



Ms. Jacque Buchanan, Forest Supervisor
Bridger-Teton National Forest
P.O. Box 1888
Jackson, WY 83001

December 21, 2010

Dear Ms. Buchanan,

We write to respond to Plains Exploration & Production Company's December 10, 2010 letter sent to the Bridger-Teton National Forest, announcing the company's offer to make several concessions, provided its request is granted to drill 136 wells in the Upper Hoback Basin in the manner it desires. To be sure, the individuals who endorsed PXP's proposal appear to have made a good faith effort to find compromise. Any attempt to protect wildlife habitat, backcountry recreation, and reduce the impacts of oil and gas development on sensitive national forest land is laudable. We understand the need to find workable solutions to the often-conflicting demands imposed on our national forests; and we recognize the challenges inherent in attempting to resolve these conflicts.

That said, we believe PXP's attempts in this case to remove barriers to drilling in the Bridger-Teton, and to expedite the permitting process, fall short of resolving the very difficult conflicts that would arise should development occur at the proposed development site. We do not believe the U.S. Forest Service should rely in any significant way on the product of a negotiation model that included signed confidentiality agreements, and secret meetings with limited stakeholders outside of the public process.

The Wyoming Range protection effort, which culminated in the passage of federal legislation last year, was a success because of its diverse coalition. Regardless of how people used the national forest—whether they hunted, bird watched, skied, fished, rode an ATV or a horse, or simply enjoyed peaceful solitude—their voice mattered. Following this model, all of the users of the forest now deserve an equal opportunity to participate in the decision making process for the Upper Hoback.

In its December 10 letter, PXP has offered some important concessions, not the least of which is the permanent retirement of its valid oil and gas leases on 28,000 acres of national forest land in the Cliff Creek area. We applaud PXP for contemplating actions that further the long-term conservation of the Bridger-Teton. This welcomed announcement, however, comes at too high a price and with substantial strings attached. Without additional offers to constrain the project proposal itself, we are concerned that adjacent lease retirements will have little positive effect in safeguarding wildlife and the backcountry values of the Upper Hoback.

Despite its best efforts to splinter the strong coalition of Wyoming Range stakeholders and shift the attention away from the actual impacts of its proposal, PXP is still subject to a Forest Service decision that respects the interests of the whole public. We urge the Forest Service not to allow PXP's proposal to overshadow or unduly influence this process. We also ask that if the Forest Service decides to incorporate any of the substantive aspects of PXP's proposal in its decision, that these are first subjected to public review and comment in the environmental analysis process already underway.

For all the press coverage about PXP's many concessions, little about the proposal itself has changed. Seventeen well pads and 136 wells are still proposed for development as quickly as PXP is allowed to develop them. Many of the agreed-to terms in its proposal are things the Forest Service can and should already require of the company. And we have only to look at the questionable success of monetary

donations for offsite mitigation and monitoring on the Pinedale Anticline to know that a pot of money is hardly a silver bullet. The Upper Hoback and its wildlife populations deserve better.

We understand the difficult challenge the Forest Service faces in attempting to mitigate industrial development in a pristine backcountry area, and are committed to offering constructive suggestions during the public comment period. In these comments we will advocate that baseline wildlife data should be acquired before well locations are delineated. This information coupled with strict phased development, and perhaps a greater level of directional drilling (i.e. more wells on fewer pads) will go the farthest to ensure avoidance of impacts in some cases and actual onsite mitigation in others. We also urge the Forest Service to require groundwater characterization and monitoring as well as sufficient onsite air quality baseline studies before any development is authorized.

Again, we will offer more in-depth details that define a true onsite conservation alternative in the weeks to come. Attachment A is our assessment of the individual terms of PXP's newest proposal. We hope this will be helpful to you in your decision making process.

Sincerely,



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And on behalf of:

Steff Kessler
The Wilderness Society

Dan Smitherman
Citizens for the Wyoming Range

Lloyd Dorsey
Greater Yellowstone Coalition

Please see Attachment A

cc: The Honorable Dave Freudenthal
The Honorable Matt Mead, Governor-Elect
The Honorable John Barrasso, United States Senate
The Honorable Mike Enzi, United States Senate
The Honorable Cynthia Lummis, United States House of Representatives
Members, Sublette County Commission

Members, Teton County Commission

Steve Ferrell, Director, Wyoming Game and Fish Department

John Corra, Director, Wyoming Department of Environmental Quality

Members, Wyoming Game and Fish Commission

ATTACHMENT A

Summary

Plains Exploration & Production Company (PXP) contends the terms in its proposal “exceed, by a wide margin, legal obligations that could otherwise be reasonably imposed” by the U.S. Forest Service. To the contrary, with the exception of the voluntary relinquishment of PXP’s adjacent oil and gas leases, the Forest Service has the authority to require PXP to comply with the vast majority of the terms offered. For example, the agency can and should require monitoring and baseline studies, limit the number of gas wells that may be drilled, determine the appropriate number, size and location of well pads, and regulate and prescribe the overall timing, location and pace of development.

The federal oil and gas leases that PXP holds in the Bridger-Teton National Forest do not convey an unfettered right to drill. It is well established that federal oil and gas lease rights are constrained by and subject to a large body of federal and state law, regulation and policy. Oil and gas lease rights are also limited by terms, conditions and stipulations contained in the leases, including, in this case, the unique Jackson Hole Area Oil and Gas Lease Stipulation, which includes the entire area implicated by these leases.

Additional restrictions on PXP’s development proposal include enforceable provisions contained within the Bridger-Teton Forest Plan; the Oil and Gas Leasing Decision for Specific Lands within the Cliff Creek Management Area (MA 22) and the Upper Hoback Management Area (MA 23); the Unit Agreement for the Development and Operation of the South Rim Unit Area; and any additional terms and conditions of approval that may be imposed as a result of the environmental review process mandated by the National Environmental Policy Act and the Endangered Species Act.

Responses to PXP’s terms and conditions

PXP Term #1

PXP agrees to permanently relinquish over 28,000 acres of its lease holdings located west and north of the Hoback River in the Bridger-Teton National Forest in accordance with the terms of the Wyoming Range Legacy Act for permanent conservation, enjoyment, and use by the people of Wyoming. These lands are located in and adjacent to the Wyoming Range. Should the project and the proposed agreement be challenged by a non-governmental organization (NGO) or other entity that rejects compromise and is simply interested in stopping oil and gas production on PXP's valid existing leases, relinquishment of the leases will be deferred until such time as the legal challenge is formally resolved or drilling of the first exploratory well has commenced. PXP would retain the right to pursue surface and mineral access on all remaining federal lease acreage in and outside of the MDP area, except as provided in this Term Sheet.

Response

We applaud and support PXP in the voluntary relinquishment of its federal oil and gas leases, which comprise approximately 28,000 acres within the Cliff Creek management area. Although retirement of these leases would further long-term conservation in the Wyoming Range and

respect the vision of the Wyoming Range Legacy Act, the terms accompanying this donation are not without consequence. In exchange for this lease donation and retirement, PXP asks for fewer restrictions on authorization of its proposed development project. Although a welcomed aspect of any final decision, adjacent lease retirement will not mitigate impacts from development proposed in the Upper Hoback area. Therefore, the approval of the MDP should be based on an assessment of potential impacts to wildlife and other resources in the project area itself, focusing on ways to avoid the impacts when possible and/or reduce and mitigate them on site.

PXP Term #2

PXP agrees to limit exploration and development to a maximum of 136 producing wells unless subsequent, additional environmental view is completed.

Response

PXP has submitted a proposal to the Forest Service to develop 136 wells on 17 well pads. The draft EIS now under review is based on this level of development—nothing more. Federal law would mandate additional environmental analysis before any expansion could occur. Thus, PXP is not agreeing to limit development to 136 producing wells, nor is it agreeing to do anything the law doesn't already require.

PXP Term #3

PXP agrees to forfeit its right to petition to construct more than 17 pads on the National Forest lands included within the defined MDP area.

Response

PXP's application for a Master Development Plan requests approval of 17 well pads. The Forest Service has no obligation to approve all 17 pads requested by PXP, and PXP has no legal right to develop all 17 pads. The lease rights held by PXP are limited by federal laws and regulations, and by significant constraints on surface occupancy and use contained in lease stipulations and in the Bridger-Teton Forest Plan. In addition, it is worth noting PXP has not agreed to forfeit its right to petition to increase the size of the seventeen well pads at some time in the future. An increase in the size of the well pads, even without an increase in the number of pads, could lead to significantly greater impacts to the forest.

PXP Term #4

PXP agrees to: [a] adopt "Restricted Surface Occupancy" restrictions on certain leases near the Hoback River that are currently within the MDP area. These restrictions would preclude permanent surface occupancy on portions of those leases. As part of this agreement, [b] PXP agrees to petition the USFS to allow the relocation of proposed pads 64-11 and 64-15 on WYW 132832 to avoid permanent disturbance to the area formally known as the Noble Basin. PXP's actions in this regard will ensure the preservation of more than 4,000 acres included within the MDP area that provide an important migratory route for elk and deer and support historic grazing activities. Furthermore, [c] PXP will not seek to renew expired fee leases near the Hoback River, and [d] PXP has not and will not participate in appeals of the BLM's withdrawal of approximately 3,000 acres in leases for which PXP was the high bidder in lease sales held in 2005 and 2006. Further [e] PXP also agrees that if, in the future, it seeks to develop on WYW 132831 it will accept limited access and surface occupancy restrictions on designated portions

of the leases to further ensure the creation of a buffer between development activities and the Hoback River.

Response summary

More information is needed to understand the potential conservation benefit associated with this "restricted surface occupancy" proposal. PXP's leases in the project area already contain a variety of stipulations that would restrict surface occupancy. And the Forest Service has other regulatory tools and procedures, such as lease suspensions, that the agency can employ to fulfill its responsibilities to protect the Noble Basin and to comply with the requirements of federal law and policy. Existing lease stipulations and conditions of approval available to the Forest Service may achieve restrictions on leasehold activities that are comparable to, or even more protective than, what has been proposed by PXP.

PXP Term 4[a]

PXP agrees to adopt "Restricted Surface Occupancy" restrictions on certain leases near the Hoback River that are currently within the MDP area. These restrictions would preclude permanent surface occupancy on portions of those leases.

Response to 4[a]

As noted above, it is impossible to accurately assess the potential conservation benefit of this "restricted surface occupancy" term due to PXP's lack of specificity. Existing lease stipulations, regulatory restrictions and resource constraints, however, may also prevent surface occupancy on significant portions of these leases.

PXP Term 4[b]

PXP agrees to petition the USFS to allow the relocation of proposed pads 64-11 and 64-15 on WYW 132832 to avoid permanent disturbance to the area formally known as the Noble Basin.

Response to 4[b]

PXP has not established a legal right to construct pads 64-11 or 64-15 on Lease WYW 132832 in the Noble Basin; it has merely requested the opportunity to do so. The Krug Memorandum, which is the basis of the Jackson Hole Area Oil and Gas Lease Stipulation, requires that drilling may be authorized only upon leases located within an approved unit, subject to a unit plan approved by the Secretary of the Interior. The two proposed well pads 64-11 and 64-15 are located outside the South Rim Unit Area and are therefore unavailable for development until such time that a unit is established.

Furthermore, relocating these pads does not eliminate the impact; it merely shifts it to a different location within the Upper Hoback Basin. Independent wildlife studies should be conducted to acquire adequate baseline information, from which the Forest Service can make informed decisions about where well pad construction may or may not occur. The Forest Service may also decide to indefinitely suspend operations on WYW 132832 should it determine as a result of the environmental analysis that such a suspension would serve the public interest.

PXP Term 4[c]

PXP will not seek to renew expired fee leases near the Hoback River.

Response to 4[c]

Due to lack of information provided by PXP on this point, it is not clear that PXP has a right to renew the expired leases should it attempt to do so. Regardless, more information is necessary to assess the potential conservation benefit of this offer.

PXP Term 4[d]

PXP has not and will not participate in appeals of the BLM's withdrawal of approximately 3,000 acres in leases for which PXP was the high bidder in lease sales held in 2005 and 2006.

Response to 4[d]

The two parcels PXP references here were sold in the June and August 2006 competitive oil and gas lease sales. PXP was not the high bidder on the single Wyoming Range parcel offered in December 2005. As a result of protests and appeals, the BLM did not issue either of the 2006 Wyoming Range leases and both remain today in a pending status. The legal authority of the Secretary of the Interior to refrain from issuing oil and gas lease parcels, even after bids have been received for those parcels, is well established.

PXP Term 4[e]

PXP also agrees that if, in the future, it seeks to develop on WYW 132831 it will accept limited access and surface occupancy restrictions on designated portions of the leases to further ensure the creation of a buffer between development activities and the Hoback River.

Response to 4[e]

A range of access and surface occupancy limitations already apply to the entire project area. More information is needed to assess the potential conservation benefit of this proposal.

PXP Term #5

PXP agrees to forfeit its right to seek approval to use the Upper Hoback River Road as a point of access for the MDP or any remaining lease acreage PXP holds in the area.

Response

The Forest Supervisor has explicit authority to make access decisions. The Jackson Hole Area Oil and Gas Lease Stipulation, together with the Oil and Gas Leasing EA for the Upper Hoback Management Area (MA 23), impose significant restrictions on access roads and road densities. For example, the Jackson Hole stipulation provides that: "[T]he lessee hereby agrees: Access to existing public highways shall be determined by the Supervisor at such points on the highways with due regard for sight distances, safety, or scenic considerations [and] [t]o protect the scenic and aesthetic values of roadsides, waterfronts, and recreation areas as far as possible"

PXP Term #6

PXP agrees to establish a Fish and Wildlife Habitat and Population Fund in the amount of \$4 million over the life of the project to offset potential impacts to fish and wildlife habitat resulting from implementation of the MDP.

Response

PXP must adhere to the Jackson Hole Oil and Gas Lease Stipulation that requires it to “[o]bserve and comply with all State and federal laws and regulations relating to wildlife...” The Wyoming Game and Fish Department’s wildlife recommendations for oil and gas development prioritize various actions. These include: 1) first avoiding impacts from development altogether; 2) then limiting the disturbance and the “footprint” of development; and 3) then attempting onsite mitigation. Funding of offsite mitigation projects as compensation for habitat lost should be attempted *only as a last resort and when all other efforts have failed*.

The area in and around the Upper Hoback is irreplaceable—and critically important for numerous wildlife species. The Forest Plan allows for some resource development in the Upper Hoback, but only if it will have “no adverse and some beneficial effects on wildlife.” Notably, the conservation of this area has been identified as necessary to ensure the long-term survival of the Sublette mule deer herd, which is experiencing historic declines which have been attributed to oil and gas development on its winter range. It is also occupied critical habitat and a migration corridor for the threatened Canada lynx.

The Forest Service can and should require PXP to take the necessary steps to first avoid, then lessen its footprint and then attempt onsite mitigation before it is willing to accept offsite mitigation funding. The proposed \$4 million could fund pre-development wildlife studies that are necessary to acquire baseline data to help determine the best siting of roads and well pads. In addition, the Forest Service can and should require techniques and practices that will lessen the impact of PXP’s development proposal, even if these practices cost more or require the company to drill at a slower pace.

PXP Terms #7, #8 and #9

PXP agrees to commit up to \$1.1 million in funding for surface and groundwater monitoring efforts over the life of the project.

PXP agrees to commit up to \$400,000 to assist the Wyoming Department of Environmental Quality with air quality monitoring in and around the MDP area.

PXP agrees to commit \$250,000 in funding to conduct a study on the health of moose populations in and around the project area in conjunction with the Wyoming Department of Game and Fish.

Response

As authorized by the National Environmental Policy Act, the federal government may and often does require monitoring studies and reports costing far more than the amounts offered by PXP. The Forest Service is also authorized to seek funding for surface and groundwater monitoring pursuant to Standard Lease Term Number 6 included in all of PXP's leases. This section states, in part, that: "Lessee must conduct operations in a manner that minimizes adverse impacts to the land, air, and water, to cultural, biological, visual and other resources, and other land uses or users. Lessee must take reasonable measures deemed necessary by the Lessor to accomplish the intent of this section. . . . Areas to be disturbed may require inventories or special studies to determine the extent of the impacts to other resources. Lessee may be required to complete minor

inventories or short term special studies under guidelines provided by the Lessor."

PXP Term #10

PXP agrees to commit \$250,000 to fund projects that benefit the local communities immediately surrounding the MDP area.

Response

Increased costs of road maintenance and county services will almost certainly exceed this proposed amount. As many Wyoming communities have discovered in recent years, impacts from oil and gas development that diminish rural quality of life, degrade recreational and sporting experiences on public land and threaten human health cannot be compensated monetarily.

PXP Term #11

PXP agrees to establish and work in conjunction with a Monitoring and Advisory Committee (MAC) involving representatives from Sublette County, Wyoming Game and Fish Department, as well as conservation and ranching experts. Among other things the MAC will monitor development activities and advise PXP on implementing Best Management Practices (BMP) throughout the project area to minimize the impact of the development. The MAC will also advise on the use of funds from the Fish and Wildlife Habitat and Population Fund.

Response

Collaborative efforts such as the group described above have made positive contributions to wildlife management, and as a result have become quite common in the West. The Pinedale Anticline Working Group (PAWG) is one example. Indeed, Wyoming conservation organizations earlier suggested the creation of such a group to help mitigate the impacts of this proposed development.

We support this idea, provided it complies with federal laws requiring balanced representation, and openness and transparency in the conduct of the committee's activities. We are concerned, however, that PXP's offer implies inappropriate and undue control and influence over the selection of group members, along with its powers and functions. The committee should be created independent of PXP and it should advise the Forest Service impartially. The Forest Service has the discretion and authority to require prescribed practices or mitigation measures from PXP.

PXP Term # 12

PXP commits to develop supplemental mitigation programs and adjustments to its development efforts if it is determined the environmental controls approved in the ROD and contemplated by the proposed agreement are not sufficient once development has commenced.

Response

PXP is proposing to comply with an "adaptive management" regime, something the Forest Service is already well within its authority to require. Mitigation programs established for gas fields in Sublette County and elsewhere incorporate these methods. We support adaptive management, subject to rigorous monitoring, credible science, and objective and open decision

making; however, a core mitigation principle is to avoid creating the impact in the first instance. The Forest Service should focus its attention on minimizing impacts by not authorizing development in sensitive areas, limiting the number of wells and well pads, limiting the size of well pads, and by authorizing drilling in carefully controlled stages, or phases.

PXP Term #13

PXP commits to working in coordination with the Sublette County Public Works Department to develop a traffic management plan designed to minimize the impact of project related vehicle traffic along Daniel-Merna Road, Merna-North Beaver Road, and roads within the Bridger-Teton National Forest necessary for implementation of the project. To the extent practicable PXP will implement snow plowing methods that have the least impact on wildlife.

Response

Forest Service regulations, Onshore Order No. 1, the Jackson Hole Area Oil and Gas Lease Stipulation, the BTNF Forest Plan and the BTNF leasing EA/FONSI for MA 23 already address roads and transportation management in great detail. PXP is proposing nothing the Forest Service and local governments can't already require under existing authorities. With respect to wildlife, the Jackson Hole lease stipulation, for example, requires the lessee "to conduct operations in a manner that will offer the least possible disturbance to wildlife..." This requirement would include snow plowing operations.

PXP Term #14

PXP commits to abide by and implement a wide range of project design elements that will reduce the environmental impact of the project. Among other things, these commitments include [a] locating all permanent pads and facilities 500 feet or more from any perennial stream; [b] utilizing site-specific erosion control and a third party engineer/hydrologist for construction activity within 500 feet of certain categories of waterways; [c] scheduling construction for any activity within 500 feet of essential habitat for Snake River or Colorado River cutthroat trout to the extent practicable until after July 31st; [d] utilizing a liquids gathering system and computer assisted operations to minimize truck traffic; [e] using Best Management Practices for reclamation activities; [f] using mats as appropriate for drilling activities; and [g] using "green completion" techniques for completing wells.

Response summary

As explained below, the Forest Service already has the authority to require all of the mitigation measures proposed by PXP in this term. Further, this proposal is inadequate given existing land use requirements, stipulations and regulations. None of the measures proposed here, separately or together, will adequately mitigate environmental impacts to the degree required by the BTNF Forest Plan and the Jackson Hole Area Oil and Gas Lease Stipulation.

PXP Term 14[a]

Locate all permanent pads and facilities 500 feet or more from any perennial stream.

Response to 14[a]

- The BTNF Oil and Gas Leasing Decision for MA 23 states that "mitigation measures may include relocation of surface disturbance away from water courses."
- Federal regulation at 43 CFR 3101.1-2 provides in part that the agency may require relocation of surface facilities 200 meters (about 656 feet) or more, if warranted.
- Federal regulation at 36 CFR 228.108(j)(1) states that the operator shall not conduct operations in riparian areas and wetlands.

PXP Term 14[b]

Utilize site-specific erosion control and a third party engineer/hydrologist for construction activity within 500 feet of certain categories of waterways.

Response to 14[b]

Federal regulation 36 CFR 228.108(j)(2) requires that "[t]he operator shall take measures to minimize or prevent erosion and sediment production. Such measures include, but are not limited to, siting structures, facilities, and other improvements to avoid steep slopes and excessive clearing of land." Chapter 2, Section 6 of the Wyoming Water Quality Rules and Regulations requires permit coverage for storm water discharges from all construction activities disturbing one or more acres.

PXP Term 14[c]

Schedule construction for any activity within 500 feet of essential habitat for Snake River or Colorado River cutthroat trout to the extent practicable until after July 31st.

Response to 14[c]

The mitigation measure proposed by PXP here is already required by the Forest Service's leasing decision for MA 23. "Projects will be designed to minimize impacts to the surrounding watershed, including minimizing impacts to surface and groundwater quality, wetlands, floodplains, and associated riparian and fisheries. Mitigating measures may include ... relocation of surface disturbance away from water courses [and] limiting or halting construction activities during spring runoff, or during spawning periods for fisheries."

PXP Term 14[d]

Utilize a liquids gathering system and computer assisted operations to minimize truck traffic.

Response to 14[d]

The Wyoming Department of Environmental Quality Air Quality Division requires new emission sources in Sublette County to be offset by emission reductions in the vicinity. An overall 10% reduction in NOx and a 50% reduction in VOCs is required for new emissions. In other words, for every 100 tons of NOx it emits, PXP must eliminate 110 tons of NOx somewhere else in Sublette County and for every 100 tons of VOCs it emits, PXP must eliminate 150 tons of VOCs somewhere else in Sublette County. A liquids gathering system will help reduce overall emissions from the project, but it doesn't even begin to address how PXP will

achieve the emission reductions required by DEQ policy.

PXP Terms 14 [e], [f]

Use Best Management Practices for reclamation activities, including mats for drilling activities.

Response to 14[e], [f]

The mitigation measures proposed by PXP are already required by the Forest Service's leasing decision for MA 23: "During and following operations, reclamation measures will be required to restore resource values, including recreation, scenic, watershed, wildlife, and fisheries, to the extent practical. Reclamation measures may include construction of ... other structures which are designed with consideration for livestock, wildlife and fisheries."

PXP Term 14[g]

Use "green completion" techniques for completing wells.

Response to 14[g]

Green completions are already required in this part of Wyoming by the Wyoming Department of Environmental Quality Air Quality Division Chapter 6 Section 2 oil and gas permitting guidance.

PXP Term #15

PXP agrees to work in collaboration with the HCA [Hoback Cattlemen's Association] to maximize the multiple use of the Bridger-Teton National Forest in and around the MDP area and to preserve the association's historic grazing activities. PXP and the HCA will agree to terms in a separate document to accommodate the HCA's legitimate interests in the MDP area.

Response

We commend PXP for any and all efforts to address the HCA's legitimate concerns related to the disruptive and environmentally damaging effects of natural gas development activities. It should be noted, however, that were PXP not willing to address the HCA's concerns, stipulations attached to PXP's leases require the company to coordinate its activities with other forest users in order to minimize impacts, which may include limiting or halting operations during livestock trailing, and construction of facilities or fences may be required in order to reduce conflicts with wildlife and livestock.