



July 6, 2012

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Dear Shane,

We appreciate the time you spent meeting with us last week discussing details regarding the two new alternatives being prepared for the supplemental draft EIS for the Noble Basin Master Development Plan. We were surprised and disappointed, however, to learn that neither alternative is as protective as the Forest Service could require. We write to ask you to confirm several statements you made. We also ask the Forest Service again to consider that creation of an alternative maximizing protection of surface resources is both necessary and legally defensible.

This past winter the Forest Service came under scrutiny for proposing only one new alternative in the upcoming supplemental draft EIS, which the agency indicated would waive the long-standing Jackson Hole Oil and Gas Lease Stipulation. In response, the Forest Service made a public announcement that a second alternative would also be prepared. The Bridger-Teton's Supervisor explained that this second alternative would be "a complete stipulation-compliant, forest plan-compliant alternative." February 15, 2012 statement of Jacque Buchanan to the Jackson Hole News & Guide, "Forest to mull limits on gas, Bridger-Teton agrees to study Hoback plan in context of 65-year-old restrictions."

Many members of the public—citizens, sportsmen, and conservation organizations alike—praised the Forest Service's February announcement that it would indeed prepare and consider a "complete stipulation-compliant and forest plan-compliant alternative." Although the irony was not lost on many of us that the Forest Service had to be persuaded to do the very thing it said it would do when it consented to lease these controversial parcels (i.e. fully enforce and not waive stipulations), we nevertheless celebrated the announcement as better late than never. It now appears this praise was premature, and the Forest Service was undeserving of it.

We had reasonably assumed that a "complete stipulation-compliant" alternative meant that all of the stipulations originally attached to PXP's leases would be included and analyzed in this alternative. More than a year ago during the formal comment period for the draft EIS, we had prepared maps of the project area that illustrated the extent to which enforcement of all the stipulations would curtail surface disturbance. These maps

considered both the Jackson Hole Oil and Gas Lease Stipulation in which 1,250-foot buffers on either side of existing roads would prevent placement of well pads, and no surface occupancy stipulations for slopes greater than 40 percent or “technically unsuited soils,” which would prevent placement of new or upgraded roads, well pads or industrial facilities in these areas. This mapping exercise confirmed that if the Forest Service chose to enforce all of these protective stipulations, PXP would have access to only 28 percent of the surface of the project area.

When we referenced these maps in our meeting, however, you said the Forest Service has no plans at this time to limit PXP’s access only to that 28 percent of the Basin. Although surface occupancy on slopes greater than 40 percent would be prohibited, other areas deemed technically unsuitable such as landslide prone areas and marginally unstable soils would be available for surface occupancy within this alternative. You explained that technical NSO stipulations may be waived if new technology becomes available that mitigates sufficiently the effects to the resources the stipulations sought to protect. We are unfamiliar with any internal direction that addresses the criteria for exemptions of technical NSO stipulations. We’d ask that you confirm this statement and provide any citations that support this understanding.

Although we do not dispute the authority of the Forest Service—in rare circumstances, after a robust analysis and for good reason—to except, modify or waive protective lease stipulations, we firmly believe there is absolutely no reason to do so in this case. Of the two new alternatives, one already is slated to waive stipulations. It was for this reason—i.e. to create an alternative that was fully stipulation-compliant—that a second alternative was needed. Opting not to consider any alternative that would uphold and enforce all of the stipulations attached to PXP’s leases is contrary to the agency’s goal of preparing an objective environmental analysis that includes a reasonable range of alternatives. Moreover, waiving technical NSO stipulations is not consistent with what the agency promised the public twenty years ago when it consented to lease these controversial parcels¹, and again just five months ago when it promised a “complete stipulation-compliant” alternative would be prepared.

¹ Oil and gas development on the lands surrounding Jackson Hole has been and remains today a controversial subject. While the 1990 Bridger-Teton forest plan was being finalized, 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, Regional Forester Tixier issued a clarification letter stating:

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.’

It was the promise of this regional forester, in response to the exact 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.

This is one of the most sensitive and remote locations proposed for natural gas development anywhere in the country. The Upper Hoback Basin has been described as the most important wildlife crossroads in the Greater Yellowstone Ecosystem, if not the nation.² It is also the only gas field in the country proposed at the headwaters of a congressionally designated wild and scenic river.³ Thus, we are struggling to understand the Forest Service’s motivation for waiving these important, protective stipulations when the resource unquestionably warrants any and all safeguards the agency is within its authority to require—including enforcement of existing stipulations.

Regardless of the Forest Service’s ultimate decision, it is entirely unclear why, after these many years of flawed NEPA analyses and a record number of public comments raising concerns about this project, the agency refuses to even analyze an alternative that would hold PXP to the most basic terms of its leases. To be clear, this would not be a “conservation alternative.” Rather, it would more accurately be described as a “promises kept” alternative that would honor the commitments the agency has made to the public and enforce the unambiguous contractual lease terms PXP has known since day one would limit its occupancy of the surface.

Given the highly restrictive stipulations disclosed when these leases were sold, any reasonable company would have been acutely aware that its right to occupy the surface would be limited to the 28 percent of the project area the leases made available. That PXP seeks to change the rules of the game now by requesting waivers of these long standing stipulations is not surprising. It is in PXP’s financial best interest to have the Forest Service authorize its project in the most lenient manner possible. That the Forest Service, however, has capitulated to PXP’s requests to such an extent that there is currently no alternative being prepared that scales back PXP’s Master Development Plan footprint in any appreciable way—let alone to the 28 percent of the project area PXP’s

² The importance of the Upper Hoback Basin in providing wildlife habitat and opportunities for migration is well acknowledged. Specific to mule deer, it is worth noting that adjacent to the proposed drilling area (and actually as part of the surface area within PXP’s proposed MDP) lies a large portion of the Sommers-Grindstone conservation easement that was funded by many agencies and organizations, including the Wyoming Game and Fish Commission, the Wyoming Wildlife and Natural Resources Trust, the U.S. Fish and Wildlife Service, the National Fish and Wildlife Foundation, the Wildlife Heritage Foundation of Wyoming, the Mule Deer Foundation and many others. Additionally, \$11 million was contributed from the Jonah Infill and Pinedale Anticline Mitigation Funds. A 2011 analysis conducted by the Wyoming office of The Nature Conservancy documents, through a quantified assessment, that this easement meets and exceeds the Pinedale Anticline Project Office’s conservation target for mitigation of mule deer migration corridor. The most recent WGFD data and maps show that the mule deer corridors and stopover habitats are even more pronounced in the Upper Hoback Basin than on this adjacent easement property. The Forest Service should be cognizant that the BLM, the State of Wyoming and numerous other state and federal agencies have already broadly recognized the importance of this area for the survival of mule deer in the area. The Forest Service should be aware of this context when it considers mitigation measures for the project area. Failure to impose sufficient safeguards for mule deer would undercut the impressive efforts already made to ensure the mule deer herd survives.

³ The Hoback River has been designated one of American’s top ten most endangered rivers two years in row by American Rivers due to PXP’s drilling proposal in the Upper Hoback Basin, the headwaters of this Wild and Scenic river.

leases clearly define—is disappointing to say the least.⁴

When we asked why the Forest Service was not holding PXP to the basic terms of its leases in at least one alternative, you stated that the Forest Service was obligated to provide reasonable access to the leasehold. You said there were instances in which the government was liable when it limited access too substantially. We ask you to confirm this statement and to provide citations to the cases you referenced.

Even without the benefit of knowing the particular facts of those cases, we remain confident they could easily be distinguished from the situation here. In this case, PXP bid on and acquired leases that limited its right to occupy the surface to only 28 percent of the Basin. Holding the company to these terms would not amount to a breach of contract or a taking. Indeed, these were the contractual terms PXP assented to when it acquired the leases. And it was only with the inclusion of these stipulations that the Forest Service consented to lease these parcels at all.⁵ PXP cannot claim the government is taking or depriving it of something it never had rights to in the first place. The Forest Service is incorrect if it assumes enforcing existing stipulations puts it at risk of future liability. We would appreciate another meeting to review the legal authority the Forest Service appears to be relying on to justify its decision not to enforce all NSO stipulations.

We then questioned why the Forest Service had not required PXP to directionally drill more wells from fewer pads, as companies operating in Sublette County are now doing as a matter of routine. Many years ago the industry standard surpassed eight wells per pad, yet PXP's proposal has remained the same. You noted that until the exploratory Phase I is complete, it is not reasonable to assume PXP could access the mineral resource from fewer pads. If indeed it is impossible to know what is technically feasible prior to exploration, it seems unwise to approve a Master Development Plan at this time. What the Forest Service is doing—which it should not do—is rely on PXP's desired development proposal to define the scope and extent of surface disturbance. This is contrary to the statutory and regulatory framework that defines the Forest Service's responsibility and authority with respect to oil and gas leasing and development on the

⁴ The Forest Service should review the Pinedale Anticline's administrative record, which illustrates the BLM's decision ultimately to expand the range of alternatives and to grapple with ways it could "control spatial disturbance over time maximizing development in some areas while minimizing development in other areas, especially in portions of big game crucial winter ranges." Letter from Bob Bennett, BLM State Director, December 2006. It is entirely reasonable to expect the Forest Service to undertake a similar evaluation, which would start with an adequate range of alternatives and include at least one "complete stipulation-compliant" alternative. Another alternative that is more protective than this (i.e. a "conservation alternative") should also be analyzed.

⁵ The Forest Supervisor at the time explained that "[t]he Forest Service would not object to leasing lands in MAs 22 and 23 with the stipulations required in the Forest Plan plus the additional stipulations necessary to protect other site-specific resources." 1991 Leasing EA/Decision at 1 (emphasis added). He concluded by stating: "Based on the Forest Plan and this EA, I am informing the [BLM] that we have no objection to the issuance of oil and gas leases for the lands identified as suitable in the Forest Plan as long as they are issued with the specified stipulations and notices." *Id.* at 2 (emphasis added). Ten months after his September 30, 1991, leasing decision, the Forest Supervisor authorized the Wyoming BLM to auction oil and gas leases in MA 23, "provided that the lease contains the enclosed stipulations" (emphasis added). On June 23, 1994, the BLM issued the oil and gas leases located within MA 23 now held by PXP.

public lands it manages.⁶

Because it is the Forest Service's responsibility to set limits and constraints on surface occupancy, the agency should start by asserting its authority—particularly its authority to hold firm on all stipulations that limit surface occupancy. It should then impose additional conditions of approval in order to protect sensitive surface resources. As you noted in our meeting, the Jackson Hole Oil and Gas Lease Stipulation contains very strong, discretionary language the Forest Service could cite as authority to protect these resources. We couldn't agree more. There is no other stipulation that we are aware of that mandates an operator "conduct operations in a manner that will offer the least possible disturbance to wildlife on or adjacent to the leased land..." and requires an "absolute minimum number" of roads.⁷ The Forest Service can and should interpret this language to be as protective as possible of surface resources. It is unclear, however, how the agency proposes to implement this part of the stipulation, especially in light of the news that is isn't even holding PXP to the unambiguous NSO stipulations contained in its leases.

We would remind the Forest Service, as Governor Mead did, that: "The September 30, 1991 Environmental Assessment for the Cliff Creek Management Area and the Upper Hoback Management Area provides your agency with considerable and wide ranging authority to require significant mitigation measures that will protect the sensitive environment and habitat in this area."⁸ This 1991 EA/DN includes examples of ways in which the Forest Service might interpret the Jackson Hole Oil and Gas Lease Stipulation. In addition to this stipulation, a Bridger-Teton specific stipulation attached to all of PXP's leases mentions the 1991 EA/DN for leasing parcels within Management Areas 22 and 23 as containing additional site-specific standards that "apply to this leasehold."⁹ This stipulation also envisions—and notifies both the lessee and the public—that additional mitigating measures would be identified during the NEPA analysis.¹⁰

We entered last week's meeting having taken the Forest Service at its word that a "complete stipulation-compliant" alternative was being prepared. As such, we anticipated a discussion wherein the 28 percent of the Basin that PXP's leases made available for surface occupancy would represent a maximum amount of surface disturbance this alternative would allow. From this starting point, we hoped you would report that the Forest Service was further incorporating innovative wildlife safeguards and other conditions of approval. We hoped these would include avoidance areas such as the documented mule deer migration corridor and important stopover habitat areas, as well as setbacks from streams, wetlands and riparian areas. The Wyoming Game and Fish Department specifically mentioned these habitats and recommendations for mitigating

⁶ The Forest Service is required by its own oil and gas regulations to "ensure that the surface use plan of operations is consistent with the lease, including the lease stipulations, and applicable Federal laws...." 36 C.F.R. § 228.107(a)(1) (emphasis added).

⁷ Jackson Hole Oil and Gas Lease Stipulation §§ 5, 3.

⁸ Governor Mead's comments on the Draft EIS, March 11, 2011.

⁹ Stipulation for Lands of the National Forest System Administered by the Bridger-Teton National Forest.

¹⁰ Id.

impacts to them in its formal comments on the draft EIS in March 2011.¹¹

Unfortunately, we didn't have the chance to discuss these specifics, (i.e. whether and to what extent the Forest Service planned to require PXP to relocate or minimize the number of pads, roads and facilities) because we didn't get past the fact that the Forest Service is now questioning the basic validity of the mule deer data. As you explained, the Forest Service apparently believes the data are not conclusive because "the first year showed no mule deer presence in the area, the second year showed only a limited number and the third year showed a lot more." The Forest Service, you said, was reluctant "to read too much into the data." Frankly, this astounded us. It was our understanding that the findings of this long-term study were not in dispute as this herd is likely the most thoroughly monitored in the country.¹²

As follow up questions, we are interested to know what, if anything, the Forest Service will propose regarding four recommendations the Wyoming Game and Fish Department has made. These include: 1) prohibiting surface development within the documented mule deer migration corridor and stopover habitat areas; 2) requiring 500-foot, and in some cases 500-meter, setbacks for certain stream and riparian habitats; 3) relocating or prohibiting three northern well pads due to their proximity to or location within crucial big game habitats; and 4) minimizing impacts to Canada lynx in the southeastern portion of the project area.

We would also like to discuss environmental quality concerns and the ways in which the Forest Service plans to address, require, and then monitor and enforce best management practices within the drilling and production stages of the operation. We are particularly interested in whether the agency intends (upon the advice of the Wyoming Department of Environmental Quality) to require groundwater characterization as a precursor to baseline testing and monitoring. We are also interested to learn what, if anything, the Forest Service will require PXP to do to provide onsite baseline air quality

¹¹ The WGFD's formal comments urged the Forest Service to restrict occupancy in certain areas of the Basin:

Mule deer are known to use the project area during spring and fall migrations. These migration corridors contain stop over habitat and high use areas as identified by Sawyer and Kauffman 2009.... It is essential that these movement/migration corridors and especially the stop over habitat and high use areas should be preserved by establishing these areas as NSO that will prohibit road construction, gas pads and associated infrastructure development. The resulting document should describe in detail how these mule deer migration corridors will be preserved intact.

The WGFD also requested the Forest Service "relocate or delete" three well pads in the north end of the project area that contain elk and moose crucial winter range, elk and moose calving areas, the mule deer migration corridor. March 9, 2011, comments numbered #50 (emphasis added) and #36.

¹² We inquired with the study's primary researcher and received a very different story. Over the past fifteen years, data have been collected. "There is no way to interpret these, but that a lot of deer move through the Noble Basin." Pers. comm. Hall Sawyer, 7/29/12. This is a "critical" area for deer and "if this data isn't good enough to illustrate that, no data will ever be good enough." Id. We also learned that the most recently updated data, including GPS data, were shared with the Wyoming Game and Fish Department in Pinedale last week.

data and continued monitoring.

It is our strongly held position that the Forest Service can and should enforce all existing NSO stipulations that limit PXP's right to occupy the surface of the Basin. In order to give itself this option, however, the agency must first prepare an alternative that considers enforcement of these stipulations—something we were surprised and disappointed to learn the Forest Service has not yet chosen to do. In addition to enforcement of all NSO stipulations, the Forest Service can and should impose additional protective measures to safeguard wildlife, water and air.

We would appreciate having a follow up meeting with you and Jacque about these topics as soon as possible. Thank you for considering and addressing our concerns. We look forward to continuing to participate in the process as it moves forward.

Sincerely,

Lisa McGee

And on behalf of:

Stephanie Kessler
The Wilderness Society

cc: Jacque Buchanan