

**DECISION RECORD**  
**Categorical Exclusion 3 (CX3), WY-070-390CX3-13-44, WY-070-390CX3-13-85 –**  
**WY-070-390CX3-87**  
**Section 390, Energy Policy Act of 2005**  
**Devon Energy Production Company, L.P., Pine Tree Plan of Development (POD)**  
**Bureau of Land Management, Buffalo Field Office, Wyoming**

**DECISION.** The BLM approves 4 applications for permit to drill (APD) from Devon Energy Production Company, L.P. (Devon) for the Pine Tree horizontal wells. The Pine Tree wells are proposed on fee (private) surface. Collectively they drain federal leases WYW147316, WYW147318, and WYW151707. The wells fall under reduced BLM surface jurisdiction for this federal project; see consultation references, below.

**Compliance.** This decision complies with:

- Federal Land Policy and Management Act of 1976 (FLPMA) (43 USC 1701); DOI Order 3310.
- National Environmental Policy Act of 1969 (NEPA) (42 USC 4321).
- National Historic Preservation Act of 1966 (16 USC 470).
- Endangered Species Act of 1974 (16 USC 1531).
- Buffalo and Powder River Basin (PRB) Final Environmental Impact Statement (FEIS), 1985, 2003.
- Buffalo Resource Management Plan (RMP) 1985, Amendments 2001, 2003, 2011.

**Consultation.** This decision considered:

- BLM Washington Office Instruction Memorandum No. 2009-078, Processing Oil and Gas Application for Permit to Drill for Directional Drilling into Federal Mineral Estate from Multiple-Well Pads on Non-Federal Surface and Mineral Locations, 2009.
- Wyoming BLM State Director Review, SDR No. WY-2011-010, EOG Resources, Inc. v. Pinedale Field Office, 2011.

**A summary of the details of the approval follows.** The CX3 worksheet, WY-070-390 CX3-13-44, WY-070-390CX3-13-85 – WY-070-390CX3-87, incorporated here by reference, includes the project description, including site-specific mitigation measures. Mitigation measures will include the conditions of approval (COAs). See the COAs for the project’s limitations.

**Table 1. BLM Approves the Following APDs and their Associated Infrastructure**

#	Well Name	Well #	Qtr	Sec	Twp	Rng	Bottomhole Lease	Surfacehole Lease	CX Number
1	Iberlin Ranch Fed	2826-3NH	NWNE	33	42N	76W	WYW147316	Fee	WY-070-390CX3-13-44
2	Iberlin Ranch Fed	33-26-3MH	NWNE	33	42N	76W	WYW147318	Fee	WY-070-390CX3-13-85
3	Iberlin Ranch Fed	3426-1MH	SWSW	34	42N	76W	WYW147318	Fee	WY-070-390CX3-13-87
4	Iberlin Ranch Fed	0316-1FH	SWSW	34	42N	76W	WYW151707	Fee	WY-070-390CX3-13-86

**THE FINDING OF NO SIGNIFICANT IMPACT (FONSI).** The US Congress, Department of Interior, and BLM affirmed there was no significant impact of a like-structured project when they created this CX3 and its limiting parameters. Thus a FONSI and an EIS is not required.

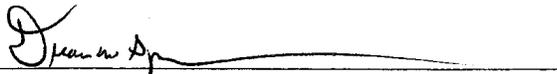
**COMMENT OR NEW INFORMATION SUMMARY.** Since implementation of this CX3 proposal BFO received a clarified WY NEPA implementation policy and BLM Instruction Memorandum 2013-033, Fluid Mineral Operations - Reducing Preventable Causes of Direct Wildlife Mortality.

**DECISION RATIONALE.** The approval of this project is because:

1. The project will not adversely affect public safety and does not involve any unique or unknown risks.
2. The project will not result in a violation of any federal or known state or local law, statute or ordinance, or other requirement imposed for the protection of the environment.

3. The approved project, conditioned by its design features and COAs, will not result in any undue or unnecessary environmental degradation. The PRB FEIS analyzed and predicted that the PRB oil and gas development would have significant impacts to the region's Greater Sage-Grouse (GSG) population. The impact of this development cumulatively contributes to the potential for local extirpation yet its effect is acceptable because it is outside priority habitats and is within the parameters of the PRB FEIS/ROD and current BLM and Wyoming GSG conservation strategies. There are no conflicts anticipated or demonstrated with current uses in the area. This decision approving the Iberlin Ranch Fed wells: 2826-3NH, 33-26-3MH, 3426-1MH, and 0316-1FH complies with the Energy Policy Act of 2005, Section 390, 43 CFR 1610.5, 40 CFR 1508.4, and 43 CFR 46.215.
4. Approval of this project conforms to the terms and the conditions of the 1985 Buffalo RMP (BLM 1985) and subsequent update (BLM 2001) and amendments (BLM 2003, 2011). This project complies with the breadth and constraints of CX3, Energy Policy Act of 2005, and subsequent policy.
5. BLM concludes the location to drain federal fluid mineral leases down-hole was determinative in the well pad and surface-hole locations.
6. The operator provided the BLM a true and complete copy of a document in which the owner of the surface authorizes the operator to drill a federal well from non-federal lands, and in which the surface owner or representative guarantees the Department of the Interior, including BLM, access to the non-federal lands to perform all necessary surveys and inspections. (See BLM WO Instruction Memorandum No. 2009-078, p. 2, para 6).
7. The selected alternative will help meet the nation's energy need, revenues, and stimulate local economies by maintaining workforces.
8. The Operator committed to:
  - Comply with the approved APDs, applicable laws, regulations, orders, and notices to lessees.
  - Obtain necessary permits from agencies.
  - Provide water well agreements the owners of record for permitted wells.
  - Provide water well analysis from a known reference point.
9. The Operator certified it has a surface access agreement.
10. The project is clearly lacking in wilderness characteristics because it has no federal surface.
11. This decision does not foreclose the lessee or operator to propose a new or supplementary plan for developing the federal oil and gas lease(s) in this project area, including submission of additional APDs to drain minerals in accord with lease rights and law.

**ADMINISTRATIVE APPEAL:** This decision is subject to administrative appeal in accord with 43 CFR 3165. Request for administrative appeal must include information required under 43 CFR 3165.3(b) (State Director Review), including all supporting documentation. Such a request must be filed in writing with the State Director, Bureau of Land Management, P.O. Box 1828, Cheyenne, Wyoming 82003, no later than 20 business days after this Decision Record is received or considered to have been received. Any party who is adversely affected by the State Director's decision may appeal that decision to the Interior Board of Land Appeals, as provided in 43 CFR 3165.4.

Field Manager: 

Date: 2/7/13

**Categorical Exclusion 3 (CX3), WY-070-390CX3-13-44, WY-070-390CX3-13-85 – WY-070-390CX3-87**

**Section 390, Energy Policy Act of 2005**

**Devon Energy Production Company, L.P., Pine Tree 1 Plan of Development (POD)  
Bureau of Land Management, Buffalo Field Office, Wyoming**

**Description of the Proposal.** Devon Energy Production Company, L.P., (Devon) proposes to drill 4 horizontal oil wells from 2 pads and construct their associated infrastructure. The proposed wells are 40 miles southeast of Kaycee, Wyoming (see Table 1.1.). The project's pads are on private (fee) surface and overlay fee leases then drain federal minerals. The wells fall under reduced BLM surface jurisdiction for this federal project per BLM Instruction Memorandum (IM) 2009-078 and as described in WY State Director Review 2011-010.

The BLM will decide whether or not to approve the proposed development, and if so, under what terms and conditions agreeing with the Bureau's multiple use mandate, environmental protection, and RMP. BLM Washington Office IM No. 2009-078 established policy and procedures for processing federal applications for permit to drill (APDs) for horizontal drilling into federal mineral estate from multiple well pads on non-federal locations. Drilling and producing the subject wells is a federal action. Construction, operation, and reclamation of infrastructure on non-federal land are not federal actions. Drilling and producing mitigation is in the Conditions of Approval for Conventional Application for Permit to Drill.

It is the BLM's responsibility and obligation to analyze the full effects of the federal action, and identify mitigation measures, regardless of the BLM's authority to enforce the mitigation. The BLM needs to identify mitigation measures that would reduce or eliminate the effects of a non-federal action when it is a connected action to the BLM proposed action (see the BLM NEPA handbook, section 6.8.2.1.1, Connected Non-federal Actions). Identifying mitigation outside of the BLM's jurisdiction alerts other agencies and landowners that can implement the mitigation. The probability of the other agencies implementing the mitigation measures is likely to occur, although these agencies may vary specific parameters recommended by the BLM. Full effects of the action and recommended mitigation measures are found in the Pine Tree 1 POD Surface Use Plan, this CX3 worksheet, and BLM Recommended Mitigation Measures (RMMs) for Conventional Application for Permit to Drill.

Much of the project area has dissected uplands with steep down-cut channels, created predominately by summer thunderstorms and spring runoff in ephemeral drainages with steep gradients and fine sediment substrate, which lead to the Powder River. Davis Draw and numerous intermittent tributaries of the Powder River drain the area to the northwest. Tree and shrub species which consist mainly of sparse cottonwood trees and sage brush dominate the riparian areas. Rangeland is the predominant management with livestock grazing and recreational hunting as the main uses. The area experienced historic conventional oil and gas exploration and production, and recent CBNG development, documented with environmental assessments (EAs). The area is in a 10-14 inch precipitation zone, with most of the precipitation falling during late winter and spring. The surface owner is Mark Iberlin.

The proposal is to explore by drilling for, and possibly develop, oil and natural gas reserves in the Niobrara, Mowery, and/or Frontier geologic mineral formations at about 11,765 – 13,125 feet depth leased by Devon.

Devon submitted the Pine Tree 1 POD as notices of staking (NOS) on August 1, 2012 to the BFO. After onsites on August 13, 2012 the NOSs were converted to applications for permit to drill (APDs). Onsites

evaluated the proposal and modified it as necessary to mitigate environmental impacts. The BLM sent a post-onsite deficiency letter to Devon on December 7, 2012. A list of proposed wells is in Table 1.1.

**Table 1.1. Proposed Wells**

#	Well Name	Well #	Qtr	Sec	Twp	Rng	Bottomhole Lease	Surfacehole Lease	CX Number
1	Iberlin Ranch Fed	2826-3NH	NWNE	33	42N	76W	WYW147316	Fee	WY-070-390CX3-13-44
2	Iberlin Ranch Fed	33-26-3MH	NWNE	33	42N	76W	WYW147318	Fee	WY-070-390CX3-13-85
3	Iberlin Ranch Fed	3426-1MH	SWSW	34	42N	76W	WYW147318	Fee	WY-070-390CX3-13-87
4	Iberlin Ranch Fed	0316-1FH	SWSW	34	42N	76W	WYW151707	Fee	WY-070-390CX3-13-86

**Drilling and Construction.**

- Drilling of 4 federal oil and gas wells in the Niobrara, Mowery, and/or Frontier geologic mineral formations at about 11,765 to 13,125 feet depth.
- Fresh water will be obtained from the West Pine Tree CBNG Field Fink Prong pipeline at a diversion located in the SESE Section 28, T42N, R76W (SEO Permit # P198133W). The water will be diverted from the pipeline into a 4 to 12 inch poly-line that is laid across the surface. Approximately 1.5 miles of surface pipeline will be laid.
- 15,000 bbls of water will be required to drill each well.
- Construction of a 350 x 560 foot pad for each location (2 pads).
- A road network consisting of 2 miles of existing access that will be upgraded to a crown and ditched access with a 20 foot subgrade and 70 foot corridor.
- Average daily traffic during the 6-8 week drilling phase is estimated at 2 large trucks and 6 pickup trucks per day.
- Should drilling result in the establishment of commercial production from the proposed wells, production facilities at each well will consist of the wellhead, pumping unit, oil tanks, water tanks, circulating pump, a flare, a vapor recovery unit, a treater, and a gas separator. Size and amount of oil and water tanks will be determined by production.
- One compressor set on each location. The compressor package is approximately 20 foot in length, 10 foot in length, and 12 foot length. Later in the life of the well, the compressor will be converted to a traditional pumping unit.
- Approximately 1 mile of above ground power will be constructed if the wells are producers.

**Completion**

- During the 3-4 week completion process the average daily traffic is estimated at 4 large trucks and 6 pickup trucks per day.
- 1 earthen lined pit will be constructed to hold water for the completion process. The pit will be 250 x 250 feet and will hold 144,300 bbls of water.
- Water will be obtained from the same location as the drilling water.
- 12-20 500 bbl frac masters will be on location during well completion operations.

- Flow back water will be disposed in an authorized facility. See master surface use plan (MSUP) for list of authorized facilities.

For a detailed description of design features, construction practices and water management strategies associated with the proposed action, refer to the MSUP and drilling plan in the POD and individual APDs. Also see the POD for maps showing the proposed well locations and the associated facilities described above. More information on oil and gas well drilling, production, and standard practices also is available in the Powder River Basin Final Environmental Impact Statement (PRB FEIS), pp. 2-9 to 2-40. See Table 1.2 for construction surface disturbance.

**Table 1.2. Construction Disturbance Associated with the Pine Tree 1 POD**

Facility	
Engineered Pads	2 @ 350' x 560' (12 acres)
Template Roads	2 miles @ 70' corridor (17 acres)
Temporary Water Surface Lines	1.5 miles (0 acres – no surface disturbance)
Power Drops	1
Overhead Power	1 @ 30' corridor (3.6 acres)
Completion Pit	1 @ 250' x 250' (1.5 acres)
<b>Total Acre Disturbance</b>	<b>34.1</b>

**Plan Conformance, Compliance, and Justification with the Energy Policy Act of 2005.**

The Energy Policy Act of 2005, Section 390(a) subjects oil or gas exploration or development to a rebuttable presumption that the use of a categorical exclusion under the National Environmental Policy Act (NEPA) applies. Thus BLM must use an Energy Policy Act, Section 390(b), CX unless BLM rebuts the presumption. This CX worksheet is NEPA compliance categorically excluded from an EA or EIS or their analysis; it is not an exclusion from all analysis. (40 CFR 1508.4 and BLM H-1790, p. 17.) The proposed action conforms with the terms and conditions of the Approved Resource Management Plan (RMP) for the public lands administered by the BLM, Buffalo Field Office (BFO), 1985, the PRB FEIS, January 2003, and the Record of Decision (ROD) and Resource Management Amendments for the Powder River Oil and Gas Project, Amendments of 2001, 2011 as required by 43 CFR 1610.5, 40 CFR 1508.4, and 43 CFR 46.215. The Pine Tree 1 POD APDs and area are clearly lacking in wilderness characteristics as there is no federal surface. BLM finds that the conditions and environmental effects found in the senior EA and PRB FEIS remain valid.

The applicable categorical exclusion from the Energy Policy Act of 2005, Section 390, is exclusion number (b)(3) which is *drilling an oil or gas well within a developed field for which an approved land use plan or any environmental document prepared pursuant to NEPA analyzed such drilling as a reasonably foreseeable activity, so long as such plan or document was approved within 5 years prior to the date of spudding the well.*

BLM has 3 requirements to use a Section 390 CX3, (BLM H-1790, Appendix 2, #3, p. 143):

- 1) Each proposed APD is in a developed oil or gas field (any field with a completed confirmation well).

Table 1.3 is a list of existing/approved wells that are within or adjacent to the Pine Tree 1 POD. This information is provided for informational use and shows the reader that BLM conducted analysis.

**Table 1.3. Adjacent or Overlapping NEPA Analyses and Development Sorted by Decision Date**

#	POD Name	NEPA Document #	#/Type of Wells	Decision Date
1	Grayling	WY-070-10-332	80 CBNG	3/1/11
2	Brook Trout	WY-070-EA08-129	50 CBNG	9/17/08
3	Spruce 1	WY-070-390CX3-12-95 & WY-070-390CX3-12-107	2 Conventional Oil & Gas	5/3/12

- 2) There is an existing NEPA document (and the RMP) containing reasonably foreseeable development scenario for this action. There are several existing NEPA documents that reasonably foresaw development to spud additional wells to fill in 80 acre well-spacing. BLM reviewed these documents and determined they considered the potential environmental effects associated with the proposed activity at a site specific level. In addition, all approved EAs, see Table 1.4, below, tier into the PRB FEIS (2003). The PRB EIS analyzed foreseeable development in the PRB. The PRB foreseeable development included 3,200 oil wells and drilling CBNG wells on 80 acre-spacing resulting in about 51,000 CBNG wells.
- 3) The tiered NEPA document was finalized or supplemented within 5 years of spudding (drilling) the proposed wells.

The Pine Tree 1 POD CX3s tier to the following approved EAs listed below in Table 1.4.

**Table 1.4. NEPA Documents Finalized Within Anticipated Spud Date**

#	POD Name	NEPA Document #	# / Type of Wells	Decision Date
1	Grayling	WY-070-10-332	80 CBNG	3/1/11
2	Brook Trout	WY-070-EA08-129	50 CBNG	9/17/08
3	Samson's Hornbuckle	WY-060-EA11-181	96 Oil	8/2011
4	Spruce 1	WY-070-390CX3-12-95 & WY-070-390CX3-12-107	2 Conventional Oil & Gas	5/3/12

BLM also incorporates by reference the analysis in the similarly situated, designed, and proposed development analyzed in Valerie POD, WY-070-EA12-68, approved March 1, 2012.

In summary the EAs in Tables 1.3 and 1.4 analyzed in detail the anticipated direct, indirect, residual, and cumulative effects that would result from the approval of these APDs and associated support structure in Pine Tree 1 POD is similar to both the qualitative and quantitative analysis in the above mentioned EAs. The BFO reviewed these EAs and found that the EAs considered potential environmental effects associated with the proposed activity at a site specific level.

### **Plan of Operations.**

The proposal conforms to all Bureau standards and incorporates appropriate best management practices, required and designed mitigation measures determined to reduce the effects on the environment. BLM reviewed and approved a surface use plan of operations describing all proposed surface-disturbing activities pursuant to Section 17 of the Mineral Leasing Act, as amended. This CX3 worksheet also incorporates and analyzes the implementation of committed mitigation measures contained in the MSUP, drilling plan, and WMP, in addition to the Standard COAs found in the PRB FEIS ROD, Appendix A.

### **Wildlife.**

BLM reviewed the proposed APDs. BLM determined that the proposed APDs, combined with the COAs are: (1) consistent with the FEIS and its supplements, the RMP and its Amendments, and the above tiered EAs; and (2) consistent with the effects analyzed in the site specific Endangered Species Act section 7 consultation and does not change the determinations in that consultation. Site-specific wildlife issues amplified here are mitigation measures for raptors, and Greater Sage-Grouse (GSG).

## Raptors

Known active\* nests occur within 0.5 mile of the Pine Tree 1 POD. Table 1.5 summarized the nests, ID, and location.

**Table 1.5. Active Raptor Nests**

#	BLM ID #	UTM	Species	PODs with nests previously analyzed
1	3515	419432:4823947	RTHA	Grayling

\*The Buffalo Field Office RMP (1985, 2001 Amendment) defines an active nest as “one that has been used at least once during the previous three years.”

Impacts anticipated to occur toward the nesting pairs of raptors and mitigation will be similar to those analyzed in the following EAs which are adjacent or overlapping to the Pine Tree 1 POD and are incorporated here by reference:

1. Grayling EA WY-070-10-332 Direct and Indirect Effects (pp. 54-57); Cumulative Effects (p. 57); Residual Effects (p. 57)

Devon Energy Production Company, L.P has committed to restricting construction and disruptive activities associated with movement of drilling rigs or completion equipment from March 1<sup>st</sup>-July 31<sup>st</sup> if raptor nest 3515 is active (Operator MSUP, pp. 20).

## Greater Sage-Grouse (GSG)

New information regarding GSG includes the 2012 BLM-contracted population viability analysis for the Northeast Wyoming GSG. That study found that there remains a viable population of GSG in the PRB (Taylor et al. 2012); however threats from energy development and West Nile Virus (WNV) are impacting future viability (Taylor et al. 2012). The study indicated that effects from energy development, as measured by male lek attendance, are discernible out to a distance of 12.4 miles.

The PRB FEIS predicted that the PRB oil and gas development would have significant impacts to the GSG population. The impact of the proposed development may cumulatively contribute to the potential for local extirpation yet its effect is acceptable because it is outside priority habitats and is within the parameters of the PRB FEIS/ROD and current BLM and Wyoming GSG conservation strategies. BLM analyzed and considered mitigation for 7 leks in the following EA which is adjacent or overlapping to the Pine Tree 1 POD and this analysis is incorporated here by reference:

1. Grayling EA WY-070-10-332 Direct and Indirect Effects (p. 42-43); Cumulative Effects (pp. 43); Residual Effects (p. 45)

There are no documented GSG leks within 2-miles of the proposed activities associated with the Pine Tree 1 POD.

## Bald Eagle

Though potential roosting and nesting habitat exists, there are no documented bald eagle roosts or nests within 1-mile of the Pine Tree 1 POD. Devon Energy Production Company, L.P has committed to continuing with bald eagle survey requirements and mitigation measures contained in the Grayling POD (EA WY-070-10-332) (Operator MSUP, pp. 20).

## Water Resources.

The historical use for groundwater in this area was for stock or domestic water. A search of the WSEO Ground Water Rights Database showed 18 registered stock and domestic water wells within 1 mile of the

proposed well in the project area with depths from 240 to 375 feet. For additional information on groundwater, refer to the PRB FEIS (2003), Affected Environment, pp. 3-1 to 3-36.

Adherence to the drilling COAs, the setting of casing at appropriate depths, following safe remedial procedures in the event of casing failure, and using proper cementing procedures should protect any fresh water aquifers above the target coal zone. This will ensure that ground water will not be adversely impacted by well drilling and completion. The operator will run surface casing to 3,000 feet, total vertical depth to protect shallow aquifers. The water bearing formation in the Fox Hills Formations will be protected with casing and cement. Centralizers will be placed on every joint throughout the Fox Hills Formation. Estimated depth of the Fox Hills is 7,560 TVD.

At the time of permitting, the volume of water that will be produced in association with these federal minerals is unknown. The operator will have to produce the wells for a time to be able to estimate the water production. In order to comply with the requirements of Onshore Oil and Gas Order #7, Disposal of Produced Water, the operator will submit a sundry to the BLM within 90 days of first production which includes a representative water analysis as well as the proposal for water management.

Historically, the quality of water produced in association with conventional oil and gas has been such that surface discharge would not be possible without treatment. Initial water production is quite low in most cases. There are three common alternatives for water management: Re-injection, deep disposal or disposal into pits. All alternatives would be protective of groundwater resources when performed in compliance with state and federal regulations.

**Cultural.**

A previously reviewed and accepted Class III cultural resource inventory (BFO # 070120097) adequately covered the proposed project area. No cultural resources are in the area of potential effect. On February 5, 2013 G.L. "Buck" Damone III, BLM Archaeologist, electronically notified the Wyoming State Historic Preservation Office (SHPO) following section VI(A)(1) of the Wyoming State Protocol, of a finding of no effect for the proposed project. If operators observe any cultural values [sites, artifacts, human remains (Appendix L PRB FEIS and ROD)] during operation of this lease/permit/right-of-way, they will be left intact and the Buffalo Field Manager notified. Further discovery procedures are in the Standard COA (General)(A)(1).

**Decision and Rationale on Action.**

The COAs provide mitigation and further the justification for this decision and may not be segregated from project implementation without further NEPA review. I reviewed the plan conformance statement and determined that the proposed Pine Tree 1 POD CX3 APDs and infrastructure conform to the applicable land use plans. I reviewed the proposal to ensure the appropriate exclusion category as described in Section 390 of the Energy Policy Act of 2005 is correct. It is my determination that there is no requirement for further environmental analysis.



Field Manager



Signature Date

*Note: The CX3's approval requires a separate decision record (DR) and the DR must include appropriate appeal language that comports to the appropriate 43 CFR part authorizing the project. There is decision space in the CX3 and in the DR to apply limitations, mitigation, and conditions of approval – however mitigation and COAs must comply with those published in the 2003 ROD or thoroughly analyzed in an EA this CX3 worksheet tiers to or incorporates an analysis here by reference or is supported in this CX3 worksheet with an analysis.*

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