



555 Seventeenth Street • Suite 2400 • Denver, Colorado 80202 • Telephone 303/298-1000 • Fax 303/299-1518

March 12, 2007

Bureau of Land Management
Pinedale Field Office
432 East Mill Street
PO Box 768
Pinedale, WY 82941

VIA FEDERAL EXPRESS

Attention: Matt Anderson

Re: Supplemental EIS to Pinedale Anticline Oil and Gas
Exploration and Development Project EIS

Dear Matt:

Anschutz Pinedale Corporation (hereinafter "APC") joined Shell and Ultra as co-proponents of the Pinedale Anticline Year Round Access Proposal, dated September 16, 2005, that has prompted the BLM's action to supplement the PAPA ROD (BLM, 2000b). APC participated in the initial proposal based on the understanding that it would receive some benefit through stipulation relief in consideration of its commitment to share in the proposed mitigation measures that were designed to minimize the environmental impacts of year round drilling on the Pinedale Anticline. As you are aware, APC's position changed following a fundamental modification in the Proposed Action by Shell, Ultra and the newest member of the proponents, Questar. APC's letter of March 23, 2006 protested the manner in which the Proposed Action changed. A copy of the letter is attached hereto for your convenience. The primary reason for APC's withdrawal as a proponent to the SEIS was due to the establishment of Concentrated Development Areas that excluded all of APC's acreage within the PAPA. The Core Development Areas and Core Area (hereinafter "CDAs") remain a primary component of Alternative B and Alternative C to the Draft SEIS.

APC is a significant stakeholder within the PAPA, owning and operating more than 22,000 acres, an acreage position equivalent to Shell and Questar (+2%). APC's interests are most similar to those held by Questar, because APC's lands are substantially within Management Area (MA) 5, and its lands are located in close proximity or adjacent to Questar's acreage in the northern portion of the PAPA. The Draft SEIS refers to Questar's lease position as, "The northern-most portion of the PAPA contains mostly a single operator's contiguous leases...". The Draft fails to recognize APC's significant acreage position adjoining Questar. APC's ownership is significantly different from other operators, like Yates and BP America, in that their acreage is located to the south and mostly outside of the Big Game Winter Range, specifically MA-5. The attributes of APC's acreage, current low natural gas production vs. high Big Game Winter Range habitat value, led us to understand the Proponents motivation for

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bartering away APC's benefits in exchange for preferential treatment on their acreage and operations within the CDAs. Excluding APC's acreage in MA-5, provided significant wildlife mitigation value at no cost to the Proponents. APC stands in opposition to this action for obvious reasons.

Knowing that it would be difficult, if not impossible, to alter the course of the Proponents tactics of using APC's acreage as a "sacrificial lamb" in the SEIS process, APC recommended, by letter dated March 23, 2006, to the BLM that all acreage outside of the Concentrated Development Areas be excluded from the Proposed Action and continue to be governed by the 2000 PAPA ROD. Alternatives B and C of the Draft SEIS are contrary to APC's request that the SEIS not supersede the 2000 PAPA ROD as applicable to the lands outside of the CDAs, including all of APC's 22,000+ acres. Unfortunately, Alternatives B and C only extend the benefits of stipulation relief to the owners and operators within the CDAs at the same time as it applies operational restrictions to lands outside of the CDAs.

We contend that Alternatives B and C are short sighted and rely too heavily on the Proponents proclamation of certainty about the field boundaries lying within the CDAs. It is alarming that the Draft SEIS makes reference to a single word, "uncertainty" when characterizing the PAPA EIS and, at the same time, fails to recognize the present day uncertainties when inhibiting expansion of the field beyond the CDAs under the Alternative B (Proposed Action) and Alternative C. The Draft SEIS also refers to the PAPA EIS as ambiguous; however, by its own terms the Draft SEIS is ambiguous when providing for delineation drilling in a field already arbitrarily delineated by the CDAs.

Notwithstanding the fundamental and procedural imperfections of Alternatives B and C to the Draft SEIS, AEC is supportive of the concept of year round drilling when applied in a manner that is equitable to all owners and operators within the PAPA. At a minimum, the BLM must implement the following changes to Alternatives B and C prior to adopting either alternative:

- 1) All of the proposed mitigation should run with or be limited to the owners and operators within the current CDAs. Non-CDA owners and operators should be excluded from the burden of the proposed mitigation and operate under rules similar to the PAPA ROD (BLM, 2000b), and
- 2) Upon completion of a well outside of the current CDAs that is capable of producing in paying quantities, as defined by the "Yates" decision, the BLM shall expand the adjoining CDA to include the section of land containing said well. The owners and operators of the expanded area shall participate in mitigation on a proportionate basis and at a level consistent with adjoining lands previously included in a CDA.

In the absence of implementing the above-described conditions, APC requests that the BLM adopt Alternative A (No Action Alternative) and continue to manage the PAPA under the 2000 PAPA ROD. Continuing under the 2000 PAPA ROD is a preferred alternative to

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the inequitable distribution of the costs and benefits under the year round drilling proposal as currently drafted in Alternatives B and C, and the 2000 PAPA ROD provides adequate limits for development through 2009, as recited in the Draft SEIS:

212 well pad limit in MA 5 would be reached in 2009;
Approximately 276.0 miles of road would be reached in 2011;
68 well pad limit in MA 7 would be reached in 2011;
28 well pad limit in MA 4 would be reached in 2013; and
700 well pad limit in the entire PAPA would be reached in 2014.

APC acknowledges the shortcomings of the PAPA ROD (BLM, 2000b) as it relates to air quality, but it believes that air quality mitigation proposed in Alternatives B and C can be equaled or surpassed by applying mitigation measures on a site specific basis through the APD process, or by other governmental guidelines.

In summary, APC is supportive of both Alternatives B and C to the Draft SEIS conditioned upon the modification of the alternatives in a way that would limit the proposed mitigation to the current CDA owners and operators and allow for future expansion of the CDAs when paying wells are established outside of the current CDAs. Without these changes to Alternative B and C, APC petitions the BLM to adopt Alternative A and continue to manage the PAPA under the 2000 ROD until such time as an equitable year round drilling plan can be developed.

Thank you in advance for considering our comments on the Draft SEIS.

Sincerely,

ANSCHUTZ PINEDALE CORPORATION



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KVB/sbc

Enclosure

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March 23, 2006

Via Federal Express

Bureau of Land Management
Pinedale Field Office
432 East Mill Street
PO Box 768
Pinedale, WY 82941

Attention: Matt Anderson

Re: Supplemental EIS to Pinedale Anticline Oil and Gas
Exploration and Development Project EIS

Dear Matt:

The position of Anschutz Pinedale Corporation (hereinafter "Anschutz") on the referenced SEIS has changed since its original participation in the Proposed Action as outlined in that certain letter dated May 16, 2005 to the BLM from Anschutz, Shell and Ultra. The primary reason for the change is due to the substantial modification of the Proposed Action as set forth in the most recent proposal from Shell, Ultra and Questar. This amended Proposed Action significantly reduces the number of leasehold owners that benefit from the elimination or relaxation of wildlife stipulations for wintertime operations. The amended Proposed Action identifies certain concentrated development areas, and the currently defined concentrated development areas do not include any of Anschutz' acreage on the Pinedale Anticline.

As a result of the Proposed Action modification, Anschutz will not receive the opportunity to operate during the winter months in those areas containing wildlife stipulations as contemplated in our original proposal. To make matters worse, the amended Proposed Action further provides, "In addition, the proposed action includes commitments to reduce human activity and air emissions on the PAPA acreage through program components like the liquids gathering system and computer assisted operations. In most cases, the operators will expedite pad reclamation by drilling and completing all wells allowed on the pad under current well spacing rules before moving onto new pads. The Operators also propose to construct delineation pads and drill wells to establish the extent of their productive leasehold (as to depth, density and aerial extent) without asking for seasonal stipulation relief. The Operators intend to later expand and use these delineation pads, if the wells are productive, into multiple-well pads during development..." While receiving no benefit through stipulation relief, Anschutz and many other small leasehold owners will be burdened by the committed mitigation that extends to or runs with lands located outside of the concentrated development areas but within the PAPA.

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The amended Proposed Action under its own terms describes the disproportionate benefit to a few leasehold owners, to wit: "Existing wildlife stipulations would remain active for the PAPA acreage not identified as part of the three areas approved for concentrated year round development. This means approximately 290 square miles, or 94% of the total PAPA acreage, would still be restricted for gas field operations per the terms of the current wildlife stipulations" Anschutz is part of the 94% ownership receiving no benefit from the amended Proposed Action.

For the reasons described hereinabove, Anschutz respectfully requests that it no longer be included as a proponent to the SEIS. Further, Anschutz objects to the Proposed Action as recently amended, including the concentrated development areas as defined by Shell, Questar and Ultra. Consequently, Anschutz proposes that all acreage outside of the concentrated development areas, also referred to as the "Core Development Area", be excluded from the Proposed Action and continue to be governed by the 2000 PAPA ROD.

Please do not hesitate to contact me with questions or comments concerning this matter.

Sincerely,

ANSCHUTZ PINEDALE CORPORATION



Keith Bonati
Sr. Landman

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Attention: Matt Anderson

Re: Supplemental EIS to Pinedale Anticline Oil and Gas
Exploration and Development Project EIS

Dear Matt:

Please accept this letter as an amendment to my letter dated March 12, 2007 regarding the Draft SEIS. The last sentence in the first paragraph of page one should be deleted and replaced with, "The Core Development Areas, CDA, Development Areas, DAs and Core Area (hereinafter "CDAs") remain a primary component of Alternative B and Alternative C to the Draft SEIS.

Sincerely,

ANSCHUTZ PINEDALE CORPORATION

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PINEDALE CORPORATION

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June 15, 2007

Via Overnight Delivery

Bureau of Land Management
Pinedale Field Office
Matt Anderson, Project Manager
1625 Pine Street
Pinedale, WY 82941



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

Dear Mr. Anderson:

Anschutz Pinedale Corporation ("APC") submitted comments on the Draft Supplemental Environmental Impact Statement for the Pinedale Anticline Oil and Gas Exploration and Development Project ("PAPA SDEIS") on March 12, 2007, but hereby supplements its comments with the following information. In particular, APC would like to take this opportunity to react to a proposed alternative presented by, or advanced by, the Wyoming Game and Fish Department ("Game & Fish") and several of the operators (Shell, Ultra, and Questar) in the Pinedale Anticline Project Area ("PAPA") to increase the size of the Year-Round Access Core Area and to suspend oil and gas leases along the flanks of the PAPA. Because this alternative was presented during the comment period, Anschutz did not have an opportunity to provide the BLM with formal comments regarding the newly presented alternative.

As the BLM is aware, APC has a significant interest in the PAPA because it owns and operates more than 22,000 acres of federal, state and fee oil and gas leases in the area. APC would be significantly and adversely impacted by the approval of either Alternative B or Alternative C as presented in the PAPA SDEIS. These alternatives would significantly limit APC's ability to operate on its leasehold, which is located outside of the proposed "core areas," but would still impose stringent mitigation requirements on APC's operations in the form of air emission restrictions and mandating the creation of a liquids gathering system. As indicated in APC's letter of March 12, 2007, the proposed mitigation measures should only be attached to those operators with significant leasehold acreage in the core development areas ("CDAs"). Only operators with the CDAs will be engaging in activities likely to increase stress on wildlife with year-round operations. Operators such as APC will still be required to comply with the seasonal stipulations applied to their leases and thus should not be required to finance the

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mitigation measures developed by the BLM to lessen or mitigate the impacts of year-round development.

APC understands the Wyoming Game and Fish Department (Game & Fish) proposed alternative would essentially increase the size of the core area by imposing a half-mile buffer around the entire core area, but suspend development activities on the flanks of the anticline. Year-round drilling would occur within the buffer area, as well as delineation activities for the first five years after the ROD is issued. Delineation activities would cease after the five-year period expires. In exchange for the one-half mile buffer, the alternative calls for the BLM to suspend all development outside of the core area.

APC supports the Game & Fish's proposal to expand the core area within the PAPA, which would afford APC the benefits of relaxed or eliminated wildlife stipulations. By adopting this element of Game & Fish's proposed alternative, the BLM would assuage some of APC's concerns regarding the BLM's Alternatives B and C in the SDEIS, which do not allow APC to take advantage of relaxed seasonal stipulations on its leasehold. APC strongly opposes, however, the Game & Fish's proposal to suspend all development outside of the core area, as well as the proposal to limit delineation activities to five years. These restrictions would impermissibly interfere with APC's lease rights and may result in a taking in violation of the Fifth Amendment to the Constitution. APC also objects to the BLM's attempt to regulate air quality and visibility in the SDEIS. The BLM lacks authority to regulate these resource values, and the air and visibility mitigation measures proposed in the SDEIS are therefore impermissible.

ANSCHUTZ SUPPORTS EXPANSION OF THE CORE AREA

APC supports the expansion of the year-round access core area. Unlike the BLM's Alternatives B and C in the SDEIS, the expansion of the core area proposed by Game & Fish would permit APC to benefit from the elimination or relaxation of wildlife stipulation for wintertime operations. As APC explained in its March 12, 2007 letter, the BLM's Alternatives B and C are inherently unfair because they require operators outside the core areas to bear the burden of additional mitigation measures but do not afford these operators the advantages of year-round drilling. By expanding the core area, the BLM allows more operators to participate in year-round drilling and thus more equitably distributes the benefits of year-round drilling among operators in the PAPA.

Not only would expansion of the core area result in more equitable development in the PAPA, it would permit APC to develop its proven productive acreage. The proposed half-mile buffer includes portions of APC's Two Buttes Unit, WYW-163106X, which lies on the eastern flank of the BLM's core area. The BLM's approval of the unit, which is based on sound geologic evidence, see 43 C.F.R. § 3181.2, is an indication that the acreage within the unit will be productive. APC drilled and completed the Two Buttes 16-15cd Well, API Number 49-035-23892, in Section 15, Township 32 North, Range 109 West, 6th P.M. in 2005, and the BLM issued a Yates Decision letter on the Two Buttes 16-15cd Well effective as of September 27, 2005. Importantly, many of APC's existing and planned wells within the Two Buttes Unit are located within the one-half mile buffer zone. Expansion of the core area would permit APC to

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fully develop proven productive acreage on the west side of the core area. The proposed half-mile buffer encompasses APC's Mesa 3-19A well, a producing well that lies on the western flank of the BLM's core area, as well as additional development APC is evaluating. Expansion of the core area would permit APC to continue to develop this proven productive acreage.

In contrast, the core areas proposed in Alternatives B and C of the SDEIS do not reflect the proven productive areas within the PAPA. These core areas appear to be based on estimates of anticipated oil and gas development. See PAPA SDEIS, pgs. 2-23, 2-30. In setting these boundaries, the BLM appeared to have ignored evidence of acreage that the operators, including APC, have demonstrated to be productive. The BLM cannot overlook these proven areas and must allow APC to fully develop the entire resource. Because expansion of the core area would permit APC to continue to develop the proven resource, APC encourages BLM to expand the core area.

FUTURE EXPANSION OF THE CORE AREA

APC partially supports the BLM's proposal under Alternative B to authorize expansion of the core area if warranted by future exploration and development activities. See PAPA SDEIS, pgs. 2-25. With improved technology, lower well drilling and completion costs, or increased demand for natural gas, operations outside of the currently designated core area could justify the expansion of the core area. [The BLM should allow itself sufficient flexibility to expand the core area when demonstrated reasonable and practical based on continued development and delineation activities.] As discussed in more detail below, however, APC is strongly opposed to any arbitrary limitation on when delineation activities will be allowed within the PAPA. Arbitrary limits on delineation activities may conflict with APC's existing property and contract rights.

MANDATORY MITIGATION MEASURES

Under both Alternative B and Alternative C, the BLM mandates numerous mitigation measures designed to reduce the potential impacts of year-round drilling and increased development along the crest of the Pinedale Anticline. Because APC will not benefit from the year-round drilling opportunities, it would be inappropriate for the BLM to mandate any of the extraordinary mitigation measures discussed in the APPA SDEIS on APC's operations. In particular, APC is concerned about BLM's proposal to require piping all produced water and condensate and the numerous air quality mitigation measures proposed in Section 4.9.5 of the PAPA SDEIS. Given the location of APC's leasehold it would be unduly cost prohibitive for APC to install a liquids gathering system. Similarly, in addition to the BLM's lack of authority to impose air quality mitigation measures, it would be unduly expensive and unnecessarily burdensome for APC to be required to fund the various mitigation measures and extensive future air quality modeling proposed in the PAPA SDEIS. Because APC would not benefit from the increased development operations proposed in the PAPA SDEIS, and would not benefit from year-round drilling operations, APC should not be required to fund the mitigation measures the BLM is proposing in order to offset the environmental impacts of increased development.

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THE BUREAU OF LAND MANGEMENT MUST HONOR ANSCHUTZ'S EXISTING LEASE RIGHTS

Although APC supports the Game & Fish's proposal to expand the core area, APC stresses that it is opposed to Game & Fish's proposal to suspend development activities outside of the core area and to limit delineation activities within the buffer zone to a term of five years. The BLM cannot authorize or increase year-round drilling and development within the core area to the benefit of a handful of operators in the PAPA, while burdening operators outside of the core area with delays in or denial of their rights to develop their leases. Such a restriction is patently unfair to operators, such as APC, with most or all of their acreage outside of the core area. Moreover, such a restriction impermissibly interferes with these operators' lease rights and may result in a taking in violation of the Fifth Amendment to the Constitution.

Because APC's leases do not include no surface occupancy (NSO) stipulations, the BLM may not deny development activities on APC's leases outside of the core area. Once a federal oil and gas lease is issued without a no surface occupancy stipulation, the BLM cannot completely deny development on the leasehold in the absence of a nondiscretionary statutory prohibition against development. *See, e.g., National Wildlife Fed'n, et al.*, 150 IBLA 385, 403 (1999). Only Congress has the right to completely prohibit development once a lease has been issued. *Western Colo. Congress*, 130 IBLA 244, 248 (1994). Instead, the BLM must allow APC to explore for and develop its leasehold for oil and gas as provided by the terms of APC's leases. An oil and gas lease is a contract between the federal government and a lessee, and the government must honor the specific rights an oil and gas lease affords the lessee. *See Mobil Oil Exploration & Producing Southeast, Inc. v. United States*, 530 U.S. 604, 620 (2000) (recognizing that lease contracts under the Outer Continental Shelf Lands Act give lessees the right to explore for and develop oil and gas); *Oxy USA, Inc. v. Babbitt*, 268 F.3d 1001, 1006-7 (10th Cir. 2001) (noting that the Tenth Circuit has long held that federal oil and gas leases are contracts), *rev'd on other grounds, BP America Prod. Co. v. Burton*, 127 S. Ct 638 (2006). An oil and gas lease conveys not only the right to develop federal minerals, but also an obligation to develop these minerals. The BLM may not prohibit development activities outside of the core area in a manner entirely inconsistent with the terms of APC's leases.

Similarly, the BLM may not restrict delineation within the buffer to a five-year period after the issuance of the ROD for the PAPA SEIS. The BLM cannot unilaterally limit the time a lessee has to develop a lease and, thus, effectively modify the terms of the lease. Federal oil and gas leases are issued with a primary term of ten years, and the BLM cannot modify that aspect of a lease, or deny the right to develop leases already in their extended term by virtue of production. *See Copper Valley Machine Works, Inc. v. Andrus*, 653 F.2d 595, 603-04 (D.C. Cir. 1981) (holding that lessees are entitled to their full lease terms irrespective of whether the prohibitions are by lease or conditions of approval); *Coronado Oil Co.*, 164 IBLA 309, 321 (2005) (noting that federal leases are issued for a period of 10 years). The proposal to limit delineation to a five-year period is inconsistent with the express provisions of APC's leases granting development rights for a full ten years. The BLM may not unilaterally abrogate specific provisions of APC's leases to further a few operators' abilities to develop leases within the core area.

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The proposal to limit delineation activities to only the first five years after the ROD is issued is also inconsistent with the term and conditions of the Two Buttes Unit Agreement that was approved by the BLM on July 18, 2005. The Unit Agreement creates certain rights and obligations for APC, the BLM's attempt to suspend leases on the flanks of the PAPA or preclude development on the flanks of the PAPA is inconsistent with the requirements of the BLM approved Unit Agreement.

Should the BLM deny or unreasonably delay APC's ability to develop its lease, the BLM's action may constitute a taking in violation of the Fifth Amendment to the Constitution. The Federal Court of Claims has recognized that a temporary taking occurs when the BLM prohibits oil and gas development on a lease for a substantial period of time. *Bass Enterprise Prod. Co. v. United States*, 45 Fed.Cl. 120, 123 (Fed.Cl. 1999). A lessee who can demonstrate a taking of an oil and gas lease is entitled to damages in the fair market rental value of the leasehold. *See Bass Enterprise Prod. Co. v. United States*, 48 Fed.Cl. 621, 625 (Fed.Cl. 2001). If the BLM denies all development opportunities on APC's acreage in order to foster and facilitate development on the other operators' leasehold, APC will be able to demonstrate a temporary taking. *See Bass Enterprise Prod. Co. v. United States*, 45 Fed.Cl. at 123. The BLM must avoid adopting alternatives that would result in the unconstitutional taking of APC's property and contract rights.

AIR QUALITY

APC considers air quality to be an important issue in southwestern Wyoming. The analysis in the PAPA SDEIS, as well as other recent environmental impact statements, confirms that air quality in southwest Wyoming is very good. Emissions data collected in the PAPA and the surrounding areas demonstrate compliance with all National and Wyoming Ambient Air Quality Standards ("NAAQS/WAAQS") and that visibility in the area is generally improving. *See PAPA SDEIS*, pgs. 3-54 - 3-55. The analysis in the recently released Draft EIS for the Eagle Prospect Exploratory Wells Project, jointly prepared by the BLM and Forest Service, affirmatively states that visibility in Bridger Wilderness has improved since 1989. *See Eagle Prospect DEIS*, pg. 3-11 (reflecting data through 2006). Similarly, 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 1990's and is approaching record high levels despite increased oil and gas development in the PAPA and nearby areas. *See PAPA SDEIS*, pgs. 3-58 - 3-59. [Unfortunately, the BLM does not adequately explain this information in the PAPA SDEIS and should insert additional language discussing the monitoring data in the PAPA SFEIS to fully inform the public.]

Consistent with data demonstrating that air quality is improving in and near the PAPA, the BLM's project and cumulative modeling analysis predicts that the ambient air within the PAPA will comply with air quality standards despite existing and proposed increased development. *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 should stress that its

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modeling, though overly conservative, indicates compliance with all NAAQS/WAAQS in the PAPA.

The BLM should also disclose that its air model results are overly conservative, as its modeling of the potential air quality impacts for 2005 demonstrates. Contrary to the actual IMPROVE visibility monitoring data discussed above, the BLM's conservative modeling for 2005 demonstrates the potential for 45 days of 1 deciview impairment at Bridger Wilderness Area. Although the analysis is not directly comparable, the modeling data appears to be sharply contradicted by the 2005 IMPROVE monitoring data demonstrating improved visibility at Bridger Wilderness Area. Although BLM partially acknowledges the conservative nature of emissions modeling in the PAPA Air Quality Technical Study Document ("AQTSD"), see PAPA AQTSD, pg. 37, the BLM never adequately explains the extent to which its models conservatively evaluate impacts or the fact that its models cannot conclusively predict impacts. The BLM must more thoroughly disclose the conservative nature of its analysis and its role in the NEPA process in the PAPA SFEIS.

APC is concerned, however, that the BLM did not include all of the reasonably foreseeable future actions in its cumulative air impacts analysis for the PAPA SDEIS. In particular, APC is concerned that the BLM improperly excluded reasonably foreseeable oil and gas development projects from the Uintah Basin in Utah and projects in northern Colorado. In the air quality support document for the PAPA SDEIS, the BLM indicates that no oil and gas projects are foreseeable in either the Vernal or Salt Lake Field Offices in Utah, or in the Little Snake Field Office in Colorado. See PAPA SDEIS, Air Quality Technical Support Document, Vol.2, Appd. G, Table G.10, pg. G-61. The recently released Environmental Assessment for Kerr-McGee's Bonanza Area (October 2006) identifies 16 separate oil and gas projects in the Vernal Field Office that were pending or recently approved. See Environmental Assessment for Kerr-McGee's Bonanza Area, UT-080-2006-240, pg. 4-49. In all total, the Bonanza EA identifies 6,530 wells as reasonably foreseeable within the Vernal Field Office alone. Similarly, despite the fact the BLM determined there were no reasonably foreseeable development oil and gas development in the Little Snake Field Office in Colorado, the BLM is currently analyzing a proposal from Questar to develop over 4200 wells in the Little Snake and Rock Springs Field Offices. The BLM's failure to include these planned or approved oil and gas projects in its cumulative impacts analysis may have rendered BLM's analysis inaccurate and incomplete.

AIR QUALITY MITIGATION

APC objects to the unnecessary air quality mitigation measures described in Section 4.9.5 of the PAPA SDEIS. The language of the SDEIS, coupled with the fact that the BLM's extensive air quality modeling in the PAPA SDEIS demonstrates continued compliance with all NAAQS/WAAQS, suggest that the BLM intends to reduce potential visibility impacts through the proposed mitigation. Because actual visibility monitoring proves that visibility has remained relatively constant over the past 15 years and has recently improved despite increased oil and gas activity, the BLM is improperly allowing overly conservative models to influence its management decisions.

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Not only are the proposed mitigation measures unnecessary, they raise serious legal and regulatory concerns. The BLM lacks authority to regulate both air emissions and potential visibility impacts. The Interior Board of Land Appeals (IBLA) has made clear that in Wyoming, the Wyoming Department of Environmental Quality and the EPA are solely charged with ensuring compliance with federal and state air quality standards. *See Wyoming Outdoor Council, et al.*, IBLA No. 2006-155, at 12 (June 28, 2006). This decision is particularly compelling because it relates to natural gas operations within the Pinedale Resource Area, and specifically operations on the adjacent Jonah Field. Similarly, in the PAPA SDEIS and in other contexts, the BLM has recognized that it has very little authority to regulate air emissions. *See PAPA SDEIS*, pg. 4-62. The BLM previously recognized its inability to mandate air quality mitigation in the Record of Decision for the Continental Divide/Wamsutter II Natural Gas Project, pg.15 (“BLM cannot implement specific air quality mitigations *since it has no authority to do so.*”) (emphasis added). The BLM has equally limited authority to regulate potential visibility impacts. The Clean Air Act (“CAA”) restricts a federal land manager’s authority to a secondary role in the regulation of visibility within designated Class I areas. 42 U.S.C. §§ 7475(d)(2)(B), 42 U.S.C. § 7491. In contrast, the CAA vests the WDEQ with the regulation of potential impacts to visibility, and authority over air quality in general. 42 U.S.C. § 7407(a). Therefore, 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.

In light of these limitations, the BLM must significantly revise, if not delete entirely, the proposed mitigation strategy described in Section 4.9.5. of the PAPA DEIS. Wyoming’s continued compliance with all NAAQS/WAAQS and its progressive and comprehensive air quality regulatory program demonstrates that WDEQ is fulfilling its responsibility to protect air quality in Wyoming. BLM should not attempt to illegally regulate air emissions in derogation of WDEQ’s authority.

In addition to objecting to the general mitigation strategy proposed in the SDEIS, APC is particularly concerned with the BLM’s illegal attempt to cap potential emissions associated with additional development in the PAPA by requiring reductions in visibility impacts. 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. Additionally, the Phase II Mitigation in Alternative C requires 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.* By requiring the operators to demonstrate, through modeling, reduced visibility impacts associated with significant emission reductions, the BLM is effectively imposing a project-wide air emissions cap. 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. *See Amended ROD for the Fontenelle Natural Gas Infill Drilling Project*, pg. I-14 (explaining 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.”). The BLM must

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eliminate this *de facto* emissions CAP in the PAPA SFEIS and ROD, in deference to the WDEQ's authority over air emissions in Wyoming.

The BLM's *de facto* emissions cap is particularly troubling because the BLM admits that emissions from compression are already at BACT levels—meaning that further reductions are not technically feasible. See PAPA SDEIS, pg. 4-74. The BLM lacks the authority to impose mitigation measures on oil and gas leases that are not technically or economically feasible. 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"). In the SDEIS, the BLM does not indicate whether the emission reductions described in Alternative C of the EIS are possible, much less technologically and economically feasible.

AQ-9

BI-3-15

Furthermore, APC objects to BLM's attempt to require operators to demonstrate "annually through modeling that their plan to further reduce visibility impairment at the Bridger Wilderness Area is effective." See PAPA SDEIS, pg. 4-75. 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. Significant additional monitoring data for southwest Wyoming is already becoming available thanks to a cooperative effort by WDEQ and oil and gas operators in southwest Wyoming to purchase and install new monitoring equipment across the region. 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-10 PA-15 PA-14
BI-3-16

In summary, APC urges the BLM to consider expanding the "core area" within the PAPA to include other operators as the Game & Fish has proposed. APC, however, asks the BLM to reject the Game & Fish proposal to delay or deny activity outside of the core area because this approach would impermissibly interfere with operators' existing lease rights. Furthermore, APC requests that the BLM significantly revise the air quality mitigation measures outlined in the PAPA SDEIS.

Thank you in advance for considering APC's comments on the PAPA SDEIS.

Sincerely,

Anschutz Pinedale Corporation



Keith Bonati
Senior Landman