

FINDING OF NO SIGNIFICANT IMPACT/DECISION RECORD.

Decision

I have reviewed this environmental assessment including: the explanation and resolution of any potentially significant environmental impacts; and public comments (see Appendix A to this Decision Record, "Summary of EA Comments and BLM Responses"). I have selected the proposed action alternative with the mitigation measures described below for authorization and implementation. I have determined that the proposed project is in conformance with the approved land use plan. It is my decision to implement the project with the mitigation measures identified below.

Finding of No Significant Impact

Based upon the analysis of potential environmental impacts contained in the EA, I have determined that the impacts are not expected to be significant, and that an EIS is not required.

Rationale for Decision

Compared to the No Action Alternative, the Proposed Action Alternative best meets the Purpose and Need and guiding laws, regulations, and directives, including the Federal Land Policy and Management Act (FLPMA, 43 USC 35). The proposed action is in conformance with the Great Divide Resource Management Plan (RMP) and the Atlantic Rim Natural Gas Field Development Project EIS.

Public Comments/BLM Responses

Appendix B to this Decision Record contains a summary of public comments received for this action, and corresponding BLM responses.

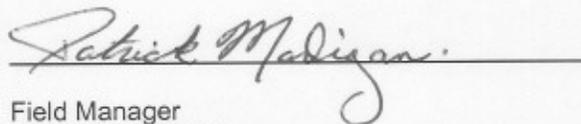
Mitigation Measures/Remarks

All needed mitigation is a part of the proposed action and is found in the Master Surface Plan, and accompanying attachments and appendices, with the Conditions of Approval for the MSUP and APD's. A total of 52 well APDs (43 gas wells and 9 water injection well), as well as access across BLM-administered surface to access 3 additional state mineral/federal surface wells and one state mineral/federal surface water injection well (all within the Jack Sparrow CBNG Federal Unit), unless specified otherwise in the COA, are authorized under this decision, along with associated well pads, access roads, pipelines, power-lines and utility corridors.

Monitoring and Compliance

Designated BLM personnel will monitor operations under authorizations for the proposed action as needed to ensure compliance with the Master Surface Plan and Conditions of Approval.

Authorized Official:



Field Manager
Rawlins Field Office

SEP 30 2008

Date

Appeal

Under BLM regulation this decision is subject to appeal. Under BLM regulation, this decision is subject to administrative review in accordance with 43 CFR 3165. Any request for administrative review of this decision 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 within 20 business days of the date this Decision Record is received or considered to have been received.

Appendix A to the Decision Record

ERRATA

Modifications and Corrections To The
Jack Sparrow Plan of Development (POD)
Environmental Assessment (EA)

Potential Environmental Impacts of the "Proposed Action" Alternative

This EA was submitted for public comment in an incomplete "draft" version. Much of the information was still in the approval stage with the interdisciplinary team. Therefore, any applicable errata and comments were incorporated into preparation of the final EA.

End Errata

Appendix B to the Decision Record

Summary of EA Comments and BLM Responses

Two (2) comment letters were received (Biodiversity Conservation Alliance (BCA) on behalf of BCA and the Natural Resources Defense Council (NRDC), September 9, 2008, via email/hardcopy; and Husch, Blackwell, Sanders, LLP on behalf of the Theodore Roosevelt Conservation Partnership, September 10, 2008 via fax/hardcopy). The letters have been reviewed to determine whether the information they provided would warrant a determination other than a Finding of No Significant Impact (FONSI). Substantive comments are summarized below, with BLM responses to the comments in italics. The RFO would like to thank all who commented for taking the time to review the EA.

As noted in the EA (Page 3), information about the proposal was posted in the RFO public room for a 30-day period upon submittal by the proponent (beginning December 16, 2006). In addition, the BLM online NEPA register provides notice of actions for which NEPA documentation is prepared, including the proposal considered under this EA.

In reviewing the comments received, there were some instances where substantial comments were made but we could find no project-specific comments or any description of (1) new information, (2) why or how the analysis is flawed, (3) evidence of flawed assumptions, (4) evidence of error in data presented, or (5) requests for clarification that bear on conclusions presented in the analysis. This was the standard used to identify substantive comments for the following responses.

Biodiversity Conservation Alliance, Comments:

I. Sage Grouse Leaks and Wintering Areas

"Populations of sage grouse continue to decline. Yet, BLM persists in relying on mitigation measures that have already failed in other areas. The AR FEIS failed to adequately discuss whether its proposed mitigation measures for sage grouse are appropriate or scientifically defensible".... Indeed, BLM has determined that the quarter-mile NSO buffers and two-mile seasonal stipulations applied under this project are inadequate to sustain sage grouse populations in the Powder River Basin at identical CBM well densities.... Neither of these issues is addressed in the EA for the Jack Sparrow...PODs. BLM is plowing ahead with more drilling permits before it has taken steps to prevent the steady and dramatic decline of the sage grouse. Contrary to the mandates of the BLM's own Sensitive Species policy and the Great Divide Resource Management Plan, BLM's approval of the Jack Sparrow POD will harm sage grouse leks and nesting habitat".

"Furthermore, the State of Wyoming has initiated a new sage grouse conservation policy by Executive Order, which depends on conservation of sage grouse in designated Core Areas. See Attachments 3 and 4. This policy constitutes significant new information that has become available subsequent to the issuance of the Atlantic Rim, ROD, and thus tiering to this NEPA analysis is unavailing. Supplemental NEPA will be required to address this issue.

"As a result of these impacts and considerations, significant impacts to sage grouse are likely and an EIS will be needed prior to project approval".

The BLMs analysis of the proposed action included site-specific review of potential impacts to sage grouse, consideration of available, experience and expertise of the BLM biologists as well as data and knowledge collected by the Wyoming Department of Game and Fish, U.S. Fish & Wildlife Service, and other organizations. The seasonal restrictions applied are supported by programmatic BLM decisions (such as the Great Divide RMP and Atlantic Rim ROD, among others), and are consistent with BLM policies developed in consultation with agencies such as the Wyoming Department of Game and Fish.

One Jack Sparrow POD well (AR Federal 1591 11-22) is within the Wyoming Governor's delineated sage-grouse core areas. Other agencies and organizations may acquire new information and develop new management practices (such as the State of Wyoming Core Population Areas) that may influence or compliment BLM's decisions and policies. However, as the Executive Order issued by the Governor of Wyoming acknowledges, existing rights need to be recognized and respected. BLM Wyoming continues to work toward establishing consistent policy and direction for sage-grouse management on BLM lands. However, until such time new BLM guidance is developed, the BLM RFO is committed to work with industry and our partners to reduce impacts to sage-grouse habitat from oil and gas development within our existing authority and approved land use planning and project decisions, while recognizing valid existing rights.

II. Water Quality and Downstream Sensitive Fishes

"The EA fails to discuss the potential effects of the Jack Sparrow POD on water quality and downstream sensitive fish species. We are concerned that proposed activities, when occurring on highly saline, erodible, or unstable soils will contribute to significant impacts to the watershed and downstream native fishes." "The level of direct and cumulative salt loading to the Colorado River System also has not been disclosed, potentially leading to violations of the Colorado River Compact.

See EA (pages13-15).

Project Best Management Practices are deemed to be protective of possible significant impacts to these populations (as applicable). As site-specific NEPA analysis is issue-driven, it is up to the BLM Authorized Officer to determine the scope of the proposed action and the analysis of impacts. If particular resources do not exist in the project area, or in the area identified as the cumulative impact analysis area, it is not necessary to analyze or discuss these resources in the EA (40 CFR 1500.1(b), 1502.20 &1508.28).

III. State Certifications Required by Section 401 of the Clean Water Act

"...BLM must require that project proponents have acquired certifications (or waiver) from the State of Wyoming, pursuant to Section 401 of the Clean Water Act. The EA should, but does not, indicate whether such certifications have been acquired."

The proponent must comply with all laws, standards, and criteria set forth by all appropriate Federal, State, and Local authorities; which is a standard requirement included in BLM's Conditions of Approval.

This project does not involve point source discharges that may make their way to navigable waters of the United States, and therefore, the proponent is not required to have acquired certifications (or a waiver of such certifications) from the State of Wyoming, pursuant to Section 401 of the Clean Water Act, 33 U.S.C. §1341."

The BLM is aware that Section 401 of the Clean Water Act (33 USC 1341) requires applicants for a federal license or permit that would authorize discharge into waters of the United States to obtain a certification from the State in which the discharge originates. On March 20, 2007, the U.S. Army Corps of Engineers obtained certifications from the Wyoming Department of Environmental Quality for most Nationwide General Permits that authorize discharges pursuant to Section 404 of the Clean Water Act (33 USC 1344) in Wyoming. All certifications remain valid until March 18, 2012, for discharges authorized by nationwide permits and project proponents are not required to obtain separate certifications prior to undertaking those activities. Therefore, roads, pads, pipelines, produced water management structures, and other common activities that result in discharges are currently authorized because certification has been granted. Certifications of any other discharges that are not currently authorized cannot be acquired until the need for a permit arises. The BLM is confident that those certifications would be acquired by the project proponent as applicable and as

certified in the Jack Sparrow POD Water Management Plan.

IV. Methane

"...In addition, a major methane seep along Wild Cow Creek is in quit close proximity to the Jack Sparrow POD. Also, there is no evidence that collaborative monitoring will lead to any abatement of methane seepage... The agency continues to approve more and more drilling permits without even beginning to collect data regarding the potential for methane seeps." "BLM should quantify potential emissions of methane."

See EA (pages 7-8)

The Atlantic Rim EIS analyzed potential impacts of various air quality pollutants. Under the current Rawlins RMP, analysis of potential greenhouse gas impacts is beyond the scope of the management; NEPA does not require agencies to address "remote and highly speculative consequences," such as the possibility that isolated, unknown, and/or impossible to predict phenomena such as methane seeps exist.

V. Air Quality

"BLM is proceeding without the full picture it needs regarding ozone pollution. BLM relied on an obsolete method to predict ozone impacts and should not approve the Jack Sparrow POD or any other drilling permits until it corrects and updates its air quality analysis of ozone impacts."

Please refer to Page E-9 of the Atlantic Rim Record of Decision.

BLM is unaware of an exceedance of NAAQS standards at area air quality monitoring stations.

VI. Mule Deer migration Corridors

No mule deer comment specified for the Jack Sparrow POD from BCA/NRDC.

VII. Impacts to Raptors

"Yet nowhere in these EAs does the BLM provide a site-specific analysis of the direct and cumulative impacts of this large number of industrial intrusions on nesting raptors. Will these development, directly or cumulatively, result in reduced or eliminated nest success, abandonment of key habitats for the short or long term, and if so, what are the direct and cumulative impacts of these projects on the viability of raptor populations throughout the region?"

The BLMs analysis of the proposed action included site-specific review of potential impacts to raptors, using the experience and expertise of the BLM biologists as well as data and knowledge collected by the BLM, Wyoming Department of Game and Fish, U.S. Fish & Wildlife Service, and other organizations. BLM biologists use Best Management Practices (BMPs) such as topography (locating well locations behind hills out of direct line-of-sight). In addition to BMPs specialists also considered nest condition and history, proximity to the nest(s), and other activities beyond control of the BLM (e.g. public access such as county, BLM and other existing roads). This analysis of site-specific impacts, with resultant site-specific Conditions of Approval, is addressed in the EA [Page 12], and also by reference ("Other site specific findings by the interdisciplinary review team are provided on the attached review documents...") The EA and Conditions of Approval address BLM specialist's conclusions and required mitigation regarding potential impacts to wildlife.

Over fifteen years of monitoring data has been acquired in Atlantic Rim and other EIS areas. Most of this data collection has been for highly developed areas. The data acquired within the adjoining Continental Divide/Greater Wamsutter II (CD/W II) EIS area indicates that raptor nest productivity has been maintained in areas of development through the use of BMPs and timing stipulations as compared to areas with little or no development.

VIII. Impacts to Lands Possessing Wilderness Qualities

"While none of the wells in the Jack Sparrow POD appear to be with the Wild Cow Creek citizens' proposed wilderness, there was a well location being staked...inside the citizens' proposed wilderness at T15N R91W Section 23 or 24. This location does not appear on any of the POD maps...This location, just east of an existing access road for a natural gas well, should be moved 50 yards to the south..."

At this time, the BLM is unaware of any staked wells, nor received any proposals for wells, within T15N, R91W, Section 23 or 24 (Wild Cow Creek citizens' proposed wilderness). Staking of a well is considered casual use, as defined by the Great Divide Resource Management Plan (RMP) approved on November 8, 1990. The BLM may or may not receive the NOS/APD for the well(s) in question, depending on industry timeframes, drill schedules, etc.

Theodore Roosevelt Conservation Partnership Comments:

I. Mule Deer Migration Corridors

"...The EA fails to acknowledge the presence of a known mule deer migration corridor within the planned development area. See Exhibit A. The placement of wells within this corridor would conflict with the Record of Decision approving the Atlantic Rim Natural Gas Field Development Project (March 2007) ("ROD") and result in impacts not analyzed in the Final Environmental Statement for the Atlantic Rim Natural Gas Field Development Project (Nov. 2006) ("FEIS"). Accordingly, the EA may not lawfully "tier" from the FEIS."

"An extraordinary and irrefutable volume of science demonstrates the importance of migration corridors to the long-term viability of mule deer...Sawyer has been collecting mule deer data for three consecutive years on the Atlantic Rim, the ostensible purpose of which is to delineate migration routes prior to gas development to "allow managers to develop proactive, rather than reactive, management prescriptions..."

"Proof that the BLM has ignored the most recent Sawyer data is found in the outdated maps accompanying the EA. These maps fail to recognize the existence of a mule deer migration corridor present in Township 15N, Range 91W, Section 22."

"Because BLM has ignored the best available information, the Proposed Action includes 52 federally approved coal bed methane gas production well in the POD, three of which will be placed within this mule deer migration corridor. The FEIS promised: "When information is available from this research, additional mitigation would be placed on development for the protection of mule deer migration corridors." Once again, BLM is breaking its promise to the American sportsman by refusing to apply the best available science to land management in the ARPA."

See EA (pages 13-14)

Nineteen (19) wells are located near movement routes identified by data Sawyer (2007) obtained during the study (February 10, 2005 – November 15, 2006). In addition, five (5) wells are in the "estimated utilization distribution (UD)" that Sawyer and Kauffman (2008) identify using the same data as in the 2007 report. At this time the BLM is considering common migration routes (Sawyer 2007) when conducting project reviews, and no common migration routes are within the project boundary.

II. Sage Grouse Core Population Areas ("CPA")

"...proposed wells are located within sage grouse Core Population Areas ("CPA") identified and singled out for protection by the Governor of the State of Wyoming. See Exhibit B...While this Order may not bind federal land managers, BLM's EA fails even to acknowledge the existence of these CPAs and, accordingly, has not analyzed the impact of the Proposed Action to determine whether it is consistent with the goals and objectives of the State of Wyoming. The failure to even conduct that analysis violates

NEPA and is not consistent with BLM's own Manual concerning the management of sensitive species such as the sage grouse. Approval of the Proposed Action in the absence of such analysis would be arbitrary and capricious."

"...The CPA designation represents both the State's attempt to conserve a state-listed special status species and its attempt to stave off a listing of the sage grouse under the ESA. These goals speak directly to the underlying policies and directives of the BLM Manual concerning special status species management. Yet, there is no discussion of whether the Proposed Action is consistent with the State's objectives or whether the Proposed Action will interfere with conservation efforts designed to prevent the species from being listed under ESA. BLM is not complying with its Manual."

See BCA comments (pages 24-25)