



May 22, 2017

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**Objection to:** "True Oil, LLC—Lander Peak Area Exploration Proposal" Big Piney District,  
Bridger-Teton National Forest

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The Wyoming Outdoor Council, The Wilderness Society and Greater Yellowstone Coalition appreciate the opportunity to submit this objection to the Forest Service's draft decision authorizing True Oil's Lander Peak Area Exploratory Proposal. Our organizations have a long history of involvement with oil and gas leasing and drilling proposals on the

Bridger-Teton National Forest. We submitted comments in 2012 and 2015 on this proposal. In accordance with the requirements of 36 C.F.R. Part 218, we respectfully ask for your consideration of the four issues we raise.

### **Summary of the Issues in the Objection**

- I. The Forest Service impermissibly limited the scope of the EA to two wells.
- II. The Forest Service should require additional mitigation measures as conditions of approval.
- III. The Forest Service should ensure accountability in its monitoring requirements.
- IV. The Forest Service should require True Oil to provide additional reclamation bonding.

### **Connection between Prior Comments and Content of the Objection**

- I. We urged the Forest Service to consider the potential impacts from True Oil's master development plan in our May 7, 2012 scoping comments at 2-3, and in our December 1, 2015 scoping comments at 2-3.
- II. We provided detailed suggestions to the Forest Service regarding mitigation measures in our May 7, 2012 scoping comments at 9-13, and in our December 1, 2015 comments at 10-13.
- III. We mentioned the need for the Forest Service to ensure adequate oversight and monitoring of this project in our May 7, 2012 scoping comments at 10, and in our December 1, 2015 comments at 8.
- IV. We suggested the Forest Service require True Oil to secure increased bonding as a condition of approval in our May 7, 2012 scoping comments at 14, and in our December 1, 2015 comments at 13.

### **Detailed Discussion of the Issues in the Objection**

- I. The Forest Service impermissibly limited the scope of the EA to two wells.

As noted in our prior scoping comments, in 2010 True Oil submitted a three-phase Master Development Plan (MDP) of 40 gas wells to the Forest Service for approval.<sup>1</sup> The MDP included the exact two exploratory wells analyzed here, plus 38 additional gas wells. The MDP contained highly detailed plans stating the company's intention to significantly expand its operations in the existing field should the two exploratory wells show promise. It included precise locations for and a timeline regarding drilling each of the 40 proposed wells, beginning with the two exploratory wells.

Before the Forest Service had begun its environmental analysis, however, True Oil withdrew its MDP. It asked the Forest Service to segment the environmental analysis to

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<sup>1</sup> True Oil's October 2010 MDP was enclosed as Attachment #3 in our 2012 scoping comments, and we referenced the MDP again in our 2015 scoping comments at 2. For purposes of this objection, we have attached another copy of the MDP as Attachment 1.

address only Phase I of its MDP—the drilling of two wells. The Forest Service complied with the request—despite public comments in 2012 and 2015 urging it to acknowledge the MDP in its analysis—and prepared an environmental assessment for just the two wells. Nowhere in the EA does the Forest Service mention True Oil’s MDP for 40 wells, or that the two wells considered in the EA are Phase 1 of an already-designed (and at one time submitted) full field master development plan.

This withholding of highly relevant information defeats the “twin aims” of NEPA to: consider all environmental impacts of a proposed action, and inform and involve the public.<sup>2</sup> By choosing not to even acknowledge that this proposal is the first phase of a three-phase development plan, the agency can’t claim to have taken the legally required “hard look” that NEPA requires.<sup>3</sup> Although NEPA doesn’t mandate a substantive outcome, without question, it does require the Forest Service to take reasonable steps (e.g. acknowledging somewhere in the EA that a MDP exists and undertaking adequate analysis) in order to avoid making “uninformed” decisions.<sup>4</sup>

There are two ways in which the Forest Service could have addressed the MDP: 1) By expanding the scope of its analysis to include Phase 1, 2 and 3 of True Oil’s proposal, or 2) by including Phases 2 and 3 of the proposal in the cumulative impacts analysis of the EA. These options are explained in greater detail below.

### *1) Expanding the Scope*

In determining the scope of an environmental analysis, the Forest Service has the benefit of the Council on Environmental Quality’s regulations implementing NEPA to guide its process. The agency is not permitted to segment an action, as it has done here, by analyzing only a portion of a proposal—even if the larger proposal has been temporarily withdrawn. “Proposals or parts of proposals which are related to each other closely enough to be, in effect, a single course of action shall be evaluated in a single impact statement.”<sup>5</sup>

The regulations further explain: “To determine the scope of environmental impact statements, agencies shall consider 3 types of actions . . .”<sup>6</sup> Actions can be connected, cumulative and/or similar.<sup>7</sup> Actions are “connected” if they: “(i)Automatically trigger other actions which may require environmental impact statements; (ii) cannot or will not proceed unless other actions are taken previously or simultaneously or (iii) are independent parts of a larger action and depend on the larger action for their justification.”<sup>8</sup>

The Tenth Circuit Court of Appeals explained that the reason for addressing

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<sup>2</sup> Baltimore Gas & Electric Co. v. Natural Resources Defense Council, Inc., 462 U.S. 87, 97, 100 (1983).

<sup>3</sup> Utah Shared Access Alliance v. United States Forest Service, 288 F.3d 1205, 1213 (10th Cir. 2002).

<sup>4</sup> Robertson v. Methow Valley Citizens Council, 490 U.S. 332, 351(1989).

<sup>5</sup> 40 C.F.R. § 1502.4.

<sup>6</sup> 40 C.F.R. § 1502.4(a).

<sup>7</sup> 40 C.F.R. § 1502.4(a) (1),(2),(3).

<sup>8</sup> 40 C.F.R. § 1508.25(a)(1)(i),(ii),(iii).

“connected” or “closely related” actions in a single environmental impact statement is “to prevent agencies from minimizing the potential environmental consequences of a proposed action (and thus short-circuiting NEPA review) by segmenting or isolating an individual action that, by itself, may not have a significant environmental impact.”<sup>9</sup> The court “rejected claims that actions were connected when each of the two projects would have taken place with or without the other and thus had independent utility.”<sup>10</sup> Thus, “projects that have independent utility are not connected actions under 40 C.F.R. § 1508.25(a)(1)(iii).” The court did find, however, that “two proposed actions [are] connected where one action could not occur but for the occurrence of the other.”<sup>11</sup>

We believe the two exploratory wells analyzed in this EA are “independent parts of a larger action and depend on the larger action for their justification.”<sup>12</sup> The MDP provides the context for our assertion that these two wells are connected to—indeed, they are the precursors required for—True Oil’s full field development proposal. Although there is never a guarantee that a target formation will be productive, True Oil knows enough to have already prepared (and submitted) a MDP. We are not asking the company or the Forest Service to undertake a speculative exercise. Here, True Oil already publicly disclosed the existence of a detailed 40-well MDP by submitting it to the Forest Service. The agency’s responsibilities under NEPA and to the public require that it acknowledge the plan’s existence and include it in the analysis.

This scenario is analogous to a drilling proposal the Bridger-Teton National Forest addressed between 2006 and 2013 in the Upper Hoback Basin of the Wyoming Range. There, Plains Exploration and Production Company (PXP) proposed drilling between 1-3 exploratory wells. Despite stated public concern that the company likely knew more than it was disclosing about its larger development plans, PXP claimed it had no way to predict what full field development would look like without the benefit of information collected from drilling the initial wells. The Forest Service took PXP at its word and prepared a draft EIS in 2007 to analyze the impacts anticipated from only the three proposed wells.

At the same time, however, the company’s leadership had made statements to its shareholders that it had full field development plans, citing geology in the basin similar to that of the highly productive Jonah Field. The public, including the governor at the time and other elected officials, raised objections. The company seemed to be speaking out of both sides of its mouth. If it was being truthful with its shareholders that it anticipated full field development, then the proposal submitted to the Forest Service needed to include Phase 1 (the 1-3 initial wells) and Phase 2 (133 additional wells). It was impermissible for PXP to attempt to segment two phases of a project that were clearly connected.

PXP ultimately withdrew its initial proposal and came back with a proposal that included Phases 1 and 2. The Forest Service prepared another draft EIS in 2011 based on

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<sup>9</sup> *Citizens’ Comm. to Save Our Canyons v. U.S. Forest Serv.*, 297 F.3d 1012, 1028 (10th Cir. 2002) (citations omitted).

<sup>10</sup> *Id.* (citations omitted).

<sup>11</sup> *Id.* (citations omitted).

<sup>12</sup> *Id.* (citations omitted).

PXP's MDP—analyzing the impacts that would occur from drilling 136 wells.

Here, True Oil has already prepared (and submitted) a MDP that includes Phase I (2 initial wells) Phase 2 (seismic activities) and Phase 3 (38 additional wells). Despite True Oil's withdrawal of the MDP and its apparent request to only address Phase 1 of its proposal, the Forest Service has an independent responsibility to determine the appropriate scope of any analysis it prepares. Here, the Forest Service should have determined that Phase 1 of True Oil's MDP is an "independent part[] of a larger action and depend[s] on the larger action for [its] justification."<sup>13</sup> The Forest Service erred in not expanding the scope of this analysis to include Phases 2 and 3.

## *2) Cumulative Impacts*

In the alternative, even if the Forest Service were to determine (incorrectly) that Phases 2 and 3 of True Oil's proposal are not connected actions—it nevertheless should have included Phases 2 and 3 of the MDP in its consideration of cumulative impacts. Cumulative impacts are those that "result from the incremental impact of the action when added to other past, present and reasonably foreseeable future actions."<sup>14</sup> Although full field development proposal is not an absolute certainty, NEPA doesn't require analysis merely of definitive future actions—it requires the agency to consider impacts of the proposed action when coupled with "reasonable foreseeable" future actions.<sup>15</sup> There is more than enough information in this case—as the MDP has already been prepared and submitted—to illustrate that Phases 2 and 3 are reasonably foreseeable. As such, the Forest Service erred in not considering these and the potential impacts from this larger development scheme in its cumulative impacts analysis.

### Suggested Remedy for Issue I:

Phases 1, 2 and 3 of the MDP are "connected actions" such that the Forest Service should have considered them together in a single EIS. Had the Forest Service considered the MDP in its cumulative impacts analysis, it is our contention that it would not have issued a Finding of No Significant Impact (FONSI), as it did here. The agency would surely have found Phase 1 of the proposal, coupled with the reasonably foreseeable future actions of Phases 2 and 3, to be a "major federal action significantly affecting the quality of the human environment" for which the preparation of an EIS is required.<sup>16</sup> Because both avenues lead to the same endpoint, we ask the Forest Service to prepare an EIS in which all three phases of True Oil's development plans are analyzed.

### Background information about Issues II, III and IV

The next three issues we raise in this objection stem from our concerns about True Oil's history of oil spills, massive water pollution events from pipeline ruptures, and other

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<sup>13</sup> 40 C.F.R. § 1508.25(a)(1)(iii).

<sup>14</sup> 40 C.F.R. §§ 1508.7, 1508.25(a)(2).

<sup>15</sup> 40 C.F.R. § 1508.7.

<sup>16</sup> 42 U.S.C. § 4332(c).

violations of law. A report entitled, True Companies: A History of Regulatory Issues, documents that True Oil, LLC and its companies (Bridger and Belle Fourche) are responsible for more than 30 spills since 2006—illegally releasing some 300,000 gallons of crude oil in Wyoming, Montana and North Dakota, and have been fined on multiple occasions for environmental violations.<sup>17</sup> The report, citing investigations by the Pipeline Safety Trust and the Casper Star-Tribune, found that True Oil’s pipeline companies “have incident rates roughly double the industry average.”<sup>18</sup>

One of the most notable and unfortunate incidents was the release of more than 30,000 gallons of crude oil into the Yellowstone River near Glendive, Montana on January 17, 2015.<sup>19</sup> Governor Bullock declared a state of emergency in two counties, and the Glendive water treatment plant was “shut down for five days after elevated levels of benzene were found in water samples.” At the time of the report more than a year later, the State of Montana and the U.S. Department of the Interior were “pursuing recovery for damage to natural resources, including fish, birds and animal habitat.”<sup>20</sup>

In 2014, one of True Oil’s pipeline companies was responsible for 25,000 gallons of crude oil spilled on BLM land in Wyoming’s Powder River Basin.<sup>21</sup> It is not clear whether BLM collected a fine for the spill, but the use of the pipeline was illegal (the right of way permit had expired some 8 years earlier) and the BLM fined the company for trespass.<sup>22</sup> In 2016, one of its pipeline companies was responsible for “spilling some 1,500 gallons of oil a quarter-mile along a dry creek bed east of Gillette, Wyoming.” The Gillette News-Record reported the cause of the spill to be “a corroded pipe.”<sup>23</sup>

The report also documents fines the Wyoming Department of Environmental Quality imposed on True Oil’s Belle Fourche pipeline company five times for “spills from broken pipelines in Campbell County, Wyoming in 2007, 2008 and 2010.”<sup>24</sup> In late 2014, the DEQ began negotiating a Remedy Agreement to clean up contaminated soil and groundwater (where samples had found elevated levels of benzene and other toxins) at the company’s crude oil collection and pipeline pump station in Converse County, Wyoming.<sup>25</sup> There were also two instances in 2007 and 2009 in Wyoming where True Oil and its companies failed to obtain an air quality permit for a barrel tank, and failed to maintain and operate a B-TEX emissions control system at an active well site, paying fines for both violations.<sup>26</sup>

The report documents instances over the last decade where True Oil and its

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<sup>17</sup> True Companies: A History of Regulatory Issues, Todd T. Pufahl, President and Business Manager of Laborers District Council Minnesota and North Dakota. Attachment 2.

<sup>18</sup> Id. at unnumbered page 2.

<sup>19</sup> Id.

<sup>20</sup> Id.

<sup>21</sup> Id. at unnumbered pages 2-3.

<sup>22</sup> Id. at unnumbered page 3.

<sup>23</sup> Id.

<sup>24</sup> Id.

<sup>25</sup> Id.

<sup>26</sup> Id.

companies “have demonstrated an apparent pattern of poor construction practices and violations of regulations for the safe operation and maintenance of pipelines.”<sup>27</sup> Detailed information drawn from the Pipeline and Hazardous Materials Safety Administration (PHMSA) is included in the report and describes a litany of disregard for procedures, inspections, operations and maintenance activities.<sup>28</sup> Apparently none of the fines disclosed in the report has been significant enough to act as a deterrent to repeated and inexcusably careless, illegal practices. The report concludes with a sobering account of the companies’ “dangerous disregard for worker safety with a record that includes multiple fatalities and apparent employment law violations.”<sup>29</sup>

We mentioned True Oil’s operating track record in our scoping comments in 2012 and 2015. We also mentioned complaints we’d received in 2006 from citizens about the dilapidated, corroded and leaking tanks and equipment observed on its leases in the Wyoming Range. The Forest Service required True Oil to take remedial action, which the company only addressed in part.<sup>30</sup> A year after the incident was reported, the Forest Service wrote again to True Oil, noting that it had still not filled a hole in the sealing material of a drip pot.<sup>31</sup> In addition, the Forest Service said, “It appears there still may be something leaking along the floor seal at the back of the building from inside to outside.”<sup>32</sup>

A review of True Oil’s past records since the early 1980s, (e.g. Sundry Notices, correspondence with the Forest Service and BLM, Notices of Incidences of Noncompliance, and Reports of Undesirable Events) reveal a pattern of violations on its Bridger-Teton leases. With respect to well 13-16a on lease WYW 16419, the BLM noted in a letter to True Oil that agency personnel had inspected the drilling location, stating, “At that time, numerous violations were found, contrary to the approved drilling plan.”<sup>33</sup> There were 17 violations in all.<sup>34</sup>

Less than a year later, the BLM found two more violations at the same well site.<sup>35</sup> The first was that True Oil had “failed to report spill of Class I Major Description (D). Any spill required less of volume in a sensitive area.”<sup>36</sup> The second was a violation of the surface use plan as there was “accumulated oil on pit.”<sup>37</sup>

Things only got worse the next year. On July 5, 1985, the same well (13-16a) “blew out and caught fire.”<sup>38</sup> Eleven workers sustained burns—four of them received third degree

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<sup>27</sup> *Id.* at unnumbered page 4.

<sup>28</sup> *Id.* at unnumbered pages 4-7.

<sup>29</sup> *Id.* at unnumbered pages 8-9.

<sup>30</sup> Letter from Greg Clark, Big Piney District Ranger to John Fanto, True Oil LLC’s Production Superintendent, July 17, 2007. [Attachment 3](#).

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> Letter from BLM Assistant District Manager of Mineral Resources to True Oil Company (with attached Drilling Inspection Record), December 29, 1983. [Attachment 4](#).

<sup>34</sup> DOI Geologic Survey Inspection Record—Drilling, December 14, 1983. [Attachment 5](#).

<sup>35</sup> DOI Geologic Survey Inspection Record—Drilling, October 2, 1984. [Attachment 6](#).

<sup>36</sup> BLM Notice of Incidents of Noncompliance Detected, October 2, 1984. [Attachment 7](#).

<sup>37</sup> *Id.*

<sup>38</sup> U.S. DOI Geological Survey: Sundry Notice and Reports on Wells, November 22, 1985. [Attachment 8](#).

burns and were life-flighted to the Salt Lake City Burn Center.<sup>39</sup> One of these men, Clifford (Red) Washut, ultimately died from his injuries on July 17, 1985.<sup>40</sup> True Oil reported a “tubing failure 8 joints below surface” as the cause of the event.<sup>41</sup>

The EA failed to acknowledge this relevant operational history in its analysis, or to explicitly base its mitigation, monitoring and bonding requirements within the context of this information. As stated above, preparing an EIS for the 40-well MDP is necessary to provide an opportunity for the Forest Service to examine in detail the extent of the likely impacts from True Oil’s full field development plan. It would also serve to help determine the ways in which the agency might better ensure True Oil’s past violations never again occur on the Bridger-Teton. We address mitigation, monitoring and bonding in turn below.

II. The Forest Service should require additional mitigation measures as conditions of approval.

The South Cottonwood drainage where True Oil is contemplating drilling two (followed by an additional 38) wells is one of the most popular, scenic and wildlife-rich areas in the Wyoming Range. The sensitive riparian habitat in this part of the national forest supports numerous wildlife, amphibian and fish species—not the least of which are core conservation populations of Colorado River cutthroat trout.

It is our understanding that the four wells True Oil operates in the area now are the only active wells on the Bridger-Teton. In contrast to the four existing wells, which were drilled mostly in the 1980s using conventional techniques targeting the Frontier Formation, these two (+38) wells will use unconventional drilling methods—including hydraulic fracturing—to extract gas from the tight sands of the Hilliard Shale Formation. Anticipating full field development, True Oil formed the Lander Peak Unit in 2013 (4,736 acres) which will target the Hilliard Shale.<sup>42</sup>

Lease stipulations are designed to provide adequate protection for sensitive resources while still allowing development to occur. In this case, however, the Forest Service will issue exceptions to certain lease stipulations and/or requirements in the forest plan that are designed to safeguard riparian habitat (e.g. prohibiting well pads within 500 feet from water) to allow expansion of existing and/or semi-reclaimed pads.<sup>43</sup> Because the riparian habitat in the unit is extremely sensitive, we recognize the challenges inherent in authorizing ground disturbing development anywhere else but on these older, existing well pads.

If these pads did not already exist, however, it would be highly unlikely that the Forest Service today would authorize drilling and fracking operations fewer than 200 feet

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<sup>39</sup> Memorandum to BLM state director from BLM district manager: True Oil Company Blowout and Fire, Soda Lake Unit, July 16, 1985. Attachment 9.

<sup>40</sup> BLM Confirmation/Report of Telephone Conversation, July 19, 1985. Attachment 10.

<sup>41</sup> Report of Undesirable Event, August 2, 1985. Attachment 11.

<sup>42</sup> EA at 15, 17.

<sup>43</sup> Id. at 20.

from streams containing core conservation populations of Colorado River cutthroat trout. Given this unfortunate reality, coupled with True Oil's poor track record of chronic disregard for the most basic operating standards that are designed to safeguard environmental quality, we urge the Forest Service to impose the absolute highest mitigation measures before allowing this company to break new ground.<sup>44</sup>

In determining how and under what conditions to permit new oil and gas development on the Bridger-Teton, the Forest Service should consider the mitigation hierarchy. Wherever possible, the agency should condition development to avoid impacts. After that, it should attempt to minimize impacts. Then it should consider any on-site mitigation. Finally, as it is the least effective, it should consider off-site and compensatory mitigation.

#### Suggested Remedies for Issue II:

- 1) As a condition for authorizing any surface disturbance related to any new drilling and fracking operations in this field, and given True Oil's track record for pipeline ruptures and spills, the Forest Service should require True Oil to replace its existing gas gathering pipelines to ensure state of the art equipment is in place.
- 2) Currently there is no difference between the proposed action and the mitigation alternative with respect to air pollution mitigation. To remedy this, the Forest Service should require True Oil to use Tier IV (or equivalent) drill rigs in its operations. We understand that other operators in the Upper Green and elsewhere are using rigs that are far less polluting than Tier II, including electric rigs.
- 3) The EA states (at 179) that if tests reveal drill cuttings contain a low enough level of contaminants (e.g. hydrocarbons, mercury, arsenic, cadmium, etc.) True Oil could bury the cuttings on site. We request the Forest Service prohibit any burial whatsoever of drill cuttings or other materials that could leach and pollute surface or groundwater, especially as the well pads in this instance are located closer to streams than would otherwise be allowed. All drill cuttings should be removed from national forest lands and properly disposed of at an appropriate off-site facility.
- 4) The Forest Service should require True Oil to use non-diesel fracking fluids.
- 5) The Forest Service should require True Oil to update its Spill Prevention, Control

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<sup>44</sup> We appreciate the Forest Service incorporating many of the specific best management practices we suggested in our scoping comments as conditions of approval. Some of these are existing requirements for operating in the Upper Green River Basin, or are already mandated by state law. Still, baseline surface and groundwater testing, closed loop (pitless) drilling practices, installation of backflow prevention devices, the use of tracers and other tests to ensure integrity of the cement and casing of well bores, green completions, replacing earthen berms around tanks with corrugated and lined steel berms, "dark sky" lighting practices, implementation of the Forest Service weed management plan, and public disclosure of fracking fluid constituents are all important components of any responsible, modern-day drilling operation on public land.

and Countermeasure Plan (SPCCP) and its Stormwater Pollution Prevention Plan (SWPP) before it issues a decision. The Forest Service made a Finding of No Significant Impact based in part on aspects of these plans that the agency knows to be out of date.<sup>45</sup> The EA states that the plans will be updated based on a 2016 site visit, but that has not happened. We know from the EA that the pad orientation has changed, and yet reliance on these old plans (based on prior pad orientation) is used to describe mitigation measures the Forest Service deems adequate. The public should have a chance to review the updated reports before the Forest Service makes a decision, as these contain mitigation measures that may or may not be sufficient.

- 6) The draft decision notice exempts the requirement found in the mitigation alternative to establish baseline data on deep groundwater quality by drilling the necessary monitoring wells. There is no rationale for this exception. The Forest Service should require True Oil to collect this data prior to Phase 1 of its proposal.
- 7) In the mitigation alternative, the Forest Service would disapprove the installation of a water supply well and temporary surface water line from pad 13-16a. In the decision notice, however, the Forest Service states that these will be allowed. There is no rationale in the decision notice about this change. We ask that the mitigation alternative remain intact, without this exception.
- 8) True Oil should provide compensatory mitigation to the Wyoming Game and Fish Department to help offset the potential harm its proposal could have to Colorado River cutthroat trout on site.
- 9) The Forest Service should ensure that each sentence in the EA that commits to a mitigation measure contains a subject. In other words, many of these commitments are now worded in the passive voice, e.g. "speed limits will be enforced, environmental awareness training would be provided, erosion would be monitored, a fire management plan would be prepared."<sup>46</sup> If these are commitments the Forest Service is requiring of True Oil, the company should be the subject of the sentence, and each sentence should include a "will" or a "shall." If these are measures that third-party contractors will undertake, that should be noted instead. If the Forest Service, DEQ or WGFD will take some of these actions, that too should be clarified. There should be no question as to the exact entity that is responsible for each mitigation measure.

### III. The Forest Service should ensure accountability in its monitoring requirements.

Sound industry standards, best management practices, and progressive mitigation measures are only as good as their implementation. True Oil's record demonstrates unacceptable disregard for environmental protection, and gives us no reason to trust that this company is capable of meeting the expectations set out in the EA to protect the

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<sup>45</sup> EA at 56-57 stating that "True Oil will update their SWPPP [and their SPCC] to be consistent with the redesign of the proposed well pads based on the September 2016 onsite visit." None of these three outdated documents were included in the EA.

<sup>46</sup> EA at 43-45.

sensitive riparian and other resources in this treasured part of the Wyoming Range.

If the Forest Service ultimately authorizes True Oil's proposed expansion in this field, then the Forest Service should commit to monitoring the company's operations at every stage of development and throughout the life of the field. It should take any and all necessary steps to ensure the national forest lands the American people entrust it to manage are not harmed by this company's negligence or wanton disregard of the law.

We are concerned that the Forest Service's commitment to monitoring is something that more often than not simply does not occur. The Bridger-Teton's forest plan concedes as much. "The monitoring outlined in the following action plan is the optimal monitoring for each program area on a reoccurring basis and is based on the presumption of full funding of the Forest Plan. It is doubtful if annual budgets will fully fund the monitoring described."<sup>47</sup> We understand that fire borrowing as well as budget cuts have left national forests, including the Bridger-Teton National Forest, underfunded and short-handed. The BLM and Wyoming DEQ are at a similar disadvantage with respect to staffing and budgets. In this instance, however, monitoring cannot be a promise made and ultimately broken. There is too much at stake.

#### Suggested Remedies for Issue III:

- 1) Because this part of the Wyoming Range is one of the most popular and beautiful areas of the southern Bridger-Teton, any damage True Oil's operations may have will be unacceptable and incredibly controversial. We ask the Forest Service to consider forming a citizens' working group—as was once established for the Pinedale Anticline—where the Forest Service, BLM, DEQ, WGFD and True Oil can routinely provide information regarding the project's development, and the results of the monitoring to a diverse stakeholder group including recreationists, anglers and hunters, conservation groups, landowners, county or state personnel, and others. This would provide an additional layer of oversight and accountability.
- 2) Before any ground breaking activities and with input from the citizens' working group (described above), the Forest Service should prepare and disclose to the public a detailed monitoring plan for this project, including the aspects of the operation that will be monitored, the resources that will be monitored, the Forest Service staff member(s) who will be responsible for the monitoring, an acknowledgement of the frequency with which the monitoring will occur, and the actions the agency will take if violations are found, or if impacts to resources are occurring.
- 3) If the Forest Service cannot commit a staff person or persons to the necessary monitoring described above, then True Oil should cover the costs of an independent third-party contractor (that the Forest Service hires) to oversee True Oil's operations and to undertake this monitoring.
- 4) Given the company's numerous pipeline ruptures resulting in massive spills that

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<sup>47</sup> 1990 Bridger-Teton Land and Resource Management Plan at 414.

have contaminated soil and drinking water in Wyoming, North Dakota and Montana, there should be specific and frequent monitoring of True Oil's pipelines and gathering lines. We suggested in the mitigation section, above, that True Oil replace its current lines with new pipe. The Forest Service should require an initial third-party inspection for these new lines, and should require routine third-party inspections of the lines for the life of the project. True Oil should cover the costs of these inspections.

- 5) Under no circumstance should the Forest Service delegate monitoring responsibilities to True Oil. Currently in the EA many aspects of monitoring are either assigned to True Oil (e.g. invasive weeds, water quality, etc.) or left unclarified.<sup>48</sup> True Oil's track record illustrates that it frequently fails to perform basic industry procedures, flouts best management practices, and violates the law. It cannot be trusted to monitor itself.

#### IV. The Forest Service should require True Oil to provide additional reclamation bonding.

The Forest Service has an independent responsibility to determine whether the bond the BLM has assessed is sufficient to cover the potential damage to surface resources that True Oil's operations could have on this sensitive area of the Bridger-Teton.<sup>49</sup> We raised the issue of adequate bonding in both our 2012 and 2015 scoping comments. We encouraged the Forest Service to determine whether the BLM's bond amount is sufficient in light of True Oil's documented history of environmental violations.

Based on a Government Accountability Office study, it is clear that the BLM can and should be doing a better job managing potential liability from oil and gas well operations.<sup>50</sup> Minimum bond requirements are inadequate to cover expenses when remediation is necessary. A mere \$25,000 is the required bond for a company operating statewide. This is hardly sufficient to cover routine reclamation, let alone remediation when problems and violations occur. This paltry sum also provides no incentive for a company to avoid situations that would require it to pay for the harm it has caused. As a matter of pure economics, a company can justify leaving public land in worse shape than when it began operating there because the bond alone is smaller than the actual cost of clean-up.

Bonds can and should be increased when a company, like True Oil, has a history of environmental noncompliance. Drilling even a single oil and gas well costs several million dollars. It stands to reason that, at minimum, a company should be able to assert it has at least this much invested to cover the costs of any environmental harm resulting from its operations.

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<sup>48</sup> See #9 under Issue II above, explaining that many of the sentences in the EA regarding commitments to monitoring and mitigation lack a subject. It is entirely unclear whose responsibility it will be.

<sup>49</sup> 36 C.F.R. 228.109(a).

<sup>50</sup> GAO Report, February 2011. Oil and Gas Bonds: BLM Needs a Comprehensive Strategy to Better Manage Potential Oil and Gas Well Liability.

Suggested Remedy for Issue IV:

- 1) The Forest Service should require True Oil to provide an additional (and substantial) reclamation bond.

**Conclusion**

When people talk about the Wyoming Range, they speak in superlatives: The best moose habitat in Wyoming, the northern terminus of the longest mule deer migration corridor in the world, and the last, best habitat for Colorado River cutthroat trout. Unfortunately, when talk turns to oil and gas companies, True Oil is not among the best. Indeed, its record is one of chronic and serious environmental violations.

In determining whether and under what conditions the Forest Service will authorize True Oil's request to expand development in the Wyoming Range, we urge the agency to err on the side of caution. Requiring an EIS that acknowledges the company's full-field master development plan, as well as this company's poor track record, is a necessary first step. A thorough analysis of the company's MDP would allow the Forest Service to better anticipate impacts and design mitigation measures. After that is complete, a plan for monitoring and requirements for adequate bonding could be addressed.

Thank you for considering the issues we raised in this objection. We look forward to the opportunity to talk with you about these concerns.

Sincerely,

Lisa D. McGee, Wyoming Outdoor Council, *Lead Objector*

And on behalf of:

Dan Smitherman, The Wilderness Society

Pat Kearney, Greater Yellowstone Coalition