

# Greater Yellowstone Coalition Jackson Hole Conservation Alliance

December 7, 2009

Dale Deiter, Jackson Ranger District  
BTNF  
Box 1689  
Jackson, WY 83001

## **Re: Scoping comments for the Fish Creek and Upper Gros Ventre River Restoration and Enhancement Project**

Hard copy delivered December 7, 2009. Email copy and some attachments sent  
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Ranger Deiter:

Please accept these comments from the Greater Yellowstone Coalition (GYC) and the Jackson Hole Conservation Alliance (JHCA). For decades our members have been involved in protecting the wildlife, habitat and recreational values of the Greater Yellowstone Ecosystem (GYE). The proposed project area in the Gros Ventre Valley is in the approximate geographic center of the 20-million-acre ecosystem and is valued by our members for many activities and interests including, but not limited to, hiking, horseback riding, mountain biking, sight seeing, hunting, fishing, boating, photography, camping, wildlife watching, conducting research, and enjoyment of solitude.

We applaud the efforts of the many stakeholders and agencies throughout the Greater Yellowstone Ecosystem who have worked together over the decades to protect the landscapes and the world-renowned wildlife that have made this ecosystem among the most famous in the world.

This collection of proposals in the Fish Creek and Upper Gros Ventre River area of the Bridger-Teton National Forest will affect large tracts of land and important waterways and may turn this quiet and beautiful area into a construction zone well into the future. What may be a collection of several connected projects mentioned in the scoping notice raises more questions than provides answers, may result in adverse consequences to important natural resources, and appears to be based on unverified and puzzling assumptions. With the recent 2009 Snake River Headwaters Wild and Scenic Rivers Act, there is yet no Comprehensive River Management Plan (CRMP) for any stretches of the rivers and streams protected under the act, and the Bridger-Teton appears to be planning on re-engineering more than 10 miles of this newly protected Scenic Gros Ventre River. The Bridger-Teton National Forest personnel need to pause and comply with their duties to follow regulations and protect the wildlife, waterways,

and critical habitats of this ecologically important area. We will offer some of our concerns here.

## **Public Process**

The Bridger-Teton National Forest is part of the United States Department of Agriculture and is in the Executive Branch of the federal government. The January 21, 2009 memorandum from President Barack Obama, *Transparency and Open Government*, contains excellent direction for Departments and Agencies of the Executive Branch of government. In this memorandum cited in the Reference Section below and attached to these comments, it notes that, “*Government should be transparent. Transparency promotes accountability and provides information for citizens about what their Government is doing.*”

We are disappointed that the Bridger-Teton National Forest (BTNF) did not adequately notify the public that the 30-day scoping comments period had started November 7, 2009. The scoping notice wasn't put on the BTNF website until November 30, 2009 after much of the scoping period had expired. Public comment closes on December 7. Our organizations expressed interest in these proposed actions during an in-person meeting on October 21, 2009 with District Ranger Dale Deiter and others but both our organizations were left off the BTNF mailing list for the actual scoping document which signals the beginning of the formal comment period. Without the process and timeline being clearly understood and adhered to by the BTNF and made clear to the public and all stakeholders, there is no tangible entry point for the public to become informed, ask questions and gain answers. We had been assured by the District Ranger during in-person meetings that we would be notified when scoping started as is required by law. The copy of the scoping notice eventually given to us by a colleague is dated November 3, 2009, and the copy of the scoping notice finally posted on the BTNF website is dated 30 October, 2009, further compounding the confusion.

This environmental analysis process must not be a mere paper exercise to the BTNF, cavalierly prepared to enable an outcome already decided upon. The Council on Environmental Quality (CEQ) regulations require that Environmental Impact Statements shall serve as the means of assessing the environmental impact of proposed agency action, rather than justifying decisions already made. (40C.F.R. 1502.2 (g)) *If there is any indication that the proposed actions in this scoping notice are predetermined or foregone conclusions that that information must be made public.* It appears that much of this scoping notice contains information supplied by others and not by the BTNF without much assurance that actions resulting from the ROD would comply with federal legal directives. Courts' interpretation of NEPA's requirements are clear: “[A]n agency may not define the objectives of its action in terms so unreasonably narrow that only one alternative . . . would accomplish the goals of the agency's action...[as] the EIS would become a foreordained formality.” Citizens Against Burlington, 938 F.2d at 196.

It would further help inform the public if the BTNF made available any previous NEPA documents completed on the Fish Creek Bank Stabilization effort, including the

reconstruction of the large headgates. These documents do not appear to be archived on the BTNF website.

### **Contractors for Environmental Analysis and Projects**

The BTNF should disclose if they have selected a private contractor to write any portion of the scoping notice and environmental analysis for the proposed actions. Any selected contractor must disclose if they hold a financial or other interest in the project. Also needing full disclosure is whether the proposed construction will be done by USFS employees or private contractors, and what letting and bidding process is undertaken in compliance with federal law.

### **Funding, Costs and Benefits**

Following the President's direction cited above, the BTNF needs to disclose to the public the costs for all the public lands and public resources projects connected with the Fish Creek and Upper Gros Ventre River Restoration and Enhancement Project, including the funding for projects already completed upon which some proposed projects are based. They need to explain what funding was used for projects such as the reconstruction of headgates on USFS land where no private land hayfields exist any longer that need irrigation water. They need to explain to the public if permission has been granted to any ongoing or proposed projects on USFS land in this area before the environmental analysis has been completed and the public has a chance to participate under the provisions of the National Environmental Policy Act. They need to explain what private or public funding sources have been secured or are being pursued for these proposed projects and during what timeframes.

The BTNF must disclose the costs and funding sources not only for construction of all the projects but also for maintenance and operations of the new facilities including the irrigation system and personnel to operate it into the future, the restoration, maintenance and operation of the proposed Historic Structures Restoration projects including personnel costs and new residences for irrigators and caretakers and possible public rental quarters, and they need to disclose any costs associated with the enhancement of willows for moose or other wildlife habitat. If an associated cost of willow enhancement is anticipated to be additional elk winter baled hay or alfalfa pellet feeding areas, or modification or intensification of the winter elk feeding program, these costs must be calculated and disclosed. The BTNF must disclose the construction and maintenance costs for all proposed modifications of the newly designated Scenic Gros Ventre River. The BTNF should disclose all such costs for all completed and proposed projects for the anticipated lifetime of the proposed projects on an annual or per decade basis.

Other costs may be the loss of solitude that visitors seek in this area due to the lengthy and disruptive construction process and increased human presence, loss of river floating opportunities, loss of dark night skies due to new artificial lighting associated with construction and residences for irrigators and historic

interpreters/caretakers, and the cost of potentially wasted USFS management efforts that closed some motorized routes in this area in 2009, yet the main route left open, route #30438, may be inundated in a newly created or restored wetland and rendered unusable. Some may consider this a benefit.

If any of the connected or proposed projects are currently resulting in savings or benefits, or it is anticipated to save money or provide benefits in the future, these savings should be calculated and disclosed to the public as well. Such benefits may be increased trumpeter swan and other waterfowl populations. There may be an increase in moose population, which may result in additional public hunting and viewing opportunities and revenues. However, the BTNF should consider risks of and effects of deleterious impacts such as amplifying wildlife diseases such as brucellosis or Chronic Wasting Disease by intensifying the elk feeding program when they calculate costs and benefits.

### **Purpose and Need**

The Forest Service may not improperly define the purpose and need for the environmental analysis and subsequent actions by arbitrarily selecting a proposal from a third party as the purpose and need; selecting a *proposal* as the purpose and need merely acts as a purposeless pass through for whatever project or activities a third party may want to perpetrate on USFS lands. This is a violation of NEPA. Because the stated purpose and need for a federal action determines the range of alternatives, it is essential that the Forest Service clearly articulates the project's purpose and need from *the USFS' perspective* and not simply adopt the proponents' objectives for the project as its own. (40 C.F.R. § 1502.13). As courts have cautioned, "One obvious way for an agency to slip past the strictures of NEPA is to contrive a purpose so slender as to define competing 'reasonable alternatives' out of consideration (and even out of existence.)" Davis v. Mineta, 302 F.3d 1104, 1119 (10th Cir. 2002) (quoting Simmons v. United States Army Corps of Eng'rs, 120 F.3d 664, 669 (7th Cir. 1997)).

The goals of a project proponent are, to a limited extent, relevant in determining a project's purpose and need, but "more importantly, an agency should always consider the views of Congress, expressed, to the extent that an agency can determine them, in the agency's statutory authorization to act, as well as in other Congressional directives" Citizens Against Burlington, Inc. v. Busey, 938 F.2d 190, 196 (D.C. Cir. 1991). As just one example, Congress was unwavering in its message when it passed the National Environmental Policy Act: federal agencies are entrusted to act as trustees of the environment for present and future generations." 42 U.S.C. § 4331(b). Had the Forest Service considered this broader responsibility, the purpose and need statement may have included greater protection of the sensitive and irreplaceable National Forest lands at stake.

Regarding the references to the Fish Creek riparian area, it is unclear whether these projects have already been done on Fish Creek. At the bottom of the second page, at "Proposed Action- Riparian Enhancement Thru Cottonwood Regeneration", it states that

“The next phase of the Fish Creek project is now possible in light of the channel stabilization that has occurred.” But as was observed during a field trip in May 2009, cottonwoods and willows have *already* been planted along the south bank of Fish Creek. Map 2, “Conceptual Resource Enhancement Area”, indicates that Riparian Enhancement Area stretches along Fish Creek from the headgates downstream to the confluence with the Gros Ventre River. Map 3, “Seasonal Flash Flood Areas”, indicates a much larger “Fish Creek Riparian Enhancement Area” which appears to overlay “Mesic Shrubland Enhancement Area,” and the “Wetland Enhancement Area”, and the “Mesic Grassland Enhancement Area.” Map 4, “Existing and Proposed Wetlands” has indications for, “Proposed Scrub Shrub Wetland” which appears to overlay “Mesic Grassland Enhancement Area” designated in Map 2. So, while the Purpose of and Need for Action alleges previous anthropogenic harm to the ecology of cottonwood and other riparian vegetation, and a need for restorative actions, the maps may indicate conflicting objectives. Virtually of this land is USFS public land. The allegations of original harm may or may not be valid, and a need for restoration may or may not exist, but the BTNF has not made this clear.

The scoping errs either by misstating the size of the project area (“The Fish Creek project area is a 610-acre area . . .” [scoping, first page]) or indicating a different acreage elsewhere and omitting the added acreage for the proposed Upper Gros Ventre River Wetland and Riparian Enhancement. In the legend for Map 5 it identifies “Phase 1 Fish Creek Resource Enhancement Area (This Area Includes Phase & Education and Outreach) 812 Acres”. This would be 200 acres more than what is stated in the text of the Scoping notice. Yet no acreage total is indicated for “Phase 9-Sections 1-7 Area Boundaries Gros Ventre River Restoration Project” in the legend of Map 5. Each of these sections appears to be outlined in bold yellow line in the map. While Section 1 of Phase 9 may be included in the Fish Creek project area and thus may not be additive acreage, Sections 2 through 7 appear to lie south, up river, from the Fish Creek project area. If, by visual estimation, each of these Sections 2 through 7 are 160 acres apiece, the acres added to whatever the Fish Creek project area might be as much as 960 acres. If this is the case (that the Fish Creek Project area is actually 812 acres, and the Gros Ventre project adds another 960 acres), then the scoping notice is incorrect and misinforms the public.

The BTNF should also revisit the need for action as defined under the emergency bank stabilization of Fish Creek in approximately 2007. This review may hold the key to defining what the *minimum* amount and scope of construction was needed to accomplish objectives; this may have been the protection of the 8.3 acres of private property along Fish Creek. Once this objective has been reasonably accomplished (which it may already be), the natural ecological processes of Fish Creek and the Gros Ventre River, along with the plant communities and wildlife species may in time accomplish any needed restoration of previous human interventions. Using the natural processes, if slower, may be far less expensive in the short and long terms.

The BTNF may want to allude to the study for the BTNF, A Review of Cottonwood Creek Channel Dynamics, M. Merigliano, 1997, which sheds light on the dynamic

nature of the watercourses in this area. This study also references historical photographs of the area rivers and streams which add to the empirical information upon which to base conclusions.

The BTNF does not offer any Purpose and Need for the proposed Historic Structures Restoration nor for the “Upper Gros Ventre River Restoration Location and Phases” Phase 9 Sections 1-7 indicated on Map 5. These deficiencies must be corrected in a new scoping notice for all connected proposed actions. If caretakers’ quarters and rental cabins or quarters are to be included in a historical restoration, that along with all reasonably foreseeable ancillary facilities and activities and must be disclosed.

We have similar concerns for omitting the Purpose and Need regarding the Upper Gros Ventre River Wetland and Riparian Enhancement as well as concerns about inaccurate information offered to the public. These collections of projects, if they are at all purposeful, need to be accurately defined and offered again to the public with the appropriate information. This scoping notice does not suffice.

### **Anecdotal Information and Arbitrary Assumptions**

The scoping notice states, “Anecdotal information indicates that the [Gros Ventre] river channel and floodplain were historically altered (e.g., straightened) . . . this may have caused channel downcutting accompanied by bank undermining and failure. Natural grade control at the downstream end of the project area reach may also have been removed in order to create additional pasture and agricultural fields. These alterations have reduced the connection between the watercourse and its floodplain. . . and has facilitated a shift in riparian vegetative communities in favor of species that are tolerant of drier conditions.” (Scoping, second page) The proposal to alter the extant hydrology of many miles of the Scenic Gros Ventre River appears to be predicated on anecdotal information without adequate supporting evidence and science. The anecdotal source isn’t disclosed to the public and should be. Any subcontractor making the determinations must disclose any financial interests in the outcome. The scoping notice moves from referencing an unverified anecdotal story directly to assertions and conclusions that are otherwise unsupported. The assertions and conclusions appear to serve as the foundation from which to kick start large scale and expensive public lands and public waterways projects.

As stated above, the BTNF is in the US Department of Agriculture, US Forest Service and thus part of the executive branch of the federal government and must comply with pertinent Presidential directives. Another Presidential Memorandum for the Heads of Executive Departments and Agencies dated March 9, 2009, listed in the Reference section of these comments and also attached, is titled, “Scientific Integrity”. Part of the memorandum notes, “The public must be able to trust the science and scientific process informing public policy decisions. Political officials should not suppress or alter scientific or technological findings and conclusions. If scientific and technological information is developed and used by the Federal Government, it should

ordinarily be made available to the public.” The memorandum goes on to call for, “the highest level of integrity in all aspects of the executive branch’s involvement with scientific and technological processes.”

As we will state elsewhere in our comments, the conclusions upon which the Purpose and Need is based in this scoping notice for Upper Gros Ventre River Restoration and Enhancement appear to conflict with the Bridger-Teton’s own July 2008 *FEIS Long Term Special Use Authorization for Wyoming Game and Fish Commission to Use National Forest System Land for their Winter Elk Management Activities*. In the 2008 USFS document’s discussion of conditions at Fish Creek elk feedground on the bank of the Gros Ventre River (FEIS: 51-54) it indicates that the degraded riverbank conditions and the impacts to riparian vegetation are caused by long term and excessive cattle and elk use. The empirical evidence in this assertion appears to be stronger than an anecdotal story or two from generations past purporting a different theory.

Resolving these two contradicting theories as to why willow growth is inhibited along the Gros Ventre River is crucially important because the remedies are sharply different in cost, in intrusive manipulation of a Congressionally designated Scenic River or not, and in the consequences of remedial actions. We offer one inexpensive and benign example of how this contradiction can be resolved later in these comments when we offer a method for testing willow growth along the Gros Ventre River.

### **Adequate Alternatives**

The Forest Service must analyze a true range of alternatives or the record of decision risks becoming a foreordained formality. Action alternatives must differ from one another other in a meaningful way so as to “insure a fully informed and well-considered decision” Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc., 435 U.S. 519, 558 (1978). A reasonable range of distinctly different alternatives allows the Forest Service - and the public - the opportunity to adequately review a true array of options.

If the purpose and need are twofold: To protect the outstanding resource values of the Gros Ventre River, and to conserve and restore native plant communities, then the BTNF must offer the public a reasonable range of alternatives to realistically accomplish these objectives. If the alternatives- and subsequent action plans- are limited to predetermined or politically expedient actions and not actions that would achieve the identified objectives then the analysis is predicated on false constructs and false premises and misleads the public.

For instance, if increasing the willow abundance along the Gros Ventre River is the purpose, or one objective, of a proposed action will changing the hydrology of the Gros Ventre River accomplish this within what’s allowable by other regulations and laws? The more explicit purpose may actually be to increase natural winter browse for moose. If intensively manipulating the hydrology of the Gros Ventre River elevates the

water table, but the willows get browsed down by excessive densities of elk thereabouts (see the BTNF Elk Feedground FEIS: 51-54), then the objective cannot be accomplished by the proposed action. If, however, willows already grow, or could grow, along the Gros Ventre River, and if elk densities are reduced to allow native plant communities to thrive, then the objectives of promoting willows and increasing natural browse for moose can be accomplished whether through manipulating elk densities alone or in conjunction with altering the extant hydrology of the Gros Ventre River.

If there is some plan to keep elk on small feedgrounds in or around the project area in order to promote willow or cottonwood growth along either Fish Creek or the Gros Ventre River, then this, too, needs to be disclosed to the public in the range of alternatives considered. If this alternative were being considered, we would oppose it.

### **Segmentation of NEPA**

The scoping notice states on page 2: “One channel-spanning structure [in Fish Creek] was specifically designed to maintain an appropriate water elevation in proximity to the headgate in order to eliminate the need for regular channel manipulation associated with the continued operation and maintenance of the [headgate] diversion.” It further states, “The next phase of the Fish Creek project is now possible in light of the channel stabilization that has occurred.” These and other statements in the scoping notice indicate that proposed expansive projects described in *this* latest scoping notice for the Fish Creek and Upper Gros Ventre River Restoration and Enhancement Project are directly tied to a *previous* significant federal action. It appears that the BTNF has chosen to segment the NEPA process and not do a comprehensive analysis for the entire area affected directly and indirectly by these proposals.

The Bridger-Teton National Forest Land and Resource Management Plan dates back to 1990. Before significant federal actions, or Special Use Permits, are allowed to take place under the National Environmental Policy Act an appropriate analysis must be done on the Fish Creek/Upper Gros Ventre River landscape that considers changed ecological conditions, changed public values and community needs, and the effects and consequences of 20 years of management and use of these landscapes. Many things have changed in this area over two decades. To offer just a short list, in the past two decades the public has become more aware of and concerned about mitigating the effects of climate change; conifer forests are becoming more affected by insect –related mortality; large predators have returned to these lands; sage grouse are being considered for protection under the Endangered Species Act; in 2005 the BTNF identified Management Indicator Species for the habitat types on the forest; the Gros Ventre has been identified as a National Scenic River under the Wild and Scenic Rivers Act; livestock grazing has been removed from portions of these lands; the Path of the Pronghorn has been identified and incorporated into the B-T Forest Plan for protection; brucellosis and Chronic Wasting Disease have moved to the forefront of the public’s concerns with management of elk and other game animals; and the public has recognized that the highest and best uses of these lands are for the protection and enjoyment of healthy ecological functions and for compatible recreation. The area in

question in this scoping notice, the confluence of Fish Creek and the Gros Ventre River and surrounding lands, is at the crossroads of many of these renowned activities and values in the geographic center of the Greater Yellowstone Ecosystem.

As previously stated in these comments, the NEPA documents for the 2008 emergency bank stabilization for Fish creek need to be offered to the public because this action is referenced in this scoping notice, and appears to have promulgated the proposals in this notice.

*The BTNF may not arbitrarily segment the NEPA process, which deprives the public of a clear picture of the potential cumulative effects of projects on such ecologically and economically valuable federal lands. An incremental or piecemeal approach such as this when the federal actions are undeniably tied together avoids disclosing to the public the full picture, it avoids the requirements of considering connected actions and cumulative impacts, and restricts the public's opportunity to comment on the larger issues at stake.*

### **BTNF Forest Plan Requirements**

Most of the proposed project area off the immediate Gros Ventre River corridor and around the proposed project areas is designated in the BTNF Forest Plan as Desired Future Condition (DFC) 12: "An area managed for high-quality wildlife habitat and escape cover, big-game hunting opportunities, and dispersed recreation activities." (LRMP:241) The impacts anticipated from various alternatives in an environmental analysis must include short term, long term and potential permanent impacts to the DFC 12 values.

### **Wild and Scenic River Protection**

The Gros Ventre River was designated as a Scenic River under the Wild and Scenic Rivers Act by an act of Congress in 2009 in the Craig Thomas Snake Headwaters Legacy Act. Many of the proposed actions in this scoping notice are within the corridor of this Scenic River or on the river itself. A Scenic River is defined as: *free of impoundments, with shorelines or watersheds still largely primitive or shorelines largely undeveloped but accessible in places by roads.* Any management activity conducted within the corridor is subject to analysis of the effects on the river's outstandingly remarkable values. Some, but not all of the Gros Ventre River Scenic River's outstandingly remarkable values are:

*Known as the 'little Serengeti' of Jackson Hole, the Gros Ventre corridor includes the primary migration route of pronghorn between Grand Teton National Park and the upper Green River, winter range of bighorn sheep, elk, mule deer, and moose, den sites for at least two grey wolf packs, and occasional bison. Sage grouse, bald eagles, peregrine falcons, and other bird species of interest are found here; there is some unique flora as well (a type of milkvetch) adapted to the salts and minerals in the soil. Historic ranches and prehistoric sites are found here.*

*The Gros Ventre River corridor provides important winter range for elk, moose, and bighorn sheep, is used during the summer by nesting birds, including trumpeter swans, sandhill cranes, and a variety of ducks. It is used by numerous species of birds of prey, including bald eagles and peregrine falcons, both of which nest in the corridor. The pronghorn migration between the upper Green River and Grand Teton National Park includes a large part of the eligible Scenic River corridor. The river is within grizzly bear habitat; grey wolves are present and denning; sage grouse leks exist in several areas of the upper Gros Ventre valley.*

The scoping notice describes constructing new impoundments in the Gros Ventre River corridor by building dikes, levees, rock cross vanes, and “hard engineering structures”. It is questionable whether these engineering features are compatible with the protected status of the Gros Ventre River. A Comprehensive River Management Plan should be completed to determine if such manipulations of the river are allowable. Whether they are necessary is another set of questions that must be answered through an environmental analysis of all the connected proposed actions.

The large headgates constructed on Fish Creek may enable the removal of water better left in the Gros Ventre River during the summer since in some years the Gros Ventre River runs dry or nearly dry before its confluence with the Snake River. The BTNF needs to reconsider the construction and use of those headgates and the impacts throughout the Gros Ventre watershed.

### **Impacts to Gros Ventre Wilderness**

The BTNF has the affirmative responsibility to protect forest resources within designated Wilderness and Wilderness Study Areas. Section 4(b) of The Wilderness Act mandates that the USFS protect the wilderness character of Wilderness. As for DFC 6B, C, and D in the BTNF LRMP, the BTNF may not permit actions on USFS land adjacent to or in proximity to Wilderness or Wilderness Study Areas that adversely affect the Wilderness qualities in those Wilderness areas as expressed in the Wilderness Act and the LRMP. Courts have shown that Congressional intent and requirements for protection of Wilderness qualities is not intended to be discretionary as to allow the USFS to pick and choose whether to fulfill their duties or not. Congress has been clear that designated Wilderness shall be managed to certain standards. The Wilderness Act requires the Forest Service to administer Wilderness Areas so they are “unimpaired for future use and enjoyment as wilderness.” 16 U.S.C. § 1131(a).

The proposed project area may be as close as a few hundred yards away from the Gros Ventre Wilderness (GVW) (Scoping Map 5; BTNF Buffalo and Jackson Ranger Districts Visitor Map, 1987). If any of the proposed projects have any direct or indirect impacts to the GVW, they must be disclosed to the public, analyzed and mitigated or canceled. If for example, for the perceived protection of willow growth along the Gros Ventre River, intensification or alteration of winter feeding of elk is undertaken, this may affect nearby Wilderness qualities.

The BTNF Forest Plan is also clear that certain standards that perpetuate “natural biophysical conditions” are required for Wilderness. It is also clear that actions that “tend to alter the natural behavior of wildlife” are prohibited by visitors, permittees, and presumably by agencies as well. Therefore any operations or special uses that would cause management of forest resources- including wildlife and habitat- to fall short of the Wilderness Standards, Guidelines, and Prescriptions are prohibited.

### **Impacts to sage grouse**

Sage grouse have been declining throughout the West, are proposed for protection under the Endangered Species Act, and are a species of special concern for the USFS. Sage grouse are known to occur in or near the project area, and any manipulation of their habitats by these proposed projects must be disclosed, analyzed and mitigated or canceled. Depending on the status of sage grouse, and depending on the proposed action(s) such manipulation may be prohibited. Proposed restoration of sage grouse habitat should be disclosed, and any manipulation of historical sagebrush habitat whether it is termed “restoration” or “enhancement”, particularly if it is proposed to be wetland rather than sagebrush, must be disclosed.

### **Impacts to trumpeter swans**

Our organizations value the magnificent trumpeter swan and we are keenly interested in the conservation of this native species, the largest waterfowl in North America. On the seventh page of the scoping notice it states that, among other species, “trumpeter swans would benefit directly from the foraging, brood rearing, and stop over habitat created during this effort.” An analysis of the proposed projects should include a quantitative assessment of such benefits. It should also include a reasonable range of alternatives to accomplish such benefits. For example, if trumpeter swans will nest on these locations, what is the anticipated level of success and production? Over what timeframe? What are the costs of these projects? Where is the money coming from? How would such success differ from a naturally expanding population in this region if nesting “resident” swans were indeed increasing? How would swan production on Upper Slide Lake [approximately 5 miles from the project area] and Soda Lake [approximately 2 miles from the project area] and Mosquito Lake [approximately 13 miles from the project area] (BTNF Buffalo and Jackson District 1987 Visitor Map) be affected by, or affect the overall conservation of trumpeter swans in the region? How have trumpeter swans used this area historically? Have they used the slow meanders of the Gros Ventre River in this area during migrations or nesting? If these ponds don't get built, how would that affect the conservation of trumpeter swans?

### **Impacts to moose**

The scoping notice at the bottom of the seventh page indicates that moose and elk would benefit from the proposed projects. As recommended above regarding potential benefits for trumpeter swans, an analysis of the proposed projects should

include a quantitative assessment of such benefits. What are the current conditions in the region (e.g., one or more herd units) for moose habitat and moose populations? What are the trends? What are the scientifically determined causative factors driving the trend(s) for both habitat and population? How would these proposed projects affect the amount and quality of moose habitat and how would these projects, if implemented, affect the moose population? If the purpose of some or all of these proposed projects is to increase winter forage for moose and increase the moose population, what will happen to moose habitat and moose populations in the *absence* of these projects? Are there alternative ways to accomplish any of the objectives for moose? How will moose populations be affected if unnatural densities of elk are kept on the feedgrounds on and near the project area in order to “protect” emerging willows, if the densities of elk subsequently amplify the prevalence of CWD in the environment and in host animals and facilitate the transmission of CWD to moose in this area?

It may benefit the BTNF to refer to Scott Becker’s 2008, Habitat selection, condition, and survival of Shiras moose in Northwest Wyoming. Also to Joel Berger’s report from the Wildlife Conservation Society, Fall 2004, A Report to the Wyoming Wildlife Commission- 9-9-04, Does Predation Drive Moose Population Declines in Northwest Wyoming- a Ten Year Study, and the appendices. These are listed in the Reference section of these comments.

### **Impacts to elk**

Some of the same questions that are listed above for moose also apply to elk.

An additional issue may be the potential in these proposals for elevating the water table in the area of the Fish Creek elk feedground in the floodplain of the Gros Ventre River. The Wyoming Game and Fish Department has noted in past years that the hay bales stored at the hay barn on this feedground have spoiled due to water at or near the surface of the ground. This may indicate that the water table has not been lowered due to anthropogenic alterations of the river hydrology as the scoping notice attests, and may be cause for concern if the projects were constructed and either raised or maintained a higher or more persistent surface water table than currently exists.

### **Impacts to Pronghorn Antelope**

The renowned Path of the Pronghorn crosses the proposed project area. This migration route of pronghorn antelope from Grand Teton National Park is the longest known big game migration in the Lower 48 states and was the purpose for a recent Forest Plan Amendment for the Bridger-Teton National Forest protecting this migration route. In January of 2008, the Superintendent of Grand Teton Park, Mary Gibson-Scott, the Supervisor of the Bridger-Teton Forest, Kniffy Hamilton, and Steve Kallin, the manager of the National Elk Refuge signed a Pledge of Support for the protection of the Path of the Pronghorn that reads, in part:

*“The significance and intrinsic value of the migration have been recognized internationally in scientific, conservation, and popular media circles. As long-distance animal migrations continue to dwindle at an alarming pace around the globe, the need to conserve the Jackson Hole pronghorn migration and protect its path through tangible, proactive measures becomes even more paramount.*

*As government, community, and conservation leaders, we have many opportunities within our respective jurisdictions and realm of responsibilities to enhance the protection of the path of the pronghorn and the population that defines it. We recognize the importance of this migration to Wyoming’s wildlife and cultural heritage, and pledge to work together to help ensure its protection for the benefit of the area’s ecology and enjoyment by current and future generations.”*

Some of the lands along the Gros Ventre River near the confluence with Fish Creek are also known to be pronghorn birthing areas. While some of these lands may not be within the designated migration corridor, the pronghorn of this area cannot persist without the survival and recruitment of new fawns into the population. An analysis must determine the effects on antelope fawns.

Despite the pledge above, the Bridger-Teton National Forest has already constructed on USFS lands the large headgates along Fish Creek in the Path of the Pronghorn. These kinds of engineering projects can only make it more difficult for the pronghorn to migrate twice a year through this area. The BTNF should reconsider the headgates. The BTNF has also allowed construction of cattle corrals near Slate Creek in the path of the Pronghorn. This evident disregard for protecting the Path of the Pronghorn by the BTNF emphasizes the need to reconsider the proposed actions in this scoping, and if determined to proceed, offer a lawful scoping notice that includes accurate information for all connected proposals.

### **Impacts to private property**

Map 5 in the scoping statement indicates black “Private Property Parcel Boundary Lines” and yellow boundaries for Sections 1-7 of the proposed Gros Ventre River Restoration Project. Some of the boundaries overlap particularly in Sections 4-7, indicating that private property may be affected by the proposed projects. The BTNF should disclose what impacts to private property there may be over what timeframes from the proposed projects.

### **Impacts to fish**

While cutthroat trout are a Management Indicator Species for the BTNF and any impacts thereon from proposed actions must be considered and mitigated, there are other native fish that require protection in this area. Both bluehead suckers and mountain suckers can occur in the Gros Ventre watershed and they are both listed as Species of Greatest Conservation Need (or species of concern) in Wyoming.

Blueheads are a NSS1 (native species status 1) and mountains are NSS4 (1-4 are species of concern). Potential impacts to these species need to be considered in any analysis and appropriate conservation measures taken to assure their protection. Some of the proposed actions may be prohibited due to adverse impacts to these species.

### **Historic Structure Restoration/New Residences**

The four sentences at “Proposed Action- Historic Structure Restoration” (Scoping, 8<sup>th</sup> page) do not suffice for scoping for a significant federal action. There is no information or explanation as to who the proposed partner is, the “Western Center for Historic Preservation”. We looked it up on the Internet, <http://home.nps.gov/grte/historyculture/wchp.htm>. There is scant information about this proposal in the scoping notice, such as how many acres would be involved; how many structures; what new structures would be added if any; costs and benefits; over what timeline(s) would the costs and benefits accrue; construction impacts and timeline; what new uses would be promulgated by the restoration such as residence(s) for irrigators for nearby proposed projects, residences for caretakers, rental residences for the public; what new operational and ancillary activities would occur such as additional human presence by how many people, pets, parking for transportation and recreational vehicles by the residents of any new domiciles.

These and other omissions necessitate another public scoping notice for all connected proposed actions and a full Environmental Impact Statement.

### **Climate change**

In the memo from US Forest Service Chief Tom Tidwell, November 20, 2009, referenced below, he notes: *“Climate change is dramatically reshaping how we will deliver on our mission of sustaining the health, diversity, and productivity of the Nation’s forests and grasslands for present and future generations. The most vulnerable and pivotal ecosystem services being affected by climate change are related to water. . . Addressing climate change and water through integrated landscape conservation must become a fundamental part of our leadership and must shape how we work with others to sustain forests and grasslands.”* In this memo the Chief directs all USFS Regions including Region 4 with the Bridger-Teton Forest, that landscape conservation strategies and action plans be completed by March 1, 2010, “addressing water and water-related services as a fundamental outcome set.”

Since nearly all of the proposed projects in the Fish Creek and Gros Ventre River area of the Gros Ventre Valley are dealing with water, we recommend that the Chief’s action plans be completed prior to moving forward with a better version of the NEPA process as recommended in these comments. In addition to these considerations any Green House Gas emissions and other potential pollutants should be quantified for all phases of project(s) construction and operations and the impacts analyzed and mitigations described.

## **Army Corps of Engineers**

The Bridger-Teton National Forest must consult with the U.S. Army Corps of Engineers and undergo all appropriate processes for any proposed manipulation of or effects to the wetlands and waters of the United States on or associated with the proposed projects and project areas.

## **A Natural Alternative**

The Bridger-Teton appears to be poised to engage in and allow further heavy-handed manipulation of lands and waterways in the Gros Ventre Valley. For example, they have recently built large irrigation headgates adjacent to Fish Creek on public lands in an ecologically critical and sensitive location, yet there are no longer any private lands needing irrigation for hay and livestock production in that area. Why are the headgates necessary? The BTNF should reconsider the wisdom of the headgates.

The BTNF has permitted the feeding of large unnatural densities of elk on the very banks of the Gros Ventre River where in this scoping notice they complain about the reduced browse for wintering big game. These assertions about willows and cottonwoods appear to form a large part of the “Need” for these projects. Rather than attribute the deficiency of willows to an alleged homesteader-induced lowered water table as in this scoping notice (second page), in the July 2008 FEIS Long Term Special Use Authorization for Wyoming Game and Fish Commission to Use National Forest System Land for their Winter Elk Management Activities, the BTNF notes that, “Sixty-one acres of the current feedground [on the Gros Ventre River] are mapped as either wetland or riparian.” (FEIS:51) This prompts the question: If the water table along the course of the Gros Ventre River has been lowered to the extent it has resulted in a “loss of connection to the floodplain . . . and has facilitated a shift in riparian vegetative communities in favor of species that are tolerant of dryer conditions,” (scoping second page) and cannot support willows, why is the area designated as recently as 2008 in a USFS document as wetlands and riparian? “The 2003 [fish habitat survey] noted that grazing impacts from both elk and cattle were present [along the banks of the Gros Ventre River].” (FEIS:52) “Minor willow is present; it is very small in stature and very sparse.” (Ibid) The 2008 FEIS indicates that excessive herbivory is either responsible or at least a contributing causative factor for diminished willows rather than a dearth of water.

Depending on the upcoming Comprehensive River Management Plan ([www.rivers.gov/publications.html](http://www.rivers.gov/publications.html)) for the newly designated Scenic Gros Ventre River, and in full compliance with any and all restrictions therein, the USFS may better answer the question of conservation of riparian willows and cottonwoods in the area by constructing some small exclosures. After a few seasons of excluding cattle and elk from browsing any available willow or cottonwood growth, it may become more apparent to resource managers and to the public if willows or cottonwood grow here in natural abundance or not. If small exclosures are unacceptable, then perhaps a more intense survey of extant (albeit stunted) willow plant abundance per square meter of

riverbank and comparing the number with other similar areas may suffice. These methods may not completely answer all questions related to this issue, but would move the discussion along without expensive, possibly unnecessary and premature manipulation of the river.

The BTNF also needs to study the snowpack data and summer water flow volume and timing in this watershed to determine if there have been changes or trends this past century which may explain trends in the hydrology of Fish Creek and the Gros Ventre River including the level of groundwater and morphology of riverbanks.

One of the, and perhaps *the* biggest ecological problem(s) in the Gros Ventre Valley is the artificial manipulation of the life cycle of the elk herds by maintaining excessively large densities of elk on and around the winter elk feedgrounds. This dominant management paradigm has set the ecology of that valley out of kilter. The harm to the riparian and deciduous plant communities stems from the artificial feeding of elk on the feedgrounds and subsequent impacts of excessive herbivory by the elk that radiate outward. These stressors on the plant communities won't be solved by further artificial manipulation of river and stream hydrology. That's the same misdirected and interventionist mindset, which disrupted the ecological functions in the first place and caused the harm to the plant communities. If the USFS truly wants to conserve healthy moose and elk populations in the Gros Ventre Valley, they need to cease stockpiling elk in excessive densities far beyond the carrying capacity of the plant communities. Then the real healing of plants and rivers can take place.

## **Conclusion**

The Bridger-Teton National Forest and its partners have done several things very well in the part of the Forest. Closing to human entry vast expanses of big game winter range in the Gros Ventre Valley sets the stage for appropriate conservation of healthy plant communities, and elk, bighorn sheep and moose populations. Acquiring most of the 320-acre Dew homestead and having those lands become part of the USFS public lands was another important step. The recognition and designation of the Path of the Pronghorn that crosses these lands is important, as is the removal of miles of surplus wire fencing to promote natural big game movements. The community-based buyout of the Bacon Creek/Fish Creek livestock grazing allotment in 2007 emphasized that the highest and best use of these lands is for wildlife habitat. The return of a full guild of predators in the Gros Ventre Valley is remarkable conservation progress. The recognition of the outstanding resource values of the Gros Ventre River and recent inclusion of this river for protection under the Wild and Scenic Rivers Act is another notable accomplishment by the public and Congress. Reestablishing the fire regimen is progressing in some areas with the allowance of wildfire and initiation of some prescribed burns. The recent BTNF North Zone Summer Travel Plan closed many motorized routes in the Gros Ventre Valley, and sought a balance with conservation of natural resources and quiet and motorized recreation.

A cursory Environmental Analysis and possible Finding of No Significant Impacts arising from this incomplete and inaccurate scoping notice is not sufficient. The lands and waters in question are too important ecologically and too much is still in jeopardy, perhaps more so if these projects are allowed to move forward. The controversial nature of some of the related issues including an elk feedground literally on the banks of the Gros Ventre River, looming Chronic Wasting Disease, the proximity of these projects to the Gros Ventre Wilderness, the tenuous existence of the most renowned big game migration route in North America the Path of the Pronghorn, and the intended manipulation of the newly designated Scenic Gros Ventre River are just some of the resources at stake. The directive from the Forest Service Chief Tom Tidwell to better manage water-related ecosystem services in the face of a changing climate emphasizes the need to do things right in the Gros Ventre. The array of wildlife species in this area includes, among others, species under the protection of the Endangered Species Act (gray wolf and grizzly bear), candidate species (sage grouse), BTNF Management Indicator Species (cutthroat trout), species of special concern (bluehead suckers and mountain suckers), and a species in general decline (moose). Many other charismatic wildlife species exist in this area, and abundant recreational and scenic values are also present.

Our organizations pledge to work with all stakeholders to help conserve the important values in this critical area of the Bridger-Teton National Forest. The BTNF is the responsible agency for management of these waters and lands. Only the Bridger-Teton Forest can be held accountable by and to the public for projects and actions on these lands and waters. In light of our concerns and due to errors and omissions in the scoping notice, we recommend that no further projects be started in this area until an appropriate Comprehensive River Management Plan is completed for the newly designated Scenic Gros Ventre River, until the completion of the Forest Service Chief's landscape conservation strategy and action plan focusing on water conservation, and until an accurate and legal scoping of all connected proposals are initiated and a comprehensive Environmental Impact Statement is conducted for all connected proposed projects.

Thank you for considering our comments. Please notify us promptly of any actions regarding this matter.

Respectfully submitted,

Lloyd Dorsey  
Greater Yellowstone Coalition  
Box 4857 Jackson, WY 83001  
307-734-6004  
[ldorsey@greateryellowstone.org](mailto:ldorsey@greateryellowstone.org)

and on behalf of:

Louise Lasley, Public Lands Director  
Jackson Hole Conservation Alliance  
Box 2728 Jackson, WY 83001  
307-733-9417  
louise@jhalliance.org

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