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November 11, 2013

Sheila Lehman  
Planning & Environmental Coordinator  
Bureau of Land Management  
Rawlins Field Office  
1300 North Third Street  
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SENT VIA: [BLM\\_WY\\_RL\\_RMP\\_VRM@blm.gov](mailto:BLM_WY_RL_RMP_VRM@blm.gov)

Re: Draft VRM and ACEC Amendment to the RMP for the Rawlins Field Office

Dear Ms. Lehman:

On behalf of the Petroleum Association of Wyoming (PAW), Public Lands Advocacy (PLA) and Western Energy Alliance (WEA), following are comments on the Draft VRM and ACEC Amendment to the RMP for the Rawlins Field Office (RMP Amendment). PAW is Wyoming's largest and oldest petroleum industry trade association dedicated to the betterment of the state's oil and gas industry and public welfare. PAW members, ranging from independent operators to integrated companies, account for approximately ninety percent of the natural gas and eighty percent of the crude oil produced in Wyoming. PLA is a nonprofit trade association whose members include independent and major oil and gas producers as well as nonprofit trade and professional organizations that have joined together to foster environmentally sound exploration and production on public lands. WEA represents over 400 companies engaged in all aspects of environmentally responsible exploration and production of oil and natural gas in Wyoming and across the West. The majority of our members are independent producers – small businesses with an average of twelve employees. PAW, PLA and WEA members have vested interests in oil and gas development throughout the Rawlins Field Office (RFO) and offer the following comments.

The RMP Amendment was prepared in order to address protests received to the 2008 Proposed RMP/Final EIS. We recognize BLM must prepare a plan amendment in order to evaluate nominated areas of critical environmental concern (ACEC) that were remanded by the BLM Director in 2008. However, it is of major concern to our members that alternatives 3 and 4 of the RMP Amendment could significantly impact current and future oil and gas activities within the RFO. As such, we support Alternative 2, as it is the alternative that most recognizes valid existing lease rights and provides for reasonable opportunities for continued domestic oil and gas development.

#### **VALID EXISTING RIGHTS**

Page 2-4 – *“Areas with existing oil and gas leases are subject to the terms and conditions of the existing lease, whereas, new or renewed leases would be subject to any new terms at the time of authorization”*

**COMMENT:** We support BLM's recognition of valid existing lease rights. According to the Federal Land Policy and Management Act (FLPMA), the Mineral Leasing Act (MLA) and BLM's Planning 1600 Handbook, BLM does not have the authority to impose new stipulations on leases after they have been issued (43 U.S.C. § 1701; BLM Land Use Planning Handbook H-1601-1, III.A.3, pg. 19 (Rel. 1-1693 3/11/05)). Nor does BLM have authority to impose mitigation measures such as Conditions of Approval (COAs) that exceed the terms and conditions of previously issued leases. See *Colorado Environmental Coal, et al.*, 165 IBLA 221, 228 (2005) (citing *Colorado Environmental Coal*, 135 IBLA 356, 360 (1996) *aff'd*, *Colorado Environmental Coal. v. Bureau of Land Management*, 932 F.Supp. 1247 (D.Colo. 1996)). In sum, BLM cannot deprive operators of their rights to develop pre-existing leases in accordance with the terms under which they are issued and is limited to imposing COAs that are consistent with existing leases. Further, BLM must ensure that it protects lessees' contractual property rights against the imposition of unreasonable restrictions on existing leases.

These principles are particularly important given the fact that the proposed VRM Class II designations in alternatives 3 and 4 could impose significant limitations on existing leases that were not anticipated at the time the leases were purchased from the federal government in good faith. Therefore, it must be acknowledged that BLM has no authority to impose new restrictions through COAs on applications for permit to drill (APD) if they would alter the valid existing lease rights. Such qualifiers are consistent with current rules and policies of the BLM and need to be clearly disclosed in the RMP Amendment.

## **VRM CLASS II DESIGNATIONS**

Page 2-4 – *“Visual quality can be difficult to manage in areas with checkerboard...or fragmented landownership patterns.”*

**COMMENT:** We support BLM's recognition of the difficulty to manage VRM restrictions on BLM lands in the checkerboard area. In fact, we venture to say that it would actually be virtually impossible for BLM to impose restrictive VRM limitations on public lands due to the agency's inability to do so on adjacent private lands. In recognizing the agency's significant management limitations, it is appropriate for BLM to utilize only VRM Class IV restrictions within the checkerboard.

Page 3-12 – *“...VRM can affect how and where mineral development occurs.”*

**COMMENT:** In accordance with Southern Utah Wilderness Alliance, 144 IBLA 70, 85 - 87 (1998), we remind BLM that it cannot place Class II restrictions on areas already leased for oil and gas development and cannot impose visual resource objectives that are inconsistent with existing lease rights. VRM designations must be consistent with the existing resource management plan regarding leases that have already been issued or lands designated as lands available for leasing. Clearly, new and existing development of oil and gas resources is inconsistent with Class II management standards.

Therefore, we strongly oppose BLM's proposal under alternatives 3 and 4 to expand the number of acres listed under VRM Class II restrictions, especially those south and east of the Adobe Town WSA, for the following reasons:

- The lands in this area are already highly productive for oil and gas and BLM does not have the legal authority to hamper this existing development through the use of stringent VRM classifications that are inconsistent with the valid existing rights.
- The land is all within the Desolation Flats Natural Gas Development Project EIS. This project went through a multi-year assessment process that was approved in June of 2004 and upheld by the Interior Board of Land Appeals. *Biodiversity Conservation Alliance, et al.*, 174 IBLA 1 (2008).
- The Desolation Flats Natural Gas Development Project has been approved and ongoing for over nine years. BLM must recognize that the area already contains numerous natural gas wells, not to mention roads, pipelines, compressor stations and a gas processing plant. In many cases, wells (producing, plugged or temporarily abandoned) and roads either surround or intrude into Class II areas that were analyzed under the EIS.

Lastly, we question the RFO's decision to list the land to the south and east of the Adobe Town WSA as VRM Class II when the management by the Green River RMP lists the lands adjacent to the Adobe Town WSA as VRM Class IV. To have such different designations for land types that are almost identical are inconsistent and nonsensical.

With all this in mind, we support Alternative 2 with its proposed increase in number of acres subject to VRM Class III and IV restrictions, especially within checkerboard and existing oil and gas operations. We further recommend Class II and Class III designations be limited to areas outside of lands where oil and gas leases have already been issued.

## **SOCIOECONOMIC IMPACTS**

The RMP Amendment fails to adequately analyze the economic and social impacts that could result from the proposed VRM Class II designations in alternatives 3 and 4. It is imperative that the public fully understand the impacts of these designations in order to make an informed choice when selecting an alternative. Failure to recognize the impacts these new designations could have to existing operations renders this analysis incomplete. Therefore, we strongly recommend BLM adequately identify the economic impacts of each individual alternative.

We appreciate this opportunity to provide you with our comments. Please do not hesitate to contact us with any questions.

Sincerely,



Esther Wagner  
Vice President – Public Lands  
PAW



Claire Moseley  
Executive Director  
PLA



Kathleen M. Sgamma  
Vice President – Government  
& Public Affairs  
WEA

cc: Don Simpson, WY BLM State Director  
Jerimiah Rieman, WY Governor's Natural Resources Policy Advisor  
Colin McKee, WY Governor's Energy Policy Analyst