



***Bureau of Land Management  
Director's Summary Protest Resolution  
Report***

**Moneta Divide Natural Gas  
and Oil Development Project  
Proposed Resource  
Management Plan  
Amendments and Final  
Environmental Impact  
Statement**

May 1, 2020

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## **Contents**

Acronyms .....	ii
Protesting Party Index .....	1
FLPMA –Migratory Bird Treaty Act and 2015 Wyoming Greater Sage-grouse Approved Land Use Plan Amendment Conformance .....	2
NEPA – Inadequate Analysis - Wildlife .....	4
References .....	6

## *Acronyms*

<b>APD</b>	Application for Permit to Drill
<b>ARMPA</b>	Approved Resource Management Plan Amendment
<b>ARMP</b>	Approved Resources Management Plan
<b>BLM</b>	Bureau of Land Management
<b>CFO</b>	Carlsbad Field Office
<b>DDA</b>	Designated Development Area
<b>FLPMA</b>	Federal Land Policy and Management Act
<b>FEIS</b>	Final Environmental Impact Statement
<b>LFO</b>	Lander Field Office
<b>MBTA</b>	Migratory Bird Treatment Act
<b>Moneta Divide FEIS/PRMPA</b>	Moneta Divide Natural Gas and Oil Development Project Final Environmental Impact Statement and Proposed Resource Management Plan Amendments
<b>NEPA</b>	National Environmental Policy Act
<b>PHMA</b>	Priority Habitat Management Area
<b>RMP</b>	Resources Management Plan
<b>RMPA</b>	Resources Management Plan Amendment
<b>ROW</b>	Right of Way
<b>TLS</b>	Timing Limitation Stipulations

## *Protesting Party Index*

<b>Protester</b>	<b>Organization</b>	<b>Letter ID</b>	<b>Determination</b>
Keith Collins		PP-WY-MDRMPA-20-002	Dismissed – No Standing
Nichole Collier		PP-WY-MDRMPA-20-003	Dismissed – No Standing
Linda Raynolds		PP-WY-MDRMPA-20-004	Dismissed – Incomplete
Kyle Larson		PP-WY-MDRMPA-20-005	Dismissed – No Standing
Andrea Taylor	Aethon Energy	PP-WY-MDRMPA-20-006	Dismissed – Comments Only
Colleen Durtsche		PP-WY-MDRMPA-20-007	Dismissed – No Standing
Kathy Schilling		PP-WY-MDRMPA-20-008	Dismissed – No Standing
Beth Johnson		PP-WY-MDRMPA-20-009	Dismissed – No Standing
Thomas Davenport		PP-WY-MDRMPA-20-010	Dismissed – No Standing
Beth Johnson	Vincent Financial Services	PP-WY-MDRMPA-20-011	Dismissed – Incomplete
Tim & Lindy Linn		PP-WY-MDRMPA-20-012	Dismissed – Comments Only
Justin Farley	Advance Casper	PP-WY-MDRMPA-20-013	Dismissed – No Standing
Kelly Fuller; Michael Saul; Rebecca Fisher <sup>1</sup>	Western Watersheds Project, Center for Biological Diversity, & WildEarth Guardians	PP-WY-MDRMPA-20-014	Denied - Issues and Comments
J. Carter Napier	City of Casper	PP-WY-MDRMPA-20-028	Dismissed – No Standing

<sup>1</sup> *This letter was cosigned by multiple parties. In this report, it is referenced as Kelly Fuller et al., Western Watersheds Project et al.*

## ***FLPMA –Migratory Bird Treaty Act and 2015 Wyoming Greater Sage-grouse Approved Land Use Plan Amendment Conformance***

***Kelly Fuller et al.***

***Western Watersheds Project et al.***

**Issue Excerpt Text:** The Final Environmental Impact Statement (FEIS) states: The Bureau of Land Management (BLM) would amend the Casper Field Office (CFO ) Resources Management Plan (RMP) to establish a Designated Development Area (DDA) in the CFO within the Production Area (53,393 acres), excluding the portion in Priority Habitat Management Areas (PHMA), to emphasize oil and gas management. The DDA in the CFO would apply similar management approaches as the neighboring Lander Field Office (LFO) DDA to provide more consistent management across the Production Area. FEIS at 2-37. The FEIS further states: On an annual basis, the BLM would evaluate and, if appropriate based on LFO and CFO RMP criteria, grant exceptions to discretionary Timing Limitation Stipulations (TLS) in the LFO and CFO DDAs. The intent of this element is to reduce the seasonal variation in the pace of development and maintain a more consistent level of development to better avoid seasonal fluctuations in demand for local services. For analysis purposes, this alternative assumes exceptions would be granted on an annual basis. In practice, the BLM would be required to evaluate each exception individually and make a determination in accordance with exception criteria of the LFO and CFO RMPs, and therefore exceptions may not be granted in all cases. FEIS at 2-37 to 2-38. This RMP amendment could lead to foreseeable incidental take of birds protected by the Migratory Bird Treatment Act (MBTA) without issuance of MBTA take permits. Under the amendment, BLM would not apply a seasonal timing limitation that protects the nests of many raptors to maintenance and operations actions from February 1 through July 31. FEIS at 2-40. As a result, the project operators would be allowed to conduct surface-disturbing actions within ¼ mile nest buffers for red-tailed hawks, Swainson’s hawks, American kestrels, ospreys, great horned owls, long-eared owls, northern saw-whet owls, common barn owls, and western screech owls, all of which are protected by the MBTA. FEIS at 2-40. Any take of these raptors, their nests, or eggs resulting from surface- disturbing activities during that time - or any other - without issuance of MBTA take permits would violate the MBTA. This RMP amendment would also fail to conform to the Wyoming Grouse ARMPA because it would conflict with the Plan’s MD SSS 9: Surface disturbing and/or disruptive activities would be prohibited from March 15-June 30 to protect sage-grouse nesting and early brood rearing habitats within 2 miles of the lek or lek perimeter of any occupied lek located outside PHMA. Instead, this RMP amendment would allow maintenance and operations activities to proceed without complying with MD SSS 9. FEIS at 2-40. Voiding a management direction of the Wyoming Grouse Approved Resource Management Plan Amendment (ARMPA) in order to facilitate a 4,250 well natural gas and oil project was not contemplated by BLM when it analyzed environmental impacts associated with the Wyoming Grouse ARMPA. Failure to conform to the Wyoming Grouse ARMPA would not fulfill BLM’s obligations under the Federal Land Policy and Management Act (FLPMA). Although the RMP amendment establishing a DDA is not currently part of BLM’s Preferred Alternative, BLM is still considering it, and it is proper to protest it at this time.

***Kelly Fuller et al.***

***Western Watersheds Project et al.***

**Issue Excerpt Text:** BLM’s Preferred Alternative Does Not Conform to the 2015 Wyoming Grouse ARMPA. The FEIS states, “Greater Sage-grouse management under the Preferred Alternative would be the same as Alternative 2. In contrast to Alternative 4, the Preferred Alternative would not preclude development of disposal wells in Greater Sage-grouse PHMA, and there would be no specific protections for Greater Sage-grouse modeled nesting habitat.” FEIS at 2-61. This does not conform to the 2015 Wyoming Grouse ARMPA’s MD MR 3, which requires

BLM to consider protective measures for sage-grouse and its habitat within PHMA as Conditions of Approval for Applications for Permit to Drill even when associated with leases that do not contain grouse-protective stipulations. 2015 Wyoming Grouse ARMPA at 54. MD MR 4 also requires, “Within PHMAs, field offices will work with project proponents (including those within BLM) to site their projects in locations that minimize impacts to sensitive resources.” 2015 Wyoming Grouse ARMPA at 55. At a minimum, this would mean locating disposal wells away from the many grouse leks within Moneta Divide Project Area PHMA, but the FEIS does not include this measure. The 2015 Wyoming Grouse ARMPA also states, “Surface occupancy and surface-disturbing activities would be prohibited on or within a 0.6-mile radius of the perimeter of occupied GRSG leks.” 2015 Wyoming Grouse ARMPA at 19. Failure to conform to the 2015 Wyoming Grouse ARMPA does not meet BLM’s obligations under FLPMA.

**Summary:**

The Moneta Divide Natural Gas and Oil Development Project Final Environmental Impact Statement and Proposed Resource Management Plan Amendments (Moneta Divide FEIS/PRMPA) (BLM 2020) do not conform with the Migratory Bird Treaty Act (MBTA) (16 U.S. Code [U.S.C.] 703–712) and the 2015 Wyoming Greater Sage-grouse Approved Resources Management Plan (RMPA) (BLM 2015).

**Response:**

The phrase “incidental take” does not appear in either the MBTA or regulations implementing the Act. The MBTA’s prohibition on pursuing, hunting, taking, capturing, killing, or attempting to do the same applies only to direct and affirmative purposeful actions that reduce migratory birds, their eggs, or their nests, by killing or capturing, to human control (U.S. Department of the Interior [DOI] 2017). Adoption of the proposed plan amendment would not result in take or any other prohibited action under the MBTA.

The Moneta Divide FEIS/PRMPA describes the potential impacts that could occur to raptors in Sections 4.8.3 (pp. 4-143 through 4-145) and 4.18.8 (pp. 4-324 and 4-325). The Moneta Divide FEIS/PRMPA is programmatic in nature, and the exact location and design of facilities/footprints proposed by the Aethon Energy Operating LLC and Burlington Resources Oil & Gas Company LP (referred to collectively as “the Companies”) is unknown at this time. Specific impacts to raptors would be analyzed in a subsequent National Environmental Policy Act (NEPA) document once a right-of-way (ROW) application or application for permit to drill (APD) is submitted by the Companies. It will be the applicant’s responsibility to comply with applicable laws, including the MBTA, and obtain all necessary permitting.

The BLM has identified buffers and mitigation measures for raptors and migratory birds, including record numbers 1103 through 1113 in Appendix F (Moneta Divide FEIS/PRMPA, pp. F-18 and F-19). Appendix F of the FEIS/PRMPA, including record numbers 1103 through 1113, represent BLM-required design features, stipulations, best management practices, and Applicant-Committed Measures that would be implemented during project development under all of the alternatives. During project development, prohibition of surface-disturbing activities within 0.75 mile of known active raptor nests would be required from February 1 to July 31, as described in record number 1105 of Appendix F. Record number 1104 requires avoidance of surface-disturbing activities within either 0.25 mile of 0.50 mile, depending on the species (Appendix F, p. F-17, Moneta Divide FEIS/PRMPA). Additionally, the Companies would use netting or “bird avert” systems to discourage and prevent birds from landing in pits or ponds to comply with BLM Instruction Memorandum (IM) 2013-033 – *Fluid Minerals Operations – Reducing Preventable Causes of Direct Wildlife Mortality* and the Migratory Bird Treaty Act (record number 1084, p. F-15 of Appendix F, Moneta Divide

FEIS/PRMPA). All raptors would be protected from powerlines, which would be constructed in conformance with the Avian Power Line Interaction Committee (APLIC) *Suggested Practices for Avian Protection on Power Lines* (Moneta Divide PRMP/FEIS Appendix F, pages F-15 and F-42). As stated in Appendix F of the Moneta Divide FEIS/PRMPA, the BLM may augment the list of protection measures and include additional conditions of approval (COAs) during the APD stage and site-specific NEPA review, which could also result in additional protections to raptors and the species listed in the protestant’s comment (Moneta Divide FEIS/PRMPA Appendix F, p. F-1). The BLM has complied with the requirements of the MBTA in preparation of the Moneta Divide FEIS/PRMPA.

The Moneta Divide plan amendments would not amend the management direction of the 2015 Wyoming Greater Sage-grouse ARMPA (BLM 2015). Appendix F of the Moneta Divide FEIS/RMPA incorporates MD SSS 9 of the 2015 Wyoming Greater Sage-grouse Amendments as a resource protection measure (see record number 1227 on page F-35 of the Moneta Divide FEIS/PRMPA). Surface disturbing and/or disruptive activities will be prohibited from March 15 to June 30 to protect Greater Sage-grouse nesting and early brood-rearing habitats within 2 miles of the lek or lek perimeter of any occupied lek located outside Priority Habitat Management Areas (PHMAs). Outside of DDAs, wildlife seasonal protections for surface-disturbing and disruptive activities apply to maintenance and operations actions when the activity is determined to be detrimental to wildlife (see record number 1180 on p. F-28 of the Moneta Divide FEIS/PRMPA). If there are inconsistencies or discrepancies between the existing plans and the 2015 Wyoming Greater Sage-grouse Approved RMPA (BLM 2015), the more restrictive decision will be implemented (Moneta Divide FEIS/PRMPA, p. F-47).

As indicated in Appendix X of the Moneta Divide FEIS/PRMPA (p. X-16), Alternative 4 in the Moneta Divide Draft RMP/EIS (BLM 2019) precluded development of disposal well facilities in PHMA and included additional protections for Greater Sage-grouse modeled nesting habitat as a means of reducing impacts to Greater Sage-grouse. Comments received during the Moneta Divide Draft EIS public comment period indicated that protections for Greater Sage-grouse proposed under Alternative 4 were inconsistent with the Lander Field Office (LFO), Casper Field Office (CFO), and Rawlins Field Office (RFO) RMPs, which establish specific requirements and processes under which development may occur in PHMA and do not identify additional protections for modeled nesting habitat. The BLM concurred with these comments and therefore did not include these additional measures in the Proposed Plan Amendment.

## ***NEPA – Inadequate Analysis - Wildlife***

***Kelly Fuller et al.***

***Western Watersheds Project et al.***

**Issue Excerpt Text:** The FEIS Fails to Take a “Hard Look” at Direct, Indirect and Cumulative Impacts under NEPA and Its Implementing Regulations a. Greater Sage-grouse. The FEIS improperly defers gathering of baseline noise data in greater sage-grouse habitat to the APD and Sundry Notice approval stage. FEIS at 4-165. Instead, BLM needs to consider baseline noise data now, before approving the overall project.

### **Summary:**

The BLM failed to take a “hard look” as required by NEPA by improperly deferring the analysis of noise impacts on Greater Sage-grouse to the APD/implementation process.

**Response:**

The CEQ regulations implementing NEPA describe how data and analyses in an Environmental Impact Statement (EIS) should be commensurate with the importance of the impact (40 Code of Federal Regulations [CFR] 1502.15) and that NEPA documents should concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail (40 CFR 1500.1(b)). The BLM is required to take a “hard look” at potential environmental impacts of adopting the Moneta Divide FEIS/PRMPA.

The level of detail of the NEPA analysis must be sufficient to support reasoned conclusions by comparing the amount and the degree of change (i.e., impact) caused by the proposed action and alternatives (BLM Handbook H-1790-1, Section 6.8.1.2). The BLM need not speculate about all conceivable impacts, but it must evaluate the reasonably foreseeable effects of the proposed action.

Adoption of the proposed plan amendment would not result in impacts to Greater Sage-Grouse. Moreover, even the proposed implementation decision, the Moneta Divide Natural Gas and Oil Development Project, is programmatic in nature, and the exact location and design of facilities/footprints proposed by the Companies is unknown at this time. Because both the proposed land use planning and implementation decisions are programmatic in nature and would not authorize any on-the-ground actions (e.g., the BLM is not approving an APD to start drilling), the BLM analyzed environmental impacts at the appropriate scale. This analysis identifies impacts that may result in some level of change to the resources, regardless of whether that change is beneficial or adverse.

Noise stipulations described in Section 4.8.4.1.2 of the Moneta Divide FEIS/PRMPA (pp. 4-162 through 4-165) reflect the LFO RMP (Decision 4117) and CFO and RFO RMPs, as amended by the 2015 Wyoming Greater Sage-grouse ARMPA. These stipulations state, in part, that new project noise levels should not exceed 10 A-weighted decibels (dBA) above baseline noise at the perimeter of the lek from March 1 to May 15. Prior to construction, the Companies will be required to measure ambient noise at the APD or ROW processing stage to establish a baseline by which to measure potential noise impacts at the leks deemed by the BLM to be potentially affected by development (Moneta Divide FEIS/PRMPA at p. X-16). The BLM analyzed the environmental impacts to Greater Sage-grouse in the Moneta Divide FEIS/PRMPA.

## References

- Bureau of Land Management (BLM). 2020. *Moneta Divide Natural Gas and Oil Development Project Final Environmental Statement and Resource Plan Amendments*. February. Available: [https://eplanning.blm.gov/epl-front-office/projects/nepa/64352/20013427/250018322/00\\_MD\\_Final\\_EIS\\_Volume1\\_combined.pdf](https://eplanning.blm.gov/epl-front-office/projects/nepa/64352/20013427/250018322/00_MD_Final_EIS_Volume1_combined.pdf). Accessed April 1, 2020.
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- U.S. Department of the Interior (DOI). 2015. Office of the Solicitor. *Memorandum from the Principal Deputy Solicitor Exercising the Authority of the Solicitor Pursuant to Secretary's Order 3345. Subject: The Migratory Bird Treaty Act Does Not Prohibit Incidental Take*. December. Available: <https://www.doi.gov/sites/doi.gov/files/uploads/m-37050.pdf>, Accessed April 2, 2020.