

ENCOURAGING RESPONSIBLE DEVELOPMENT TODAY ~ FOR TOMORROW

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July 16, 2010

Don Simpson  
Director, Wyoming BLM  
P.O. Box 1828  
Cheyenne, WY 82003

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SD	RP&M
ASD	M&LA
OC	DSS
EEO	CF
LAW	LEAD Resp.

RE: Master Leasing Plan Proposals

Dear Mr. Simpson,

As you know, the Washington Office of the BLM issued nation-wide oil and gas leasing reforms on May 17, 2010.<sup>1</sup> Our organization believes these reforms will help BLM better protect important natural resource values, such as wildlife, natural places, and air and water quality. We look forward to Wyoming BLM implementing the reforms by, among other things, creating Master Leasing Plans to analyze impacts of likely development and to develop measures to mitigate those impacts. According to the Washington Office, Master Leasing Plans will serve three main purposes: to “analyze in greater detail than the RMP the impacts of leasing and likely development”; “identify key issues such as protection of air quality, watersheds, wilderness, wildlife, and nearby land uses”; and “identify appropriate leasing and higher-level development mitigation measures to protect the environment.”<sup>2</sup> At its core, the Master Leasing Plan (MLP) concept represents BLM’s desire to develop new ways to alleviate local conflicts over oil and gas development.

With these overarching purposes in mind, we believe that Wyoming BLM should consider three important geographic areas in its development of MLP proposals: 1) the Fortification Creek Area, 2) sage-grouse core areas in Northeast Wyoming, and 3) the Big Horn Basin.

### Fortification Creek

Federal approval of recently permitted and proposed coalbed methane (CBM) development in the Fortification Creek Area in Campbell and Johnson Counties is perhaps the most controversial BLM action in the state right now. Four requests for State Director Review from our organization and others are currently pending with the Wyoming BLM Deputy State Director<sup>3</sup> and a contentious draft Resource Management Plan (RMP) for the area is about to be released for

<sup>1</sup> See [http://www.blm.gov/wo/st/en/info/newsroom/2010/may/NR\\_05\\_17\\_2010.html](http://www.blm.gov/wo/st/en/info/newsroom/2010/may/NR_05_17_2010.html).

<sup>2</sup> *Id.*

<sup>3</sup> The CBM operators have also filed requests for state director review on some of these actions.

a public comment period. We believe there is ample room to assuage this controversy through a MLP for the area.

Specifically, a MLP will complement ongoing RMP efforts both specific to the Fortification Creek Area and more general to the Buffalo Field Office area. The Instruction Memorandum notes that "The MLP process may also be combined with a plan revision process if schedules permit." The timing for the Fortification Creek Area could not be more perfect for combing a MLP with RMP amendments and revisions.

Additionally, we believe the four factors outlined in the Instruction Memorandum necessitate the preparation of a MLP for the area.

1. Undeveloped nature of Fortification Creek Area

The Fortification Creek Area is a large oasis for wildlife in the middle of one of the country's most prolific natural gas fields, the Powder River Basin. Thousands of coalbed methane (CBM) wells, access roads, power lines, and other industry infrastructure surround this area. However, inside the Fortification Creek Area very little development has occurred. The development that has occurred is mainly a result of BLM permitting actions within the last year, and as mentioned above, all of these actions have been challenged.

While the MLP policy states that it applies to substantially unleased areas, it is difficult (if not impossible) to find such an area in the Powder River Basin. The Fortification Creek Area is no exception as there are oil and gas leases covering the area (with the exception of the Wilderness Study Area and some other parts of the area). However, these leases are mostly very old and were granted when CBM development was not an envisioned use of the leases. CBM presents unique challenges and creates unique impacts, and to date, there has not been sufficient environmental review of using these leases to develop CBM resources. As discussed below, a MLP for the Fortification Creek Area would enable BLM to review the current status of leases and determine whether and how leases should be used to develop CBM in this fragile area.

2. The federal government owns the majority of minerals in the area

This criterion is clearly met for the entire Fortification Creek Area, which encompasses the elk herd's yearlong range and bordering areas. According to BLM documents, within the greater Fortification Creek Area, the Federal government is a 44% surface landowner, and an 83% fluid mineral estate owner.

3. The oil & gas industry is interested in development

There is also no question that this factor is met. In addition to the recent permitting actions in the southern portion, CBM operators have also applied for permits to drill wells in the northern portion of the Fortification Creek Area that are being considered as part of the RMP Amendment for the Fortification Creek Area. In short, there is demonstrated substantial interest in developing CBM resources in the area.

4. If development proceeds, there will be likely resource conflicts that should be addressed in a MLP

The heart of the Fortification Creek Area is the isolated elk herd's yearlong range, which consists of 122,933 acres of steep draws, badlands, juniper laden hills, and river valleys. In addition to elk, the area is also home to other big game animals like pronghorn and mule deer as well as raptors, greater sage-grouse, sharp-tailed grouse, and song birds. Numerous BLM-listed sensitive species live in the area. *See* discussion of wildlife resources in the Carr Draw III West Environmental Assessment.

The area also has significant wilderness characteristics, including a Wilderness Study Area and a proposed Area of Critical Environmental Concern. The wilderness attributes of the Fortification Creek Area are unique within the Powder River Basin and are worthy of protection.

Moreover, the area contains important cultural resources. Nearly 200 historic and prehistoric archeological sites have been inventoried in the area. The area was extensively used by Native American tribes and the private surface portions have been used for ranching operations since the late 1800's.

Finally, the area is dominated by steep slopes and fragile soils – areas where reclamation potential is difficult (if not impossible) to achieve. The topography and soils of the area have been a main source of controversy regarding proposed CBM development.

All of the natural resource characteristics described above are factors that the Instruction Memorandum says that state offices should consider when deciding what areas are appropriate for MLPs.

Options to Include in a MLP for the Fortification Creek Area

A MLP would be a tool to consider various options relating to development of CBM resources within the area. Several such options revolve around the oil and gas leases in the area. For instance, BLM could conduct a full review of the status of each lease and determine whether sufficient environmental analysis has been conducted for using each lease to develop CBM resources. Additionally, BLM could consider whether leases that will expire should be renewed or whether they should be left to expire in order to protect the natural resources of the area. If the leases are renewed, BLM could add stronger lease stipulations to protect elk habitat and other natural resources (including no surface occupancy buffers around crucial winter and parturition ranges). Finally, BLM could consider exchanging leases within the Fortification Creek Area for leases in less sensitive areas of the Powder River Basin.

In addition to looking directly at the leases, BLM should consider mitigation options and best management practices for developing CBM resources in the Fortification Creek Area. Our organization and others submitted an Elk and Habitat Alternative in October 2009, which contains many of the mitigation options BLM should consider. Several of these options are very important to analyze, including requiring clustered development and phased development. Other measures available to minimize the habitat impacts of CBM wells and infrastructure, such as

increased well spacing, minimizing well pad sizes, and combining infrastructure for various PODs should also be considered.

All of these options are consistent with rights granted under existing leases. They would allow development to proceed in a manner that reduces conflict and protects the natural resources of the area consistent with the BLM's goals and objectives identified in the Instruction Memorandum. As noted by the Interior Board of Land Appeals: "There is substantial support for the right of the Secretary of the Interior to regulate drilling rights in order to avoid adverse environmental impacts" and BLM should therefore consider "a wider range of alternatives, including the limitation or regulation of the manner and pace of development." *Powder River Basin Resource Council*, 120 IBLA 47, 55 (1991).

### **Northeast Wyoming Sage-grouse Core Areas**

The state-designated core areas in Northeast Wyoming are few and far between compared to the rest of the state. They are therefore especially important to protect in order to maintain sage-grouse populations, habitat, and migration corridors.

The Buffalo Field Office is currently revising its RMP and the Newcastle Field Office plans to start a revision of its RMP soon. In the meantime, Newcastle will also be incorporating an amendment specific to sage-grouse. See July 13, 2010 Press Release regarding "kick-off" scoping meetings for the plan amendment. A MLP specific to sage-grouse in Northeast Wyoming could include a review of oil and gas leases, consideration of allowing leases to expire, adding additional stipulations to leases, and establishing a moratorium on new leasing within core areas (at least until the RMP Amendment is finalized). Such a MLP could be incorporated into both the Buffalo and Newcastle RMPs to provide consistency in Northeast Wyoming. This is particularly important given that one of the largest core areas overlaps between the Buffalo and Newcastle RMP geographic boundaries.

### **Big Horn Basin**

In addition to the proposals submitted by other conservation groups relating to specific places within the Big Horn Basin, our organization would like the state office to consider developing a MLP for the entire Big Horn Basin. This MLP could specifically consider important issues such as air quality, climate change, split estate concerns, and reclamation potential.

Substantial parts of the Big Horn Basin are not leased and even a greater amount of the area is not currently developed. However, there is a potential for significant amounts of oil and gas development in the years to come. Thus, the Big Horn Basin presents a prime opportunity for BLM to consider a phased development plan as part of a MLP that would complement RMP revision efforts.

BLM should also consider mandating Gold Book standards through the MLP for development on federal land. For split estate lands, in the absence of a surface use agreement, the MLP should provide that federal minerals shall only be developed under conditions equivalent to those utilized on federal lands.

Thank you for your time and consideration of these important issues. We look forward to the incorporation of these ideas in the state office's MLP proposals.

Sincerely,

A handwritten signature in black ink that reads "Shannon Anderson". The signature is written in a cursive style with a long horizontal line extending to the right from the end of the name.

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