



October 20, 2014

Via email: comments-rm-arapaho-roosevelt@fs.fed.us

Glenn Casamassa
U.S. Forest Service
Arapaho and Roosevelt National Forests and Pawnee National Grassland
2150 Center Avenue, Building E
Fort Collins, CO 80526

RE: Western Energy Alliance Comments on the Draft Environmental Impact Statement for Pawnee National Grassland Oil and Natural Gas Leasing

Dear Mr. Casamassa:

Western Energy Alliance wishes to express its qualified support for Alternative 3, the Proposed Action in the Draft Environmental Impact Statement (DEIS) for oil and natural gas leasing in the Pawnee National Grassland (PNG). The U.S. Forest Service (USFS) proposes an alternative in which the entirety of the remaining federal acreage would be made available for lease with a No Surface Occupancy (NSO) stipulation. While a large portion of the oil and natural gas resources are accessible from peripheral locations, the final EIS must maintain flexibility for waivers, exceptions and modifications for those situations where resources are not accessible.

Western Energy Alliance represents over 480 companies engaged in all aspects of environmentally responsible exploration and production of oil and natural gas in Colorado and across the West. The Alliance represents independent producers, the majority of which are small businesses with an average of fifteen employees.

Access to Stranded Minerals

Currently, there are approximately 43,000 acres of federal mineral estate leases within the PNG, and approximately 100,000 acres that remain unleased. The PNG is unique in that it consists of a patchwork of land ownership, including federal, state, and private surface and minerals. The PNG sits atop a longstanding, existing oil and natural gas basin and includes legacy development, with some wells dating to the 1980s. The unleased federal tracts are surrounded by existing oil and gas development, or by leased private minerals that are part of future development plans.

Due to the patchwork nature of the surface and mineral ownership within the PNG, these unleased federal tracts have become islands of undeveloped resources as oil and natural gas operators are forced to develop around them. The federal government is losing revenue and the potential for drainage of federal minerals increases with time. Furthermore, as is acknowledged in the DEIS on page 22, the need to work around these

tracts actually results in an increase in infrastructure and surface disturbance on adjacent lands. It is therefore vital that these tracts be made available for lease.

No Surface Occupancy Stipulations

Broad NSO stipulations typically far exceed the level of restrictions necessary to protect the land and other resource values. In several of our comment letters, the Alliance has repeatedly been compelled to point out that the Energy Policy Act of 2005 directs that lease stipulations be “only as restrictive as necessary to protect the resource for which the stipulations are applied.”¹ Proper development plans, the incorporation of Best Management Practices, and, when necessary, lesser restrictions such as Timing Limitations and Controlled Surface Use stipulations are generally very effective at mitigating potential impacts to other resources without defaulting to the most restrictive stipulation, NSO.

However, the PNG is unique in its geology and its patchwork surface ownership, which allow much of the federal minerals to be accessed via adjacent private surface. In the interests of completing the EIS in a timely manner to avoid the further stranding of oil and natural gas resources, we support the EIS provided flexibility is maintained in allowing waivers, exceptions and modifications. USFS should not use the PNG DEIS as a precedent to apply blanket NSO lease stipulations in other EISs for areas that lack the PNG’s unique characteristics.

Diligent Application of Waivers, Exceptions, and Modifications (WEM)

The DEIS contains the perfunctory mention of exceptions, modifications, and waivers on page 7, but does not go into detail regarding their application in the Proposed Action. While lateral drilling techniques may very often allow access to adjacent mineral resources, they should not be viewed as a universally viable alternative. Geologic considerations may make lateral drilling technically infeasible, or the economics may prevent their use. In some cases, less environmental impact may occur from direct surface occupation.

As such, the Final EIS should incorporate explicit WEM criteria in conjunction with site-specific National Environmental Policy Act (NEPA) analysis. This would provide USFS with management flexibility to allow the greatest level of energy development while properly protecting other resource values. These criteria must then be diligently adhered to by USFS personnel, and WEMs applied if the site-specific NEPA analysis so warrants.

USFS has a precedent in the Land and Resource Management Plan of the San Juan National Forest for certain parcels that were being considered for inclusion in the Colorado Roadless rulemaking. USFS, in coordination with the Bureau of Land Management (BLM), offered the parcels for lease with an NSO stipulation and the requirement that site-specific

¹ 42 U.S.C. §15922 (b)(3)(C)

NEPA analysis would include a final determination on whether the NSO stipulation could be waived, excepted, modified, or remain in full force and effect. The subsequent Northern San Juan Basin Coal Bed Methane Project Record of Decision and Final EIS were issued in 2007.

The San Juan National Forest oil and natural gas NSO lease stipulations were clear that “[r]equests for waivers, exceptions, or modifications of this stipulation will be considered at the time operations are proposed. Any changes made to this stipulation must be in accordance with applicable land use plan guidance and/or the regulatory provisions for such changes.”² Colorado federal court and the U.S. Court of Appeals for the Tenth Circuit upheld the Record of Decision and Final EIS as valid.³

We strongly suggest that the Final EIS follow the San Juan National Forest example and incorporate explicit language outlining WEM criteria to provide USFS the necessary regulatory flexibility. This will allow oil and gas leases to be revised where appropriate while still conforming to the management objectives of the PNG Land and Resource Management Plan.

Future Leasing

The Proposed Action provides the most viable alternative for the remaining unleased federal tracts in the PNG because it would allow operators flexibility in accessing mineral resources and provide protection and mitigation for surface resources through NEPA and the permitting process. Because the most restrictive lease stipulations would be employed under the Proposed Action, there is no justifiable reason for the USFS to withhold its consent to lease from the BLM per the Federal Onshore Oil and Gas Leasing Reform Act (FOOGLRA). Any exemption from the NSO stipulation would be predicated on thorough site-specific NEPA analysis, and Surface Use Plans of Operations would fall under the direct review of the Forest Service. As such, other resource values within the PNG are robustly protected, and upon completion of this EIS we urge that the leasing process be allowed to efficiently function with no unnecessary delays.

The PNG and its surrounding area is already extensively developed for oil and natural gas and sits atop a portion of the prolific Wattenberg Field. Should the USFS decide not to offer the unleased federal tracts for lease, development will continue on comingled private and state lands.

By offering the federal tracts for lease, the USFS would reduce the potential environmental footprint from oil and natural gas development and ensure an opportunity to protect surface resources such as water and air quality, as well as wildlife habitat through the

² Northern San Juan Basin Coal Bed Methane Project Record of Decision, p. 31, § 3, Table 1, April 2007.

³ *San Juan Citizens Alliance v. Stiles*, 654 F.3d 1038, 10th Cir. 2011.

NEPA process. Federal leases require site-specific NEPA analysis prior to exploration and development, including for non-federal surface locations. The federal permitting process ensures responsible development through appropriate mitigation measures and best management practices. As such, we urge the USFS to offer the unleased federal tracts for lease with specific exception, waiver, and modification criteria.

Furthermore, oil and natural gas operators in the area are constantly improving environmental practices and techniques. For example, centralized gas and liquids gathering systems and fracking operations enable companies to reduce truck traffic and surface disturbance. However, companies often must suspend these environmentally friendly integrated operations when federal lands are involved because of regulatory inflexibility. We urge USFS to retain adaptive management flexibility.

Reasonable Foreseeable Development Scenario

We strongly recommend that the Final EIS explain that the Reasonable Foreseeable Development Scenario (RFD) is not a cap on the number of wells that can be developed within the PNG. The RFD serves as a planning tool for USFS and BLM to identify and quantify direct, indirect, and cumulative impacts, which assists in the development and analysis of alternatives. Including an explanation of the function of the RFD will inform the public and reduce litigation risk.

Water Quality

Industry goes to great lengths to protect water resources during the development of oil and natural gas resources, and the State of Colorado has in place stringent regulations to protect water quantity and quality, including updated rules for ensuring oil and natural gas operations do not impact surface and groundwater quality. The Colorado Oil and Gas Conservation Commission (COGCC) has comprehensive well bore integrity rules to ensure that potential contaminants do not escape and come into communication with groundwater aquifers during hydraulic fracturing.

The COGCC has also implemented rules requiring baseline water testing of water wells near oil and natural gas sites. Companies must test the water quality of nearby wells before, during and after drilling and completing oil and natural gas wells.

Further, the industry is also subject to regulations for disposal of water through the Environmental Protection Agency's (EPA) underground injection control (UIC) program. The Safe Drinking Water Act requires that UIC wells protect nearby drinking water and that they are constructed and operated in a manner to handle disposal water indefinitely.

Oil and natural gas companies continually search for ways to reuse and recycle water. Some companies use produced water for hydraulic fracturing operations, and many companies in the Denver-Julesburg Basin treat their water to avoid UIC disposal. In the

arid West, where fresh water is a vital resource, oil and natural gas companies endeavor to reduce their water usage to the greatest extent possible.

With all the regulations in place to ensure fracking is safe and that operations protect ground water, we urge USFS to ignore attempts by environmental groups to use the EIS as a way to stop fracking in the PNG. Colorado and federal officials from Governors to Interior Secretaries, EPA Administrators up to the President have publicly supported safe, responsible oil and natural gas development that includes fracking, and USFS should not let fringe voices seeking to halt all oil and natural gas development unduly influence the EIS.

Air Quality

Colorado has some of the most stringent air quality rules and permitting requirements for the oil and natural gas industry in the nation. This year, the Colorado Department of Public Health and Environment (CDPHE) passed new rules for the control of methane and volatile organic compound (VOC) emissions, which require the latest in emission controls and a comprehensive leak detection and repair (LDAR) program. These rules apply statewide, and any company operating in the PNG will be required to fully comply with the state's stringent requirements.

Oil and natural gas air emissions are also heavily regulated by EPA. Throughout the last several years, EPA has updated and promulgated air new rules for every facet of oil and natural gas exploration and production, from drilling to completion and then through production. These rules cover multiple emissions, including criteria pollutants like nitrous oxides (NOx) and VOCs. Operations within state and federal jurisdiction are subject to EPA air rules, which ensure all lands around and including the PNG benefit from the reduced emissions.

Socioeconomics

The oil and natural gas industry has played a historically important role in job creation and government revenues in the State of Colorado. According to analysis conducted by the respected economic research firm John Dunham and Associates, in Colorado oil and natural gas exploration and production is integral in supporting over 60,000 jobs with \$5.2 billion in wages, and an economic output of \$22.2 billion.⁴ Revenues are used to support education and vital public infrastructure and services. A robust oil and natural gas industry is imperative to the state's economic wellbeing. Oil and natural gas development from currently unleased federal tracts in the PNG will provide significant benefit to federal, state, and local economies, and provide needed energy resources to the nation should the USFS move forward with a decision to make these lands available for lease.

⁴ [Western Oil & Natural Gas Employs America](#), John Dunham and Associates, 2014 update.

Conclusion

Western Energy Alliance wishes to see the timely resumption of leasing of federal minerals within the PNG, and as such supports the Proposed Action with the modifications described above. This does not represent an endorsement by the Alliance of the future use of extensive NSO stipulations in areas lacking the PNG's patchwork mineral and surface ownership, but rather a recognition of the need to provide for the most timely access to currently stranded minerals within the PNG.

We appreciate the opportunity to comment, and should you have any questions, please do not hesitate to contact me.

Sincerely,



Kathleen M. Sgamma

Cc: The Honorable John Hickenlooper, Governor, State of Colorado
The Honorable Mark Udall, U.S. Senate
The Honorable Michael Bennet, U.S. Senate
The Honorable Cory Gardner, U.S. House of Representatives
John Beck, Bureau of Land Management
Jerry Strahan, Bureau of Land Management
Megan Stouffer, Bureau of Land Management