

1.0 INTRODUCTION

On February 4, 1999, P&M² filed a proposal with BLM to exchange P&M-owned land and minerals in Lincoln, Carbon and Sheridan Counties in Wyoming for federally-owned coal in northern Sheridan County. P&M is a wholly owned subsidiary of Chevron Corporation. Figure 1-1 is a general location map showing all the lands that would be involved in the exchange as proposed in relation to the State of Wyoming.

P&M owns approximately 5,923 acres of surface estate and portions of the mineral estate on the lands shown in Figures 1-2, 1-3, and 1-4, which they are offering to exchange for the federal coal rights in the tract shown in Figure 1-5.

Figure 1-2 shows the lands in Lincoln County, referred to here as the Bridger lands. If the exchange is completed as proposed, P&M would transfer approximately 3,086 acres of surface estate and 3,086 acres of mineral estate to U.S. ownership. Approximately 2,453 acres are situated within the BTNF and would be administered by the USFS if an exchange is completed. Approximately 633 acres are located outside the BTNF and would be administered by the BLM if an exchange is completed.

Figure 1-3 shows the lands being offered by P&M in Carbon County, referred to as the JO Ranch lands. If

the exchange is completed as proposed, P&M would transfer approximately 1,236 acres of surface estate to U.S. ownership. The U.S. owns the coal rights on approximately 154 acres and all mineral rights on approximately 42.5 acres included in the JO Ranch lands. The remainder of the mineral estate underlying these lands, which P&M does not own, is and would remain in private ownership. The JO Ranch lands proposed for exchange are surrounded by public lands administered by BLM. If the exchange is completed, the surface estate of these lands would be administered by BLM.

Figure 1-4 shows the Sheridan County lands being offered by P&M, referred to as the Welch lands. If the exchange is completed as proposed, P&M would transfer approximately 1,600 acres of surface estate and 800 acres of coal estate to U.S. ownership. The remainder of the coal estate is already owned by the U.S. P&M does not have ownership of the rest of the mineral estate, including the oil and gas estate. All of the non-coal mineral estate underlying the Welch lands is and would remain in private ownership. The lands surrounding the Welch lands are private lands. If the exchange is completed, the surface and coal estate of these lands would be administered by BLM.

Figure 1-5 shows the federal coal tract P&M seeks to acquire by exchange for the properties described above. It includes approximately 2,045 acres of land referred to as the PSO Tract in this EIS. Figure 1-5

² Refer to page viii for a list of abbreviations and acronyms used in this document.

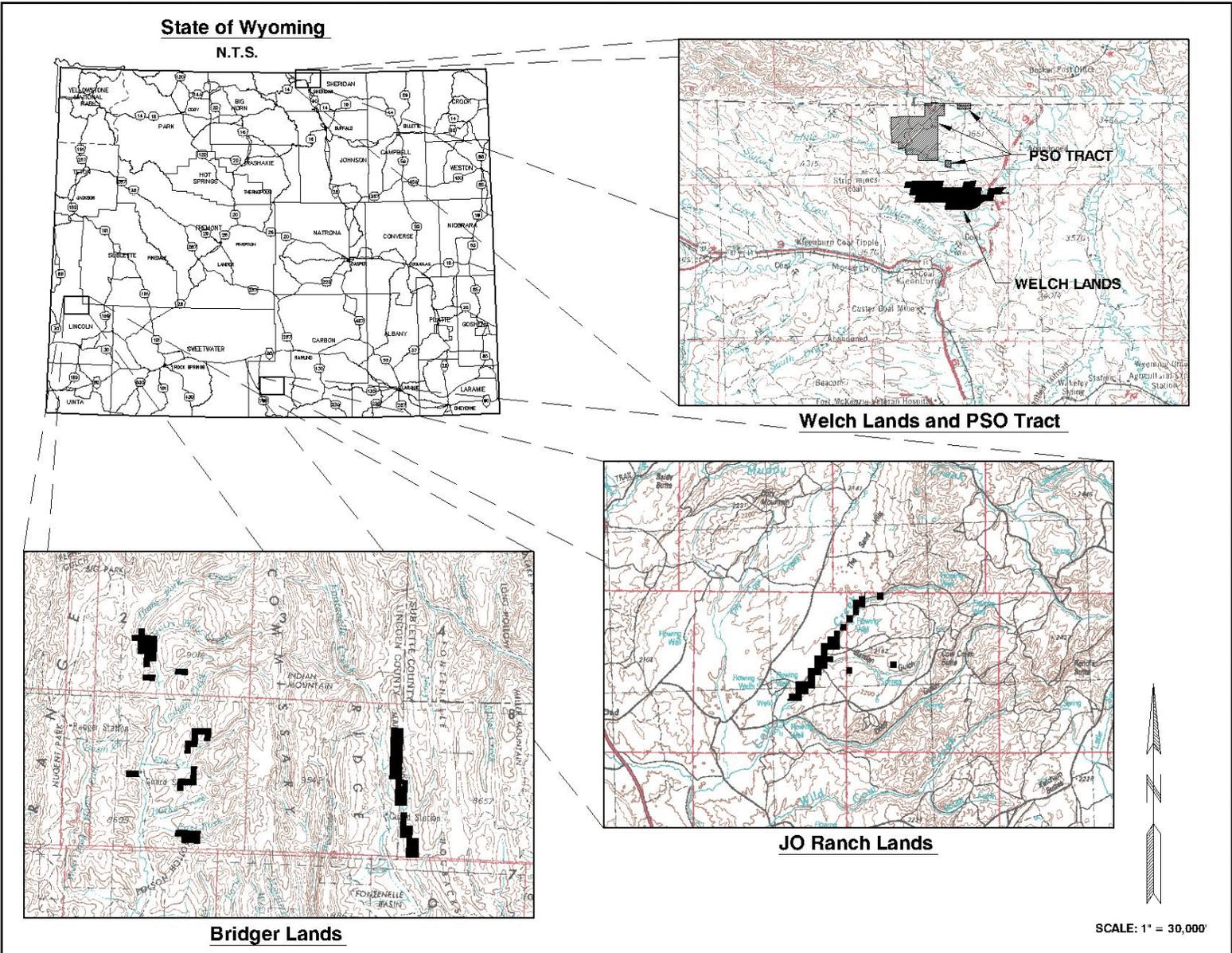
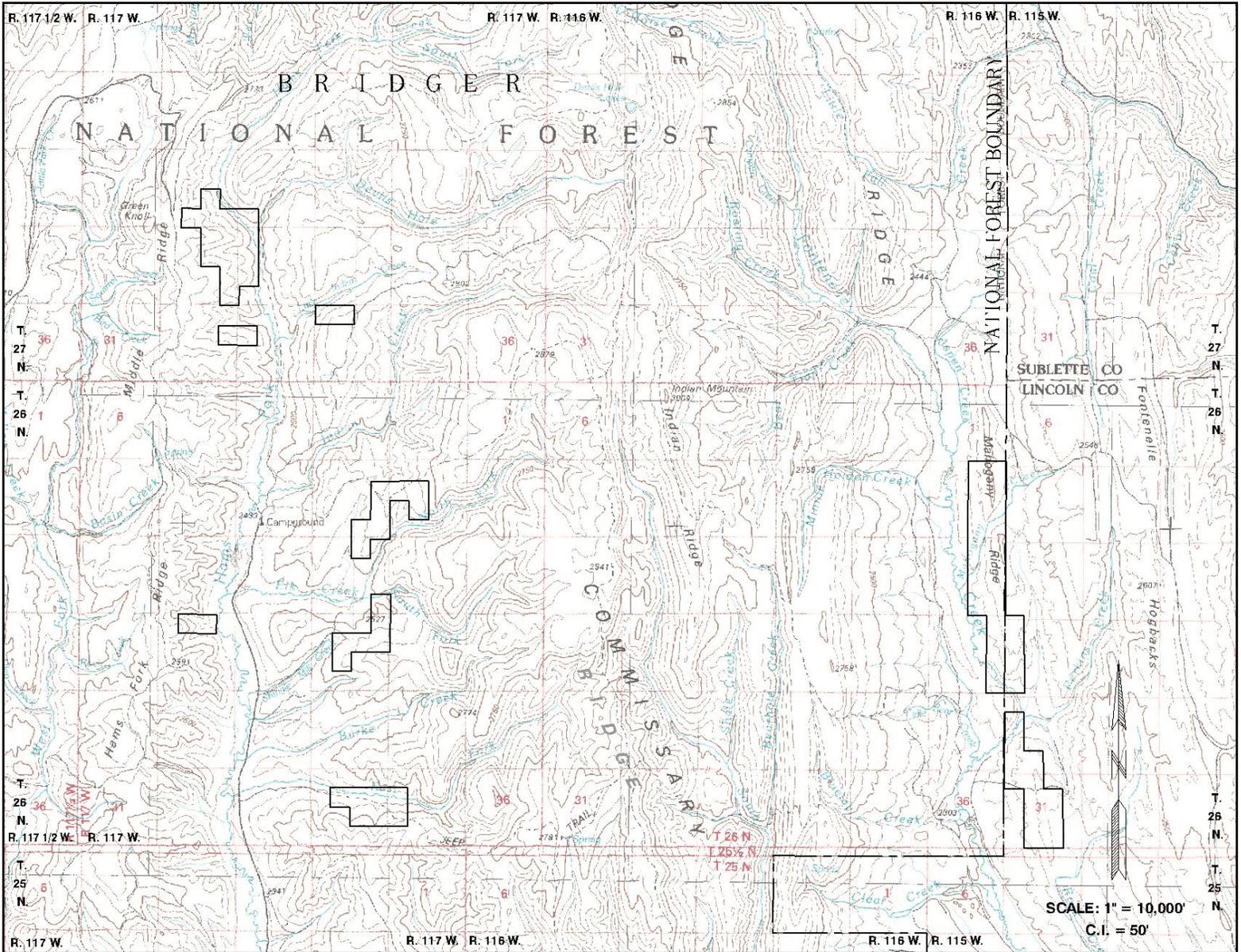


Figure 1-1 General Location Of Lands Being Offered For Exchange By P&M Coal and PSO Tract.

Figure 1-2: Bridger Lands Location Map



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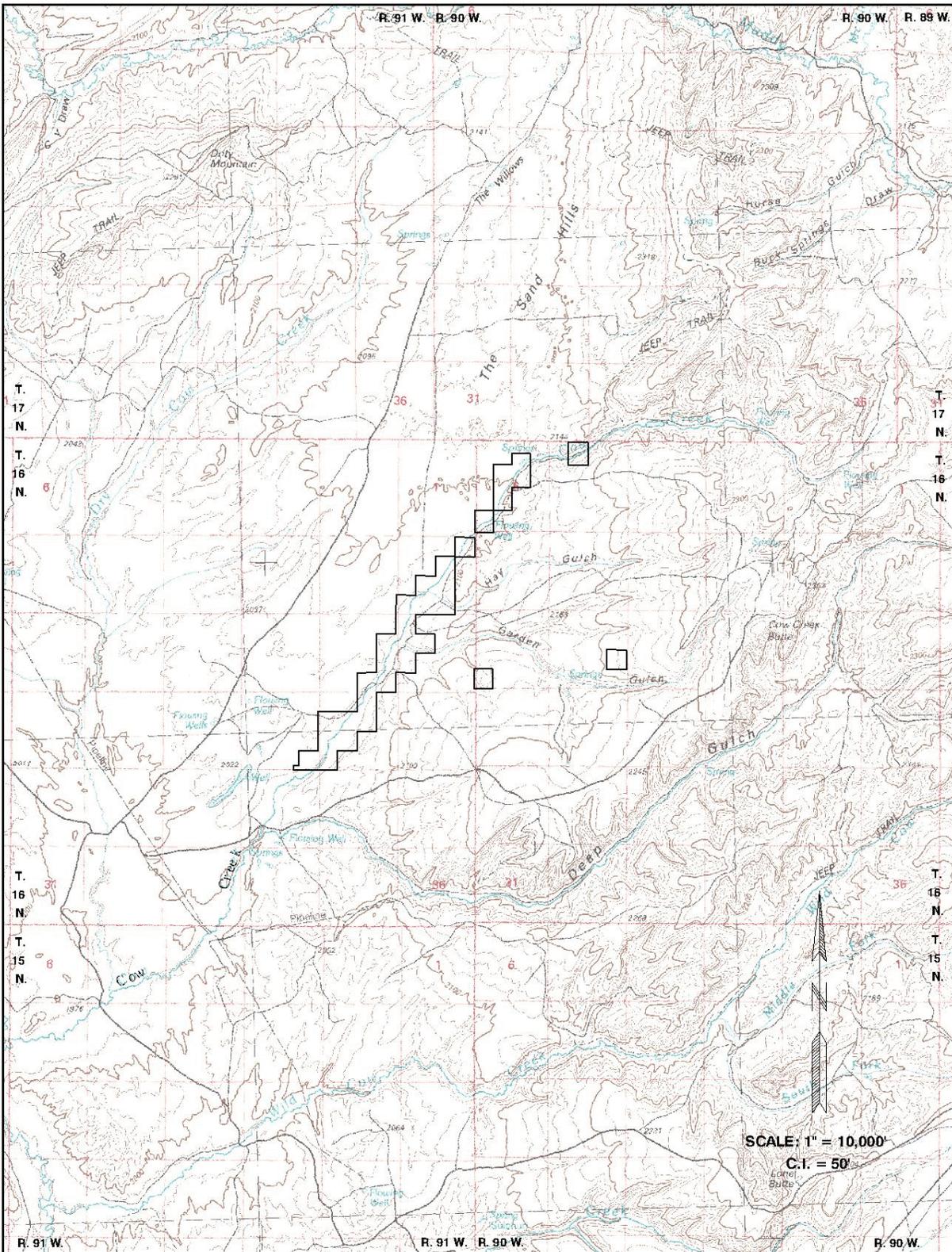


Figure 1-3. JO Ranch Lands Location Map.

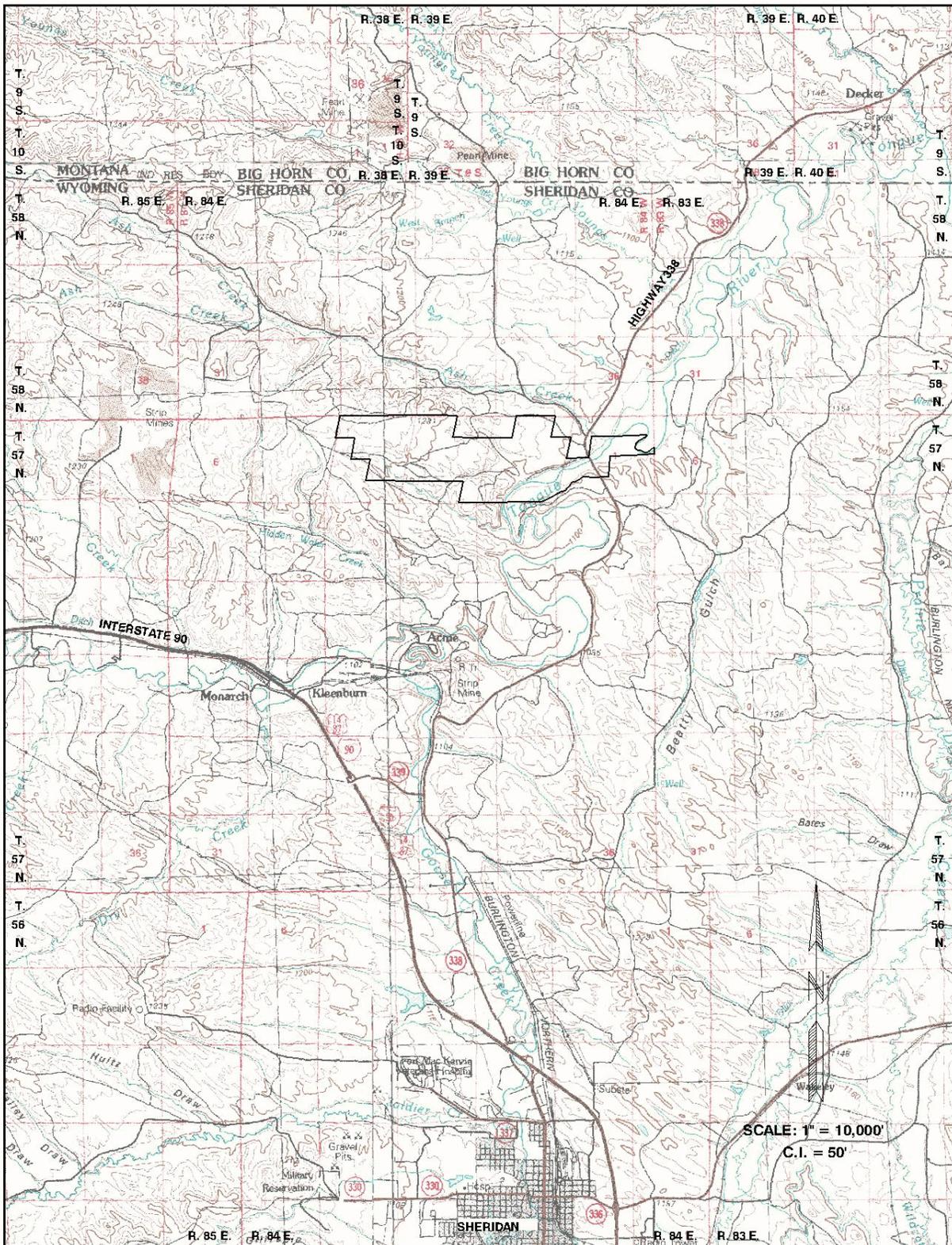


Figure 1-4. Welch Lands Location Map.

also shows the lands in Sheridan County where P&M owns the surface. P&M owns the surface of most, but not all, of the PSO Tract. There are 6.41 acres of public land in the tract, comprised on all of Section 15, T.58N., R. 84W. The coal beneath this tract is unleased federal coal, for which BLM is the managing agency. If an exchange is completed, BLM would transfer ownership of the coal to P&M.

The exchange is being processed under the provisions of the Federal Land Transaction Facilitation Act, Public Law No. 106-248, and the regulations at 43 CFR 2200. The PRRCT reviewed the exchange proposal at a public meeting held on October 27, 1999 in Gillette, Wyoming.

Land exchanges, which are discretionary, are important tools used to consolidate land ownership patterns while bringing important resources into public ownership. The two most important considerations in evaluating a land exchange proposal are (1) whether the exchange is in the public interest as required under 43 CFR 2200.0-6(b), and (2) whether the value of the interests being acquired is of equal value to the lands or interests being conveyed to private ownership (as required under 43 CFR 2200.0-6(c)).

In making the public interest determination, BLM must consider a number of factors which are outlined in the regulations at 43 CFR 2200.0-6(b). These factors include the opportunity to achieve better

management of federal lands, the opportunity to meet the needs of state and local residents and their economies, and the opportunity to secure important objectives. Some of the objectives that should be considered are: protection of fish and wildlife habitats; enhancement of public access, consolidation of lands or interests in lands, and consolidation of split estate lands.

In order to ensure that the lands or interests being exchanged are of equal value, the fair market value of the respective properties must be evaluated. In this case, the fair market value of the P&M lands will be determined through a fee appraisal by a BLM-approved qualified appraiser. BLM will determine the fair market value of the coal to be exchanged. The amount of coal exchanged will be the amount required to equal the value of the P&M lands being acquired and will be in accordance with 43 CFR 2200.

In evaluating this exchange proposal, BLM must also fulfill the requirements of NEPA by evaluating the environmental impacts of the exchange proposal. BLM has determined that the requirements of NEPA would be best served by preparing an EIS. This EIS has been prepared to evaluate the site-specific and cumulative environmental impacts of exchanging the federal coal which P&M proposes to acquire as well as to the site specific and cumulative impacts of U.S. acquisition of the lands and associated mineral resources offered for exchange by P&M. Although BLM

would not authorize mining by exchanging the federal coal as proposed, the EIS considers the impacts of mining the coal proposed for exchange because that could be a consequence of completing this exchange.

BLM will use the analysis in this EIS in making a public interest determination, in accordance with 43 CFR 2200.0-6(b), on whether to exchange coal for the offered lands.

The USFS is a cooperating agency on this EIS. The Bridger lands in Lincoln County include most of the remaining parcels of private land within the Kemmerer Ranger District of the BTNF. Acquisition of these lands is a high priority for the USFS.

OSM is also a cooperating agency on this EIS. OSM has primary responsibility to administer programs that regulate surface coal mining and the surface effects of underground coal mining operations. If the exchange is completed, the coal would no longer be federally owned, but OSM would retain some oversight responsibilities on the regulation of the proposed surface coal mine.

If the exchange is completed, P&M must complete baseline studies and obtain permit approvals prior to mining. They propose to begin mining the coal by about 2008, depending on market conditions. The mining method would be truck and shovel, and the coal would be sold for use in electric power generation.

After mining, the land would be reclaimed for livestock grazing and wildlife use, which is the current use of the PSO Tract.

There are currently no active coal mines in Sheridan County, Wyoming, although coal has been mined from both underground and surface mines in the county in the past. Two surface coal mines are currently active north of Sheridan in Montana (Decker and Spring Creek).

1.1 Purpose and Need for Action

P&M, the proponent of this exchange, wishes to acquire the federal coal beneath the PSO Tract in northern Sheridan County, Wyoming, with the intent of eventually opening a surface mine. P&M initiated the proposed exchange.

BLM and USFS are considering the exchange because the lands P&M is offering have important public resource values. The Bridger lands (Figure 1-2) are the largest in-holdings of private lands within the Kemmerer Ranger District of the BTNF. The lands are currently used for grazing, wildlife habitat, recreation and timber production. These uses are consistent with the *BTNF Land and Resource Management Plan*. While these lands remain in private ownership, there is a possibility that they could be subdivided and/or developed, which would not be in conformance with the USFS *BTNF Land and Resource Management Plan*. If the lands are acquired and become public lands, they would be managed with the surrounding USFS lands in

this area. It is a high priority of the USFS to acquire in-holdings within the BTNF boundary.

The Bridger lands located outside the BTNF (Figure 1-2) are surrounded by public lands managed by BLM and the USFS. These lands are situated along Fontenelle and Perkins Creeks. These lands are currently used for livestock grazing and wildlife habitat. If the lands are acquired, they will be incorporated into the existing multiple use management consistent with the other surrounding BLM lands in accordance with the BLM *Pinedale Resource Management Plan*.

The JO Ranch lands (Figure 1-3) are private in-holdings completely surrounded by public lands managed by BLM. These lands are situated along Cow Creek and contain several miles of important riparian habitat within the administrative boundaries of the BLM Rawlins Field Office. These lands are currently used for livestock grazing and wildlife habitat, consistent with the typical uses of the surrounding BLM lands. If the lands are acquired, they will be managed with the other public lands in accordance with the BLM *Great Divide Resource Management Plan*.

The Welch lands (Figure 1-4) are different from the other two properties being offered by P&M in that they are completely surrounded by other private lands. These lands include about two miles of frontage along the Tongue River. If the exchange is completed, this will be the only area of public lands (public access) adjacent to the Tongue River in

Wyoming outside the Big Horn National Forest. These lands would be managed by BLM in accordance with the BLM *Approved Resource Management Plan for Public Lands Administered by the BLM Buffalo Field Office* (April 2001).

If the exchange is completed, the federal government would acquire all of the surface and mineral estate that P&M owns in the three properties being offered (Bridger, JO Ranch and Welch lands, shown in Figures 1-2, 1-3, and 1-4). As described in Section 1.0, P&M owns all of the surface estate included in these three properties offered for exchange, but owns varying portions of the mineral estate in the lands offered for exchange. In exchange for these lands and minerals, P&M would acquire ownership of an equal value of federal coal beneath the PSO Tract, shown in Figure 1-5. For the purposes of this analysis, it is assumed that all the federal coal identified by P&M for acquisition would be exchanged, but the amount of coal actually offered for exchange would depend upon final appraisals of all the properties. As stated previously, if an exchange is completed, P&M proposes to mine the coal they acquire. There would be no disturbance of the acquired properties if the exchange is completed.

1.2 Regulatory Authority and Responsibility

BLM processes land exchanges under the authority provided by Section 206 of FLPMA as amended. A land exchange is a real estate transaction

where the disposal of and acquisition of lands are combined in the same transaction. This exchange will be processed under the regulations at 43 CFR 2200, the 1988 Federal Land Transaction Facilitation Act, BLM Manual H-2200-1 (Land Exchange Handbook, BLM 1997), Public Law No. 106-248, and existing BLM policy.

The BLM is the lead agency responsible for managing federal coal and other minerals. Since the proposal under consideration is to exchange federal coal for other properties, the BLM is responsible for preparation of this EIS to evaluate the potential environmental impacts of completing this exchange. For the P&M exchange, the BLM must decide whether the exchange is in the public interest and must ensure that the properties being exchanged are equal in value.

The Bridger lands would be managed by the Kemmerer Ranger District of the BTNF and the BLM Pinedale Field Office. These lands would be managed according to the 1990 *Bridger Teton National Forest Land and Resource Management Plan*, and the 1988 *Pinedale Resource Management Plan* respectively. The JO Ranch lands would be managed by BLM and are in the area covered by the 1990 *Great Divide Resource Management Plan*. The PSO Tract and the Welch lands are included in the area covered by the *Approved Resource Management Plan for Public Lands Administered by the BLM Buffalo Field Office* (April 2001).

SMCRA gives OSM primary responsibility to administer programs that regulate surface coal mining operations and the surface effects of underground coal mining operations. Pursuant to Section 503 of SMCRA, the WDEQ developed, and in November 1980 the Secretary of the Interior approved, a permanent program authorizing WDEQ to regulate surface coal mining operations and surface effects of underground mining on nonfederal lands within the State of Wyoming. In January 1987, pursuant to Section 523(c) of SMCRA, WDEQ entered into a cooperative agreement with the Secretary of the Interior authorizing WDEQ to regulate surface coal mining operations and surface effects of underground mining on federal lands within the state.

If an exchange is completed and ownership of the coal is transferred to P&M, the company would be required to submit a detailed permit application package to WDEQ before the coal could be mined. WDEQ/LQD reviews the permit application package to insure the permit application complies with the permitting requirements and the coal mining operation will meet the performance standards of the approved Wyoming program. If the permit application package does comply, WDEQ issues the applicant a permit to conduct coal mining operations.

WDEQ enforces the performance standards and permit requirements for reclamation during a mine's operation and has primary authority

in environmental emergencies. OSM retains oversight responsibility for this enforcement.

BLM also has the responsibility during preparation of this EIS to consult with and obtain the comments of other state or federal agencies which have jurisdiction by law or special expertise with respect to potential environmental impacts. Appendix A presents other federal and state permitting requirements that would have to be satisfied prior to mining this tract if the federal coal is exchanged.

1.3 Relationship to BLM Policies, Plans, and Programs

In addition to the federal acts listed under Section 1.2, guidance and regulations for managing and administering public lands, including the federal coal lands in the P&M exchange proposal, are set forth in 40 CFR 1500 (Protection of Environment), 43 CFR 1601 (Planning, Programming, Budgeting), and 43 CFR 3400 (Coal Management).

Specific guidance for processing exchanges follows BLM Manual H-2200-1 (Land Exchange Handbook, BLM 1997) and 43 CFR 2200. The *National Environmental Policy Act Handbook* (BLM 1988) has been followed in developing this EIS.

As put forth in Executive Order 13212, dated May 18, 2001, all BLM decisions must take into consideration adverse impacts on the President's National Energy Policy. According to BLM Instruction

Memorandum No. 2002-053, dated December 12, 2001, it is BLM policy to prepare a "Statement of Adverse Energy Impact" whenever a BLM decision or action will have a direct or indirect adverse impact on energy development, production, supply or distribution. If there is no adverse impact, no Statement needs to be prepared. However, the record of decision (ROD) must note this fact.

The Proposed Action, to exchange privately-owned lands for federally-owned coal, would obviously have no adverse energy impact. The No Action Alternative, denial of the exchange, could adversely effect energy production if it results in the PSO Tract never being mined or if there is a long delay in mining the coal. If the No Action Alternative is selected by BLM, the ROD will have to contain a Statement of Adverse Energy Impact which will address the following:

- rationale why the coal exchange cannot co-exist with other uses of the land;
- alternatives considered in adoption of the No Action Alternative; and
- a qualitative judgement of the impacts of the decision in regards to production lost as well as steps taken to offset the loss.

1.4 Conformance with Existing Land Use Plans

FLPMA requires that lands considered for exchange be included in a comprehensive land use plan and

that decisions to exchange the coal be compatible with that plan.

The *BTNF Land and Resource Management Plan* (USFS 1990) governs the management of USFS lands in the area surrounding the Bridger lands. The Forest Plan addresses the acquisition of lands and indicates they will be pursued with willing landowners. BTNF has completed several land exchanges and acquisitions under this plan.

The *Pinedale Resource Management Plan* (BLM 1988) governs and addresses the management of BLM lands in the area surrounding the Bridger lands. The lands that BLM would acquire in this area lie within a retention area and the plan states "... acquisition of non-Federal lands will be pursued, if needed, to accomplish management objectives. Lands action (e.g., exchanges) will be pursued to enhance and maintain key wildlife habitats."

The JO Ranch lands are located in the area managed by the BLM Rawlins Field Office where management of public lands is governed by the *Great Divide Resource Management Plan* (BLM 1990). The plan states that the preferred method of disposal or acquisition of lands by BLM will be through exchange. If the exchange is completed, future management of the land acquired in the Rawlins Field Office area will be determined through additional NEPA analysis/planning decisions.

The Welch lands and the PSO Tract are located in Sheridan County. The

Approved Resource Management Plan for Public Lands Administered by the BLM Buffalo Field Office (April 2001) governs and addresses management of BLM public lands and minerals in Sheridan County. Section 206 of FLPMA, dealing with exchanges, and section 209 of FLPMA, dealing with the reservation and conveyance of minerals, have both been incorporated into the *Buffalo Area Resource Management Plan*. If the exchange is completed, future management of the land acquired in the Buffalo Field Office area will be determined through additional NEPA analysis/planning decisions.

When an application to lease federal coal is received, BLM applies four land use planning screens to determine whether the subject coal is acceptable for consideration for leasing. The four coal screens are:

- development potential of the coal lands;
- unsuitability criteria application;
- multiple land use decisions that eliminate federal coal deposits; and
- surface owner consultation.

Development potential of the coal lands, multiple land use decisions that eliminate federal coal deposits from consideration for leasing and surface owner consultation are not directly applicable in the case of an exchange of federal coal because the coal would not remain under federal ownership if the exchange is completed. The unsuitability criteria apply to both federal and non-federal

coal reserves under Section 522(b) of SMCRA. The presence of some of the resources included in these criteria may prevent mining of both federal and non-federal coal. In that event, the federal coal lessee or the private coal owner is entitled to an exchange for the coal that they cannot mine. BLM does not want to exchange coal that cannot be mined due to federal restrictions because P&M could be entitled to another exchange in the future. Therefore, the unsuitability criteria need to be considered in selecting the coal that should be included in the exchange.

The coal mining unsuitability criteria are listed in the federal coal management regulations at 43 CFR 3461. These unsuitability criteria were applied to federal coal lands in Sheridan County in the early 1980s and in the mid 1990s by the BLM. The 1980s results were included in the 1985 *Buffalo Area Resource Management Plan*. The results of the mid-1990s unsuitability criteria application are summarized in the 2001 *Approved Resource Management Plan for Public Lands Administered by the BLM Buffalo Field Office*.

The unsuitability findings for the PSO Tract according to the 2001 *Approved Resource Management Plan for Public Lands Administered by the BLM Buffalo Field Office* are summarized in Appendix B of this EIS. The findings for Criteria 14 and 15 are discussed in more detail below.

Portions of the PSO Tract totaling about 520 acres were found to be unsuitable for coal leasing and

development under Criterion 14 (Habitat for Migratory Birds) when the unsuitability criteria were applied in the early 1980s. The designation was applied due to the presence of breeding habitat for the Lewis' woodpecker. This species is known to breed in the ponderosa pine habitat in the area of Ash Creek. BLM has reviewed this unsuitability finding and determined that Lewis' woodpeckers have been dropped from the list of "Migratory non-game birds of management concern in the U.S." BLM advised USFWS of their intent to drop the unsuitability designation for Lewis' woodpecker habitat under Criterion 14 within this area and to complete a land use plan maintenance action to reflect this. In a letter dated August 20, 2001, USFWS indicated their willingness to concur with the proposed change in unsuitability designation for Criterion 14; however, they requested that the scoria hillsides on the western edge of the exchange area be removed from the exchange. If those areas remain in the exchange tract, the USFWS will require monitoring of the Lewis' woodpecker as part of their mining permit.

The 1985 BLM *Buffalo Area Resource Management Plan* found approximately 1,200 acres of federal coal to be unsuitable due to the presence of the Lewis' woodpecker under Criterion 15, Habitat for State High-Interest Species, and some of this acreage overlaps with the western edge of the PSO Tract. The WGFD submitted comments in response to the exchange notice identifying the Lewis' woodpecker as

a state species of special concern that is found in the Ash Creek area in a letter dated January 30, 2001. In their comment letter, WGFD stated that they believe the exchange “will not significantly impact Lewis’ woodpeckers, and that any concerns related to the Lewis’ woodpecker could be adequately addressed during mine planning if active coal mining is proposed.” When contacted, WGFD indicated that, due to the extent of their occurrence in Wyoming, Lewis’ woodpeckers are not considered rare or in need of management emphasis.

On October 24, 2001, the *Buffalo Area Resource Management Plan* designation of a portion of the Sheridan Review Area as “unsuitable pending further study” for Lewis’ woodpecker habitat was removed in a plan maintenance action signed by the Field Office Manager.

1.5 Consultation and Coordination

Initial Involvement

BLM received P&M’s coal exchange proposal on February 4, 1999. The exchange proposal was initially reviewed by the BLM, Wyoming State Office, Division of Mineral and Lands Authorization. On October 31, 2000, the National Land Exchange Evaluation and Assistance Team concluded their technical review of the exchange proposal and concurred with Wyoming BLM’s request to proceed with processing the exchange.

The PRRCT reviewed this exchange proposal at a public meeting held on October 27, 1999, in Gillette, Wyoming. P&M presented information about their proposed exchange application to the PRRCT at this meeting. The PRRCT recommended that the BLM continue to process the exchange and instructed BLM to proceed with an EIS to evaluate the environmental effects of the exchange. The exchange was assigned case serial number WYW148816.

The BLM filed a Notice of Intent to Prepare an EIS and a Notice of Scoping in the *Federal Register* on February 14, 2001. The filing served as notice that the P&M exchange proposal had been received and public comment was requested.

Public scoping meetings were held on March 5, 2001 in La Barge, Wyoming, March 6, 2001 in Rawlins, Wyoming and March 7, 2001 in Sheridan, Wyoming. At the public meetings P&M, BLM and USFS personnel orally presented information about the exchange process and the properties proposed for exchange. The presentations were followed by a question and answer period, during which oral comments were made. The scoping period extended from February 14 through March 31, 2001, during which time BLM received 23 written comments.

Chapter 5.0 provides a list of other federal, state, and local governmental agencies that were consulted in preparation of this EIS (Table 5-1)

and the distribution list for this EIS (Table 5-3).

Issues and Concerns

Issues and concerns expressed by the public and government agencies relating to the exchange proposal are summarized below. As might be expected, the issues and concerns expressed are related to location. That is, people in Lincoln and Carbon Counties were most concerned with management of the acquired lands if the exchange is completed, while people in Sheridan County were more interested in the potential mining of the coal.

Issues and concerns are summarized as follows:

- Mineral ownership of acquired lands and whether these lands would be available for mineral development;
- Fate of existing timber roads;
- Grazing rights on the acquired lands;
- Effect on county tax base if these lands change from private to public ownership;
- Question of who underwrites the expense of the exchange;
- Ownership and use of the water rights on the JO Ranch lands;
- Fate of the buildings on the JO Ranch lands;
- Potential conflicts with oil and gas development on the PSO Tract;
- Access to the proposed mine on the PSO Tract and facilities to ship coal out;

- Post-mine land uses on the PSO Tract;
- Effects of blasting on nearest residents to the PSO Tract;
- Effects of mining on air quality;
- Expected revenues from the mining operation;
- Public access to Welch lands;
- Cumulative impacts of mineral development to other resources (e.g., groundwater, surface water, etc.);
- Potential impacts on cultural and paleontological resources;
- Potential impacts on T&E species and MBHFI;
- Need for the exchange;
- Reasonable alternatives to the exchange;
- Encumbrances on the lands being exchanged;
- Wetland impacts.

Draft EIS

Parties on the distribution list are being sent copies of this DEIS, and copies are being made available for review at the BLM offices in Casper, Rawlins, Buffalo, Pinedale and Cheyenne, and the USFS office in Kemmerer. Notices announcing the availability of the DEIS will be published in the *Federal Register* by the EPA and BLM. A 60-day comment period on the DEIS will commence with publication of the EPA Notice of Availability.

Final EIS, Department of Justice Consultation and ROD

All comments received on the DEIS will be included, with agency responses, in the FEIS. Availability of

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the FEIS will be published in the *Federal Register* by the BLM and the EPA. This notice will also announce a public meeting or meetings to receive public comments on the public interest factors of the proposed exchange, as required by 43 CFR 2203.3. There will be a 30-day availability period for the FEIS.

After the public meeting or meetings are held and the 30-day availability period has ended, BLM will forward to the Attorney General copies of the comments received in response to the request for public comments, the transcript of the public meeting or meetings, and copies of the written comments received at the public meeting or meetings. The Attorney General has 90 days to advise BLM, in writing, on the anti-trust consequences of the proposed exchange. The Attorney General may request additional information, which may extend the 90-day period. If the Attorney General does not respond within the 90-day time frame, BLM may proceed with the exchange.

Any advice received from the Attorney General becomes part of the public record. The ROD will include a

discussion of the consideration which is given to any advice that is received from the Attorney General related to this exchange.

Prior to preparation of the ROD, the final appraisals will be completed and BLM will request the concurrence of the Department of Interior Solicitor on the ROD and the Notice of Availability of the ROD. Once the Solicitor's concurrence is received, the BLM Wyoming State Director will request the concurrence of the BLM Washington Office through the National Land Exchange Evaluation and Assistance Team.

The ROD for the exchange will be mailed to parties on the mailing list and others who commented on this exchange during the NEPA process. The BLM decision may be protested within 45 days after publication of a notice of the availability of a decision to approve or disprove an exchange proposal. The right of appeal from a protest decision may be pursued in accordance with 43 CFR part 4. The transfer of deeds and other administrative procedures to complete the exchange will follow.