

Mr. Shane DeForest
BLM Pinedale Field Office Manager
1625 West Pine Street
P.O. Box 768
Pinedale, WY 82941-0768

April 20, 2011

Dear Mr. DeForest:

Please accept these comments regarding the implementation of the Record of Decision (ROD) for the Pinedale Anticline Supplemental Environmental Impact Statement. Given the extraordinary ozone levels that have been seen again in Sublette County this winter, and the dramatic decline in mule deer populations that have been documented on the Pinedale Anticline, it seems apparent the Bureau of Land Management (BLM) must carefully evaluate whether the ROD is being effectively implemented, and if it is, whether it is sufficient to prevent extreme environmental degradation.

In the following comments we will address issues regarding the very high ozone levels that are being monitored, visibility protection in nearby Class I areas, and the impacts of oil and gas development on the mule deer herd on the Pinedale Anticline. Based on this review it is apparent that modifications to the ROD are needed, or at a minimum the BLM must recommit to full and effective implementation of the ROD. And as will be discussed in the last section of these comments there is no doubt that BLM must faithfully implement the provisions of the Pinedale Anticline ROD.

Ozone.

Enclosed is a report the Wyoming Outdoor Council prepared regarding air quality issues in the Upper Green River Valley, including ozone issues. It reviews the high ozone levels this past winter, which spiked at 8-hour averages of 124 parts per billion (ppb), far above the health based National Ambient Air Quality Standard (NAAQS) of 75 ppb. As the report discusses, it is clear that efforts to control ozone pollution in this area have not been effective at preventing exceedances of the ozone NAAQS. Therefore new approaches are needed.

The ROD for the Pinedale Anticline project states that, "Absent an effective technology to implement, reductions in the pace of development may be utilized to ensure ambient air quality standards are met." ROD at 28. Given that previous efforts to control ozone pollution, including the Department of Environmental Quality's (DEQ) offsets policy and its attempts to negotiate nitrogen oxide emissions limits for drill rigs,

have not succeeded, implementation of limits on the pace of development on the Pinedale Anticline must be fully considered by BLM. Moreover, the ROD outlines a suite of mitigation measures that might be employed, and all of these measures should be put in place. To the extent BLM believes that some of these mitigation measures can only be implemented under the authority of DEQ, the BLM must fully consider the mitigation measures *it* can implement, which certainly includes regulating the pace of development.

As discussed in the report, there is no doubt but that oil and gas development is the primary source of ozone problems in the Upper Green River Valley. In the DEQ's technical report to EPA in support of the recommendation the area be designated in nonattainment with the ozone NAAQS, the State said, "The analysis conclusively shows that elevated ozone at the Boulder monitor is primarily due to local emissions from oil and gas (O&G) development activities: drilling, production, storage, transport, and treating."¹ Thus, there is no doubt where the solutions to this problem lie—they are to be found in regulation of the oil and gas industry, and the BLM's Pinedale Anticline ROD commits it to doing whatever is necessary to regulate this industry in order to ensure ozone levels remain in compliance with the NAAQS. We insist that BLM take all steps outlined in the ROD to regulate the oil and gas industry so as to better control ozone pollution in this area.

And of course, by the end of July 2011, the Environmental Protection Agency (EPA) will in all likelihood issue a final new NAAQS for ozone. It will likely set the new primary standard in the range of 60-70 ppb. It will also likely establish a new secondary NAAQS that is of a distinctly different form than the primary standard. Thus, the current nonattainment problem in this area will likely become even more poignant. This emphasizes the need for BLM to take significant actions regarding controlling ozone problems in this area.

The human health consequences of elevated ozone levels are simply too severe to permit a policy of being inactive or pursuing only the most glacial of corrective responses. For example, in addition to the high 8-hour averages mentioned above, 1-hour average ozone levels reached 166 ppb this winter, levels that have caused local citizens to complain of nosebleeds and respiratory problems. Therefore we again insist that BLM take steps *now* to reduce ozone pollution in the Upper Green River Valley. Toward that end, we request a written response to these concerns wherein BLM outlines what it will do to reduce the high ozone levels in the Upper Green River Valley and when specifically it will take these steps. In our view additional monitoring is not a sufficient response; *reductions* in ozone precursor emissions must be required.

Visibility.

The enclosed report also discusses issues related to visibility protection in the Class I areas near the Upper Green River Valley, the Bridger and Fitzpatrick Wilderness

¹ This report is available at <http://deq.state.wy.us/aqd/Ozone%20Nonattainment%20Information.asp>.

Areas. The Pinedale Anticline ROD puts in place three milestones for protecting visibility in these Class I areas. Within one year of signing the ROD (September 12, 2009), haze-causing emissions were to be reduced to 2005 levels,² within 42 months of signing the ROD (March 12, 2012) visibility impacts in the Bridger Wilderness Area are to be no greater than 10 days per year over 1 deciview (dv), and within 78 months of signing the ROD (March 12, 2015) “impacts will be no greater than 0 days of visibility impairment over 1 dv at the Bridger Wilderness Area.” ROD at 25. The Clean Air Act’s goal for Class I areas is the “prevention of any future, and the remedying of any existing, impairment of visibility” in Class I areas.³ Thus, by 2015 the ROD mandates that the Clean Air Act’s important visibility goal be met in these iconic areas.

The ROD specifies a number of means to achieve these benchmarks, such as by requiring natural gas-fired drill rigs, reducing the number of drill rigs, and reducing the pace of development. It states, “BLM is committed to assuring that any mitigation necessary to achieve the goal of zero days of modeled visibility impairment will be implemented” and “Absent an effective technology to achieve further reductions beyond 10 days of visibility impairment at the Bridger Wilderness Area, adjustments in the pace of development may be utilized to achieve zero days of modeled visibility impairment.” ROD at 25. It is critical that BLM, working with the DEQ, remain on course to meet these benchmarks.

Based on a discussion with Ms. Merry Gamper in the BLM Wyoming State Office, it is our understanding that in June the BLM will hold a meeting to review whether the benchmarks are being met.⁴ According to Ms. Gamper, at this meeting compliance with the benchmarks will be addressed in detail, in a “concerted effort.” Since the March 12, 2012 benchmark is coming up, it is crucial that BLM determine whether the benchmark will be met or not, and if it does not appear that it will be met, that additional mitigation be put in place to control haze-forming pollutants. And under the specific provisions of the ROD this must include consideration of regulating the pace of development on the Pinedale Anticline. We believe that waiting until the March 12, 2012 deadline arrives to determine if ROD compliance has been achieved is unacceptable; BLM must track the level of current compliance and likelihood for final compliance *now*.

We request that the results from this June meeting be provided to the public. The Pinedale Anticline ROD states, “Demonstrations of progress in meeting these milestones will be provided annually by the Operators. This information will be provided by the

² In a September 2009 letter the DEQ stated that it appeared that operators had reduced emissions sufficiently to comply with the initial benchmark of reducing emissions to 2005 levels. This letter is available at <http://www.blm.gov/pgdata/etc/medialib/blm/ny/field-offices/pinedale/papadocs.Par.36525.File.dat/DEQVisibility.pdf>. But we note that we have not seen modeling confirming that no more than 40 days of visibility impairment over 1 dv has been achieved, as the ROD also requires.

³ 42 U.S.C. § 7491(a).

⁴ Other information we have received indicates this meeting may be held in May.

[Pinedale Anticline Project Office] and will be made publicly available.” ROD at 25. Consequently information on whether the milestones are being met currently or are likely to be met one year from now should be provided to us following the June meeting, and we hereby request that this information be made publically available. It is critical that we move toward zero days of visibility impairment in Wyoming’s Class I areas, as called for by the Clean Air Act as well as the ROD, and BLM must ensure that this is the case.

As with ozone, there is no doubt that visibility impairment in the Bridger and Fitzpatrick Wilderness Class I areas is substantially a result of oil and gas development in this area. The Pinedale Anticline supplemental environmental impact statement documented this fact in detail. Therefore, as with ozone, the BLM must focus on regulating the oil and gas industry so as to control air pollution in this formerly pristine area.

Mule Deer.

The research of Dr. Hall Sawyer has of course established that the mule deer population on the Pinedale Anticline has crashed since natural gas development began in earnest. Based on this research it is clear the mule deer thresholds specified in the Pinedale Anticline ROD Appendix B Wildlife Monitoring and Mitigation Matrix have been exceeded. Thus, BLM must implement the modified management that is specified in the ROD.

“First” BLM must consider onsite mitigation. ROD at B-5. This includes protection of the flank areas and possible habitat enhancements. However, in our view these first tier responses have little or no current applicability or validity. The ROD *already* requires protection of the flank areas regardless of any supplemental mitigation response specified in the wildlife mitigation matrix. Thus, this approach only has validity if *additional* protection of the flank areas can be provided. If BLM plans to pursue this option we ask BLM to provide us with a written statement of what *new* flank area protections will be provided. And as to habitat enhancements, we ask BLM to consider whether these “enhancements” have scientific support and validity. We believe there is strong scientific documentation supporting a view that these “enhancements” often do not work, that often they are little more than sagebrush destruction projects aimed at eradicating “decadent” sagebrush—a remarkably unscientific phrase. In support of our view that these “enhancements” are not effective or scientifically supported, we direct you to the comments of Dr. Carl Wambolt that were submitted during the Pinedale Resource Management Plan revision, and which we have enclosed herewith as well. In addition we direct you to the publications referenced in this footnote.⁵ At a minimum, before invoking this Appendix B mitigation option, we ask the BLM to document that there is a reasonable basis, grounded in science, to assume that habitat enhancements can

⁵ Bruce L. Welch and Craig Criddle. 2003. Countering Misinformation Concerning Big Sagebrush. USDA Forest Service Research Paper RMRS-RP-40. Bruce L. Welch. 2005. Big Sagebrush: A Sea Fragmented into Lakes, Ponds, and Puddles. USDA Forest Service General Technical Report RMRS-GTR-144.

reverse the decline of the mule deer population, and to make that documentation available for public review.

The second tier option specified in the matrix also raises concerns in our view. That option is “Conservation Easements or property rights acquisitions.” While many conservation easements have been funded by the Pinedale Anticline Project Office and the Jonah Interagency Office, there is a substantial question whether *off-site* mitigations have provided any mitigation for the *on-site* impacts occurring to the mule deer herd on the Pinedale Anticline. Many of the existing conservation easements appear to have little or no documented connection or scientific basis relative to providing mitigation for the on-site impacts to the mule deer herd. Before invoking this second tier mitigation response BLM must document its efficacy in fact, and if it is not working effectively to reduce impacts to the *Pinedale Anticline* herd, the third tier mitigation response option should be pursued.

The third tier mitigation response under the Pinedale Anticline wildlife monitoring and mitigation matrix is “adjustments of spatial arrangement and/or pace of ongoing development.” This is clearly the most appropriate response to the mule deer herd crash and we urge the BLM to employ it. Moreover, there is no need for BLM to “Recommend, for consideration by Operators” that such measures be employed. The BLM has more than sufficient “retained rights” under an onshore oil and gas lease to put in place measures such as this regardless of whether the operators approve of it or not. The extensive levels of BLM’s retained rights, which allow it to condition oil and gas development, are fully documented in the publication “BLM’s Retained Rights: How Requiring Environmental Protection Fulfills Oil and Gas Lease Obligations.”⁶ So again, we urge the BLM to regulate the pace of development or modify the spatial arrangement of oil and gas infrastructure as necessary to maintain the Pinedale Anticline mule deer population, and we request that BLM provide us with written documentation of how it has made these considerations. We believe the Pinedale Anticline ROD requires this approach since the applicable threshold has been exceeded and the tier one and tier two mitigation responses specified in the matrix appear to be ineffective.

Big game populations are central to the lives and culture of people in western Wyoming. Allowing for a 35 percent decline in mule deer populations due to natural gas development is unconscionable.⁷ The BLM should not let problems like this develop in the first place and if they do develop it should rectify them promptly. Anything short of this is a failure to meet multiple use and sustained yield management responsibilities, as well as the obligation to prevent unnecessary or undue degradation of the public lands.

⁶ Available at http://www.lclark.edu/law/law_reviews/environmental_law/past_issues/volume_40/40-2.php.

⁷ Dr. Sawyer’s 2010 Annual Report shows that the abundance of mule deer on the Mesa declined by 60 percent from 2001 to 2009 while the abundance of the overall Sublette Unit herd declined by 25 percent in this period, indicating that the impact attributable to natural gas development appears to be a 35 percent decline.

Compliance with the Pinedale Anticline ROD is Required.

Above we have cited several provisions in the Pinedale Anticline ROD that mandate enhanced protections, relative to ozone pollution, relative to visibility protections, and relative to wildlife protections. The BLM is obligated to faithfully ensure these provisions are implemented.

The Council on Environmental Quality (CEQ) National Environmental Policy Act (NEPA) regulations make the following provisions. “Mitigation and other conditions established in the environmental impact statement or during its review and committed as part of the decision shall be implemented by the lead agency or other appropriate consenting agency.” 40 C.F.R. § 1505.3. And, “Upon request, [the lead agency shall] make available to the public the results of relevant monitoring.” *Id.* § 1505.3(d). Moreover, agencies must “Make diligent efforts to involve the public in preparing and *implementing* their NEPA procedures.” *Id.* § 1506.6(a) (emphasis added).

Thus, the decisions in the Pinedale Anticline ROD “shall be implemented.” Since there does not appear to be “effective technology” to bring about reductions in ozone levels, under the terms of the ROD other options must be pursued, including “reductions in the pace of development” so as to “ensure ambient air quality standards are met.” Furthermore, since “BLM is committed to assuring that any mitigation necessary to achieve the goal of zero days of modeled visibility impairment will be implemented,” if following the June air quality meeting it does not appear the milestones are being met, under the terms of the ROD, “adjustments in the pace of development may be utilized to achieve zero days of modeled visibility impairment.” And since it does not appear the first two mitigation options under the wildlife mitigation matrix have much validity or likelihood of actual success, the BLM must fully consider “adjustments of spatial arrangement and/or pace of ongoing development.” Under the CEQ regulations these provisions must be “implemented” since they were “committed as part of the decision.”

And under the CEQ regulations cited above, there is no doubt but that BLM must make the information we have requested herein available to the public. Much of this information is the “results of relevant monitoring” and at a minimum the agency must make “diligent efforts” to fulfill these requests. So, for example, since the ROD provides relative to visibility issues that “Demonstrations of progress in meeting these milestones will be provided annually by the Operators. This information will be provided by the [Pinedale Anticline Project Office] and will be made publicly available”, there is little doubt but that BLM must provide us with information that results from the June air quality meeting and other monitoring.

Fundamentally we believe the time has clearly come to start regulating the pace of development on the Pinedale Anticline in order to comply with the provisions of the ROD, as explained above. The sensitive and highly valued resources in this area cannot endure continued unfettered development pressure. The BLM must exercise its oversight responsibilities and ensure development pressures do not exceed levels that protect the public health and welfare and do not harm many other resources. This is required if

BLM is to meet its multiple use management responsibilities and other public obligations.

Thank you for considering these comments and we look forward to your response.

Sincerely,

Bruce Pendery,
Wyoming Outdoor Council

And on Behalf of:

Lloyd Dorsey,
Greater Yellowstone Coalition

Dan Heilig,
Western Resource Advocates

Linda Baker
Upper Green River Alliance

Susan Kramer,
Citizens United for Responsible Energy Development (CURED)

Enclosures

cc: Bob Abbey
Ken Salazar
John Corra
Steven Dietrich
Governor Matt Mead
Pinedale Anticline Working Group
Pinedale Anticline Project Office
Larry Svoboda, EPA
Mary Flanderka, Wyoming Game and Fish