(65 FR 97249, November 9, 2000). This proposed action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a State rule implementing a Federal standard and to redesignate the area to attainment for air quality planning purposes, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This proposed rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it proposes to approve a state plan implementing a Federal Standard and to redesignate the area to attainment for air quality planning purposes. EPA interprets EO 13045 as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This proposed rule is not subject to EO 13045 because it proposes to approve a State plan and to redesignate the area to attainment for air quality planning purposes.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission or redesignation request, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Carbon monoxide, Reporting and recordkeeping requirements.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: February 6, 2007.

Laura Yoshii,

Acting Regional Administrator, Region 9.

[FR Doc. E7–2538 Filed 2–13–07; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding on A Petition to List Astragalus debequaeus (DeBeque milkvetch) as Threatened or Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to list *Astragalus debequaeus* (DeBeque milkvetch) as threatened or endangered under the Endangered Species Act of 1973, as amended (Act). We find that the petition does not present substantial scientific or commercial information indicating that listing *A. debequaeus* may be warranted. Therefore, we will not be initiating a further status review in response to this petition. We ask the public to submit to us any new information that becomes available concerning the status of *A. debequaeus* or threats to its habitat at any time. This information will help us monitor and encourage the conservation of the species.

DATES: The finding announced in this document was made on February 14, 2007. You may submit new information concerning this species for our consideration at any time.

ADDRESSES: The complete supporting file for this finding is available for public inspection, by appointment, during normal business hours at the Western Colorado Field Office, U.S. Fish and Wildlife Service, 764 Horizon Drive, Building B, Grand Junction, CO 81506. Submit new information, materials, comments, or questions concerning this species to us at the address above.

FOR FURTHER INFORMATION CONTACT: Allan R. Pfister, Field Supervisor, Western Colorado Field Office (see **ADDRESSES** section) (telephone 970–243–2778, extension 29; facsimile 970–245–6933). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Act requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files at the time we make the determination. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish our notice of this finding promptly in the **Federal Register**.

Our standard for substantial information within the Code of Federal Regulations (CFR) with regard to a 90-day petition finding is ''that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted'' (50 CFR 424.14(b)). If we find that substantial information was presented, we are required to promptly commence a review of the status of the species.

In making this finding, we rely on information provided by the petitioner and evaluate that information in accordance with 50 CFR 424.14(b). Our 90-day finding process under section 4(b)(3)(A) of the Act and section 424.14(b) of our regulations is limited to a determination of whether the information in the petition meets the ''substantial information'' threshold. A substantial finding should be made when the Service deems that adequate and reliable information has been presented that would lead a reasonable person to believe that the petitioned action may be warranted.

On October 26, 2004, we received a formal petition, dated October 25, 2004, submitted by the Center for Native Ecosystems and the Colorado Native Plant Society (2004), requesting that we list *Astragalus debequaeus* as threatened or endangered, and designate critical habitat concurrently. The petition identified itself as such and included the requisite identification information for the petitioners, as required in 50 CFR 424.14(a). We acknowledged receipt of the petition in a January 20, 2005, letter to Mr. Joshua Pollock. In that letter, we advised the

petitioners that due to prior listing allocations in Fiscal Year 2005, we would not be able to begin processing the petition, and that emergency listing of *A. debequaeus* was not warranted. Delays in responding to the petition continued due to the high priority of responding to court orders and settlement agreements.

On October 20, 2005, petitioners sent a 60-day notice of intent to sue for failure to grant emergency listing status to *Astragalus debequaeus,* to make a 90-day finding, and to make a 12-month finding. On June 8, 2006, petitioners filed suit to force the Service to make the ''overdue'' finding. On July 17, 2006, a settlement agreement was proposed by the Service with dates for the 90-day finding submittal being February 9, 2007, and, if the petition was found to be substantial, we would send a 12-month finding to the **Federal Register** by October 12, 2007. These dates were agreed upon in a settlement filed on August 10, 2006, and approved on August 15, 2006.

General Biology and Listable Entity Evaluation

Astragalus debequaeus is a member of the Fabaceae (Pea) family. Plants are clump-forming perennials 2 to 10 decimeters (8 to 39 inches (in.)) in diameter with a woody taproot; stems 14 to 30 centimeters (cm) (5.5 to 12 in.) long, curving upward; compound leaves 2 to 10 cm (0.8 to 4 in.) long with 13 to 21 glabrous, flat or somewhat folded leaflets. Flowers are white, upright, and 17 to 21 millimeters (mm) (0.6 to 0.8 in.) long. Pods are ascending, 15 to 23 mm (0.5 to 1 in.) long, 6 to 11 mm (0.2 to 0.4 in.) thick, and inflated with minute rough hairs that become smooth with age (Welsh 1985, p. 31).

Astragalus debequaeus has only been identified as a separate taxonomic entity for about 20 years, which represents about two generations (Colorado Natural Heritage Program (CNHP) 2005, p. 60). The species was discovered and described as a new species in 1984 by Dr. Stanley Welsh of Brigham Young University. *Astragalus debequaeus* is recognized as a species in the *Colorado Rare Plant Field Guide* (Spackman *et al.* 1997b, p. 7); Integrated Taxonomic Information System (2007); NatureServe (2006); and Weber and Wittmann (1992, pp. 3, 42; 2001, p. 181).

Astragalus debequaeus plants are found on the fine-textured, sandy clay soils of the Atwell Gulch Member of the Wasatch Formation that are relatively barren, varicolored, seleniferous, and saline (Welsh 1985, p. 31). The habitat is found between 1,508 and 1,981 meters (4,970 and 6,500 feet) elevation in Mesa and Garfield Counties, Colorado. The species is known from 17 occurrences that occupy about 573 hectares (1,417 acres) (CNHP 2006, pp. 1–2). Fourteen of the occurrences are near the town of DeBeque, Colorado, in Mesa County. The Bureau of Land Management (BLM) Grand Junction Field Office (GJFO) manages 12 of these occurrences, 2 of which include small portions of private land. The other two occurrences near DeBeque, Colorado are located on private lands. There are three occurrences of *A. debequaeus* located in Garfield County at the base of the Roan Plateau near the town of Rifle. Two of these occurrences are primarily on BLM lands but include small portions of private land, while the other one is privately owned. The total estimated number of plants at all seventeen occurrences is at least 64,617 (CNHP 2006, p. 2; Lincoln and Bridgman 2006, p. 1). Table 1 outlines the known populations, estimated number of plants and area occupied, land ownership, and overall habitat quality as ranked by CNHP.

TABLE 1.—ASTRAGALUS DEBEQUAEUS POPULATION INFORMATION (CNHP 2005; LINCOLN AND BRIDGMAN 2006, P. 1).

Occurence location	Number of plants*	Acres (hectares) * *	Land ownership	Quality * * *
Shire Gulch	8 to 10	1 (0.4)	Private	D
Pyramid Rock	thousands	300 to 392 (121 to 158).	BLM GJFO	A
Pyramid View	> 1,000	8 (3.2)	BLM GJFO	A
Coon Hollow	> 50,000	352 (142)	BLM GJFO	A
Sulphur Gulch	300 to thousands	1 to 55 (0.4 to 22)	BLM GJFO	A
Sulphur Gulch Bottomland * * * *	>50	>30 (12)	BLM GSFO	C
Corcoran Wash	500	8 to 80 (3.2 to 32)	BLM GJFO	A
Anvil Points	>700	97 (39)	BLM GSFO/Private	AB
Little Horsethief Creek	20	1 (0.4)	BLM GJFO	C
DeBeque Cutoff	710 to thousands	36 to 317 (14.5 to 128).	BLM GJFO/Private	A
Plateau Valley	12 to 50	1 to 15 (0.4 to 6)	BLM GJFO/Private	C
Atwell Gulch	4,478 * * * * *	>16 (6.5) * * * * *	BLM GJFO	AB
South Dry Fork	1,000	15 (6)	BLM GJFO/Private	A
Horsethief Creek	100	3 to 11 (1.2 to 4.4)	BLM GJFO/Private	B
King Creek * * * *	3	1 (0.4)	Private	D
Lockhart Draw * * * *	1 to 5	1 (0.4)	BLM GJFO	D
JQS Trail * * * *	70 to 100	1 to 15 (0.4 to 6)	BLM GSFO/Private	C

* Numbers of plants are estimates.

* * Acres and hectares are estimates. When a range of acres or hectares is presented, the first number represents the observed occupied area and the second number represents the mapped area of continuous habitat.

* * * Quality is an overall quality ranking assigned by CNHP where an ''A'' represents ''excellent'' quality, ''B'' represents ''good'' quality, ''C'' represents ''fair'' quality overall, and a ''D'' represents ''poor'' quality. Intermediates are represented with multiple letters.

* * * * New occurrence added to the CNHP database in 2005.

* * * * * Lincoln and Bridgman (2006, p. 1) provided population estimate and area estimates for new additions to Atwell Gulch.

NatureServe and the CNHP rank the species as G2/S2, indicating that it is imperiled both globally and within Colorado due to extreme rarity (6 to 20 occurrences) and/or because of other factors demonstrably making it vulnerable to extinction throughout its range.

Previous Federal Actions

Astragalus debequaeus was listed as a Category 2 (C2) candidate for listing in 1993 (58 FR 51144, September 30,

1993). In the February 28, 1996, Notice of Review (61 FR 7595), we discontinued the use of multiple candidate categories and considered only the former Category 1 candidates for listing purposes. Because the species did not meet the threshold of the definition of a C1 species, *A. debequaeus* was removed from the candidate list at that time. The species is managed as a Sensitive Species by BLM, as designated by the BLM State Director, with special management consideration. The BLM Manual 6840 provides policy direction that BLM sensitive plant species are to be managed as if they were candidate species for Federal listing so that they do not become listed, while also fulfilling other Federal law mandates.

Threats Analysis

Section 4 of the Act and its implementing regulations (50 CFR 424) set forth the procedures for adding species to the Federal List of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act: (A) present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. In making this finding, we evaluated whether threats to the *Astragalus debequaeus* presented in the petition and other information available in our files at the time of the petition review may pose a concern with respect to the *A. debequaeus* survival. Our evaluation of these threats is presented below under the most appropriate listing factor.

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

The petitioners state that substantial threats to the species' habitat are presented by—(1) traditional oil and gas development, (2) oil-shale mining, (3) coalbed methane development and/or coal mining, (4) noxious weeds and seeding, (5) existing and projected roads, (6) livestock trampling, (7) off-road vehicle (ORV) use, and (8) increased housing development. We address each of these topics individually below.

Information Provided in the Petition Regarding Traditional Oil and Gas Development—Oil and gas resources and development are extensive within the range of *Astragalus debequaeus.* The species is endemic to the Atwell Gulch Member of the Wasatch Formation substrate, which overlays deposits of oil and gas in the Piceance Basin that BLM has leased for energy development. The following table summarizes information provided in the petition regarding activities within the leases and the sections where plants occur. Occurrences listed in this table are not necessarily the same as those shown in the previous table due to different occurrence criteria protocols used by CNHP in 2004 versus 2006.

TABLE 2.—SUMMARY INFORMATION PROVIDED IN THE PETITION REGARDING ACTIVITIES WITHIN THE LEASES AND THE SECTIONS WHERE ASTRAGALUS DEBEQUAEUS PLANTS OCCUR

Occurence location *	Number of leases [1]		Applications for permit to drill in the lease area [4]	Applications for permit to drill in the section [5]	Pipelines	Roads	ORV	Grazing
	Old [2]	New [3]						
Pyramid Rock	4	11	20	10	multiple	multiple	90% open	open
Corcoran Wash		1					open	open
South Dry Fork	3	2			1	1	open	open
Sulphur Gulch	2		2		1	1	open	open
DeBeque South	2	3	2	3	3	1	open	open
Atwell Gulch		1	2			multiple	open	open
Jerry Gulch	1	2					open	open
Anvil Points	3	1	27	31			open	open

[1] Occurrences listed in this table are not the same as those shown in the previous table due to different occurrence criteria protocols used by CNHP in 2004 versus 2006. Another discrepancy originates from the fact that four additional occurrences were documented in 2005 after this information was obtained by the petitioners from the CNHP.
[2] Leases granted prior to standard stipulations being included in lease notices.
[3] Leases with, at least, standard stipulations allowing avoidance up to 200 meters. Some of these stipulations also control surface use.
[4] Applications for permit to drill in the lease area as of 2004.
[5] Applications for permit to drill in the section (approximately 640 acres (2.6 km^2)) where plants occur as of 2004.

Analysis of Information Provided in the Petition and Information Available to Us at the Time of Petition Review—We cannot find support for the petitioners' claim that the high density of oil and gas infrastructure causes direct and indirect impacts to *Astragalus debequaeus.* The petitioners cite two instances in which ''a sizable number'' and ''a dozen or so'' sensitive plants (no species named) were destroyed during construction of two well pads (BLM GSFO 1999a, pp. 4–33, 34). The BLM GSFO is aware of only one instance where *A. debequaeus* was directly impacted. The BLM permitted the loss of three plants within a proposed disturbance area for an access road (Scheck 2006a). The Service has information on only one additional instance, in the BLM GJFO management area, where four plants were lost during construction of a pipeline and 12 plants were transplanted (Alward 2006).

The petition provides general information regarding the extent of oil and gas leasing and potential development in the BLM GSFO and GJFO management areas within the range of *Astragalus debequaeus.* It does not present specific information that this development has resulted in losses or threatens to result in losses of plants or habitat. Much of the information in the petition identifies potential threats and hypothetical impacts rather than actual impacts.

On the basis of our evaluation of the information presented in the petition, it is our determination that the petition does not present substantial information to indicate that listing of *Astragalus debequaeus* may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range due to oil and gas development.

Information Provided in the Petition Regarding Oil Shale Development—Petitioners state that oil-shale mining continues to become a more concrete threat that would devastate *Astragalus debequaeus.* They cite the previous mining activity that could resume given sufficient economic incentive, and the conditional oil-shale water rights permits that are still held by three oil companies in Garfield and Mesa Counties, Colorado.

Analysis of Information Provided in the Petition and Information Available to Us at the Time of Petition Review—New oil-shale research leases currently being considered by the BLM in Colorado would be located in the Piceance Basin in Rio Blanco County, outside of the range for *Astragalus debequaeus* (BLM 2006, p. 1). Potential future expansion of the research leases to commercial production would occur in the same area, also outside of the species' range. Oil-shale reserves are found in the Green River Shale formation. *A. debequaeus* is found in the Wasatch formation. The two formations are exposed in close proximity to each other in some areas in Garfield County, Colorado, but we have no information in our files to indicate that historical oil-shale mining in this area is likely to resume in the foreseeable future. Petitioners do not provide evidence that incentives are likely to increase.

Renewal of water rights associated with oil-shale development does not suggest imminent or foreseeable destruction of habitat. In February 2006, Mesa County granted an oil company an extension of a conceptual conditional use permit for a water diversion system in the DeBeque area, but no proposed plan of development was submitted (Mesa County 2006, p. 1–2). While indirect or cumulative impacts may result if large water storage projects or other facilities are constructed in the DeBeque area (Scheck 2006a), the petitioners did not provide specific information, nor does the Service have information to indicate that water projects are likely to be developed within the range of this species in the foreseeable future.

Due to the lack of overlap between the range of *Astragalus debequaeus* and areas considered for new oil-shale development, we have determined that the information in the petition is incorrect and therefore is not substantial with respect to a threat to the species from oil shale development or associated indirect impacts. On the basis of our evaluation of the information presented in the petition, it is our determination that the petition does not present substantial information to indicate that listing of *A. debequaeus* may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range due to oil-shale development.

Information Provided in the Petition Regarding Coalbed Methane Development—The petitioners assert that coalbed methane development and coal mining may constitute threats to *Astragalus debequaeus* due to the resources present and the processes for extraction. Petitioners state that 30 coalbed methane wells have been drilled on South Shale Ridge in the vicinity of an *A. debequaeus* site, and 10 more have been permitted but not drilled.

Analysis of Information Provided in the Petition and Information Available to Us at the Time of Petition Review—Petitioners provide no information to substantiate the claim that coalbed methane development or coal mining are impacting, or are likely to impact, *Astragalus debequaeus* occurrences. On site surveys by the BLM GJFO have not documented any *A. debequaeus* plants within active or permitted coalbed methane development areas and have not identified any potential threats to the species from these activities (Trappett 2005). On the basis of our evaluation of the information presented in the petition, it is our determination that the petition does not present substantial information to indicate that listing of *A. debequaeus* may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range due to coalbed methane or coal development.

Information Provided in the Petition Regarding Noxious Weeds—Petitioners state that noxious weeds and seeding pose threats to *Astragalus debequaeus.* The petition gives three examples of cheatgrass (*Bromus tectorum*) invasions documented at *A. debequaeus* occurrences.

Analysis of Information Provided in the Petition and Information Available to Us at the Time of Petition Review—The petitioners' description of weed and introduced seed interactions with rare plants in general is accurate and applicable to *Astragalus debequaeus* habitat after disturbance. Three examples are given of cheatgrass invasions documented at *A. debequaeus* occurrences. Two of the sites, Pyramid View and Pyramid Rock/Pyramid Ridge, are ranked by CNHP as ''A'' (excellent) for ''quality'' even though the cheatgrass downgraded the ''condition'' of the habitat to a ''B'' (good). At the third occurrence at Horsethief Creek the ''quality'' is ranked ''B'' although the site is given a ''C'' (fair) for ''condition'' due to cheatgrass and the roadside location. *A. debequaeus* plants at this site are large (114 cm/45 in.) and seedlings are present (CNHP 2005, pp. 36–37). While cheatgrass is nearly ubiquitous in the western United States, it does not necessarily dominate perennial plants or prevent seedling establishment.

In the BLM GSFO management area, cheatgrass has been noted as a component of the vegetative community at all Anvil Points occurrences that have been visited in the past 4 years. Based on observations during these surveys, it does not appear that the Anvil Points occurrences are dominated by cheatgrass or other noxious weeds, and the *Astragalus debequaeus* populations do not appear to be suppressed by the presence of cheatgrass at the current levels (Scheck 2006a).

On the basis of a review of the information in the petition, it is our determination that the petition does not contain substantial information to indicate that cheatgrass and other noxious weeds or seeds are a threat to *Astragalus debequaeous*. Despite the presence of cheatgrass in some locations where *A. debequaeous* occurs, cheatgrass does not appear to suppress *A. debequaeus* (Scheck 2006a). We have concluded that a slight downgrade in habitat quality at a few locations does not constitute a threat to the species. Neither the petitioners, nor our files, provide information on the extent or magnitude of noxious weed invasion to indicate that listing *A. debequaeus* may be warranted due to the present or threatened destruction, modification, or curtailment of *A. debequaeus'* habitat or range.

Information Provided in the Petition Regarding Roads—The petitioners state that existing and projected roads pose significant threats to *Astragalus debequaeus*. They cite the general proximity of roads to existing populations and the predicted increase in road networks that accompany oil and gas development as significant threats. They base this claim upon assertions of soil compaction, fine particle deposition on the plants, alterations in hydrologic flow above the plants, spread of invasive plants, increased ORV access and use, destabilization of the slopes where the plants are found, the limiting of plant dispersal, and damage to the plants during road maintenance and repairs.

Analysis of Information Provided in the Petition and Information Available to Us at the Time of Petition Review—In the BLM GSFO management area, several of the Anvil Points

suboccurrences are within 0.40 kilometer (0.25 mile) of a road. Scheck (2006a) indicates that road disturbance in the form of destabilization of slopes, dust deposition and corridors for weed dispersal likely results in impacts to *Astragalus debequaeus*. However, there is no substantial information to suggest the magnitude of these impacts and whether they pose a threat to the species. None of the known occurrences are located on slopes below the roads, so there have been no impacts from sedimentation or changes in runoff patterns. Road maintenance and repair has contributed to the loss of a few individuals that are sloughing off the cut banks above the road (Scheck 2006a). However, sloughing at this site seems to be an isolated impact involving only a few plants. Although oil and gas development on BLM lands would include access roads, the BLM would evaluate proposed roads during project planning and they would be subject to applicable stipulations, including possible road relocation (BLM GSFO 1999a, p. 13). These measures should help to ensure that no substantial impacts result from road construction.

It appears that the information provided in the petition addressed impacts to the species in only a few localized areas and does not speak to the magnitude or severity of impacts to the species. Further, the petitioners do not provide information on the extent or magnitude of existing and future roads and how road use, maintenance, or development may affect the species. On the basis of our evaluation of the information presented in the petition, it is our determination that the petition does not present substantial information to indicate that listing *Astragalus debequaeus* may be warranted due to the present or threatened destruction, modification, or curtailment of *A. debequaeus'* habitat or range due to road development.

Information Provided in the Petition Regarding Livestock—Petitioners state that livestock pose a threat to *Astragalus debequaeus*, primarily through trampling, but also discuss secondary issues including the introduction of noxious weeds and other invasive plants as well as direct grazing. According to the petition, livestock pose a threat to *the species* because all known *A. debequaeus* occurrences are within BLM grazing allotments. They cite the Atwell Gulch occurrence in the Heely allotment, BLM GJFO management area, where over 20 percent of the total number of plants was heavily trampled in 1997. The petitioners found this compelling in that only 50 percent of plants were located in areas accessible to cattle. At the Pyramid Rock occurrence in the BLM GJFO management area, one occurrence was reported by CNHP to be somewhat overgrazed, with much cheatgrass, which petitioners cite as an indication that cattle were introducing noxious weeds. Petitioners state that as of 2004 there were no other available reports on the grazing status within any allotments.

Analysis of Information Provided in the Petition and Information Available to Us at the Time of Petition Review—Based on a review of information in our files, we have determined the information contained in the petition regarding the threat to *Astragalus debequaeus* from livestock impacts may not be accurate.

The GJFO BLM manages the Heely grazing allotment, which lies within the Atwell Gulch occurrence of *Astragalus debequaeus*. These occurrences were surveyed in 1996 and 2006. In both surveys, trampling of individual plants by cattle was observed; however, the total estimated number of plants appeared to have increased by 610 plants at previously known locations, and 6 newly recorded sites, with an estimated 3,361 plants, were discovered. The BLM renewed the grazing lease in 2006 for only 3 years to allow for the collection of additional data before issuing a grazing decision, during which time it will continue to monitor the plants (Lincoln and Bridgman 2006, p. 5).

In the BLM GJFO management area, the Pyramid Rock occurrence was ranked ''AB'' in 1996 (Spackman et al. 1997a, figure 11) and ''A'' in 2000 (CNHP 2005, p. 46). Because the quality of the site has improved and its subsequent CNHP ranking, we do not agree with the petitioner's claim that overgrazing is a threat at this site.

In the BLM GSFO management area, only one grazing allotment contains known populations of the species. The BLM GSFO completed a grazing permit renewal Environmental Assessment for Webster Park allotment in the Anvil Points occurrence of *Astragalus debequaeus* that included a discussion of grazing impacts (or lack thereof) on the plants. The BLM stated that ''there are several known populations of the BLM Sensitive plant, *A. debequaeus*, in the lower unit of the Webster Park allotment and in the adjacent Sharrard Park allotment. Monitoring of these populations in 2002 and 2003 found little evidence of livestock grazing or trampling. The reissuance of the grazing permit, as proposed, should have no effect on this plant species'' (Scheck 2006a).

The resilience of these plants over 10 years at Atwell Gulch and 19 years at Pyramid Rock indicates that the response of *Astragalus debequaeus* to grazing impacts under current management does not pose a significant threat to the species. The magnitude of grazing in known occupied *A. debequaeus* habitat is minor, and where it occurs, does not seem to be impacting the long-term viability of the species at the site.

On the basis of our evaluation of the information on the extent or magnitude of livestock impacts contained in the petition, it is our determination that the petition does not present substantial information to indicate that listing *Astragalus debequaeus* may be warranted due to the present or threatened destruction, modification, or curtailment of *A. debequaeus'* habitat or range.

Information Provided in the Petition Regarding Off-Road Vehicle (ORV) Use—The petitioners state that ORV use poses a significant threat and has been documented at an *Astragalus debequaeus* site. Petitioners state that ORV use is allowed in most areas where *A. debequaeus* is found, and that it is documented at the Area of Critical Environmental Concern (ACEC), which is closed to motorized vehicles. The petitioners also expect that increased ORV use will accompany increased access provided by new roads for oil and gas development.

Analysis of Information Provided in the Petition and Information Available to Us at the Time of Petition Review—The petition does not contain reliable information concerning the threat to *Astragalus debequaeus* from ORV use. While ORV use is allowed in most areas of BLM land where *A. debequaeus* is found, ORV tracks are documented only at the Pyramid Rock ACEC, which is closed to motorized vehicles. The BLM GSFO reports no ORV impacts to the Anvil Points populations, because legal public access to these sites is blocked by private land.

On the basis of our evaluation of information on the extent or magnitude of ORV use contained in the petition, it is our determination that the petition does not present substantial information to indicate that listing *Astragalus debequaeus* may be warranted due to the present or threatened destruction, modification, or curtailment of *A. debequaeus'* habitat or range. Our information indicates that the magnitude of ORV use in known occupied *A. debequaeus* areas is minor.

Information Provided in the Petition Regarding Residential Development—The petitioners assert that increased

housing development threatens *Astragalus debequaeus.* Petitioners cite the 1997 CNHP report that listed increased housing development between Rifle and Grand Junction as a threat to the habitat for the species (Spackman et al. 1997a, pp. 5, 44).

Analysis of Information Provided in the Petition and Information Available to Us at the Time of Petition Review—The petition provides no estimates of current or projected housing development within the habitat for *Astragalus debequaeus* to indicate that it represents a threat to the species. While housing development is known to be increasing within the range of this species, the potential direct impact of housing development on *A. debequaeus* is limited to the occurrences that are at least partly on private land. Information on the portion of occupied area and number of plants present on the private portion of these parcels is not available. However, private lands contribute only a small portion of the known occurrences of *A. debequaeus.* Even if all private lands were lost, the vast majority of occurrences and individuals would remain on BLM lands (see Table 1) not subject to residential development. On the basis of our evaluation of information on the extent or magnitude of residential development contained in the petition, it is our determination that the petition does not present substantial information to indicate that listing *A. debequaeus* may be warranted due to the present or threatened destruction, modification, or curtailment of *A. debequaeus'* habitat or range.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The petitioners did not provide information regarding the overutilization of this *Astragalus debequaeus* for commercial, recreational, scientific, or educational purposes. We also have no available information on the overutilization of this plant species for commercial, recreational, educational, or scientific purposes. Therefore, we have determined that the petition does not provide substantial information that listing *A. debequaeus* may be warranted due to overutilization for commercial, recreational, scientific, or educational purposes.

C. Disease or Predation

Information Provided in the Petition—Petitioners state that the threat of herbivory (either natural or livestock related) could be significant given the small population sizes, scarcity of occurrences, and limited geographic range size of the species. They cite CNHP records from 2004 in which the plants were ''somewhat overgrazed'' at one occurrence in 1986, and two plants were browsed in another occurrence where there also was ''some evidence of seed predation by an unknown predator.'' Petitioners also state that cattle are believed to avoid grazing on *Astragalus debequaeus*, either because it is unpalatable or because the more palatable plants are found in other habitats.

Analysis of Information Provided in the Petition and Information Available to Us at the Time of Petition Review—The petition does not contain substantial information concerning the threat of herbivory. The report on seed predation and browsing appears anecdotal, and no evidence suggests that herbivory threatens *Astragalus debequaeus.* As the petition states, cattle appear to avoid grazing on *A. debequaeus.* As such, we have determined that the petition does not provide substantial information that listing *A. debequaeus* may be warranted due to herbivory. Livestock impacts are also discussed under Factor A above.

D. Inadequacy of Existing Regulatory Mechanisms

Petitioners state that Federal regulatory mechanisms are inadequate to protect the *Astragalus debequaeus.* The petition asserts that BLM fails to protect the species due to—(1) inadequate monitoring of occurrences; (2) inadequate avoidance of adverse impacts from oil and gas development, grazing, and ORV use; and (3) failure to designate or enforce ACECs. Finally, the petition asserts that there is a lack of State regulatory mechanisms protecting the species. As indicated in other portions of this finding, the petition failed to present substantial information indicating that oil and gas, grazing, and ORV use are a threat to *A. debequaeus.* Nevertheless, we evaluated the claims of the petition regarding each of these factors and the adequacy of the associated regulatory mechanisms below.

Information Provided in the Petition Regarding Inadequate Monitoring—The Petitioners state that BLM fails to monitor the species, saying that several occurrences have not been revisited in over 18 years.

Analysis of Information Provided in the Petition and Information Available to Us at the Time of Petition Review—The petition does not provide reliable information that the BLM fails to monitor the species. The petitioners claim that several occurrences have not been revisited in over 18 years. However, CNHP (2005, pp. 12, 17, 123) records indicate that, with the exception of one small occurrence and two suboccurrences, all known occurrences have been surveyed since 1995. Petitioners list eight subocurrences that have been revisited within the last 8 years and four newly discovered suboccurrences. In the BLM GSFO management area, two suboccurrences in the Anvil Points area have been monitored for the past 3 years, and surveys have relocated one of four ''missing'' subocurrences that may have been inaccurately mapped (Scheck 2006b). In the BLM GJFO management area, eight known subocurrences were resurveyed, seven new subocurrences were found, and a monitoring plot was established in the Atwell Gulch occurrence in 2006 (Lincoln and Bridgman 2006, p. 5). Transplant research and monitoring (see Factor E below) were funded after BLM surveys located plants along the route for a new oil and gas pipeline. On the basis of our evaluation of the information presented in the petition, it is our determination that the petition does not present substantial information to indicate that listing *Astragalus debequaeus* may be warranted due to inadequate monitoring of occurrences.

Information Provided in the Petition Regarding Inadequate Protection From Oil and Gas Development, Grazing, and ORV Use—The petitioners assert that the BLM fails to regulate oil and gas development, ORV use, and livestock grazing in a manner that would adequately protect *Astragalus debequaeus.* Petitioners assert that neither the 1987 Grand Junction Resource Management Plan nor the 1999 Glenwood Springs Resource Management Plan amendment adequately controls energy development impacts on the plants. They state that the standard lease provisions found in 43 CFR 1301.1–2 cannot be applied to leases issued prior to the promulgation of these regulations. They also state that neither of these Resource Management Plans stipulate there will be no surface occupancy at BLM sensitive plant sites.

Regarding regulation of ORV use, the petitioners state that more than half of the occurrences and total number of plants are exposed to ORV traffic, and that several of the occurrences are in designated open ORV areas on BLM land.

Regarding regulation of livestock grazing, petitioners cite the example of five Environmental Assessments written for grazing permit renewals in the BLM GJFO management area, in which BLM

failed to consider grazing impacts to the plant.

Analysis of Information Provided in the Petition and Information Available to Us at the Time of Petition Review—The petition does not provide reliable information regarding the ability of the BLM to apply protections to already leased oil and gas areas. The provisions in 43 CFR 1301.1–2 apply to leases issued prior to the adoption of the regulations, because these provisions are considered ''consistent with lease rights granted'' and, therefore, are not a violation of existing lease rights (Scheck 2006b). While relocation of activities by up to 200 meters (656 feet) may not be adequate to avoid all impacts to large occurrences, it would protect the majority of individuals. Relocation of oil and gas activities also would suffice to avoid direct impacts to smaller occurrences, such as those at Anvil Points.

Ten of the 13 suboccurrences in the Anvil Points occurrence are found on leases issued in May 1999, following the completion of the Glenwood Springs 1999 Oil and Gas Leasing and Development Record of Decision and Resource Management Plan Amendment (Scheck 2006b). These leases are covered by a Controlled Surface Use stipulation (CSU–3) to protect populations of sensitive plants (BLM GSFO 1999b, p. 12). Each time a new Application for Permit to Drill is received or a Geographic Area Plan is proposed, BLM GSFO requires surveys in areas of potential habitat for special status plants, including *Astragalus debequaeus*. If populations or individuals are found in the project area, the proposed action is modified, if deemed necessary, to mitigate impacts (Scheck 2006b). When seismic activities were proposed for the Anvil Points area in 2001, surveys were conducted beforehand and all occurrences of *A. debequaeus* were avoided (Scheck 2006a).

In the BLM GJFO management area where 13 of the 17 occurrences are located, the standard lease stipulation (43 CFR 1301.1–2) is included in 19 of the 30 leases in the area (see Table 1). The earlier leases also are subject to the same provisions, which are consistent with lease rights granted. Conditions of approval for new Applications for Permits to Drill include surveys of potential habitat for special status plants, including *Astragalus debequaeus,* and mitigation measures to avoid impacting occupied habitat.

Regarding regulation of livestock grazing, four of the Environmental Assessments cited by petitioners that were available for review support the petitioner's claim that no specific measures were included for protection of the plant (BLM GJFO 2000, pp. 8–9; BLM GJFO 2001, pp. 7–8; BLM GJFO 2003a, pp. 7–8, 13; BLM GJFO 2003b, p. 6). However, seasoned field biologists, with extensive knowledge of the species and years of site visits to these allotments, signed these assessments after determining that the species was not likely to be adversely affected by the grazing activities. In two of these Environmental Assessments (BLM GJFO 2000, p. 9; BLM GJFO 2001, p. 8), BLM recommended scheduled range monitoring for a subset of the relevant population.

Regarding ORV use regulation, petitioners assert that few restrictions exist within the range of *Astragalus debequaeus*. They do not show, nor do we have additional information to indicate, that the level of ORV use in the area presents a need for a higher level of regulation.

On the basis of our evaluation of the information presented in the petition, it is our determination that the petition does not present substantial information to indicate that listing *Astragalus debequaeus* may be warranted due to the lack of regulation by BLM on oil and gas development, livestock use, or ORV use. Our files show that the BLM routinely considers impacts of its actions on *A. debequaeus*, and avoids the majority of individual plants and occurrences.

Information Provided in the Petition Regarding Failure to Designate Areas of Critical Environmental Concern—Petitioners state that BLM has failed to designate additional ACECs to protect this species, and that the existing ACEC does not protect the plants from grazing and ORV activities and impacts, based on one illegal ORV track and permitted grazing.

Analysis of Information Provided in the Petition and Information Available to Us at the Time of Petition Review—Through the Roan Plateau Resource Management Plan/Final Environmental Impact Statement, the BLM has proposed an ACEC at Anvil Points that would increase protection for the species (BLM GSFO 2006, p. 3–111). This ACEC will be finalized after the Record of Decision is published. The ACEC would protect about 14 percent of the plants in the Anvil Points occurrence (Scheck 2006b; CNHP 2005, pp. 38, 73).

The Pyramid Rock ACEC in the BLM GJFO management area is being evaluated for grazing and ORV impacts to *Astragalus debequaeus* and three other species because some habitat damage has occurred (Lincoln and Bridgman 2006, p. 9). This ACEC has been withheld from oil and gas lease offerings.

On the basis of our evaluation of the information presented in the petition, it is our determination that the petition does not present substantial information to indicate that listing *Astragalus debequaeus* may be warranted due to the lack of protection by BLM through the designation and enforcement of ACECs. The BLM has created the Pyramid Rock ACEC that protects about 150 individuals (CNHP 2005, p. 2). Furthermore, the petition and our files do not contain any evidence that the species requires ACECs to sustain it.

Information Contained in the Petition Regarding Lack of State Regulatory Mechanisms—Petitioners state that Colorado has no State regulatory mechanisms for protecting rare plant species, and that the Colorado Natural Areas Program is insufficient to protect and provide recovery for *Astragalus debequaeus*.

Analysis of Information Provided in the Petition and Information Available to Us at the Time of Petition Review—The Colorado Natural Areas Program collects information on rare plant species, but does not have regulatory authority over habitat development. However, they are working with the BLM GJFO to determine whether fencing would be appropriate for the Pyramid Rock Natural Area (Kurzel 2006). Voluntary conservation agreements for a State Natural Area are most effective on private land, which is a very small percentage of the habitat for this species.

While we agree that Colorado does not have State regulatory mechanisms for protecting rare plant species, the petitioners and currently available information do not provide information that the species requires any additional regulatory mechanisms to sustain it. On the basis of our evaluation of the information presented in the petition, it is our determination that the petition does not present substantial information to indicate that listing *Astragalus debequaeus* may be warranted due to the inadequacy of existing regulatory mechanisms.

E. Other Natural or Manmade Factors Affecting the Continued Existence of the Species

Information Provided in the Petition Regarding Population Size and Range—Petitioners state that limited range, small number of plants, and small number of populations make *Astragalus debequaeus* vulnerable to anthropogenic impacts, environmental and genetic stochasticity, and climate change. They

cite 44 occurrences of the species at 8 sites over a range of 40 to 48 kilometers (25 to 30 miles).

Analysis of Information Provided in the Petition and Information Available to Us at the Time of Petition Review—We disagree with the assertion that population size, range, and number of populations are so limited that other natural or manmade factors would substantially impact the species. In a 2006 Global Ranking report from CNHP, the occurrence numbers have been revised to 32 documented occurrences, 15 of which are suboccurrences; therefore, 17 (primary) occurrences are currently known to be extant (CNHP 2006, p. 2). The difference in the number of occurrences is based on an update of occurrence delineation protocols, plus the addition of four new occurrences that were added to the CNHP database in 2005 (see Table 1). The total number of plants estimated in 1996 was 68,000. Four new occurrences and a net of 1,205 new plants have been documented by CNHP (2005, pp. 7, 36, 47, 80, 137). In 2006, which had a very dry spring, 6 new suboccurrences containing 3,361 plants were recorded in Atwell Gulch (Lincoln and Bridgman 2006, p. 1). The total estimated number of plants has changed from 68,000 in 1996 to 64,617 in 2006. The difference appears to be due to the method of summarizing the rough estimates from 1996 records. There are no recounts that can be used to precisely compare population sizes and determine whether there has been an actual downward trend in the number of plants. The area of currently known occupied habitat for the 17 occurrences is an estimated 573 hectares (1,417 acres) (CNHP 2006, p. 2). Spackman et al. (1997a, p. 8) concluded that the species occupies most of its available suitable habitat and historical range.

On the basis of our evaluation of the information presented in the petition, it is our determination that the petition does not present substantial information to indicate that listing of *Astragalus debequaeus* may be warranted due to impacts from other natural or manmade factors.

Information Provided in the Petition Regarding Transplanting Success—Petitioners state that *Astragalus debequaeus* does not respond well to transplanting. They cite one unsuccessful attempt to transplant three plants (Trappett 2005).

Analysis of Information Provided in the Petition and Information Available to Us at the Time of Petition Review—The petition provides reliable information regarding the lack of success of transplantation as a mitigation measure in Trappett (2005). We also know of one additional attempt at transplantation. In 2005, 12 individuals were transplanted from a pipeline right-of-way. Two of the transplants died, some flowered in 2006, with none being as robust as undisturbed plants in the vicinity (Alward 2006). Because so few individuals were involved, information from these two transplant attempts does not provide substantial evidence to indicate whether transplanting can be successful in minimizing disturbance effects on the species.

Although the two known attempts have been of limited or uncertain success, few individuals are subject to transplantation. The BLM prefers impact avoidance over transplantation as a conservation measure. Neither the petitioners nor our files provide substantial information that listing *Astragalus debequaeus* may be warranted due to the lack of success of transplantation attempts.

Finding

We have reviewed the petition and literature cited in the petition and evaluated that information in relation to information available to us. After this review and evaluation, we find that the petition does not present substantial scientific information to indicate that listing *Astragalus debequaeus* (DeBeque milkvetch) may be warranted at this time.

Petitioners state that nearly all occurrences are—within oil and gas leases, some with approved permits to drill; on active grazing allotments; open to ORVs; and often near roads and pipelines. However, there are only a very limited number of instances where impacts to the plants have resulted from any documented or potential threats. Further, there is insufficient information in the petition regarding the magnitude of these impacts and no information that suggests that these impacts may have population-level effects.

The petition is based primarily on claims regarding Factors A and D, both of which are primarily tied to oil and gas development. Since the petition was submitted in 2004, the BLM has taken additional measures to conserve the species in areas within potential oil and gas development areas. They have withheld the Pyramid Rock ACEC from oil and gas leasing, conducted new surveys during the Application for Permit to Drill and grazing allotment renewal reviews, and added standard lease stipulations and controlled use stipulations to new oil and gas leases in the course of developing appropriate management strategies. Monitoring is being implemented to assess the effectiveness of these measures in minimizing impacts to the species as additional development occurs within its habitat.

Our review of the available information indicated that the species appears to be maintaining its presence in known locations throughout its range. Despite several potential threat factors, the petition and the information in our files do not present substantial information indicating that any factor, nor a combination of factors, suggests the petitioned action, listing as threatened or endangered with critical habitat, may be warranted for *Astragalus debequaeus.*

Although we will not commence a status review in response to this petition, we will continue to monitor the *Astragalus debequaeus* population status and trends, potential threats, and ongoing management actions that might be important with regard to the conservation of the *A. debequaeus* across its range. We encourage interested parties to continue to gather data that will assist with the conservation of the species. If you wish to provide information regarding *A. debequaeus*, you may submit your information or materials to the Field Supervisor, Western Colorado Ecological Services Office, U.S. Fish and Wildlife Service (see **ADDRESSES** section).

References Cited

A complete list of all references cited herein is available upon request from the Western Colorado Ecological Services Field Office (see **ADDRESSES** section).

Author

The primary author of this document is Ellen Mayo, U.S. Fish and Wildlife Service, Western Colorado Ecological Services Field Office (see **ADDRESSES** section).

Authority

The authority for this action is section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: February 6, 2007.

Kenneth Stansell,

Acting Director, Fish and Wildlife Service.

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