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April 5, 2007

Via Overnight Delivery and Electronic Mail

Bureau of Land Management
Pinedale Field Office
Matt Anderson, Project Manager
432 East Mill Street
Pinedale, WY 82941

Re: Comments Regarding the Draft Supplemental Environmental Impact Statement for the Pinedale Anticline Oil and Gas Exploration and Development Project

Dear Mr. Anderson:

G-1

BI-7-1

We represent a number of oil and gas producers that explore and operate on the public lands in Wyoming and hereby offer the following comments on the Draft Supplemental Environmental Impact Statement for the Pinedale Anticline Project Area Oil and Gas Exploration and Development Project ("PAPA SDEIS" or "SDEIS"). We support continued natural gas activities in the PAPA and encourage the BLM to approve additional development. It is important for the BLM to approve and facilitate the production of domestic energy sources such as those present in PAPA. The PAPA is a highly concentrated natural gas resource and approval of the Operators' Proposed Action would allow the development of a significant resource of clean-burning natural gas. The improvements to the regional transportation infrastructure could further facilitate energy production from the area and should be approved as part of the PAPA EIS and Record of Decision ("ROD").

Overall, we note that the SDEIS satisfies the requirements of the National Environmental Policy Act of 1969 ("NEPA") to consider the potential impacts of a proposed federal action and to inform members of the public of those potential impacts. *See Baltimore Gas & Electric v. Natural Resources Defense Council*, 462 U.S. 87, 97 (1983). The BLM appropriately considered the potential impacts of development to a variety of resources. The BLM should proceed to issue the Final SEIS for the PAPA with all due speed. In addition to these general comments, we offer the following specific comments.

ECONOMIC ADVANTAGES

Consumers, industries and businesses throughout the nation are struggling with rising energy prices, tighter supplies and increased dependence on imports from politically unstable areas. Estimates conclude that the Anticline has enough gas to supply ten million homes annually for more than 30 years, making it the third largest gas field in the United States.

Further, domestic natural gas development in Pinedale will have a positive impact on the local and regional economy and spur strong economic growth because it will create a year-round workforce, provide a significant tax source for local communities and support Wyoming's business community. The estimated royalties of the area's natural gas reserves are $16 billion, half of which would go to the State of Wyoming and the other half to the federal government.

AIR QUALITY

According to the analysis in the PAPA SDEIS, air quality in southwest Wyoming, and particularly in vicinity of the PAPA, is very good. Emissions data collected near Jonah Field demonstrate compliance with all National and Wyoming Ambient Air Quality Standards ("NAAQS/WAAQS"). *See* PAPA SDEIS, pgs. 3-54 – 3-55. This information is confirmed by information in the Draft EIS for the Pinedale Resource Management plan that was released earlier this year. *See* Pinedale RMP DEIS (2007), pg. 3-3 ("air quality in the planning area is considered very good"). The BLM's analysis in the PAPA SDEIS also indicates that visibility in the area is generally improving. Data from the IMPROVE sites in the Bridger Wilderness Area, North Absaroka Wilderness Area, and Yellowstone National Park demonstrate that visibility on the 20% cleanest days and 20% middle days has generally improved since the early 1990s and is, in fact, near record high levels. *See* PAPA SDEIS, pgs. 3-58 – 3-59. The IMPROVE monitoring data indicates dramatic improvements in visibility on the cleanest and middle days in the last 2-3 years, despite increased oil and gas development in PAPA. *Id.* The Draft EIS for the Pinedale RMP similarly states "Bridger Wilderness visibility data reveal no significant trend of worsening visibility from 1989 through 2003." *See* Pinedale RMP DEIS (2007), pg. 3-6. The BLM's explanation of this data, however, is far from adequate. The BLM simply presents that data in a table and does not explain that visibility is improving in the area. The BLM should add additional language discussing the monitoring data in the PAPA SFEIS to fully inform the public. The BLM should also include additional information regarding Figures 3.11-4, 3.11-5, and Table 3.11-3, which indicate deposition levels near Pinedale are well below the levels of concern.

BI-7-2

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Compliance with NAAQS/WAAQS

Even the BLM's conservative modeling and analysis in the PAPA SDEIS indicates that air quality in southwest Wyoming will be protected even when the BLM approves additional development in PAPA. *See* PAPA SDEIS, pgs. 3-64, 4-65 – 4-70; PAPA Air Quality Technical Support Document ("PAPA AQTSD"), Vol. 1, pgs. 43-52, Appds. M, E. The BLM's cumulative modeling analysis similarly indicates compliance with the applicable NAAQS/WAAQS when the direct project emissions are added to the potential emissions from other regional emission sources.

2005 Modeling

Despite the fact the BLM did not adequately explain why the 2005 modeling scenario was necessary, the results of the modeling are contradicted by the IMPROVE visibility data, discussed above. If anything, the 2005 modeling demonstrates the conservative nature of BLM's air quality modeling, particularly with respect to visibility impacts. The BLM should clearly explain that the apparent discrepancy between the 2005 modeling results and the actual monitoring data is likely a result of the conservative nature of the BLM's modeling. The BLM should also describe how the BLM's 2005 modeling compares to the background data for other criteria pollutants. The BLM should describe whether the 2005 modeling results are similar to or more conservative than the background emissions and air quality data gathered during 2005.

AQ-2 BI-7-3

Background Ammonia Levels

It appears the BLM utilized a background NH_3 (ammonia) concentration of 1.0 ppb. *See* PAPA AQTSD Vol. 1, pg. 39. However, BLM analysis in the DEIS for the Pinedale RMP revision (2007) demonstrates measured annual concentrations of ammonia at less that 0.4 ppb in Pinedale and Yellowstone National Parks. *See* Pinedale DEIS pg. 3-8. Lower levels of ammonia would significantly limit the formation of ozone and other visibility impairing constituents. The BLM should disclose the conservative nature of its modeling as a result of exaggerated ammonia levels. The BLM should not use the higher ammonia concentrations in its models if such levels are not supported by actual monitoring data in the BLM's possession, regardless of IWAQM guidance.

AQ-3 BI-7-4

AIR QUALITY MITIGATION

The air quality mitigation measures described in Section 4.9.5 of the PAPA SDEIS raise serious legal and regulatory concerns and should be revised. It appears the focus of the BLM's mitigation measures is to reduce potential visibility impacts, despite recent improvements in visibility in the region. Given the fact air quality in the area is in compliance with

NAAQS/WAAQS and visibility is improving in the area, the BLM is improperly allowing overly conservative models to influence its management decisions. The BLM must not attempt to limit oil and gas development activities based upon hypothetical impacts derived from such conservative models, especially when such models are not confirmed by or consistent with actual monitoring data.

BLM's Authority to Regulate Air Quality

As recognized in the PAPA SDEIS and the recently released Draft EIS for the Pinedale RMP, the BLM has very little authority to regulate air emissions. *See* PAPA SDEIS, pg. 4-62 ("Air pollution impacts are limited by state and federal regulations, standards, and implementation plans established under the Clean Air Act and administered by the applicable air quality regulatory agency (WDEQ/AQD and EPA) . . . The applicable air quality regulatory agencies have the primary authority and responsibility to review permit applications and to require emission permits, fees, and control devices prior to construction or operation."). "The State of Wyoming has primacy with regard to air quality. . . . When necessary, the state regulates emissions through its State Implementation Plan (SIP) for air quality by promulgating the appropriate rule." Pinedale RMP DEIS (2007), pg. 3-9. The BLM does not have authority to regulate emissions in Wyoming.

With respect to potential visibility impacts, the BLM's authority is equally limited. Under the Clean Air Act ("CAA"), a federal land manager's authority is strictly limited to considering whether a "proposed major emitting facility will have an adverse impact" on visibility within designated Class I areas. 42 U.S.C. § 7475(d)(2)(B). Under the CAA, the regulation of potential impacts to visibility, and authority over air quality in general, rests with the WDEQ. 42 U.S.C. § 7407(a). The goal of preventing impairment of visibility in Class I areas will be achieved through the regional haze state implementation plans ("SIPs") that are being developed. 42 U.S.C. § 7410(a)(2)(J). Although federal land managers with jurisdiction over Class I areas may participate in the development of regional haze SIPs, as noted above, the BLM has no such jurisdiction in Wyoming. 42 U.S.C. § 7491. Accordingly, the BLM has no authority over air quality, and cannot impose emissions restrictions, either directly or indirectly, on natural gas operations in southwest Wyoming, particularly if the overall goal is to reduce potential visibility impacts. With these limitations in mind, the BLM must revise or eliminate its attempt to illegally regulate air quality emissions as expressed in Section 4.9.5. of the PAPA SDEIS.

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Cap on Emissions

Of particular concern is the BLM's attempt to illegally cap emissions associated with development in the PAPA. The Phase I Mitigation described in Alternative C requires the

operators in PAPA to first "show a reduction in modeled visibility impacts to 2005 actual impact levels" within one year of issuance of the ROD. *See* PAPA SDEIS, pg. 4-74. Alternative C Phase II Mitigation would require the operators to "reduce visibility impact levels associated with modeling 20 percent drilling rig emissions reductions each year for the next 4 years after 2005 impact levels are achieved." *Id.* In imposing these requirements, the BLM is establishing a *de facto* emissions cap in excess of its statutory and regulatory authority. The BLM lacks the authority to impose an emissions cap, as it recognized ten years ago in a series of appeals regarding the oil and gas development in the Moxa Arch and Fontenelle project areas. After attempting to impose a cap on emissions in the Fontenelle ROD, the State of Wyoming and several oil and gas operators filed an appeal with the Interior Board of Land Appeals. While the appeal was still pending, and upon the advice of the Department of the Interior's Solicitor's Office, the BLM admitted that it lacked authority to impose an emissions cap and mended the Fontenelle ROD accordingly. In the Amended ROD for the Fontenelle Natural Gas Infill Drilling Project, the BLM properly recognized that it "would be fundamentally inappropriate for BLM to impose a 'cap' on emissions . . . because the authority and mandate for regulating emissions rests with the State [of Wyoming] through an EPA approved State Implementation Plan." *See* Amended Fontenelle ROD, pg I-14.

AQ-5

BI-7-6

The BLM has effectively capped emissions by requiring the operators to demonstrate, based upon overly conservative modeling, potential visibility impacts equivalent to significant reductions in emissions. Such an approach is particularly troubling when the BLM admits that emissions from compression are already at BACT levels—meaning that further reductions are not even technically feasible. *See* PAPA SDEIS, pg. 4-74. The BLM must eliminate this *de facto* emissions CAP in the PAPA SFEIS and ROD, in deference to the WDEQ's authority over air emissions in Wyoming.

Further, the BLM lacks the authority to impose mitigation measures on oil and gas leases that are not technically or economically feasible. Once the BLM has issued an oil and gas lease conveying the right to access and develop the leasehold, the BLM cannot later impose unreasonable mitigation measures that take away those rights. *See Conner v. Burford*, 84 F.2d 1441, 1449-50 (9th Cir. 1988); 43 C.F.R. § 3101.1-2 (2006) (BLM can impose only "reasonable mitigation measures . . . to minimize adverse impacts . . . to the extent consistent with lease rights granted"). As the BLM is aware, once federal oil and gas leases are issued without no surface occupancy stipulations, and in the absence of a nondiscretionary statutory prohibition against development, the BLM cannot completely deny development on the leasehold. *See, e.g., National Wildlife Federation, et al.*, 150 IBLA 385, 403 (1999). There is no indication or analysis in the SDEIS indicating whether the 80% emission reduction—from the 2005 actual emission levels—is possible, much less technologically and economically feasible.

Demonstrating Compliance Using Conservative Modeling

BI-7-7

On page 4-75 of the PAPA SDEIS, the BLM indicates the operators will be required to demonstrate "annually through modeling that their plan to further reduce visibility impairment at the Bridger Wilderness Area is effective." The use of modeling is not appropriate when actual monitoring data is available to demonstrate compliance with the BLM's goal of reduced visibility impacts. Relying upon models known to be overly conservative may be appropriate to accomplish NEPA's disclosure requirements, but is not appropriate to ensure regulatory compliance with BLM's visibility goals. *See State of Ohio v. EPA*, 784 F.2d 224, 230 (6th Cir. 1986) (holding that it is arbitrary and capricious for an agency to use models to set emission limits unless they are checked against real world data). The BLM must delete the requirement to demonstrate compliance through annual modeling.

AQ-6

We appreciate the opportunity to submit our comments on the Draft Supplemental Environmental Impact Statement for the Pinedale Anticline Oil and Gas Exploration and Development Project and look forward to participating in the BLM's analysis of this project. Please place our office on your mailing list for this project and specifically provide us with complete paper copies of future documents related to this project.

Very truly yours,

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Robert C. Mathes

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