

**DECISION RECORD**  
**Categorical Exclusion 3 (CX3), WY-070-390CX3-13-241**  
**-Section 390, Energy Policy Act of 2005, Application for Permit to Drill (APD**  
**WPX Energy, Chokeycherry Unit POD 1**  
**Bureau of Land Management, Buffalo Field Office, Wyoming**

**DECISION.** BLM approves 1 APD from WPX Energy (WPX) to drill coalbed natural gas (CBNG) well and construct their associated infrastructure. The CX3 analysis, and the APD, all of which the BLM incorporates here by reference, describes the proposal.

**Compliance.** This decision complies with:

- Federal Land Policy and Management Act of 1976 (FLPMA) (43 USC 1701); DOI Order 3310.
- Mineral Leasing Act of 1920 (MLA) (30 U.S.C. 181); including the Onshore Oil and Gas Orders.
- National Environmental Policy Act of 1969 (NEPA) (42 USC 4321).
- Buffalo and Powder River Basin (PRB) Final Environmental Impact Statement (FEIS), 1985, 2003.
- Buffalo Resource Management Plan (RMP) 1985 and Amendments.

**A summary of the details of the approval follows.** The CX3, WY-070-390CX3-13-241, includes the project description, including site-specific mitigation measures which are incorporated by reference into that CX3 from earlier analysis. The proposed well is 20 miles west of Gillette, Campbell County, Wyoming. The Chokeycherry Unit POD (plan of development) proposal had 1 APD to drill using the drill over procedure in order to receive an extension on the individual lease. The well is a vertical bore proposed on an 80 acre spacing pattern with 1 well per location into the Wall coal seam. WPX proposes no production facilities or infrastructure with this APD.

**Approvals.** BLM approves the following CBNG APD:

#	Well Name	Well #	Qtr	Sec	Twp	Rng	Lease #	CX #
1	CCU	41-18	NENE	18	49N	74W	WYW173726	WY-070-390CX3-13-241

**Limitations:** None; see also, the conditions of approval (COAs).

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

**COMMENT OR NEW INFORMATION SUMMARY.** BLM publically posted the APDs and received no comments. BLM received new information on Greater Sage-Grouse (GSG) including the 2012 population viability analysis for the Northeast Wyoming, GSG policy updates in BLM and WY Instruction Memorandums-2012-043, -044, and WY IM 2012-19, a BLM Instruction Memorandum-2013-033, on reducing direct wildlife mortalities, and a clarification on using the density disturbance calculation tool.

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

1. Mitigation measures and COAs, analyzed in the CX3 analysis, in environmental impact statements or environmental analysis to which the CX3 tiers or incorporates by reference, will reduce environmental impacts while meeting the BLM's need.
2. The approved project conditioned by its design features and COAs, will not result in any undue or unnecessary environmental degradation. The impact of this development cumulatively contributes to the potential for local GSG 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 Greater Sage-Grouse (GSG) conservation strategies. There are no conflicts anticipated or demonstrated with current uses in the area. This decision approving the Chokecherry Unit POD 1 (1 APD) POD complies with the Energy Policy Act of 2005, Section 390, 43 CFR 1610.5, 40 CFR 1508.4, and 43 CFR 46.215.

3. 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.
4. The selected alternative will help meet the nation's energy need, revenues, and stimulate local economies by maintaining workforces.
5. The operator, in their POD, shall:
  - Comply with all applicable federal, state, and local laws and regulations.
  - Offer water well agreements to the owners of record for permitted water wells within 0.5 mile of a federal producing well in the POD (PRB FEIS ROD, p. 7).
  - Provide water analysis from a designated reference well in each coal zone.
6. The project is clearly lacking in wilderness characteristics as there is no federal surface.
7. This decision does not foreclose the lessee or operator to propose a new or supplementary plan for developing the federal oil and gas leases in this project area, including submission of additional APDs to drain minerals in accord with lease rights and law. This decision does not foreclose the lessee or operator to propose using external pumping units via a sundry application process.
8. WPX certified there is a surface use access agreement with the landowners.
9. This approval is subject to adherence with all of the operating plans, design features, and mitigation measures contained in the master surface use plan of operations, drilling plan, water management plan, and information in individual APDs.

**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: 10/21/13

**Categorical Exclusion 3 (CX3), WY-070-390CX3-13-241**  
**Section 390, Energy Policy Act of 2005**  
**WPX Energy, Chokecherry Unit POD 1 (1 Application for Permit to Drill (APD))**  
**Bureau of Land Management, Buffalo Field Office, Wyoming**

**Description of the Proposed Action.**

The proposal is to explore for and develop coalbed natural gas (CBNG) reserves in geologic formations currently leased by WPX Energy (WPX) 20 miles SW of Gillette, Campbell County Wyoming (see Table 1.1). The Chokecherry Unit POD 1 (plan of development) proposal has 1 APD to drill using the drill over procedure in order to receive an extension on the individual lease. The well is a vertical bore proposed on an 80 acre spacing pattern with 1 well per location into the Wall coal seam. No production facilities or infrastructure are proposed with this APD. Analysis of production facilities or infrastructure would be performed under a new proposal.

**Table 1.1. Proposed Wells**

#	Well Name	Well #	Qtr	Sec	Twp	Rng	Lease #
1	CCU	41-18-4974	NENE	18	49N	74W	WYW173726

**Table 1.2. Construction Disturbance**

Facility	Chokecherry Unit POD 1 (1 APD)
Slot Pad 120' X 30' (Requires 120' X 140' working area)	(0.39 acres)
Primitive Roads (with utility corridor)	0.25 miles (0.43 acres)
<b>Total Acre Disturbance</b>	<b>0.82 Acres</b>

**Affected Surface Owners:** Glen Barlow.

**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 analysis 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 Chokecherry Unit POD 1 (1 APD) is 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 NEPA analyses that are within or adjacent to the Choke Cherry Unit POD 1. This information is provided for informational use and shows the reader that BLM conducted analysis.

**Table 1.3. Adjacent / Overlapping NEPA Analyses for CBNG Development**

#	Project Name	NEPA Document	#of Approved or Producing Wells	Decision Date
1	Barlow Ranch Federal	WY-070-EA12-173	1	8/10/2012
2	Kingsbury Federal CBM Unit	WY-070-03-122	33	8/15/2003
3	Carr Draw II	WY-070-EA07-023	96	12/9/2006

- 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 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. The Barlow Ranch project is in the foreseeable development scenario of 80 acre well-spacing in areas with similar geographic and resource conditions analyzed in EAs in Table 1.3.
  
- 3) The tiered NEPA document was finalized or supplemented within 5 years of spudding (drilling) the proposed well. The tiered NEPA document in Table 1.3, for Barlow Ranch Fed is within 5 years of the proposed spudding of these wells.

**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 analysis 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. This CX3 also incorporates by reference the oil and gas drilling practices described and analyzed throughout the Barlow Ranch Federal EA, WY-070-EA12-173. BLM highlights sections in Table 1.4.

**Table 1.4. Highlighted Sections and Pages Incorporated by Reference into this CX3**

Chokecherry Unit POD 1 Sections Incorporated by Reference from	Barlow Ranch Federal EA WY-070-EA12-173
Soils	pp. 22-28
Vegetation	pp. 29-30
Wetlands/Riparian	pp. 32
Invasive Species	p. 33-34
Sharptail grouse	pp. 35-36
Sage-grouse	pp. 40-45
Raptors	pp. 36-38
Water Resources	pp. 30

**Wildlife**

Western Land Services (WLS) performed a habitat assessment for bald eagles, grouse leks, mountain plover, raptors, prairie dog colonies, and Ute ladies'-tresses orchid in 2008. Wildlife inventory surveys for sharp-tailed grouse, Greater Sage-Grouse (GSG), raptor nests, mountain plover, prairie dog colonies as

well as other BLM Special Status (Sensitive) Species (SSS) were conducted each year from 2008-2013 (Western Land Services 2008-2013). WLS searched for potential Ute ladies'-tresses orchid habitat (WLS 2008). WLS conducted all surveys according to the PRB Interagency Working Group's protocols; see: [http://www.blm.gov/wy/st/en/field\\_offices/Buffalo/wildlife.html](http://www.blm.gov/wy/st/en/field_offices/Buffalo/wildlife.html).

The BLM used information from WLS, the BLM wildlife database, and the onsite inspection to determine that the proposed APD, combined with the COAs are: consistent with the FEIS, WY-070-02-065, and its supplements, to include biological opinion (ES-6-WY-02-F006), the RMP and its Amendments, and the above tiered or incorporated analyses.

### **Migratory Birds**

Effects to migratory birds from surface disturbing and disruptive activities associated with development of oil and gas wells were analyzed in the Barlow Ranch Federal 074974-3NH EA, WY-070-EA12-173, 2012, Section 4.9.4, pp. 38-39, incorporated here by reference. Activities associated with development of the Chokecherry Unit POD 1 well are anticipated to be similar in nature to those associated with the Devon Barlow Ranch Federal 074974-3NH well, which lies approximately 465 meters northwest, incorporated here by reference, along with the analyses from SDR-WY-2013-025.

As described in the Barlow Ranch Federal EA, the habitat in the area of the Chokecherry Unit POD 1 well is suitable for a number of BLM sensitive migratory birds. Timing limitations for GSG (March 15 – June 30) and raptors (March 1 – July 31) on surface disturbing activities serve to mitigate impacts to nesting migratory birds for a portion of the breeding season. If raptor nests are inactive, then late hatching migratory bird broods may be killed if construction occurs soon after June 30.

Effects to migratory birds from surface disturbing and disruptive activities associated with development of the proposed well and access are similar to the wells previously analyzed in the CX3s, covering Bonita Federal Com. 11H-WY-070-390CX3-13-41, Lone Moose Federal Com. 13H-WY-070-390CX3-13-73, Cousins Federal Com. 22H-WY-070-390CX3-13-74 and Rocky Butte Federal Com. 29H-WY-070-390CX3-13-75, pp. 6-9, incorporated here by reference.

To reduce the likelihood of a “take” under the MBTA, the BLM biologist recommends that the Chokecherry Unit POD 1 well and access construction (vegetation removal) occur outside of the breeding season for the greatest quantity of BLM SSS passerines (May 1- July 31) where suitable nesting habitat for sagebrush obligates is present. This restriction would apply to habitat removal, unless a pre-construction nest search (within approximately 10 days of construction planned May 1-July 31) is completed. If surveys will be conducted, the operator will coordinate with BLM biologists to determine protocol. The nest search will consist of in areas where vegetation will be removed or destroyed. The BLM recommends that the proposed 4171-9-31 pad and associated infrastructure have timing limitations applied for well pad construction during the nesting season for sagebrush obligate passerines (May 1 to July 31). BLM determined that this restriction conforms to objectives identified in Instruction Memorandum No. WY-2013-005 *Interim Management Guidance for Migratory Bird Conservation Policy on Wyoming Bureau of Land Management (BLM) Administered Public Lands Including the Federal Mineral Estate* (see SDR WY-2013-025, Sept. 04, 2013).

### **Cultural**

A previously reviewed and accepted class III cultural resource inventory (BFO # 070080134) adequately covered the proposed project area. No cultural resources are in the area of potential effects (APE). On September 30, 2013 BLM Archaeologist Doug Tingwall, 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 proposal. Three cultural resources are in a one-section radius around the proposal.

**Table 1.5. Resources near the Proposal & National Register of Historic Places (NRHP) Eligibility**

Site #	Site Type	NRHP Eligibility
48CA1570	Sawyer Expedition Route	E (non-contributing segment)
48CA1664	Prehistoric Lithic Scatter	NE
48CA6803	Historic Debris Scatter with Depression Feature	NE

Site 48CA1570 (Sawyer Expedition Route) is eligible for inclusion the National Register of Historic Places, however no contributing portions (typically expressed as wagon ruts) of this site are present in the project area nor does the resource retain its integrity of setting in the project area.

There are no eligible sites in the APE of the proposal. Following the Wyoming State Protocol Section VI (A)(1), the BLM notified the SHPO on September 30, 2013 that no historic properties exist in the APE. 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. Standard COA (General)(A)(1) further explains discovery procedures.

**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 Bluebird I (3 APDs) 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.

  
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 Field Manager

10/21/13  
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 Signature Date

Contact Person: Andy Perez, Natural Resource Specialist, Buffalo Field Office, 1425 Fort Street, Buffalo WY 82834, 307-684-1100

**References:**

- Taylor, R. L., D. E. Naugle, L. S. Mills. 2012. Viability analyses for conservation of sage-grouse populations: Buffalo Field Office, Wyoming. Final Report. February 27, 2012. University of Montana, Missoula, MT.
- U.S. Department of the Interior, Bureau of Land Management, Wyoming State Office, "Greater Sage-Grouse Habitat Management Policy on Wyoming Bureau of Land Management (BLM) Administered Public Lands Including the Federal Mineral Estate", Instruction Memorandum No. WY-2012-019.