



December 22, 2011

Ms. Jacqueline Buchanan  
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Jackson, WY 83001-1888

Dear Jacque,

Thank you for taking the time to meet with me last week. I appreciated getting a better sense of the issues that are still under consideration for PXP's drilling proposal in the Upper Hoback, as well as the likely timeline for the release of the supplemental draft EIS. I was heartened to learn that no decision has been made regarding modification of the Jackson Hole Oil and Gas Lease Stipulation or about the placement and number of well pads the Forest Service intends to authorize. I write to offer Wyoming Outdoor Council's perspective on both the importance of the stipulations—particularly the Jackson Hole Oil and Gas Lease Stipulation—and the authority of the Forest Service to restrict PXP's drilling proposal in order to protect sensitive resources.

The Jackson Hole Oil and Gas Lease Stipulation constrains all of PXP's leases. Its history is worth noting. As you know, the language in the stipulation is adopted from a 1947 memorandum Secretary of the Interior, Julius Albert Krug issued in response to pleas from Wyoming state senator, Leslie Miller (who was later to become Governor) and the superintendent of Grand Teton National Park, John McLaughlin. These men, along with Albert Day, the U.S. Fish and Wildlife Director and Charles Brauman, the Assistant Secretary of Agriculture, supported expansive protection of the national forest lands around Jackson Hole from oil and gas leasing and development. Ultimately, pressure from Wyoming's legislature (a body that at the time favored expanding oil and gas development in the area) resulted in a compromise in which some lands received protection and others could be developed, but with restrictive stipulations. National forest lands north of the 11<sup>th</sup> Standard Parallel, a geographic survey line that runs east to west just south of Jackson Lake, would be unavailable to future oil and gas leasing. National forest lands south of this line on the Teton portion of the Bridger-Teton National Forest would be available for leasing, but with unique restrictions, now enumerated in

the Jackson Hole Oil and Gas Lease Stipulation.<sup>1</sup>

Thus, more than 60 years ago, the Upper Hoback Basin was among a limited amount of national forest acreage in Wyoming nearly withdrawn from all future oil and gas leasing. Although it was ultimately not withdrawn, citizens were promised—via this unique stipulation—that if oil and gas development were ever proposed, protection of scenic, wildlife and recreation values would be ensured in the Basin and on other select lands to which the Krug Memorandum applies.<sup>2</sup>

The stipulation seeks to “protect the scenic and aesthetic values of roadsides, waterfronts and recreation area zones as far as possible consistent with the authorized use in connection with construction, operation and maintenance facilities.”<sup>3</sup> As such, it prohibits wells from being drilled “within 1,250 feet of any public road...without the consent of the Secretary of the Interior.”<sup>4</sup> It calls for the lessee to “keep to an absolute minimum the number of access, and other travelways necessary to conduct the lessee’s operations” and “to conduct operations in a manner that will offer the least possible disturbance to wildlife on or adjacent to the leased land.”<sup>5</sup>

We urge the Forest Service to recognize the importance of this highly unique stipulation. Although the 1,250-foot buffer is the only easily quantifiable aspect of the stipulation, it is not its only mandate. There is no other stipulation in existence that we are aware of that sets such a high bar. No other stipulation requires a project to have “the least possible disturbance to wildlife” or an “absolute minimum number of roads.”<sup>6</sup> This stipulation makes the protection of wildlife and backcountry values limiting factors on oil and gas development on the lands in question. It gives the Forest Service clear instruction to only authorize a project that will ensure the very best protections for wildlife. It also gives the leaseholder fair notice that development will be highly constrained and likely very costly.

Oil and gas development on the lands surrounding Jackson Hole has been and remains today a controversial subject. During the drafting of the Forest Plan, members of the public expressed strong opposition to oil and gas development and skepticism about the Forest Service’s ability to protect forest resources from the impacts of oil and gas activities by the imposition of stipulations alone. In response to these concerns and in conjunction with the release of the Forest Plan in 1990, Regional Forester Tixier issued a 28-page series of action

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<sup>1</sup> Historical information gathered from Angus Thuermer, Jr. “Oil Ban idea 40 years old, Controversy let to Krug Compromise in 1947,” Jackson Hole News & Guide, Dec. 28, 1989.

<sup>2</sup> And of course in 2009, Congress recognized these values were still worth safeguarding when it withdrew the Upper Hoback Basin and more than 1 million acres of adjacent national forest land from future oil and gas leasing. Although the legislation didn’t condemn any existing oil and gas leases, it envisioned the potential for voluntary sale/donation of these, ensuring the area would never be leased again.

<sup>3</sup> Jackson Hole Oil and Gas Lease Stipulation § 4.

<sup>4</sup> Id. at § 1.

<sup>5</sup> Id. at § 3 and §5.

<sup>6</sup> The stipulation’s mandate to require an “absolute minimum number of roads” is crucial. I was pleased to hear the Forest Service intends to ensure the road density standards in the Forest Plan are not exceeded. We support the Forest Service in this effort, and also urge the agency to thoroughly consider alternative access points into the Basin.

plans and clarification letters.<sup>7</sup> In it, he states:

Another point often raised is, ‘You never enforce oil and gas lease stipulations or you change them to benefit the oil and gas industry. Why should we believe Forest managers or the Plan about your willingness to enforce restrictions on the industry?’

The law requires Forest Service employees to enforce Plan provisions. Plan provisions contain restrictions on new oil and gas . . . development and production. Whether or not enforcement has been good in the past, the answer to the question is, ‘We hear you. We’re worried about our credibility even more than you are. We intend to perform.’<sup>8</sup>

It was the promise of this regional forester, in response to the specific concern we are raising again, more than 20 years later, that stipulations would be enforced and not changed to benefit the oil and gas industry. We ask the Forest Service to be mindful of the explicit promises it has made to the public with respect to the very decision it faces today: whether to modify contractual terms of the lease in order to benefit PXP.

After the release of the Forest Plan in 1990, site-specific environmental assessments were prepared that considered leasing specific lands on the Bridger-Teton National Forest for oil and gas development, and what, if any stipulations would be placed on individually leased parcels. The Forest Service continued to assure the public that stipulations would be applied and upheld. In the Forest Service’s 1991 Decision Notice authorizing leasing in Management Areas 22 and 23 in the Cliff Creek and Upper Hoback areas, the Forest Service stated it would “not object[] to leasing lands within the MAs as long as the leases are issued with the stipulations identified as being required in the Forest Plan....”<sup>9</sup> Thus, the inclusion and promise of enforcement of the stipulations were conditions precedent to the Forest Service’s controversial decision to authorize leasing in the Upper Hoback Basin in the first place. The importance of these stipulations—as binding terms of PXP’s leases, but also as promises made repeatedly to the public—cannot be overstated.

The Jackson Hole Oil and Gas Lease Stipulation applies to all of the leases PXP holds on the Bridger-Teton National Forest. The stipulation was attached to the leases when they were originally sold in the mid-1990s and was still in force when PXP acquired the leases in 2004. When the South Rim Unit Agreement was finalized in 2005, this stipulation was not only mentioned, but its language was included in its entirety.<sup>10</sup> Prefacing the stipulation is a sentence wherein “the lessee hereby agrees” to the terms of the stipulation.<sup>11</sup> The agreement was signed

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<sup>7</sup> February 20, 1990, Letter Enclosure Two, Clarification About the Rationale for Allowing Oil and Gas Leasing Near Jackson Hole. This was included as Exhibit 43 in our comments we submitted March 10, 2011 on the MDP DEIS.

<sup>8</sup> Id. at 19 (emphasis added).

<sup>9</sup> September 30, 1991, Decision Notice and FONSI for “Making Oil and Gas Leasing Decision for Specific Lands within the Cliff Creek (MA 22) and Upper Hoback (MA 23) Management Areas” at 9.

<sup>10</sup> Unit Agreement for the Development and Operation of the South Rim Unit Area at 11.

<sup>11</sup> Id.

by PXP's Vice-President, R.W. Pendleton on September 1, 2005 and notarized.<sup>12</sup>

Although PXP clearly had knowledge of this protective stipulation, it failed to offer a Master Development Plan that honored it. Nowhere in the draft EIS was the Jackson Hole Oil and Gas Lease Stipulation even mentioned. It was clear from the maps included in the document that numerous well pads—including the proposed exploratory well pad—were sited within the 1,250-foot protected areas along public roadways, something the stipulation explicitly prohibits. Moreover, PXP disregarded the NSO stipulations attached to its leases, proposing to construct well pads and roads within areas of steep slopes, unstable soils or potential landslide areas. Its proposed road network also exceeded the road density standards put forth in the Forest Plan. Although it is not entirely clear, PXP's proposal may also have violated aspects of the Forest Plan that address visual quality.<sup>13</sup>

This past summer, in response to our comments on the draft EIS that addressed these problems, the Forest Service confirmed that after its internal review and additional GIS mapping (overlying the quarter-mile road buffer, NSO areas and setbacks from riparian areas), only 5 of the 17 well pad locations PXP had proposed were valid. Now, as we are nearing the release of a new alternative, it appears the Forest Service isn't contemplating a more modest development proposal, which it could rightfully require, but instead may in fact opt to modify the Jackson Hole Oil and Gas Lease Stipulation in order to accommodate the same level of development PXP has desired all along. That the Forest Service—in its first opportunity to interpret and apply this unique and highly protective stipulation—would consider only an alternative that sought to modify it, is troubling, especially considering none of the existing alternatives illustrate a scenario in which the stipulation would be upheld.

I appreciated the clarification you offered in our meeting, however, that with resource protection as the goal, the Forest Service's analysis may indicate that allowing well pads to be located closer to existing roads (requiring a modification of the 1,250-foot buffer) could lessen the project's overall surface disturbance. The Wyoming Outdoor Council will be eager to see the comparison maps and data the Forest Service develops. We would certainly not advocate upholding a stipulation if it meant greater adverse impacts; however, given the topography in the Upper Hoback Basin and the significant amount of acreage adjacent to the 1,250-foot buffer that is subject to technical NSO stipulations, it is unclear whether there is adequate acreage to site 17 well pads. If that is the case, i.e. if upholding the 1,250-foot buffer coupled with upholding the other NSO stipulations and setbacks from riparian areas, etc., limits the number of well pads that can be constructed in the Basin, we believe the Forest Service can and should hold PXP to the terms of its lease stipulations. The best safeguard the Forest Service can impose for the protection of wildlife habitat isn't to lift stipulations to accommodate PXP's desired number of well pads, but to require PXP to limit the number of well pads altogether if necessary.<sup>14</sup>

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<sup>12</sup> *Id.* at 12.

<sup>13</sup> The 1991 Decision Notice and FONSI for "Making Oil and Gas Leasing Decision for Specific Lands within the Cliff Creek (MA 22) and Upper Hoback (MA 23) Management Areas also promises at 10: "The Forest Plan Standards and Guidelines for visuals and the adopted Visual Quality Objectives will be met."

<sup>14</sup> PXP's proposal for 8 wells per pad is far from the "gold standard" in the industry. Pads elsewhere in Sublette County routinely have 20 or more wells per pad and companies have proven they can drill 50 or more wells from pads fewer than five acres in size in Colorado. See "Encana expands capacity of directional drilling," September 25,

If PXP claims the Forest Service is not authorized to limit the number of pads, or that somehow the Forest Service is required to approve a project that is “economically feasible,” it is wrong. There is absolutely no such requirement in law or regulation. To the contrary, all rights granted to PXP when its oil and gas leases were issued are explicitly conditioned, constrained by and made subject to any and all stipulations attached to the leases and reasonable measures which the authorized officer may require to minimize adverse impacts to other resource values.<sup>15</sup> To suggest, as PXP or perhaps BLM may have done, that the Forest Service must accommodate a company’s bottom dollar in its administrative decision-making process is off the mark. As a project proponent, PXP has the right to submit a proposal and the Forest Service then determines what scale, pace and manner is allowable on the specific public lands it manages. Some areas are far more sensitive than others, as illustrated in the number and type of stipulations attached to a lease. Further, oil and gas development is always speculative, and nowhere is profit, or “economic feasibility” for an individual lessee guaranteed by the lessor, who in this case is the federal government.

Notwithstanding this basic and general premise, PXP cannot claim that the Forest Service failed to provide adequate notice to potential lessees that access would be difficult in the Upper Hoback area of the national forest, and that there would be increased costs associated with any potential development. The 1991 Decision Notice that authorized leasing in the Upper Hoback stated, “By reviewing these examples [i.e. examples of ways in which the Jackson Hole Oil and Gas Lease Stipulation could be utilized] the potential lessee or operator will be better able to anticipate design requirements and costs for projects located on Bridger-Teton National Forest administered lands.”<sup>16</sup> Surely, there is no more direct way of saying, “Buyer beware.” The Decision Notice also cautioned:

Directional drilling will be necessary to explore or develop lands covered by NSO stipulations. Some of these areas are large enough to be inaccessible by directional drilling, assuming there is a half-mile directional drilling capability. [E]xploration and production costs will be increased in these areas. Drilling costs will be significantly affected by the large blocks of steep slopes and unstable soils found in portions of these MAs.<sup>17</sup>

Although it is far more than this, the Jackson Hole Oil and Gas Lease Stipulation in part serves as an NSO stipulation. Its 1,250-foot buffer requirement significantly limits the surface area available for well pad locations. The cursory analysis submitted in our comments on the draft EIS indicated that given the 1,250-foot buffer around roads, coupled with other prohibitions on

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2011 at: [http://www.gjsentinel.com/news/articles/encana\\_extends\\_capacity\\_of\\_dir/](http://www.gjsentinel.com/news/articles/encana_extends_capacity_of_dir/). The onus is on PXP to illustrate why it can’t meet its own industry’s best management practices.

<sup>15</sup> 43 C.F.R. § 3101.1-2 states: “A lessee shall have the right to use so much of the leased lands as is necessary to explore for, drill for, mine, extract, remove and dispose of all the leased resource in a leasehold subject to: Stipulations attached to the lease; restrictions deriving from specific, nondiscretionary statutes; and such reasonable measures as may be required by the authorized officer to minimize adverse impacts to other resource values, land uses or users not addressed in the lease stipulations at the time operations are proposed.”

<sup>16</sup> September 30, 1991, Decision Notice and FONSI for “Making Oil and Gas Leasing Decision for Specific Lands within the Cliff Creek (MA 22) and Upper Hoback (MA 23) Management Areas at 4.

<sup>17</sup> *Id.* at 11.

surface occupancy, only 28 percent of the national forest land portion of the analysis area is currently open to the surface disturbing activities oil and gas development requires.

The available 28 percent of the Upper Hoback Basin should have been PXP's starting point when it submitted its MDP several years ago, and these areas should be its starting point now. After PXP proposes a certain number of well pads within these allowable areas, the Forest Service can and should impose additional measures to ensure the Jackson Hole Oil and Gas Lease Stipulation's mandate that "the least possible disturbance to wildlife" is enforced. To this end, the Forest Service should consider the most recent mule deer migration and stopover area data and seek to avoid well pad and road construction in these areas. Similarly, well pads should be located sufficiently far away from riparian areas, as well as away from the most crucial moose habitat—determined from the baseline study now underway—and away from the most critical lynx habitat areas, specifically the documented "Bondurant corridor."<sup>18</sup>

We ask the Forest Service to consider at least one new alternative that enforces all of the stipulations in PXP's lease contract and meets all Forest Plan standards and guidelines.<sup>19</sup> Notably, in a September 2011 radio interview, John Martini, PXP's Manager of Government Affairs, spoke about the importance of the Forest Service honoring the terms of the leases when they were issued originally. We couldn't agree more.

*John Martini:* Leases of this nature are governed by existing laws, and I think that this point is really commonly overlooked with a lot of the dialog particularly on this particular project. The Forest Service is charged with following the laws and following the rules that go along with the leases of this nature when they were originally issued.

*Christie Koriakin:* So [the Forest Service] doesn't get to make up the rules as they go along. They have to follow the existing rules.

*John Martini:* That's absolutely right. You know a really important part of this entire discussion is—and I know the Forest Service has said it publicly a number of times—but the question of whether drilling should occur on these leases was resolved back in 1993 when the leases were originally issued. There was a full

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<sup>18</sup> In addition to the above issues with respect to siting of operations, environmental quality remains an enormous concern. Groundwater characterization, a necessary first step before baseline water quality testing is performed, should be a condition of approval. Onsite, pre-drilling air quality monitoring should also be required. Mandating use of "green" fracking fluids, something industry concedes is available, but is not yet widely used should also be a condition of approval. These are only a sampling of the concerns; in addition to others we and other members of the public raised in our comments on the draft EIS that we hope the Forest Service will incorporate into one or more new alternatives.

<sup>19</sup> From a purely procedural standpoint, the Forest Service can always scale back stipulations in the final EIS and ROD if in the draft, the alternative enforcing the stipulations (particularly the 1,250-foot buffer) results in greater surface disturbance. However, with no other alternative illustrating and disclosing to the public what full enforcement of the stipulations looks like, the analysis will be incomplete. Or the Forest Service could consider two new alternatives: one in which the stipulations are enforced and one that modifies the stipulation. This would serve a similar purpose. What we do not believe would be sufficient is the omission from the supplemental analysis of at least one alternative that meets all Forest Plan standards and guidelines and all lease stipulations.

public process that went along in 1993 about whether these leases should be issued. The Forest Service issued the leases pursuant to that public process and the Forest Service is now bound by the law and bound by the terms, if you will, of the leases they issued back then. [T]he Forest Service is charged with ensuring the most environmentally responsible project is put forward and as the applicant we respond to what they tell us the rules of the game are going to be.<sup>20</sup>

PXP has publicly and correctly acknowledged that the Forest Service sets “the rules of the game” and that as an applicant that seeks to develop an industrial scale gas field on a world class national forest, it must—at minimum—adhere to the conditions that were clearly stated when the leases were issued. This is the public’s expectation as well.

Furthermore, if PXP begrudges the administrative process for the amount of time and analysis its proposals have required, it has mostly itself to blame.<sup>21</sup> It could have largely avoided these delays had it honored the protective stipulations set forth within its oil and gas leases and submitted a proposal that respected the development constraints inherent in this sensitive Upper Hoback Basin. Instead, it chose another way of doing business.<sup>22</sup>

We encourage the Forest Service to continue its deliberate approach. We appreciate your willingness to consider our concerns and to accept feedback throughout the process. Thank you for your consideration.

Sincerely,

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937 Sandcherry Way  
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cc: Harv Forsgren, Regional Forester

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<sup>20</sup> Reporter Christie Koriakin of Jackson Hole’s community radio station, KHOL, 89.1 interviewed John Martini as part of a series of stories produced on natural gas development. The interview aired September 14, 2011 and is available at: <http://soundcloud.com/koriakin/scene-heard-2011-09-14-natgas>.

<sup>21</sup> In a statement published in the Sublette County Examiner, PXP Awaits one more SEIS for Eagle Prospect, Tues, Nov. 29, 2011, PXP Corporate Information Director, Hance V. Myers III, said the company is “eager” to have analysis brought to a close...and that the project is “one of the most heavily analyzed public land projects in Wyoming.”

<sup>22</sup> PXP first proposed a three-well project, claiming it had no plans for further development. Its CEO simultaneously made public statements about the area’s similar geology to the nearby Jonah Field, and the company’s plans to “develop a nice field in the middle of the forest.” This inconsistency caused the public serious concern, and PXP opted to withdraw its initial proposal and resubmit a Master Development Plan. That MDP proposal, as we now know, failed to honor fundamental lease stipulations or meet Forest Plan standards and guidelines. The day before the draft EIS was released, PXP rolled out its secret “conservation agreement,” a political ploy that attempted (unsuccessfully) to splinter a diverse coalition of Wyoming Range supporters and confuse the public. The terms of this agreement were not analyzed in any of the alternatives in the draft EIS, and the agreement also disregarded the stipulations attached to its leases and Forest Plan standards and guidelines.