

January 17, 2024

Andrew Archuleta
State Director
Wyoming Bureau of Land Management
5353 Yellowstone Road
Cheyenne, WY 82009

**re: Draft Resource Management Plan and Environmental Impact Statement for the
Rock Springs RMP Revisions, Wyoming. Notice of Availability.
BLM_WY_FRN_MO4500170700**

Dear State Director Archuleta,

The reaction to the release of the Bureau of Land Management's (BLM) Rock Springs Field Office (RSFO) draft Resource Management Plan revision (DRMP) and Environmental Impact Statement (DEIS) was one of shock that rippled through the state of Wyoming. Stakeholders' input that had been collaboratively provided for 12 years was discarded. Never before had the BLM selected an extreme conservation alternative as the preferred alternative, one hastily developed in a single week and contrary to the balanced objectives envisioned by those involved in the multi-year stakeholder and cooperating agency process. The public's reaction to the BLM's decision was proportional and necessary.

Wyoming, and even more so the communities within the RSFO, rely on access to public lands not just for outdoor experiences, but for economic prosperity and job creation. The influence the oil and natural gas industry has on this area of the state is expansive. It has shaped the cultural and societal fabric of these communities and supports robust economic activities. The two common themes observed during public hearings held late last year were the residents want to retain access for all of the activities available in the field office and that they want to maintain the way their communities are currently functioning. The BLM holds the levers to allow this area of the country to continue to have a prosperous economy and the ability to access all of the incredible opportunities for outdoor experiences.

The Petroleum Association of Wyoming and Western Energy Alliance (the Associations) have used the time afforded to review the DRMP and develop substantive responses. BLM Director Tracy Stone-Manning and you, Director Archuleta, have publicly committed the BLM to work with stakeholders and have acknowledged that the best result will come from those “who roll up their sleeves”. The Associations have. We appreciate your careful consideration of our comments.

The Associations

The Petroleum Association of Wyoming represents companies involved in all aspects of responsible oil and natural gas development in Wyoming, including upstream production, oilfield services, midstream processing, pipeline transportation and essential work such as legal services, accounting, consulting and more¹.

Western Energy Alliance is the leader and champion for independent oil and natural gas companies in the West. Working with a vibrant membership base for over 50 years, the Alliance stands as a credible leader, advocate, and champion of industry. Our expert staff, active committees, and committed board members form a collaborative and welcoming community of professionals dedicated to abundant, affordable energy and a high quality of life for all. Most independent producers are small businesses, with an average of fourteen employees.

Outdated Data

Reasonably Foreseeable Development

40 CFR 1502.22 compels the federal agencies conducting NEPA analysis to utilize relevant data when it is “essential to a reasoned choice among alternatives”. This is not a question or a choice, it is a Congressional mandate to be implemented by the Executive Branch.

The DRMP commenced revision in 2011. Interestingly, the revisions were necessitated by wild horse and Greater Sage-Grouse needs, neither of which are a topic of consideration in this revision. Regardless, the data relied upon to form the focused analysis was collected and is vintage 2010, meaning the assumptions in the DRMP are almost so outdated that, under any other circumstance, it would be up for revision soon. It has become clear during this revision that the assumptions made in 2010 were off base, far beyond what could be considered within the bounds of a trend.

Importantly, the BLM’s reasonably foreseeable development (RFD) forecast projects that during the 20-year life of the RMP, 6,719 new wells would be drilled in the RSFO, or an average of 336 wells per year.² This forecast is then used as the underpinning analysis³ to project outcomes from management actions enacted through the RMP, including air quality, surface disturbance, water

¹ PAW advocates for oil and gas development that supports sustainable production of Wyoming’s abundant resources; fosters mutually beneficial relationships with Wyoming’s landowners, businesses, and communities; and upholds the values of science-based, environmental stewardship. Recent studies show this industry supports over 20,000 jobs in Wyoming and contributes \$8 billion in economic activity. Our industry generates significant tax revenue to the state of Wyoming, funding state and local government operations, education and public infrastructure. Eighty-five percent of the oil and gas companies operating in Wyoming are classified as small businesses.

² Final Reasonable Foreseeable Development Scenario for Oil and Gas, Table 20

³ Draft EIS, Section 4.2.3, Analysis Assumptions. “Assumptions for analysis are made to assist in determining the potential environmental...impacts... They are based on...the likelihood of resource development (e.g. the reasonably foreseeable development (RFD) for oil and gas).”

quality, surface and ground water usage, cultural resources, Areas of Critical Environmental Concern (ACEC) relevance and importance criteria, invasive species, wildlife habitat, visual resources and others. Simply put, the RFD supported the assumptions of impacts for almost every resource analyzed in the DRMP. The BLM states early in the DRMP, as a way of providing context to all alternatives, that “the biggest difference in impacts from the range of alternatives can be derived from looking at the proposed allocations for minerals cited above in Table ES-1.”⁴

However, upon review of recent, actual data on oil and natural gas production in the RSFO, a very different story emerges. The BLM’s own data shows that in FY2022 in the RSFO, 33 Applications for Permits to Drill (APD) were received, 21 approved, 13 are pending, a mere 18 wells were actually spud and only 29 were completed.⁵

Based off the BLM’s 2013 RFD, it was projected and all NEPA analyses were based upon an average of 336 new wells being drilled every year in the RSFO. In fact, only 18 wells were spud in FY2022. With this actual data, one would reasonably assume 360 wells would be drilled over the 20-year life of the RMP, not the 6,700 wells projected in the RFD. The BLM has the data for the number of wells actually spud in the RSFO each year since the 2013 RFD was completed. The Associations are not able to construct the data for the time period since 2013 because the BLM does not make such data readily available to the public. However, BLM should present that data in the DRMP to give an accurate basis for its impacts analysis. We strongly recommend that the BLM provide the actual yearly data since 2013 before the final RMP, as NEPA requires the public to be informed with the best available information.

Assuming the 18 wells spud in FY2022 representation of an annual average, **the BLM’s outdated projection causes a severe overestimation of oil and natural gas development by 1,867 percent.** The assumptions used in projecting impacts for every alternative, of which oil and natural gas development was the predominate factor for determining impacts, are overestimated somewhere in the ballpark by a factor of 19. This level of overestimation makes the entire analysis from the BLM unreliable. The public and interested stakeholders have no objective reality of how management actions within each alternative will actually unfold into the future. Such excessive overestimation enables the BLM to erroneously justify the extreme conservation measures and land closures contemplated in Alternative B. This incredible mishap compels nothing short of a withdrawal and reissuance of the DRMP with an updated reasonably foreseeable development analysis and reanalysis of the impacts on all other natural resource values.

Not only has the BLM used outdated data on activity levels, but it has not considered very important data about the reduction in impacts that the oil and natural gas industry has achieved due to technological advancements, especially since 2011. In the year 2000, over 4,000 wells were spud in Wyoming. The following year (2001), combined oil and natural gas production totaled 327 million barrels of oil equivalent (BOE). In 2019, just over 650 wells were spud, and 2020 production totaled 334 million BOE. Just twenty years later, one sixth as many wells were needed to achieve a roughly equivalent production level, which represents a substantial reduction in land disturbance.

⁴ Draft RMP, page ES-6

⁵ BLM Oil & Gas Stats, FY22, Table 16: Applications for Permits to Drill (APD) Report

Further, it's important to emphasize that vertical wells, more prevalent in the 2000's, were drilled on single-well pads. Directional and horizontal drilling became more prevalent around 2010 and into the present, allowing for multiple wells per pad. This practice has reduced surface disturbance by as much as 70 percent and allows operators to access lease parcels with no surface occupancy, timing limitation, or conditional surface use stipulations.⁶ Parcels that would be off-limits to leasing under Alternative B could in fact be responsibly developed since industry practice does not result in the impacts that the BLM assumes. Moreover, through the application of prudently attached lease stipulations rather than the blanket closure to leasing that the BLM envisions, impacts to other natural resources can be further minimized or eliminated altogether. Well count is no longer the single surrogate for inferring surface disturbance. The reduction in the number of pads required to recover the same amount of hydrocarbons is greater than the reduction in well count from 2001 to 2019. The BLM has not adequately accounted for the decrease in surface disturbance from well pads, access roads, power lines, pipelines and other infrastructure created by the transition to horizontal drilling and the resulting reduction in fragmentation. The BLM must reanalyze the impacts from oil and natural gas based on actual wells spud and realistic assessments of today's technologies.

If the BLM had used data based on more realistic activity levels, modern technologies and industry best practices, it would have provided the public a much more accurate picture of the magnitude of impacts that could be expected from oil and natural gas development in the RSFO. In fact, recent, more accurate data would have driven down projected impacts from development to a level far below what was even considered in the conservation alternative. Projections incorporated into every alternative related to surface disturbance, water resources disturbance within lands with wilderness characteristics, vegetative communities, wildlife and fisheries, special status species, wild horses, cultural resources, paleontological resources, visual resources, livestock grazing management and recreation would all be much lower than what is presented in the DRMP.

Relying on 10-year old data that did not account for modern technology and industry best practices has severely skewed the public's ability to gauge the actual impacts that could be expected. The BLM's mischaracterizations are so important and so integral to the entire DRMP that the BLM must conduct a new RFD and issue a new draft RMP. An updated, accurate RFD is so foundational to the projections in the DRMP that it cannot, at present, be relied upon.

The BLM's Preferred Alternative

The BLM failed to engage with cooperating agencies to develop an alternative which reflects the Biden Administration's objectives. Instead, the BLM thrust the DRMP upon Wyoming and selected as its preferred choice Alternative B. This alternative has a pervasive emphasis on preservation objectives, causing unnecessary harm to the economic stability of the State of Wyoming, and particularly the oil and gas industries. The objectives will ultimately undo the very conservation goals it professes to embrace. They are based on a flawed interpretation of what a truly environmentally oriented management philosophy should be based upon. Striking a balance between environmental conservation and the economic well-being of the State is essential for long-term sustainability.

Alternative B would eliminate the possibility of fluid mineral leasing on 2,490,520 acres of the 3.7 million subsurface acres managed in the RSFO. It would leave oil and natural gas

⁶ Applegate, 2014.

development available only where valid existing leases are held and close currently available lands when those leases expire. This is a vast departure from the current RMP, which sets aside 540,021 acres as closed in areas incompatible with oil and natural gas development. Additionally, over 800,000 acres would be managed as no surface occupancy areas representing a significant 412 percent increase from current practice.

The Federal Land Policy and Management Act (FLPMA) directs that public lands be managed with recognition of the nation's need for domestic sources of minerals⁷ and has thus identified mineral development as a primary use of public lands. The Mineral Leasing Act has further defined national policy as "promot[ing] the mining of coal, phosphate, oil, oil shale gas and sodium on the public lands". When intermingled, these two policies mandate that productive uses of public lands be allowed for the public interest. Removing that potential from every acre not already leased is, in effect, a withdrawal of federal lands for a specified purpose, an outcome only allowed through Congressional action⁸.

If the BLM's objective is to achieve an environmentally protective outcome, it would designate these lands as available for oil and natural gas leasing and development. Instead, the BLM neglected to fully disclose the environmental implications from selecting Alternative B. Those implications would include increased greenhouse gas (GHG) emissions from the development and production of oil and natural gas transferred to other areas of the country or overseas. This relieves the BLM of the ability to regulate development, perhaps lessening environmentally beneficial protections applied on public lands. There is no energy substitute capable of replicating what oil and natural gas do. Preventing their development in the RSFO does not eliminate demand for oil and natural gas but merely displaces production to other areas.

Oil and natural gas from public lands are some of the most sustainably developed in the world, particularly in the RSFO. Besides the strict U.S. Environmental Protection Agency (EPA) and state air quality regulations that reduce methane emissions and intensity, the BLM imposes many other regulatory measures and lease stipulations not found on nonfederal lands. The BLM has failed to account for the environmental impact of displacing production from federal lands in the RSFO to other areas that do not carry commensurate protections.

Further, the BLM has not considered the energy and geopolitical implications from restricting domestic oil and natural gas development in the RSFO. The United States currently consumes 20.28 million barrels of oil and 89.7 billion cubic feet of natural gas per day. In its recently released report, ExxonMobil projects that the world population will grow by 2 billion people by 2050 and Global Gross Domestic Product per capita will rise by 85 percent during the same period. Fifteen percent more energy will be required to sustain these growing demands and oil and natural gas are projected to meet 54 percent of global demand.

In its 2023 Annual Energy Outlook, the U.S. Energy Information Administration (EIA) projects that domestic oil and natural gas consumption will continue at current rates of consumption, if not rise slightly, through 2050.⁹ EIA has consistently projected over the years that oil and natural gas consumption will continue to rise globally through 2050 and beyond, continuing to outpace renewables, as shown in Chart 1 below.¹⁰

⁷ 43 U.S.C §1701(a)(12)

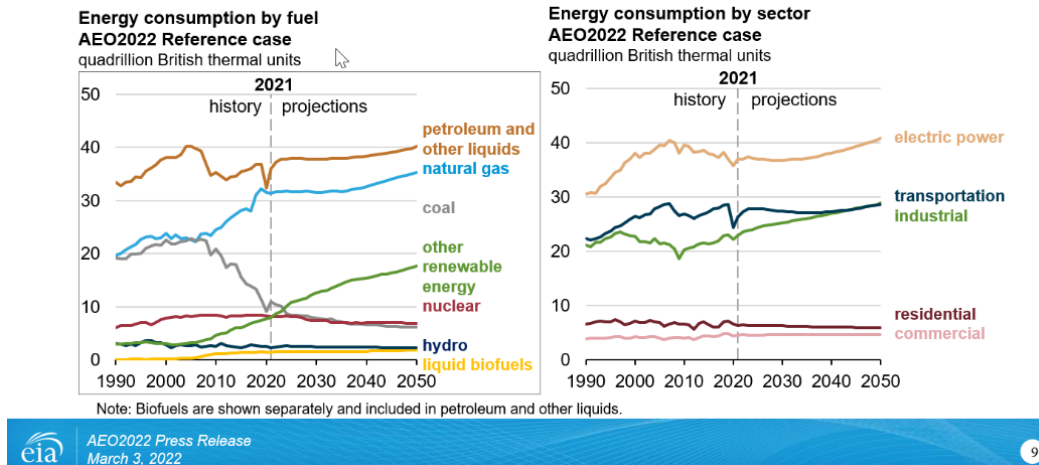
⁸ 43 U.S.C §1701(a)(4)

⁹ [Annual Energy Outlook 2023](#), EIA, March 16, 2023.

¹⁰ [Annual Energy Outlook 2022](#), EIA, March 3, 2022.

Chart 1. EIA Projection of Global Energy Consumption

Renewables consumption grows fastest but remains far below petroleum and other liquids consumption in 2050



Approximately 24 percent of the oil and 11 percent of the natural gas produced in the United States require authorization through the federal onshore and offshore programs, a significant portion of production in our nation. To stunt their development simply elicits greater reliance on other supply chains to meet demand. On average, 40 percent¹¹ of the oil and gas consumed in the United States comes from international sources. Restricting or eliminating the ability for development within the RSFO will result in some portion of that supply coming from international sources. In that instance, the BLM would have no control or knowledge of the environmental controls and mitigation requirements during production, will have no oversight in the refining process, and will result in longer transportation routes and slower delivery. These factors lead to an outcome in which removing oil and natural gas development in the RSFO results in the worst environmental outcome. Real-world scenarios indicate that allowing domestic oil and natural gas development is the environmentally preferable alternative that also has corollary socio-economic benefits.

Alternative B would apply right-of-way exclusion areas throughout a majority of the east-west natural gas transmission corridor which loosely follows interstate-80. This area is commonly referred to as the checkerboard, with alternating public and private land sections. This would limit access to the growing customer base throughout the service area or interstate export opportunities. Utilizing natural gas for electric combustion is one strategy for Wyoming companies to continue to thrive and comply with the Wyoming Regional Haze State Implementation Plan. The impacts to these industries and other users throughout this corridor were not analyzed.

The BLM has not conducted a comprehensive socio-economic analysis of the full impacts of Alternative B and placing 2.5 million acres off-limits to oil and natural gas production in the

¹¹ U.S. Energy Information Administration, Frequently Asked Questions, How Much Petroleum Does the United States Import and Export?

RSFO. Had it done so as required under FLPMA, the analysis would show that the implications are stark. Even without considering the full impacts, the BLM anticipates its preferred management objective will cause a reduction in economic activity of \$907 million annually, with 2,920 jobs lost, equating to \$211 million in less labor earnings in the planning areas, per year. These are not meaningless, rounding error impacts, but would have generational impacts to people in the RSFO and beyond.

Management Actions

Table 2-1 in the DRMP lists management actions for all the resources and activities within the field office and denotes the goals each is intended to achieve. Below are the Associations' substantive comments to those management actions with a nexus to the oil and natural gas industry.

Leasable Minerals – Oil and Gas

Of the roughly 3.7 million subsurface acres managed by the BLM in the RSFO, the BLM claims 1.7 million are leased for oil and natural gas development. Table 2-5 in Volume 2 of the DRMP indicates the BLM's intention to close 2,490,520 acres to future oil and natural gas leasing. The BLM intends to only make available for future development a portion of the acreage currently leased because the agency intends to close almost 800,000 acres currently leased when the term of those contracts expire. FLPMA strikes a balance between conserving public lands for future generations while acknowledging that public lands must provide current and future generations the resources needed to survive. The BLM does not have the authority to effectively close all public lands under its management to fossil fuel development. Alternative B is indefensible considering the requirements of FLPMA and the Mineral Leasing Act.

Rather than a blanket closure to any leasing and development on 2.5 million acres, the BLM should consider appropriately tailored lease stipulations to protect other resource values in the RSFO. The Associations remind the BLM that the requirements of the Energy Policy Act of 2005, as well as the Energy Policy Conservation Act Amendments of 2000, that require federal land management agencies to use the least restrictive means necessary to protect other resource values. Blanket closure to a principal use of public lands is not the least restrictive means.¹² Moreover, blanket closure is inconsistent with the BLM's own Land Use Planning Handbook. The Land Use Planning Handbook provides that areas should only be closed to leasing when "other land or resource values cannot be adequately protected with *even the most restrictive lease stipulations.*" BLM Handbook H-1601, App. C at 24 (*emphasis added*).

The best option the BLM has in this instance is to continue the balanced approach of making lands available for oil and natural gas development that is currently in place: Alternative A. Alternative A would allow companies to develop their existing leases, as required by law, while also allowing them to continue their responsible development in the most economic, environmentally beneficial manner possible. Many of the leased areas in the RSFO are contiguous blocks. Encouraging their continued expansion would allow companies to establish drilling programs that capture the best resources on the fewest acres possible.

¹² See, e.g., 42 U.S.C. § 15922(b)(lease stipulations should only be as restrictive as necessary to protect the resource for which stipulations are applied); 42 U.S.C. § 6217(a) (directing the Secretary of Interior to consider leasing restrictions, among other potential restrictions to oil and gas resource development).

And the BLM cannot look at its decisions within this DRMP in a vacuum. While the Associations have and will continue to fight ardently against reforms the BLM has implemented to the oil and natural gas leasing program, the BLM is none-the-less operating the program differently. The BLM is offering fewer acres now than it ever has. And using the five criteria outlined in Instruction Memorandum 2023-007, the BLM has set strict guidance for what acreage they may make available for future leasing, including leases proximate to active production and additional considerations on habitat. When considering the restrictions the BLM has placed on the leasing program, operators are more selective than ever in nominating lands needed for future development. The BLM should keep the entire field office open and available to leasing, knowing that it is currently using other tools to influence the prevalence of development.

Rights-of-way

The issuance of rights-of-way (ROW) for pipelines, power lines, roads and sites are necessary for the orderly and effective development of mineral leases on both BLM-administered and split estate lands. This includes the ability of third-parties (e.g., midstream gathers/processors and electric utilities) to obtain and develop ROWs to support development of existing leases. The amount of acreage designated as ROW avoidance or exclusion areas in Alternative B would impose significant and unnecessary burdens on both existing and future mineral development, to the point of hindering or precluding any future development. This level of prescriptive management could result in the taking of significant resources from this industry, removing lessee's ability to develop resources as conditioned when a parcel was purchased, to which the BLM has no legal or reasonable justification. The management actions in Alternative A provide for environmental resource protection while still allowing mineral resource development, subject to numerous restrictions. The Associations recommend other clarifying changes regarding ROW avoidance and exclusion areas to ensure proper support for both future and existing mineral development.

The BLM does not have the authority to unilaterally modify existing leases through a resource plan amendment or otherwise infringe on valid existing rights. All BLM actions, including authorization of RMPs, are "subject to valid existing rights." 43 U.S.C. § 1701, note (h); see also *Strata Prod. Co. v. Jewell*, No. CV 13-205 JCH-GBW, 2014 WL 12789010, at *7 (D.N.M. Aug. 11, 2014) ("The authority of the BLM to take actions in accordance with a plan, however, is "subject to valid existing rights." (quoting 43 C.F.R. § 1610.5-3(b))). In particular, oil and gas leases constitute valid existing rights. E.g., *Barlow & Haun, Inc. v. United States*, 805 F.3d 1049, 1056 (Fed. Cir. 2015).

Federal lessees have a legal right to occupy the surface to explore for, produce and develop oil and natural gas resources on their leases, subject only to the stipulations contained in their lease at the time of issuance. See *Pennaco Energy v. United States Dep't of the Interior*, 377 F.3d 1147, 1160 (10th Cir. 2004). Thus, the BLM cannot terminate, modify or alter any valid or existing property rights – such as existing oil and gas leasing rights – or apply unduly restrictive conditions or stipulations that would significantly impede or impair new or continued development of existing leases and other rights, like instituting restrictive ROW policies which impede a right-holders ability to access and develop their lease. 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)); *Mitchell Energy Corp.*, 68 IBLA 219, 224 (1982) (citing Solicitor's

Opinion, M-36910, 88 I.D. 908, 913 (1981)); *Sierra Club v. Peterson*, 717 F.2d 1409, 1411 (D.C. Cir. 1983) (“On land leased without a No Surface Occupancy Stipulation the Department cannot deny the permit to drill; it can only impose ‘reasonable’ conditions which are designed to mitigate the environmental impacts of the drilling operations.”).

In the DRMP, the BLM makes the general statement that “[t]he RMP will recognize valid existing rights.” See Draft RMP/EIS at 1-2 and 2-2 (which mentions applying Alternatives stipulations and mitigations to applications for permit to drill). Unfortunately, the BLM does not explicitly recognize that in areas proposed for ROW avoidance or exclusion that lessees will be able to maintain their valid existing rights, which in many instances will require additional rights-of-way for new or expanded production. Operators of any current oil and natural gas leases may not be granted new ROWs. Instead, the BLM mentions that “approval will be on a case-by-case basis and subject to adequate mitigation of impacts following BLM mitigation policies and Wyoming BLM Mitigation Guidelines for Surface-Disturbing and Disruptive Activities” or that “The planning area is open to consideration of granting rights-of-way with the exception of defined exclusion and avoidance areas.”

The various Alternatives also mention that an operator must “Locate pipelines, power lines and other utilities adjacent to or co-located within existing ROWs to reduce new surface disturbance.” Additionally, the BLM proposes numerous restrictive stipulations, actions, and a range of conditions of approval (COA) that could significantly impede or impair the ability of operators to develop existing leases, thus depriving them of their rights provided under the lease. Accordingly, the Associations request that the BLM make clear throughout the DRMP, where the BLM discusses the scope and applicability of lease stipulations, COAs, special designations (e.g., ACECs), and other management prescriptions, that the proposed restrictions do not apply to valid existing right holders, particularly holders of oil and gas leases and ROWs that need access to those lands for resource extraction, and road and pipeline access. The best option for the BLM to achieve this end is to continue with management of rights-of-way as it currently is through Alternative A. The Associations again point out here that the BLM mustn’t consider designation of ROW in a vacuum but consider how it is operating the oil and natural gas program as a whole. Lessening restrictions on ROWs will encourage development to migrate to the most productive areas and with the least disturbance footprint possible.

The BLM pursuing its current course would also torpedo other policies of this Administration, especially as it relates to carbon capture, utilization and sequestration. In total, the federal government has awarded over \$134 million to public Wyoming entities on various initiatives that will advance the technology and geologic characterization for successful carbon capture. Through numerous CarbonSAFE awards, studies on unitization, pore space, decarbonization, and more, previous Administrations have invested in Wyoming to find answers to these important questions (with this current Administration providing the most funding).

Wyoming has the potential to store roughly one trillion tons of CO₂. The BLM should not silo itself but instead communicate with its sister federal agencies on policies such as this and find ways to assist and encourage their fruition. The best way the BLM can accomplish that task at present is to allow for continued placement of infrastructure by making ample lands available for future rights-of-way.

A final note on the BLM’s approach to rights-of-way is their obligation to not impede access to state lands. Wyoming has a Constitutional responsibility to generate revenue for its public school

system and state institutions by encouraging productive uses on state lands. These lands are very often encompassed by federal lands (very much so in the RSFO) and require access through those lands in order to be utilized. The BLM must respect this charge given to the state by its citizens and ensure that no actions taken within this RMP impede the state's ability to fund these activities. 43 C.F.R. § 1610.3-2 outlines the discretion afforded to states and a Governor's ability to make state policies known to the BLM through a consistency review. The Associations can think of no higher instance of where federal government deferral is warranted than to a state Constitutional mandate.

Areas of Critical Environmental Concern

In its consideration of designating new, and expanding existing ACECs in its preferred alternative, the BLM has failed to account for the management activities that have been in place which have allowed these areas to retain and enhance their unique values. The BLM has failed to prove how additional management prescriptions are needed. During its 12-year review, cooperators and the BLM had seemingly decided that some of the current ACECs were ripe for expansion or tighter management prescriptions, but that not all proposed ACECs met relevance and importance criteria. This was expressed in Alternative D.

The RSFO currently manages 10 ACECs on 286,460 acres as designated in the 1997 Green River RMP, shown in Alternative A. Below are details about the current ACECs. We note that the BLM has provided inconsistent information. In the Chapter 2 discussion of the alternatives, particularly as it relates to the ACECs on pages 2-174 through 2-211, the acreage detailed is different than in the summary Table 3-5 on page 3-28 through 3-29. The BLM should ensure the information is consistent throughout the DRMP so that the public is fully and accurately informed. We have noted the discrepancies below, with the first number reflecting the value from Table 3-5 and the second number determined from the Chapter 2 details. Current ACECs are as follows:

- Cedar Canyon (2,550/2,550 acres) – cultural values, scenic values, and wildlife habitat;
- Greater Red Creek (131,890/131,600 acres) – watershed, riparian values, cutthroat trout habitat, fisheries management, wildlife habitat;
- Greater Sand Dunes (36,850/39,290 acres) – geologic and biological features, recreation uses;
- Natural Corrals (1,142/1,110 acres) – cultural, historical, recreational, wildlife, and geological values;
- Oregon Buttes (3,450/3,440 acres) – scenic integrity as an historic landmark, wildlife and geologic values;
- Pine Springs (6,030/6,030) – cultural, historic, prehistoric, geologic, and scenic values;
- South Pass Historic Landscape (53,940/53,940 acres) – visual and historical integrity of the National Historic Trails, scenic and wildlife values;
- Special Status Plant Species (Variable/1,200 acres) – plant communities, habitat, threatened and endangered species;
- Steamboat Mountain (43,270/47,280 acres) – water quality, vegetation, soil, wildlife resources, geological and ecological features, diverse habitats, stabilized Sand Dunes, Steamboat elk herd and other big game populations;
- White Mountain Petroglyphs (20/20 acres) – cultural resource values, wildlife and scenic values.

The DRMP proposes designating new ACECs under Alternative B, as well as expansion of three existing ACECs. If these proposed new and expanded ACECs are approved, more than 1,704,205 acres in the planning area would consist of ACECs, an excessive 83% expansion of land designated as ACECs.

- Greater Red Creek ACEC expanded by 336,570 acres, from 131,600 to 468,170 acres, to include Sugarloaf Management Area and Salt Wells Management Area – wildlife habitat, riparian values, scenic qualities, cultural resources, paleontological resources;
- South Pass Historic Landscape expanded by 117,360 acres to 171,300 acres – visual values, historical values, scenic and wildlife values;
- Steamboat Mountain ACEC expanded by 392,050 acres to 439,330 acres to include the Steamboat Mountain Management Area, western portion of the Red Desert Watershed Management Area, and other areas – wildlife resources, diverse habitats, big game populations;
- South Wind River ACEC (374,710 acres) – recreation opportunities, visual values, wildlife habitats, migration corridors, visual and historical integrity of the National Historic Trails and surrounding viewscape, Special Status plants and their habitats
- East Sand Dunes— Red Lake ACEC (22,340 acres) – recreation opportunities, visual values, wildlife habitats and migration corridors;
- Big Game Migration Corridors (226,335 acres) – recreation opportunities, visual values, air quality, biological diversity, wildlife habitats and migration corridors, visual and historical integrity of the National Historic Trails and surrounding viewscape, special status plants and their habitats;
- Big Sandy Openings (2,020 acres) — scenic integrity, watershed, wildlife, and geologic values.

Per Appendix V, all ACECs would be closed to oil and natural gas leasing. The BLM fails to explain how oil and natural gas development would impair the values for which the ACEC is proposed. The BLM did not disclose any analysis within any ACEC report noting how current development has impaired those values. The BLM further failed to analyze current development pervasiveness and techniques which lessen footprint disturbance and advancements in reclamation. Closing lands to responsible oil and natural gas leasing and development is not supported and is the most restrictive method for preserving other natural resource values. It would actually prohibit opportunities which enhance the productivity of the habitat. The BLM has provided insufficient evidence for any of these expansions or new ACECs to demonstrate that they are necessary. These factors chip away at the scant analysis the BLM has provided.

By choosing the most restrictive means for protecting other resource values, the BLM is violating the Energy Policy Act of 2005 and the Energy Policy Conservation Act Amendments of 2000, which forbid federal land management agencies from utilizing the most restrictive means necessary to protect other resource values. The BLM has at its disposal many tools to protect resource values well short of closing lands to oil and natural gas leasing. The BLM should instead specify appropriate lease stipulations, tailored to the resource values in the proposed ACECs, rather than designating these excessive ACECs and imposing blanket closures.

Alternative D lessened four ACECs by 37,304 acres. These reductions were determined by the Wyoming stakeholders as a way to better balance productive, multiple uses of public lands with

environmental conservation. The stakeholders recognize, as do our Associations, that lease stipulations, existing rules, current technology and the best management practices of the oil and natural gas industry mean that lands do not have to be locked away from responsible leasing and development in order to protect other resource values.

Air Quality

The federal Clean Air Act dictates how air quality regulations are developed, implemented and enforced across the nation. The Wyoming Department of Environmental Quality has been granted primacy to regulate and enforce the provisions of the CAA from the U.S. Environmental Protection Agency. Any decisions on activities to regulate or enforce air quality must be deferred to Wyoming DEQ.

The Associations understand that the BLM is currently required to consider air quality impacts in the course of an environmental review. Unfortunately, that analysis is deficient because it holds static energy generation sources and their commensurate emissions. In reality, several electricity generating units have announced plans to convert to natural gas. The BLM should carefully analyze the real-world emissions implications of these announced plans to determine true emissions estimates.

Water Resources

The Wyoming DEQ, Water Quality Division has been granted primacy from the EPA to develop, regulate and enforce point source water quality standards. Wyoming DEQ similarly has oversight of nonpoint sources.

The state of Wyoming, with responsibility delegated to the State Engineer's Office, manages the water resources in the state and has jurisdiction to determine their allocation.

Any decisions affecting either water quality or quantity should be deferred to the state of Wyoming. Because of this, the BLM should not outright preclude any areas in the RSFO from surface disturbing activities due to their perceived impacts on water quality or quantity. Regulations are such that they can be tailored and their stringency be commensurate to offset the expected amount of water quality degradation. It is rare that projects fail due to an inability to find a reasonable regulatory solution, but those instances do occur. The probability of project success should not be based on a non-jurisdictional decision from the BLM.

Soil and Geologic

Current U.S. Department of Agriculture, Natural Resource Conservation Sciences mapping and ecological site descriptions are behind schedule, so pinning any requirements on this basis at this time is not recommended. Obtaining soil samples for every site, as proposed, is excessive, time-consuming and often unwarranted. Given Wyoming's short growing season, requiring soil samples to be collected and analyzed without specific justification before development could result in substantial delays. It would also be useful for the NRCS to define what characteristics they are looking for before sampling (e.g., soil texture, pH, electroconductivity, etc.). Some tests can be conducted in the field, while many other tests are required to be analyzed in a lab. The decision to conduct soil sampling should be left to the discretion of the project proponent as they are ultimately responsible for successful restoration. The BLM must also ask whether field office staff have sufficient training to make these determinations.

Also, often times areas with “limited reclamation potential” are areas which are already devoid of wildlife and not highly productive. Limited reclamation potential should not be a reason to dissuade or remove productive activities from those lands. As science and practices associated with reclamation and ecological restoration are advancing to become more predictive, understanding limiting factors is likely to go a long way in assisting reclamation in challenging environments. It is important to consider the growing body of knowledge regarding the use of seed mixes which are tailored to survive in limiting conditions (e.g., native halophytes in saline/sodic soils) and allowing development on lands with low reclamation potential.

Congressionally Designated Trails

The Associations request the BLM stay the course as it relates to management of the visual resources surrounding contributing trail segments. Expanding the current one-fourth ROW avoidance area to a 10-mile ROW exclusion is egregious. This will have implications across the field office. There are many national trail contributing sections oriented north to south across the checkerboard. A 10-mile ROW exclusion would prohibit any new infrastructure necessary to move products through Sweetwater County. Further, it infringes on valid existing rights by stranding existing leases with no ability to access ROW’s to develop their assets. This level of restriction has never been needed and is not warranted going forward.

Of additional concern with national trails is the BLM’s proposal to append a 30-mile Class II visual resource management prescription. VRM Class II puts heavy requirements to hide visual intrusions from anthropogenic development. At present, the State Historic Preservation Office works in concert with the BLM to determine the level of mitigation needed to protect the visual integrity of contributing sections of national trails. This process has and will continue to be the best option. There was significant work completed in the Normally Pressured Lance ROD which considered the visual impacts from that development on nearby trails. It is certainly not a conclusion of the NPL ROD that a 30-mile buffer is warranted.

The Associations recommend the BLM not make changes to the current management objectives for national trails. This industry is capable of mitigating visual impacts to the extent necessary and has confidence in the state SHPO to offer rational solutions which protect these resources.

Fish and Wildlife

The BLM should defer to the Wyoming Game & Fish Department (WGFD) guidelines for surface disturbing activities in big game crucial winter habitat and parturition areas. Outright denial of surface disturbing activities must not occur. The use of waivers, exemptions and modifications has long been in effect to allow for nuanced and effective management of these areas. The BLM should consider the peer-reviewed study by Applegate and Owens that shows a 70 percent reduction in surface disturbance in Wyoming from increased use of horizontal drilling.¹³ The BLM’s analysis needs to account for this decrease in surface disturbance and access roads created by the transition to horizontal drilling and the resulting reduction in habitat fragmentation, rather than impose a denial of surface disturbing activities. The industry

¹³ [“Oil and gas impacts on Wyoming’s sage-grouse: summarizing the past and predicting the foreseeable future,”](#) *Human-Wildlife Interactions Vol. 8 No 2*, Dave H. Applegate and Nick L. Owens, 2014, p. 284-290.

understands the regulations applied by the WGFD and to improve consistency across land ownerships, the BLM should align in this respect.

Under no circumstances should the BLM outright exclude surface occupancy and disturbance on existing leases where that is not already a condition, as is proposed under Alternative B. There are consultation processes and opportunities to consider impacts to wildlife during the development and operation phases that can lessen short-term disturbance. The BLM must acknowledge and respect valid existing rights and recognize this industry's ability to develop resources without causing unnecessary complications for wildlife.

The BLM should similarly align its management within and surrounding big game migration corridors to the requirements imposed by the WGFD. Alternative B, imposing NSO within all corridors and applying a ½ mile NSO buffer, is not supported by any science. It could actually be an impediment to encouraging private landowner cooperation going forward and limit restoration activities which come from authorizing productive uses. The WGFD, led by the contours of Wyoming Executive Order 2020-01, has an opportunity to conduct additional analysis of any proposed disturbance activities within migration corridors and provide stipulations to development which maintain corridor functionality.

Alternative B applies a 1-mile restriction to surface structures to occupied and historic raptor nests and associated feeding grounds and would manage these areas as avoidance areas for new rights-of-way. Appendix J Table J.2 Seasonal Wildlife Restrictions applies a 2-mile restricted area around active and historic raptor nests from February 1 through July 31. These blanket restrictions are not supported by scientific studies and do not consider variable conditions such as nest condition, recent nest use/dis-use, topographic sight-line and sound barriers, or species-specific tolerance to human activity. With regard to buffers surrounding raptors nests, it has long been the practice of the BLM to defer to the U.S. Fish & Wildlife Service for those determinations. This coordination should continue allowing BLM biologists and USFWS to use their scientific and regional knowledge to analyze disturbance thresholds, topography and other sight-line and sound barriers around active raptor nests on a case-by-case basis

Projects With Existing Records of Decision

The BLM should strongly consider adopting Governor Gordon's Task Force on the Rock Springs Resource Management Plan Agreement in Principle #6. The task force unanimously recommended "No new exclusions or avoidance for fluid mineral development and rights of way in areas operating under existing and approved Records of Decisions".

Portions of two existing oil and gas development projects fall within the RSFO, the Jonah Infill Development Project and the Normally Pressured Lance Development Project.

Proposed special designations, visual restrictions, associated management actions and other elements in the BLM's preferred alternative B would have significant impact on the existing and responsible execution of both Records of Decision. Of particular concern is the proposed 15-mile buffer associated with National Historic Trails in alternative B. The NPL ROD has protection measures in place already based on a comprehensive viewshed analysis.

Thoughtful, years-long analysis by the BLM and cooperating agencies went into the EIS process for both development projects and ultimately decisions were made that reflect a Multiple-Use

and Sustained Yield Mission and innovative conservation. In addition, the BLM, state of Wyoming and others have spent years defending these balanced decisions in court and appeals successfully, affirming the BLM's decisions. The below excerpts highlight the court and BLM's affirmation of the NPL decision.

From Judge Skavdahl's opinion:

“The BLM took a ‘hard look’ at the environmental consequence and considered all relevant information when making its ROD and deciding the best alternative to balance the goals of the NPL Project and the potential environmental impacts.” *Upper Green River All. v. U.S. Bureau of Land Mgmt.*, 598 F. Supp. 3d 1303, 1330 (D. Wyo. 2022).

From BLM's brief:

The NPL ROD “authorized the Project alternative that would **best** avoid impacts to wildlife while also allowing development to proceed.” Resp. Br. for the Federal Appellees, *W. Watersheds Project v. U.S. Bureau of Land Mgmt.*, No. 22-8022, at 1 (filed Jan. 24, 2023) (emphasis added).

BLM's “careful analysis” of greater sage-grouse winter concentration areas “illustrates how BLM appropriately evaluated and disclosed the Project's potential effects at a ‘programmatic level,’ based on the available information.” Resp. Br. for the Federal Appellees, *W. Watersheds Project v. U.S. Bureau of Land Mgmt.*, No. 22-8022, at 35 (filed Jan. 24, 2023).

In the NPL EIS, “BLM took a hard look at the Project's potential effects on pronghorn and appropriately considered any cumulative impacts within Grand Teton National Park as well.” Resp. Br. for the Federal Appellees, *W. Watersheds Project v. U.S. Bureau of Land Mgmt.*, No. 22-8022, at 44 (filed Jan. 24, 2023). Resp. Br. for the Federal Appellees, *W. Watersheds Project v. U.S. Bureau of Land Mgmt.*, No. 22-8022, at 36 (filed Jan. 24, 2023).

“BLM's EIS contains detailed information about the relationship between the Project area and pronghorn habitat.” Resp. Br. for the Federal Appellees, *W. Watersheds Project v. U.S. Bureau of Land Mgmt.*, No. 22-8022, at 45 (filed Jan. 24, 2023).

“The Project area does include [big game] migration routes, and BLM ensured that the Project's design protected key migration routes. For example, portions of the big game ‘crucial winter range and migration routes’ in the Project area were included in development area 1—the 38,384-acre part of the Project area with the most substantial limits on development density.” Resp. Br. for the Federal Appellees, *W. Watersheds Project v. U.S. Bureau of Land Mgmt.*, No. 22-8022, at 46 (filed Jan. 24, 2023).

BLM's analysis of pronghorn impacts “complied with NEPA. The agency explained why it analyzed the Project's effects at the Herd 401 level, and why it studied the geographic area it did. It identified the different sorts of pronghorn habitat within the Project area, as well as migration routes, and it analyzed and disclosed the Project's potential effects on those areas. It also identified potential mitigation measures and explained how Project activities could be further modified at the site-specific permitting stage.” Resp. Br. for the Federal Appellees, *W. Watersheds Project v. U.S. Bureau of Land Mgmt.*, No. 22-8022, at 47–48 (filed Jan. 24, 2023).

Any action in the DRMP that impedes or deviates from current management of lands within the boundaries of both the Jonah Infill and NPL boundaries should be excluded from the final RMP and defer to the existing and court upheld management outlined in the Records of Decisions.

In addition, both the Jonah and NPL projects are located in two different field offices. Any inconsistency in management from one field office managing for the ROD and another managing from the ROD and superseding RMP requirements would create significant complications.

Both the Jonah Infill Development Project and NPL Development Project have more than adequate NEPA analysis and more importantly significant, and effective, resource protection measures in place.

Appendix I – Reclamation Plans

The BLM is proposing both unreasonably stringent expectations for reclamation of disturbed sites and is requiring standards that will not produce the greatest habitat restoration results. Companies must have significant latitude when developing reclamation plans instead of being constrained by a set of prescriptive expectations that do not allow for the diversity of landscapes.

One requirement the BLM proposes is that the average frequency of shrubs within a project area must accomplish 50 percent coverage as gauged against a reference site. It can take well over 20 years for shrubs to dominate a site at that level. The BLM's focus on shrub coverage ignores the science associated with ecological succession. Therefore, it may be dismissive of a more reasonable and productive outcome which would be to target healthy, vigorous and diverse plant communities which provide benefits to invertebrates and support trophic food webs. Allowing discretion at the planning stages will increase the probability of achieving the best outcome.

Another standard the BLM is proposing is that the average percentage composition and total diversity of forbs must be equal to or greater than pre-disturbance composition. Yet multiple agencies with expertise, including the NRCS, Sublette County Conservation District, the Wyoming Department of Agriculture WGFD and the Bureau itself have determined that the requirement for forbs be equal or greater than pre-disturbance composition is a poor measurement or criteria. This is an arbitrary goal set by the BLM that again will not result in the best outcome for reclaiming a disturbed site.

Waivers, Exemptions and Modifications

The Associations are concerned that Alternative B's restriction of the use of waivers, exemptions, and modifications (WEM) will limit the field office's flexibility to respond to conditions on the ground and conduct adaptive management. The DRMP discussion of Leasable Minerals – Oil and Gas in Table 2-1 starting on page 2-29 specifies that exceptions will not be granted in Alternative B, even those carefully detailed in Appendix B, as they would in other alternatives. Just as the BLM has not provided justification for the blanket closure of 2.5 million acres of lands in the RSFO, BLM provides no justification for denying the use of WEMs entirely.

As has been practiced in Wyoming, the BLM grants a very small number of WEMs, and only after companies meet stringent requirements, including compensatory mitigation and robust recent surveys of habitat and species data, which are thoroughly vetted by the state and BLM

wildlife biologists. Further, companies only ask for an exception when necessary to ensure safety, allow an operation to timely commence or provide an additional few days to finish an operation such as drilling a well. Allowing an exemption, defined as “a limited exemption, for a particular site within the leasehold, to a stipulation,” the BLM is not putting a species or other special status area at risk. Further there are several benefits that result from timing stipulation exceptions, such as additional mitigation efforts, studies and permanent conservation credits. In the DRMP, the BLM should recognize the strict application of WEMs at the field office level and not seek to deny their use.

Further, Wyoming BLM data, obtained through a Freedom of Information Act request by Public Employees for Environmental Responsibility (PEER), show that of 127 applications for exceptions, only 78 were requested from oil and natural gas companies in Wyoming over the five-year period from January 1, 2018 to February 1, 2023.¹⁴ The remainder were from solar energy, power and telephone companies unrelated to oil and natural gas. Of the oil-and-gas related requests, 73 were granted for an average of 14.6 per year. Less than 15 per year is hardly an abuse of WEMs and certainly reasonable given the requirements the BLM demands companies meet before granting an exception. With approximately 4,561 APDs approved in Wyoming over those five years, granting 73 exceptions is a very reasonable 1.6 percent.

What’s especially interesting about the data that PEER obtained is that no exceptions were requested by oil and gas companies in the RSFO. All exceptions requested and granted in the RSFO were for Union Telephone, Sweetwater Solar and Quanta Electric Power, none of which is an oil and natural gas company. The notion that WEMs are unreasonable and should not be granted in the RSFO, as specified for Alternative B, is simply not supported by data.

We recognize that the data PEER obtained from their FOIA may not be complete. However, the onus is on BLM, in the DRMP analysis, to show evidence supporting management action 2207 to deny their use in the RSFO. Absent such data, denying the use of WEMs in the planning area is simply not substantiated.

The Associations generally encourage the BLM to offer as much discretion and flexibility to consider WEMs that are otherwise grounded in recent scientific data and result in practical operational activity. The prompt consideration and processing of exception requests and their approval when conditions are met results in many operational, wildlife and habitat efficiencies and benefits, including reduced impacts from drilling and completions equipment mobilization and demobilization.

Inconsistent Information

Table 2-1, Management Objective 2207 indicates that 2,186,218 acres will be closed for oil and gas leasing under Alternative B and Table 2-4 in Appendix V confirms this. The DRMP notes that, as of 2010, 1,772,213 acres were leased in the field office. The BLM is intending to close areas for future leasing that are currently leased when the term of an existing lease expires. However, Table 2-5 indicates that 2,490,520 acres are intended to be closed for fluid mineral

¹⁴ [*BLM Oil Exemptions Threaten Sage Grouse in Wyoming: Groups Ask for Immediate Moratorium on Waiver of Habitat Protection*](#), PEER, March 8, 2023. We took the data PEER obtained in a FOIA and tabulated the numbers related to oil and natural gas, as PEER, an anti-oil-and-gas advocacy group, was attempting to use data for all 127 WEMs, even those related to solar and electricity transmission, to advocate for no oil and natural gas exemptions.

leasing. While both are incredible departures from how the BLM has managed public lands during its entire existence, surety of the truth is needed.

Further comparing alternatives, MA 2207 indicates the following acres closed to fluid mineral withdrawal: Alternative A: 540,021 acres; Alternative C: 225,782 acres; Alternative D: 768,989 acres. Table 2-5 indicates: Alternative A: 335,939; Alternative C: 79 acres; and Alternative D: 270,287. This must be reconciled.

Conclusion

The BLM caused the reaction that unfolded from its proposed action. The BLM threatens not only the economic and societal foundation of the communities within the RSFO, but indeed sent a message to all Western communities dependent on public lands that their future is in jeopardy. Businesses, governments, organizations and citizens committed themselves to a level never before needed in an effort to maintain the world they know and ensure a future for their children. The Associations hope the BLM heard the message.

The BLM attempts to revise RMPs on a 20-year rotation, as data, techniques and priorities evolve. The foundation of this DRMP is vintage 2010, is far off the mark and as such, it is evident the data and projections it incorporates are egregiously off and in need of an update. The overestimation of oil and natural gas development and associated impacts require the BLM to rescind this draft RMP and start anew or, at a minimum, issue a supplemental EIS after it has completed a new reasonably foreseeable development analysis.

Thank you for the opportunity to comment. The Associations welcome any questions and further discussion, and PAW will continue to participate actively in the stakeholder process. We urge the BLM to listen to the state of Wyoming, its cooperating agencies and the stakeholders who have been working in good faith to find balanced solutions in the RSFO.

Sincerely,



Pete Obermueller
President
Petroleum Association of Wyoming



Kathleen Sgamma
President
Western Energy Alliance

cc: The Honorable John Barrasso, U.S. Senate, State of Wyoming
The Honorable Cynthia Lummis, U.S. Senate, State of Wyoming
The Honorable Harriet Hageman, U.S. House of Representatives, State of Wyoming
The Honorable Mark Gordon, Governor, State of Wyoming