rare, with genetically unaltered fish occupying less than two percent of their historical range. The Little Sheep Creek population is therefore extremely valuable and vulnerable. These surface waterways do not exist in a vacuum: they are part of an interconnected hydrological system that includes both surface and groundwater. Oil and gas exploration and development are linked to significant impacts on the whole hydrological system.

Wild Montana is again disappointed that the agency has failed to conduct a comprehensive baseline study of water quality and aquatic resources, beyond the simple "yes/no" table in Appendix E. The direct, indirect, and cumulative impacts cannot be disclosed and analyzed without that baseline understanding.

The outlined aquatic standards in Appendix I and elsewhere in the EA are nothing more than a reiteration that certain "design features" are enough to mitigate and eliminate any risk to the watershed. Many of these statements are predicated on the project proponent's development of a Spill Prevention Control and Countermeasure (SPCC) plan. Unfortunately, the agency did not require the project proponent to develop at least a draft of that plan as part of this decision analysis.

Furthermore, the discussion of what measures could or should be included in such a plan seem inadequate. As noted earlier, global warming and associated climate change are already altering the landscape of southwest Montana through changes in precipitation patterns, increased ambient temperatures, and changes in historic wildfire patterns. The SPCC factors, as presented, focus on actions or accidents by the project proponent that cause spills. But with the increase in dramatic and intense climatic conditions, the risk of flash floods, wildfires, and other natural events that create very real risks of spills are not considered in the proposed framework. Not only does Wild Montana object to the failure of the agency to provide a draft SPCC plan for public comment, we also object to the suggested framework for that plan that does not adequately address the range of events that create a spill risk in the project area.

Another serious concern regarding water quality is the EA's complete lack of comprehensive hydrological systems understanding and its failure to competently account for the impacts to groundwater. While scientific understanding of the complex, connected hydrological web of surface and groundwater is still limited, it is well known in this area that groundwater sources give rise to and support surface conditions in emergent wetlands. Importantly, there are many stories of byproducts of oil and gas production that relies on some form of fracturing below the water table contaminating water supplies for households and agricultural use. Similar surface water, the presented discussion on groundwater is simply a cursory recitation of non-specific factors and general practices, not the required project-specific hard look at potential direct, indirect, cumulative impacts of water use and impacts from this kind of industrial development.

Finally, Wild Montana protests the agency's conclusory but insufficiently supported statement that best management practices along the affected roadways will reduce sedimentation into area waterways by 50%.²⁵ The practice the agency relies on for this conclusion, however, are not at all tailored nor specific to this particular project: reciting a list of general types of activities without specifying more particular information about exactly how those practices will be deployed in the project at hand is not analysis at all. But more importantly, the recognition of the need to utilize these mitigation and impact-reducing measures in the first place clearly demonstrates that this proposed project will in fact have an impact on the environment. One of the factors the agency relies on is the truck traffic estimates, which, as outlined above, accounts for only a portion of the expected truck traffic, and therefore only a portion of the expected dust, erosion, and runoff potential. Overall, the agency arbitrarily disregards these potential impacts and fails to conduct even a cursory analysis at the project-specific level.

1. Conclusion:

In conclusion, Wild Montana strongly objects to the agency's presented analysis and conclusion that fail to meaningfully and fully account for the particular practices and impacts this project will have in the Lima Tendoy area. This area is too precious to Montanans to leave its environment up to insufficient analysis and unsupported conclusions.

Respectfully,

Aubrey R. Bertram Staff Attorney Wild Montana