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Chris Carlton
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Re: Devon Energy Production Company, L.P. Comments on the Draft Resource Management Plans and Environmental Impact Statement for the Lander Field Office Planning Area

Dear Chris:

Devon Energy Production Company, L.P. ("Devon") hereby submits the following comments on the Bureau of Land Management's ("BLM") Draft Resource Management Plan and Environmental Impact Statement for the Lander Field Office Planning Area ("Lander DRMP/EIS") as announced in the Federal Register on September 9, 2011. 76 Fed. Reg. 55939 (Sept. 9, 2011). Devon submits these comments to the BLM because of the significant impact the proposed revision to the Resource Management Plan ("RMP") for the Lander Field Office Planning Area ("Lander RMP") will have upon Devon's ongoing and future operations in the Lander Field Office Planning Area ("Lander Planning Area").

Devon has significant interest in areas managed by the Lander Field Office including over 15,964.71 gross acres of federal oil and gas leases, over 2,880 gross acres of State of Wyoming leases, and 321.69 acres of private leases and mineral deeds. Devon operates numerous wells in the resource area and has produced 1702 billion cubic feet of natural gas and approximately 4,387 barrels of oil from these wells. Devon is the operator of the Beaver Creek Federal Oil & Gas Exploratory Unit, WYW-109416X and is the project proponent for the Beaver Creek Coal Bed Natural Gas Development Project currently pending before the BLM. 73 Fed. Reg. 43948 (Jul. 29, 2008). Additionally, Devon has numerous employees and contractors in the area managed by the Lander Field Office and throughout Wyoming and has a substantial number of additional employees supporting these assets based out of Devon's corporate headquarters in Oklahoma City, Oklahoma. The adoption of the Lander RMP will significantly impact both Devon's existing operations in the Lander Planning Area and its future operations in the area.

GENERAL COMMENTS

At this point in time, Devon does not support any of the Alternatives as currently drafted. Devon is particularly concerned that both Alternative B and the BLM's Preferred Alternative, Alternative D, will not honor existing rights in violation of federal law. As the BLM is aware, portions of the Lander Planning Area have significant potential for oil and gas development. Lander DRMP/EIS, Map 17, Map 20; see Reasonable Foreseeable Development Scenario for Oil and Gas for the Lander Field Office Second Draft Report, February 9, 2009, ("RFD Report") Figures 24, 28, 29. Indeed, large portions of the Planning Area have

significant potential for both conventional oil and gas and coalbed natural gas (“CBNG”) development. The BLM should not unreasonably restrict access to this important source of domestic energy.

Devon opposes Alternative B and aspects of Alternative D because they place far too many onerous and unreasonable restrictions on future oil and gas development, including CBNG development. In particular, Alternative B inappropriately and unreasonably proposes to close most of the Lander Planning Area to future oil and gas leasing and imposes overwhelming operational restrictions and timing stipulations on the remainder of the lands within the Lander Planning Area. Lander DRMP/EIS, Map 30. The BLM must ensure compliance with the Energy Policy Act of 2005, Energy Policy and Conservation Act of 2000 (“EPCA”), the National Energy Policy, and Executive Order Number 13212 (66 Fed. Reg. 28357 (May 18, 2001)) to reduce rather than increase impediments to federal oil and gas leasing and development. Devon strongly opposes adoption of Alternative B or any element thereof.

Role and Purpose of a Resource Management Plan

Pursuant to the Federal Land Policy and Management Act of 1976 (“FLPMA”), the BLM is required to develop land use plans to guide the agency’s management of federal lands under its administration. 43 U.S.C. 1711 (2010). Land use plans, known under the BLM’s regulations as RMPs, are designed to “guide and control future management actions.” See *Norton v. Southern Utah Wilderness Society*, 542 U.S. 55, 59 (2004) (citing 43 U.S.C. § 1712; 43 C.F.R. § 1610.2). “Generally, a land use plan describes, for a particular area, allowable uses, goals for future condition of the land, and specific next steps.” *Norton v. Southern Utah Wilderness Alliance*, 542 U.S. at 59 (citing 43 C.F.R. 1601.0-5(k)) [currently codified at 43 C.F.R. 1601.0-5(n)]. FLPMA requires the BLM to manage federal lands and minerals “in accordance with” the RMPs developed by the BLM after appropriate notice and comment. 43 U.S.C. § 1732 (2010); 43 C.F.R. § 1610.5-3(a) (2010). Nonetheless, the Supreme Court of the United States, in a unanimous decision, recognized that under FLPMA and the BLM’s own regulations that land use plans are not ordinarily the medium for making affirmative decisions. *Norton v. Southern Utah Wilderness Alliance*, 542 U.S. at 69. The Supreme Court further recognized that the development of an RMP is only the “preliminary step in the overall process of managing public lands.” *Norton v. Southern Utah Wilderness Alliance*, 542 at 69; see also *Theodore Roosevelt Conservation P’ship v. Salazar*, 616 F.3d 497, 504 (D.C. Cir. 2010). The IBLA has similarly recognized that RMPs are not “static documents” which remain “fixed for all time.” *Southern Utah Wilderness Alliance, et al.*, 144 IBLA 70, 88 (1998). “On the contrary, for an RMP to have any ultimate vitality, it must be seen as a management tool which is necessarily circumscribed by the values and knowledge existing at the time of its formulation.” *Id.* Finally, the BLM’s Land Use Planning Handbook specifies that RMPs are not normally used to make site-specific implementation decisions. See BLM Handbook H-1601-1, II.B.2.a, pg. 13 (Rel. 1-1693 3/11/05); see also *Theodore Roosevelt*, 616 F.3d at 504, (holding that a resource management plan does not include a decision “whether to undertake or approve any specific action”) (citing 43 C.F.R. 1601.0-5(n)).

Given its nature and purpose, the BLM should consider the type of decisions that need to be made in the Lander RMP. The BLM should not attempt to make site-specific decisions, but should develop only broad management goals and objectives. Further, the BLM should not expend unnecessary resources attempting to analyze the potential impacts of oil and gas development on a site-specific basis more than necessary given the uncertainty associated

with the location and extent of future development. See *N. Alaska Env'tl. Ctr. v. Kempthorne*, 457 F.3d 969 (9th Cir. 2006). Individual development projects will be analyzed on a case-by-case basis if and when operations are actually proposed. Based on the BLM's own policies and binding legal precedent, the BLM should ensure that the agency does not utilize the land use planning process to impose site-specific conditions of approval ("COAs") or unreasonably limit future management actions when revising the Lander RMP. In many cases throughout the Draft Lander RMP, the BLM improperly attempts to make far too many site-specific decisions. The BLM should recall the general and fluid nature of its planning documents and ensure it is not making site-specific decisions at this stage.

The BLM Must Manage Public Lands in the Lander RMP for Multiple Use - Including Oil and Gas Development

The development of oil and gas resources from public lands is a critical part of the BLM's responsibilities. See, e.g., 43 U.S.C. § 1702(l) (defining mineral exploration and development as a principal or major use of public lands). Under FLPMA, the BLM is required to manage the public lands on the basis of multiple use and sustained yield. 43 U.S.C. § 1701(a)(7) (2006). " 'Multiple use management' is a deceptively simple term that describes the enormously complicated task of striking a balance among the many competing uses to which land can be put, 'including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and [uses serving] natural scenic, scientific and historical values.' " *Norton v. Southern Utah Wilderness Alliance*, 542 U.S. at 58 (quoting 43 U.S.C. § 1702(c)). "Of course not all uses are compatible." *Id.* Devon recognizes the difficult task the BLM faces to manage public lands in the Lander Planning Area for multiple use, but encourages the BLM to remember that oil and gas development is a crucial part of the BLM's multiple use mandate. The BLM must ensure that oil and gas development is not unreasonably limited in the revision to the Lander RMP.

Existing Lease Rights

The BLM acknowledges in the Lander DRMP/EIS that it must honor existing rights. "The RMP will recognize valid existing rights." Lander DRMP/EIS, pg. Executive Summary xxxviii; see also Lander DRMP/EIS, pg. 9. The BLM should further expressly recognize that oil and gas leases are existing rights that cannot be modified. Once the BLM has issued a federal oil and gas lease without no surface occupancy ("NSO") 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). Only Congress has the right to completely prohibit development once a lease has been issued. *Western Colorado Congress*, 130 IBLA 244, 248 (1994). The BLM's Land Use Planning Handbook also specifically recognizes that existing rights must be honored. BLM Land Use Planning Handbook H-1601-1, III.A.3, pg. 19 (Rel. 1-1693 3/11/05). The BLM must comply with its planning handbook and recognize existing rights. Any attempts to modify existing rights could violate the terms of Devon's contracts with the BLM and the BLM's own policies.

Further, the BLM cannot deprive Devon of its valid and existing lease rights either directly or indirectly. When it enacted FLPMA, Congress made it clear that nothing therein, or in the land use plans developed thereunder, was intended to terminate, modify, or alter any valid or existing property rights. See 43 U.S.C. § 1701 (2010). In order to effectuate this

purpose, the BLM promulgated policies regarding the contractual rights granted in an oil and gas lease. BLM Instruction Memorandum 92-67 states that “[t]he lease contract conveys certain rights which must be honored through its term, regardless of the age of the lease, a change in surface management conditions, or the availability of new data or information. The contract was validly entered based upon the environmental standards and information current at the time of the lease issuance.” As noted in the BLM’s Instruction Memorandum, the lease constitutes a contract between the federal government and the lessee which cannot be unilaterally altered or modified by the BLM.

The BLM should also recognize that its authority conferred by FLPMA is expressly made subject to valid existing rights. 43 U.S.C. § 1701. Thus, a RMP prepared pursuant to FLPMA, after lease execution and after drilling and production has commenced, is likewise subject to existing rights. See *Colorado Environmental Coal., et al.*, 165 IBLA 221, 228 (2005). The Lander RMP, when revised, cannot defeat or materially restrain Devon’s valid and existing rights to develop its leases through COAs or other means. See *Colorado Environmental Coal., et al.*, 165 IBLA 221, 228 (2005) (citing *Colorado Environmental Coal.*, 135 IBLA 356, 360 (1996) *aff’d*, *Colorado Environmental Coal. v. Bureau of Land Management*, 932 F.Supp. 1247 (D.Colo. 1996)). The BLM partially recognizes that it cannot modify existing lease rights in the Lander DRMP/EIS, but the agency negates this statement by suggesting that it will impose COAs on operations that will, effectively, impose new limitations on leases. Lander DRMP/EIS, pg. 637. The BLM cannot use COAs to modify or take existing lease rights. The BLM should revise the Lander RMP to make this point clear.

Thus, the BLM must remember that when it revises the Lander RMP it is not working from a blank slate. Rather, many of the decisions made by the BLM in its previous land use plan for the Lander Field Office will impact and limit the agency’s options in the current RMP revision. The BLM must carefully review and understand the limited nature of some of its options during this revision process. As explained throughout these comments, the BLM cannot limit, restrain, or unreasonably interfere with existing rights.

In the revised Lander RMP and accompanying environmental impact statement (“EIS”), the BLM should state clearly that an oil and gas lease is a contract between the federal government and the lessee, and that the lessee has certain rights thereunder. 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 gives 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 Production Co. v. Burton*, 549 U.S. 84 (2006). Although the BLM may revise the existing RMP for the Lander Planning Area, the BLM—and the public—should be reminded that the BLM cannot unilaterally alter or modify the terms of existing leases.

The BLM recently recognized the nature of existing oil and gas lease rights in the Pinedale RMP issued by the BLM in November 2008. “Existing oil and gas or other mineral lease rights will be honored. When an oil and gas lease is issued, it constitutes a valid existing right; BLM cannot unilaterally change the terms and conditions of the lease . . . Surface use and timing restrictions from this RMP cannot be applied to existing leases.” Pinedale RMP, pg. 2-19. Similar language exists in the December 2008 Rawlins RMP. Rawlins RMP, pg. 20. Devon encourages the BLM to include similar language in the Lander RMP.

Stipulations Should be the Least Restrictive Possible

When revising the Lander RMP, the BLM should ensure that stipulations developed for future oil and gas leasing are the least restrictive necessary to adequately protect other resource values. Since the BLM issued the Lander RMP in 1987, Congress passed the Energy Policy Act of 2005. Section 363 of that Act required the Secretary of the Interior and the Secretary of Agriculture to enter into a Memorandum of Understanding (“MOU”) regarding oil and gas leasing and to ensure that lease stipulations are applied consistently, coordinated between agencies, and “only as restrictive as necessary to protect the resources for which the stipulations are applied.” Energy Policy Act of 2005, Pub. L. No. 109-58, § 363(b)(3), 119 Stat. 594, 722 (2005). The MOU required by § 363 of the Energy Policy Act of 2005 was finalized in April of 2006 as BLM MOU WO300-2006-07. Pursuant to the Energy Policy Act and the MOU required thereby, the stipulations for oil and gas leases within the revised Lander RMP should not be onerous or more restrictive than necessary. Based on Devon’s review of the proposed alternatives in the Lander DRMP/EIS, the BLM did not follow the guidance in this MOU or the express direction in the Energy Policy Act of 2005. In almost every circumstance, the BLM proposes to adopt stipulations that are overly restrictive and unduly limiting. The BLM must consider the MOU when selecting the agency’s Preferred Alternative or adopting the Lander RMP.

Devon additionally offers the following comments regarding the Lander DRMP/EIS. For the agency’s convenience, these comments are organized by chapter and section of the Lander DRMP/EIS.

CHAPTER 1 - INTRODUCTION

The BLM states in the Lander DRMP/EIS that it will develop planning decisions to cover split estate situations where the BLM owns the minerals but not the surface. Lander DRMP/EIS, pg. 9. The BLM should also recognize that under Wyoming law in situations where the surface estate and the mineral estate are owned by separate parties, the mineral estate is considered the dominant estate. *See also Mingo Oil Producers v. Kamp Cattle Co.*, 776 P.2d 736, 741 (Wyo. 1989) (noting the mineral estate is the dominant estate in Wyoming). Although Wyoming law requires accommodation to the surface owner where the minerals are privately owned, the BLM has expressly recognized and stated that Wyoming’s so-called “split estate law” does not apply to situations where the mineral estate is owned by the federal government. The BLM Director notified the State of Wyoming Oil and Gas Supervisor in June of 2005 that “[i]n light of the legal concerns posed by application of W.S. [Wyoming Statute] 30-5-401 - 410 to federal oil and gas, we believe that the statute and regulations implementing the statute are limited in application to state and private mineral estate.” The BLM should inform the public of the BLM’s position regarding this issue in the Final EIS and the Lander RMP to avoid inconsistencies with the BLM’s policy and confusion for the public.

The BLM should also recognize more recent guidance from the BLM regarding the nature and extent of the BLM’s authority over operations that occur off the public lands, but when federal minerals are still accessed. The BLM Director issued an Instruction Memorandum in 2009 addressing the limited nature of the BLM’s authority in these situations. Instruction Memorandum 2009-078 (Feb. 20, 2009). Given the dramatic increase in directional and horizontal oil and gas drilling techniques, the BLM should more clearly define its limited authority and responsibility to impose COAs in such circumstances.

CHAPTER 2 - RESOURCE MANAGEMENT PLAN ALTERNATIVES

Section 2.4 - Alternatives Considered but not Carried Forward for Detailed Analysis

From a National Environmental Policy Act of 1969 (“NEPA”) standpoint, the BLM has developed and analyzed a reasonable range of alternatives in the Lander DRMP/EIS. By including alternatives that are likely to have either more significant or less significant environmental impacts than the No Action Alternative, the BLM has provided a basis for informed comparison between various management scenarios for the public and the agencies. The BLM appropriately recognizes its obligation to consider alternatives is not without limitations. It is well established that NEPA requires an agency only to consider “reasonable alternatives.” 40 C.F.R. § 1502.14 (2010). Courts and the IBLA have long held that “[a]lternatives that do not accomplish the purpose of an action are not reasonable and need not be studied in detail by the agency.” *Citizens’ Comm. to Save Our Canyons v. United States Forest Serv.*, 297 F.3d 1012, 1030 (10th Cir. 2002) (citations and internal punctuation omitted). “The Bureau may eliminate alternatives that are ‘too remote, speculative, impractical, or ineffective,’ or that do not meet the purposes and needs of the project.” *Biodiversity Conservation Alliance, et al. v. Bureau of Land Management, et al.*, 608 F.3d 709, 715 (10th Cir. 2010) (citing *New Mexico ex rel. Richardson*, 565 F.3d at 708-09 & n. 30 (citation omitted)); *Northern Ala. Env’tl. Ctr., et al.*, 153 IBLA 253, 263 (2004). “NEPA does not require agencies to analyze the environmental consequences of alternatives it has in good faith rejected as too remote, speculative, or impractical or ineffective.” *Citizens’ Comm. to Save Our Canyons*, 297 F.3d at 1030-31 (internal punctuation omitted).

In the Lander DRMP/EIS, the BLM properly eliminated several alternatives that are not practical, feasible, or consistent with the BLM’s multiple-use mandate. The BLM properly eliminated alternatives that would have prohibited all oil and gas development in the Lander Planning Area. Lander DRMP/EIS, pg. 19. Such an alternative is not consistent with BLM’s multiple use mandate or the fact the mineral development is specifically defined under FLPMA as a principal or major use of the federal lands. 43 U.S.C. § 1702(l). Further, the BLM should inform the public that only the Secretary of the Interior could withdraw the entire Planning Area from oil and gas leasing under FLPMA and that withdrawals can only be made using specific procedures mandated by FLPMA. 43 U.S.C. § 1714(a),(b) (2010) (requiring withdrawals to be made by the Secretary of the Interior, or a person in the Secretary’s office who has been appointed by the President with the advice and consent of the Senate and listing the requirements necessary for the Secretary to withdraw public lands). With respect to deferring oil and gas leasing until “infrastructure” is in place, the BLM should remind the public that the indefinite suspensions of existing leases required for such an alternative are unreasonable and that courts have recognized that a lengthy suspension of a federal lease may actually constitute an unconstitutional taking of a private property right. *Bass Enterprise Production Co. v. United States*, 45 Fed.Cl. 120, 123 (Fed.Cl. 1999). For these reasons, in addition to those referenced by the BLM, the BLM properly eliminated such an alternative from detailed consideration. Devon also agrees that the BLM should not study an alternative that would defer leasing and development for long periods of time. Lander DRMP/EIS, pgs. 21, 26.

Similarly, the BLM is not required to pursue alternatives that are not reasonable because they are not technically or economically feasible. The Council on Environmental Quality (“CEQ”) has described reasonable alternatives as “those that are practical or feasible

from the technical and economic standpoint and using common sense, rather than simply desirable.” *CEQ’s Forty Most Asked Questions*, Question 2a, 46 Fed. Reg. 18028, 18027 (Mar. 23, 1981) (emphasis added). BLM need not analyze speculative, impractical, or uneconomic alternatives. *Citizens’ Comm. to Save Our Canyons*, 297 F.3d at 1030-31. For example, overly stringent restrictions or COA, such as requiring all directional drilling regardless of technical or economic considerations, may render development uneconomic and need not be analyzed.

Finally, the BLM is not required to analyze alternatives that require phased leasing of oil and gas resources. Lander DRMP/EIS, pg. 26. The United States Court of Appeals for the Tenth Circuit, which has authority over all of Wyoming, recently affirmed a BLM decision not to require a phased leasing resource management plan in the Powder River Basin specifically because such an alternative would delay the production of energy resources and was not otherwise practical. *Biodiversity Conservation Alliance, et al. v. Bureau of Land Management, et al.*, 608 F.3d 709, 715 (10th Cir. 2010). Given current case law, the BLM appropriately eliminated this alternative from detailed consideration. Further, allowing oil and gas developers to secure leases in only one portion of a geologic basin or area at a time will limit or preclude exploration and development activities. Before an oil and gas operator will be willing to commit the millions of dollars necessary to drill even a single exploratory oil and gas well, it must secure a large enough lease position to justify the expense. If phased leasing was mandated by the BLM, operators may be unable to secure a sufficient lease position and new exploration would come to halt, along with the economic benefits associated therewith. The BLM properly excluded from detailed consideration alternatives that would have unreasonably constrained oil and gas development such as phased leasing. Lander DRMP/EIS, pg. 26.

Section 2.6 - Alternatives Summary

Withdrawal Procedures Under FLPMA

Under all of the proposed alternatives and Alternatives B and D in particular, the Department of the Interior would be required to comply with the formal withdrawal requirements imposed by FLPMA. FLPMA defines a withdrawal as:

withholding an area of Federal land from settlement, sale, location, or entry, under some or all of the general land laws, for the purpose of limiting activities under those laws in order to maintain other public values in the area or reserving the area for a particular public purpose or program; or transferring jurisdiction over an area of Federal land, other than “property” governed by the Federal Property and Administrative Services Act, as amended (40 U.S.C. 472) from one department, bureau or agency to another department, bureau or agency.

43 U.S.C. § 1702(j) (2010). Under Alternatives B and D, the BLM proposes to make large areas of land unavailable to oil and gas leasing. Withholding an area from leasing constitutes a withdrawal under FLPMA. Under Alternative B, the BLM proposes to close almost 2,300,000 acres to oil and gas leasing. Because closing areas to oil and gas leasing constitutes a withdrawal, the Department of the Interior will be required to comply with the procedural provisions of Section 204 of FLPMA. 43 U.S.C. § 1714 (2010). The BLM effectively admits that areas administratively unavailable to oil and gas development would “prohibit oil and gas

exploration and subsequent development and exploration.” Bighorn RMP/DEIS, pg. 4-62. This language confirms Devon’s position that closing areas to leasing constitutes a withdrawal under FLPMA.

Under FLPMA, the Secretary is required to comply with certain procedural requirements because it is closing large portions of the Lander Planning Area to oil and gas leasing. Section 204 of FLPMA requires the Secretary of the Interior to comply with certain procedural mandates prior to closing an area of 5,000 acres or more to mineral development. 43 U.S.C. § 1714. Because Alternatives B and D propose to close areas of 5,000 acres or more to mineral development, they must comply with Section 204 of FLPMA. Among the other requirements imposed on the Department of the Interior is the requirement for the Secretary of the Interior, as compared to the Director of the BLM or a State Director, to make all withdrawals of federal lands. 43 U.S.C. § 1714(a). The Secretary—or a designee in the Secretary’s office appointed by the President and confirmed by the Senate—is authorized to make withdrawals under FLPMA. The Secretary is also required to provide notice of the proposed withdrawal in the Federal Register and conduct hearings regarding the withdrawal. 43 U.S.C. § 1714(b)(1), (h). Finally, the Secretary is required to notify both houses of Congress of the proposed withdrawal. See 43 C.F.R. § 1610.6. The notice must include information: (1) regarding the proposed use of the land; (2) an inventory and evaluation of the current natural resource uses and value of the land and adjacent public and private land which may be affected; (3) an identification of present users and how they will be affected; (4) an analysis of the manner in which the existing and potential uses are incompatible with or in conflict with the proposed uses; (5) an analysis of the manner in which such lands will be used in relation to the specific requirements for the proposed uses; (6) a statement as to whether suitable alternative sites are available; (7) a statement of the consultation which has been or will be had with other federal, regional, state, and local government bodies; (8) a statement regarding the potential effects of the withdrawal on the state, local, and regional economy; (9) a statement of the length of time needed for the withdrawal; (10) the time and place of the hearings regarding the withdrawal; (11) the place where the records of the withdrawal can be examined; and (12) a report prepared by a qualified mining engineer, engineering geologist, or geologist, which shall include information on mineral deposits, mineral production, existing mining claims, and an evaluation of future mineral potential. 43 U.S.C. § 1714(c)(2). To date, the Department of the Interior has not complied with the requirements set forth in Section 204 of FLPMA or the BLM’s implementing regulations at 43 C.F.R. Part 1700. Prior to approving the Lander RMP, the BLM must comply with these provisions and inform the public how it will be impacted.

FLPMA also requires the Secretary of the Interior to comply with specified procedural requirements before making a management decision that totally eliminates a principal or major use of the public lands for a period of two or more years on a tract of land more than 100,000 acres in size. 43 U.S.C. § 1712(e). Oil and gas development is defined as a principal or major use of the public lands. 43 C.F.R. § 1702(l). Under Alternatives B and D, the BLM would make over 100,000 acres unavailable to oil and gas leasing for a period of two years or more, yet BLM has not complied with the clear and unequivocal requirements of FLPMA. BLM must notify Congress of its intent to close significant areas to future oil and gas development prior to finalizing the Lander RMP.

Section 2.6.1 - Alternative A (Current Management)

Devon generally supports portions of Alternative A to the extent described in these comments.

Section 2.6.2 - Alternative B

Overall, Alternative B is overly restrictive, unnecessarily limits oil and gas development in the Lander Planning Area, and should be eliminated from further consideration. As discussed in more detail below, oil and gas development is one of the primary employment and tax revenue sources in the Lander Planning Area. Lander DRMP/EIS, pgs. 489, 500 - 518, 1173 - 1189. In these difficult economic times, the BLM should promote and foster employment and revenue generating opportunities in Wyoming, not limit economic development and job creation. The BLM's adoption of Alternative B would have devastating economic impacts upon the region, State of Wyoming, and even the nation. Lander DRMP/EIS, pgs. 1175 - 1178, 1186 - 87. Oil and gas development, even on existing leases, would be significantly hampered by the BLM's management actions under Alternative B. Although Devon understands the importance of having a wide range of alternatives to satisfy the requirements of NEPA, the BLM must not adopt Alternative B.

In particular, Alternative B is not a reasonable alternative because it virtually eliminates oil and gas development from the public lands contrary to the BLM's multiple use mandate. Under FLPMA, the BLM is required to manage the public lands on the basis of multiple use and sustained yield. 43 U.S.C. § 1701(a)(7) (2010). " 'Multiple use management' is a deceptively simple term that describes the enormously complicated task of striking a balance among the many competing uses to which land can be put, 'including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and [uses serving] natural scenic, scientific and historical values.' " *Norton v. Southern Utah Wilderness Alliance*, 542 U.S. at 58 (quoting 43 U.S.C. § 1702(c)). Further, under FLPMA, mineral exploration and development is specifically defined as a principal or major use of the public lands. 43 U.S.C. § 1702(l). FLPMA requires the BLM to foster and develop mineral activities, not stifle and prohibit such development. Alternative B does not comply with the BLM's multiple use mandate and must be eliminated.

The overall minerals management under Alternative B is inappropriate because they unreasonably limit oil and gas development. As noted above, the BLM is significantly limiting potential future oil and gas development in the Planning Area by making 2,276,525 acres under Alternative B unavailable for oil and gas leasing. The BLM is additionally making 187,524 acres available to oil and gas leasing only with major constraints under Alternative B. Alternative B in particular eliminates almost the entire Planning Area for mineral development and must not be selected by the BLM.

Alternative B is not consistent with existing National Policies. Federal agencies are required to expedite projects which increase domestic energy production under existing executive orders. Executive Orders 13211, 13212, and 13302. The adoption of Alternative B would significantly curtail domestic production compared to both the baseline scenario and any of the other alternatives analyzed by the BLM. Lander DRMP/EIS, pgs. 647, 1186 - 1187. The loss of such an enormous energy supply is contrary to the best interests of the nation and inconsistent with the Energy Policy Act of 2005.

The removal of vast areas of lands from future oil and gas development and potential restrictions on existing leases under Alternative B, and to a lesser extent, Alternative D, would also significantly restrict regional earnings, jobs, and tax revenue in the Lander Planning Area. The adoption of Alternative B would reduce regional earnings significantly and reduce local jobs by 1,000 jobs over the current management scenario. Lander DRMP/EIS, pgs. 1175, 1185. In these difficult economic times it is inappropriate for the BLM to significantly restrict economic development and job growth. The Obama Administration has repeatedly indicated that its first priority is to create jobs for the American people, yet the BLM is proposing alternatives, including its preferred alternative, that would actually reduce jobs in the area. *Id.* Such alternatives are inappropriate and should be eliminated. The BLM cannot adopt an alternative that would reduce economic development, decrease domestic energy supplies, and harm the local tax base.

Further, as described in more detail in Devon's comments regarding Chapter 4, the BLM has not analyzed or disclosed the potential impacts the restrictions on future leasing may have upon operations on existing leases. As the BLM acknowledges in Chapter 3 and Map 7, a significant extent of the Lander Field Office is currently leased for oil and gas development. Some leases, however, are isolated making them virtually impossible and not economically feasible to develop in their current state. Any responsible oil and gas producer who decides to take the risk of exploring by drilling a wildcat area must do so only after assembling a large enough block of leasehold acreage so that, if the drilling is successful, it can obtain an adequate return on the high risk dollars invested. The BLM has, in another context, recognized the need for control of a reasonable acreage block. *See Prima Oil & Gas Co.*, 148 IBLA 45, 51, (1999) (BLM policy to suspend leases when "a lessee is unable to explore, develop, and produce leases due to the proximity, or comingling of other adjacent Federal lands needed for logical exploration and development that are currently not available for leasing"). The BLM must recognize, study, and report the economic impact of its decision to close significant portions of the Planning Area to leasing, or to make significant portions of the Planning Area only available with major constraints will have upon future exploration and development in the area. It is not enough for the BLM to simply assert that existing lease rights will be protected, the BLM must analyze further how existing lease rights will be impacted by future limitations on leasing and development and what protection it will afford existing leases in the above described scenario.

Section 2.6.3 - Alternative C

Devon supports aspects of Alternative C to the extent described in these comments.

Section 2.6.4 - Alternative D (Agency Preferred Alternative)

Alternative D is not consistent with existing National Policies. Federal agencies are required to expedite projects which increase domestic energy production under existing executive orders. Executive Orders 13211, 13212, and 13302. The adoption of Alternative D would significantly curtail domestic production compared to both the baseline scenario and any of the other alternatives analyzed by the BLM. Lander DRMP/EIS, pgs. 647, 1186 - 1187. The loss of such an enormous energy supply is contrary to the best interests of the nation and inconsistent with the Energy Policy Act of 2005.

The removal of vast areas of lands from future oil and gas development and potential restrictions on existing leases under Alternative D, would also significantly restrict regional earnings, jobs, and tax revenue in the Lander Planning Area. The adoption of Alternative D would reduce regional earnings significantly and reduce local jobs by 1,000 jobs over the current management scenario. Lander DRMP/EIS, pgs. 1175, 1185. In these difficult economic times it is inappropriate for the BLM to significantly restrict economic development and job growth. The Obama Administration has repeatedly indicated that its first priority is to create jobs for the American people, yet the BLM is proposing alternatives, including its preferred alternative, that would actually reduce jobs in the area. *Id.* Such alternatives are inappropriate and should be eliminated. The BLM cannot adopt an alternative that would reduce economic development, decrease domestic energy supplies, and harm the local tax base.

Further, as described in more detail in Devon's comments regarding Chapter 4, the BLM has not analyzed or disclosed the potential impacts the restrictions on future leasing may have upon operations on existing leases. As the BLM acknowledges in Chapter 3 and Map 7, a significant extent of the Lander Field Office is currently leased for oil and gas development. Some leases, however, are isolated making them virtually impossible and not economically feasible to develop in their current state. Any responsible oil and gas producer who decides to take the risk of exploring by drilling a wildcat area must do so only after assembling a large enough block of leasehold acreage so that, if the drilling is successful, it can obtain an adequate return on the high risk dollars invested. The BLM has, in another context, recognized the need for control of a reasonable acreage block. *See Prima Oil & Gas Co.*, 148 IBLA 45, 51, (1999) (BLM policy to suspend leases when "a lessee is unable to explore, develop, and produce leases due to the proximity, or comingling of other adjacent Federal lands needed for logical exploration and development that are currently not available for leasing"). The BLM must recognize, study, and report the economic impact of its decision to close significant portions of the Planning Area to leasing, or to make significant portions of the Planning Area only available with major constraints will have upon future exploration and development in the area. It is not enough for the BLM to simply assert that existing lease rights will be protected, the BLM must analyze further how existing lease rights will be impacted by future limitations on leasing and development and what protection it will afford existing leases in the above described scenario.

Finally, the BLM must clarify the language in the final section of Section 2.6.4.4.3 regarding lease stipulations in non-designated Development Areas. Lander DRMP/EIS, pg. 54. This language appears to suggest the BLM will increase or modify stipulations even on existing leases, which would be contrary to law.

Table 2.7 - 1000 Physical Resources - Air Quality

When revising the Lander RMP, the BLM must be cognizant of its limited authority to regulate air quality and air emissions. The BLM does not have direct authority over air quality or air emissions under the Clean Air Act ("CAA"). 42 U.S.C. §§ 7401 *et seq.* Under the express terms of the CAA, the Environmental Protection Agency ("EPA") has the authority to regulate air emissions. In Wyoming, the EPA has delegated its authority to the Wyoming Department of Environmental Quality ("WDEQ"). *See* 42 U.S.C. §§ 7401 - 7671q; 40 C.F.R. pts. 50 - 99 (2010); 40 C.F.R. § 52.2620 (Wyoming's State Implementation Plan); WYO. STAT. ANN. §§ 35-11-201 to 214 (LexisNexis 2011); Wyo. Air Quality Stds. & Regs. ("WAQSR") Chs. 1 - 14. The Secretary of

the Interior, through the Interior Board of Land Appeals (“IBLA”), has unequivocally determined that, in Wyoming, the State and not the BLM has authority over air emissions:

In Wyoming, ensuring compliance with Federal and State air quality standards, setting maximum allowable limits (NAAQS and WAAQS) for six criteria pollutants CO (carbon monoxide), SO₂ (sulfur dioxide), NO₂, ozone and particulate matter (PM₁₀ and PM_{2.5}), and setting maximum allowable increases (PSD Increments) above legal baseline concentrations for three of these pollutants (SO₂, NO₂, and PM₁₀) in Class I and Class II areas is the responsibility of WDEQ [Wyoming Department of Environmental Quality], subject to EPA oversight.

Wyoming Outdoor Council, et al., 176 IBLA 15, 26 (2008). Decisions of the IBLA are binding upon the BLM and have the same force and effect of a Secretarial decision. 43 C.F.R. § 4.1 (2010) (noting that the Office of Hearings and Appeals, which includes the IBLA, may decide matters as fully and finally as the Secretary of the Interior); *see also IMC Kalium Carlsbad, Inc. v. Interior Bd. of Land Appeals*, 206 F.3d 1003, 1009 (10th Cir. 2000) (holding that IBLA has *de novo* review authority over the decisions of subordinate agencies such as the BLM). Devon encourages the BLM to add a statement in the Lander RMP clarifying the scope of the BLM’s authority as defined by the IBLA. The BLM does not have the authority to impose regulations or mandate control measures on emission sources, including oil and gas operations, within Wyoming.

Given its lack of authority over air quality, the BLM must revise all of its “goals” in Table 2-7 relating to air quality. Although BLM’s proposed goal PR:1.1 appears to recognize limitations on the BLM’s authority over air quality, the remaining goals do not. Lander DRMP/EIS, pg. 60. Similarly, the BLM’s second proposed Goal PR:2 states “Maintain concentrations of PSD pollutants associated with management actions in compliance with the applicable increment.” *Id.* This “goal” is wholly inappropriate because the BLM does not have the authority to implement, regulate, or enforce the prevention of significant deterioration (“PSD”) increment. The BLM’s lack of authority of PSD increment was recently recognized in the MOU issued by the Department of the Interior, Department of Agriculture, and the EPA which indicates that BLM NEPA documents relating to oil and gas activities will model PSD increment consumption for informational purposes only. *See Memorandum of Understanding Among Department of Agriculture, Department of the Interior and the Environmental Protection Agency Regarding Air Quality Analyses and Mitigation for Federal Oil and Gas Decisions Through the National Environmental Policy Act Process (“EPA MOU”), Section V.G (June 23, 2011).* Wyoming’s PSD program was approved by the EPA in July of 2008, 73 Fed Reg. 40,750 (Jul. 16, 2008), and currently controls Wyoming’s enforcement of the PSD program within the State of Wyoming. Because Objective PR 1.2 overlaps with jurisdiction held solely by the WDEQ and EPA, it must be removed from the Lander RMP. *See* 40 C.F.R. §§ 51, 52; WAQSR Chapter 6, § 4. The BLM must revise its goals to be consistent with the BLM’s authority. This goal as drafted is beyond the BLM’s authority and must be deleted.

Devon additionally believes that the BLM’s goals to “improve air quality in the Planning Area as practicable” are unnecessary given the authority of the EPA and WDEQ over air quality. Lander DRMP/EIS, Table 2.7, pg. 60. Congress has already directed the EPA to develop new and revised national ambient air quality standards based on the latest scientific knowledge. 42 U.S.C. §§ 7408(a)(2), 7409(b)(1). Under the CAA, states are not authorized to

develop emission standards which are less stringent than the national standards for any particular ambient air quality standard. 42 U.S.C. § 7416; 40 C.F.R. § 52.14. Given the fact the EPA and WDEQ are already developing and enforcing air quality control measures, there is no need for the BLM to develop goals, obligations, or requirements that may interfere with the EPA and WDEQ's authority. Further, the BLM has no authority over air quality so it cannot enforce its "goal" as currently drafted. The BLM should not attempt to develop or enforce air quality mitigation measures or standards but should leave air quality enforcement and control measures to the agencies with the experience and the authority over the same.

For the same reasons, Devon encourages the BLM to eliminate Objective PR: 2.2 in the Lander DRMP/EIS. Lander DRMP/EIS, Table 2.7, pg. 60. Both EPA and WDEQ have developed sufficient enforcement mitigation measures to protect against deposition pollutants. There is no reason for the BLM to attempt to enforce these regulations.

The BLM cannot attempt to impose air emission regulations through its normal management responsibilities. Further, even assuming the BLM had the authority to regulate air quality or air emissions, the management goals are poorly worded and could lead to increased litigation. Opponents to natural gas development could, and likely would, suggest the above-referenced goals prevent the BLM from authorizing any actions that may lead to increased emissions within the Lander Planning Area. Opponents to natural gas development have used similarly phrased language in the Pinedale RMP and Buffalo RMP to suggest not only that BLM has authority over air quality, but that the BLM cannot authorize actions which may impact air quality. The BLM must revise its air quality goals and management actions to state that BLM's only management goal, objective, or action will be to ensure that the WDEQ is invited to participate in the NEPA process as a cooperating agency and that BLM will not interfere with the WDEQ's regulation of air quality. In the event the BLM unwisely retains the potentially illegal objectives contained in the Lander DRMP/EIS, the BLM must include clear language in the RMP disavowing any attempt by BLM to regulate air emissions or air quality in the Lander Planning Area. The language in all of the BLM's air quality "goals" and most of its management actions are too broad, inappropriate, and should be revised.

With respect to potential visibility impacts, the BLM's authority is also limited by existing federal law. Under the 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) (2010). Oil and gas operations do not meet the definition of a major emitting facility.¹ Further, 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, the BLM has no such jurisdiction in Wyoming because it does not manage on Class I areas. 42 U.S.C. § 7491; *see also* WYO. STAT. ANN. §§ 35-11-201 to 214. Accordingly, the BLM has no authority over air quality and cannot impose emissions restrictions, either directly or indirectly, on natural gas operations in Wyoming, particularly if the overall goal is to reduce potential visibility impacts.

¹Major emitting sources are those that emit or have the potential to emit 250 tons per year of any regulated pollutant, or any of the 28 listed industrial sources that have the potential to emit 100 tons per year of any regulated pollutant. 42 U.S.C. § 7479(1); 40 C.F.R. §§ 51.166(b)(1), 52.21(b)(1) (2010).

As such, the BLM should revise its second Goal PR2.1 to clarify that BLM cannot and will not attempt to enforce visibility-impairing pollutants. Rather than attempting to regulate air quality in the Lander RMP, Devon encourages the BLM to participate in and abide by the regulatory processes currently underway in Wyoming. Any attempt by the BLM to regulate air quality could lead to inconsistent, confusing, and possibly illegal standards if imposed by the BLM.

For the reasons already explained, Devon does not support the language in Record No. 1003 pursuant to which the BLM proposes to impose additional air quality Best Management Practices. Lander DRMP/EIS, Record No. 1003, pg. 60. Because the BLM does not have authority over air quality within the State of Wyoming, it should refrain from imposing mitigation measures for air quality. Further, the requirement as drafted is vague and undefined. The BLM does not describe the type of "Best Management Practices" it will impose or how it will regulate and determine the efficiency of such measures.

Included herein are Devon's comments on Appendix F and BLM's proposal to have air quality modeling performed as necessary for individual projects. See Lander DRMP/EIS, Record No. 1007. The BLM should also ensure that its proposal to require modeling for individual projects is required by Record No. 1007 and Appendix F is consistent with the EPA MOU. The EPA MOU sets different criteria for when and how air quality should be performed for oil and gas projects and nothing in the Lander RMP should be inconsistent.

Devon encourages the BLM to modify Record No. 1008 to reflect the limited nature of BLM's authority over air quality. As drafted, Record No. 1008 could be read to require the BLM to enforce air quality emissions. Lander DRMP/EIS, pg. 19. The BLM should revise Record No. 1008 to state that BLM will "encourage" rather than "require" BLM-authorized activities to minimize adverse air impacts. As described above, BLM does not have the authority to require operators to comply with particular air quality regulations.

The BLM developed more appropriate air quality language in the recently released Draft EIS and Resource Management Plan for the Bighorn Basin Planning Area ("Bighorn RMP/DEIS") that the Lander Field Office should utilize. The language in the Bighorn RMP/DEIS recognized the limit on the BLM's authority by noting that it will only impose best management practices ("BMPs") within the scope of its authority and that, under the Preferred Alternative it will only facilitate discussions with other agencies regarding the nature and scope of the additional mitigation measures. See Bighorn RMP/DEIS, Record No. 1005, pg. 2-43. Devon encourages the BLM to adopt similar language in the Lander RMP and not to impose or attempt to impose mitigation measures or other requirements that are outside of its authority.

Table 2.8 - 1000 Physical Resources - Soil

The BLM should revise Record No. 1011 to state that surface-disturbing activities may be authorized any time in the Designated Development Areas ("DDAs") so long as such activities are authorized by the BLM. Lander DRMP/EIS, Record No. 1011, pg. 62. One of the advantages allegedly associated with Alternative D is the fact that operators may be authorized to conduct year-round operations within DDAs. As currently drafted, Record No. 1011 could be read to preclude year-round operations within DDAs. Lander DRMP/EIS, Record No. 1011, pg. 62. Allowing limited surface disturbing operations within DDAs is consistent

with the BLM's overall management goal under Alternative D and should be specifically authorized. Devon understands that surface disturbing operations may not be possible in areas with significant potential for archeological or paleontological resources, but believes limited surface disturbing operations could be appropriate in certain circumstances.

The BLM has not adequately explained what type of a site-specific analysis or reclamation plan will be required in areas with low reclamation potential ("LRP"). Lander DRMP/EIS, Record No. 1012, pg. 62. In order for operators to meaningfully comment on this requirement, the BLM needs to provide more definition of what constitutes a "very detailed" reclamation plan. Lander DRMP/EIS, Record No. 1012, pg. 62. Significant portions of the Lander Planning Area have low reclamation potential (see Lander DRMP/EIS, Map 11), and the operators need to understand what types of reclamation plans will be required. As currently drafted, this requirement is unnecessarily vague and should be revised.

The BLM's proposed soil management objectives under Alternative B are overly restrictive and unnecessary. Devon is particularly opposed to the prohibition on surface disturbing activities in LRP areas and in slopes over 15%. Lander DRMP/EIS, Record Nos. 1013, 1014, pg. 63. The BLM has not justified such measures and they should not be adopted.

The BLM must ensure its requirements for reclamation are consistent with the existing BLM policy as expressed in Wyoming Instruction Memorandum 2009-022. Because only general information is included in the draft RMP, Devon cannot understand how it will impact operations. Further, the BLM should not impose these specific erosion control measures in a broad planning document such as an RMP. Erosion mitigation measures can be best determined on a case-by-case basis once development is proposed on a particular lease or field area and the BLM and proponents are able to evaluate site-specific reclamation conditions and criterion.

The BLM should clarify that under all of the alternatives reclamation plans are required for all oil and gas drilling operations under Onshore Order Number 1, Section III, 4, j, 72 Fed. Reg. 10308, 10333 (Mar. 7, 2007). As currently described under Record No. 1019, the public may have the impression that reclamation plans are not always required for oil and gas development activities. Lander DRMP/EIS, Record No. 1019, pg. 65. Regardless of what alternative is eventually adopted by the BLM for the Lander RMP, oil and gas operators will be required to prepare and submit reclamation plans with any and all applications for permits to drill.

Devon supports reclamation requirements under Alternative D which encourage interim reclamation at the earliest feasible time, the continued implementation of Wyoming Instruction Memorandum 2009-022, and the development of reclamation plans when surface disturbing operations are actually proposed. Lander DRMP/EIS, Record No. 1018, pg. 64. Please find below Devon's comment on the proposed reclamation requirements in Appendices D and G.

The BLM indicates it may require additional bonding for site reclamation in areas of low reclamation potential. Lander DRMP/EIS, Record No. 1041, pg. 68. Note that Devon, like all oil and gas operators, already has bonds in place pursuant to the BLM regulations at 43 C.F.R. subpart 3104. Although the BLM has the authority to increase bonds for reclamation activities, 43.C.F.R. § 3104.5, the BLM regulations require certain findings of fact and

determinations to be made prior to any increase in a bond. Nothing in the Lander RMP should conflict with the BLM's obligations under its existing regulations; nor has BLM justified the need to increase Devon's existing bond amount. As such, Management Action 1041 should be modified to indicate bonds will only be increased in accordance with BLM's regulations.

Table 2.10 - 1000 Physical Resources - Water

Devon does not support the BLM's proposed management actions under Alternatives B or D for water resources because they may unduly restrict oil and gas development. Lander DRMP/EIS, Record Nos. 1044, 1046. The BLM's proposed management actions are unduly restrictive and unnecessary. Therefore, Devon supports proposed management actions under either Alternative A or C.

In the Lander RMP, the BLM needs to appropriately recognize that the State of Wyoming has primacy over water quality standards, enforcement, and remediation within the State of Wyoming. Many of BLM's proposed goals and management actions do not reflect WDEQ's proper authority and role. Lander DRMP/EIS, Record Nos. 1025 - 1046. The BLM should recognize that erosion and stormwater runoff are regulated by the EPA through its National Pollutant Discharge Elimination System (NPDES) program under the CWA, which is administered by the State of Wyoming. See 33 U.S.C. § 1342 (2010); 40 C.F.R. parts 122, 123 (2011). The BLM should also recognize the State of Wyoming's stormwater regulations that already require full stormwater pollution prevention plans for disturbances over one acre in size. WDEQ Rules, Chapter 2, Section 6. In the Lander RMP, the BLM should not impose additional or potentially contradictory requirements on oil and gas operations with respect to stormwater management or water discharge.

The BLM's proposed prohibition or discouragement on the surface discharge of produced water on BLM-administered land under Alternative B is overly prescriptive and unnecessary. Lander DRMP/EIS Record No. 2013, pg. 76. Often the discharge of water associated with oil and gas development activities is beneficial for wildlife, domestic livestock, and even agriculture. Given the fact all produced water is subject to strict control requirements by the WDEQ, the BLM should not interfere and create unneeded and burdensome requirements. Further, the proposed management action may deprive the BLM of the management flexibility the agency needs to address individual situations where produced water will be beneficial.

Table 2.12 - 1000 - Lands with Wilderness Characteristics

The BLM should utilize the Lander RMP to clarify how it will manage lands with wilderness characteristics. Since the issuance of Secretarial Order Number 3310 in December of 2010, there has been significant confusion regarding its implementation and impact. Devon understands the requirement of the Secretarial Order and its implementing manuals, but is unclear how the Order and manuals will be implemented during the current fiscal year given the Congress' direction that no funding can be used this year to implement the Act. Pub. L. No. 112-010, § 1769, 124 Stat. 38, 155 (2011). In a Memorandum to the BLM Director on June 1, 2011, Secretary Salazar indicated that the BLM would not designate any lands as "Wild Lands." Finally, a new Instruction Memorandum was issued in July providing some additional guidance, but also withdrawing the previously issued BLM Manual. Instruction Memorandum 2011-154 (Jul. 25, 2011). The BLM must take the opportunity presented by the Lander RMP to

explain the Department of the Interior's current policy and how it will relate to the management of public land within the Lander Planning Area.

Further, to the extent BLM is required to comply with the provisions of Secretarial Order 3310 after the 2011 fiscal year, the BLM should utilize the revision to the Lander RMP as an opportunity to comply with Secretarial Order Number 3310 to inventory lands under its jurisdiction for so-called wilderness characteristics. By preparing an inventory during the land use planning process, the BLM will more efficiently be able to document its compliance with Secretarial Order Number 3310 and, hopefully, prevent unnecessary delay when processing future applications for oil and gas development. Instruction Memorandum 2011-154 also states that BLM may conduct wilderness inventories during the land use plan and provides the BLM with authority to conduct inventories as necessary. See Instruction Memorandum 2011-154, pg. 1; See also BLM Manual 6301.06.A.2 (Rel 6-126 02/25/2011); BLM Manual 6302.04.C.1 (Rel 6-126 02/25/2011).²

Devon also encourages the BLM to ensure that any and all citizen proposed wilderness areas submitted as part of the plan revision comply with all the requirements of the BLM Manual including a map of sufficient detail adequate to determine: (1) specific boundaries; (2) a detailed narrative that describes the wilderness characteristics of the area and documents how the information significantly differs from the information in prior inventories; and (3) photographic documentation of the area's wilderness characteristics. BLM Manual 6301.13.A.2 (Rel 6-126 02/25/2011); Instruction Memorandum 2011-154. If sufficient information, as required by the Instruction Memorandum, is not presented by the citizen groups advocating the wildlands designation, the BLM should disregard the citizen proposal.

BLM should also carefully consider whether or not wilderness characteristics are present during its inventory and its analyses of any citizen proposed wilderness characteristics areas. The BLM should carefully consider (1) whether or not the area is roadless and over 5,000 acres in size; (2) whether its natural character has been affected primarily by the forces of nature only; and (3) whether or not the area provides opportunity for solitude or primitive and unconfined types of recreation. Instruction Memorandum 2011-154. Obviously if oil and gas leases exist within an area, it cannot and will not meet these characteristics. The valid and existing lease rights in the area will necessarily prohibit the type of unconfined recreation necessary for a wilderness characteristic area. BLM should also recall that the Secretarial Order requires the agency to protect and honor the existing rights including valid and existing rights. See Secretarial Order No. 3310, Sec. 5 d.(3) (Dec. 22, 2010). The BLM should carefully ensure that all valid and existing rights are fully honored and protected. As part of its land use planning process, the Manual also notes that the BLM should specifically examine how local or regional economies depend upon other resources in lands with potential for wilderness characteristics. BLM Manual 6302.1.C.4 (Rel 6-126 02/25/2011); Instruction Memorandum 2011-154. As the BLM is aware, the local economies within the Lander Planning Area are highly dependent on mineral development including oil and gas development for the prosperity of their economies. The BLM should not take any action which may jeopardize current or future employment in this area.

² Devon understands BLM Manuals 6301, 6302, and 6303 were placed in abeyance until further notice by Instruction Memorandum 2011-154 (July 25, 2011), but will still refer to said manuals to the extent they are applicable at some point during the planning process.

Despite language in the Secretarial Order and associated manuals requiring the BLM to place a high priority on protecting lands with wilderness characteristics, the BLM should not ignore its multiple use and sustained yield mandate under FLPMA. The term “multiple use” is defined under FLPMA specifically including utilizing public lands for their mineral resources in order to meet the present and future needs of the American people. 43 U.S.C. § 1702(c). BLM’s second goal under FLPMA, providing for a sustained yield, “requires BLM to control depleting uses over time so as to ensure a high level of valuable uses in the future.” *See Utah v. United States Department of the Interior*, 535 F.3d 1184, 1187 (10th Cir. 2008). Further, in FLPMA, Congress specifically recognized the importance of mineral development on federal lands by identifying it as one of the principal or major uses of the public lands. 43 U.S.C. § 1702(l). The BLM should not forget its multiple use and sustained yield obligations when revising the Lander RMP or proposing to manage land for wilderness values.

Overall, Devon is opposed to the BLM’s decision to manage additional lands within the Planning Area to protect wilderness characteristics or to designate the lands as Wild Lands or a similar designation. The BLM already manages a significant number of acres as wilderness study areas within the Planning Area, and the BLM has not justified the need to manage additional areas for such restrictive use.

Table 2.13 - 2000 - Mineral Resources

Leasable Minerals - Oil and Gas

The overall minerals management under Alternatives B and D is inappropriate because it unreasonably limits oil and gas development. As the BLM is aware, mineral exploration and production is identified as a principal or major use of federal lands under FLPMA, 43 U.S.C. § 1702(l), and federal agencies are required to expedite projects that increase domestic energy production. Executive Orders 13211, 13212, and 13302. Alternative B would drastically curtail potential future oil and gas development in the Lander Planning Area by closing huge portions of the Planning Area (2,279,525 acres) to oil and gas leasing. Lander DRMP.EIS, Record No. 2012, pg. 75. The BLM has not justified such a radical option, one that would decrease the number of acres open to leasing under standard stipulations by a staggering eighty-one percent (81%). Lander DRMP/EIS, pg. 641. Closing over two million acres to oil and gas development is not reasonable, responsible, or currently justified. The BLM should eliminate Alternative B from any future consideration in the final EIS because it is contrary to the BLM’s multiple use mandate and existing federal policy.

As the BLM is aware, the BLM’s obligation to consider alternatives is not without limitations. It is well established that NEPA requires an agency only to consider “reasonable alternatives.” 40 C.F.R. § 1502.14. Courts and the IBLA have long held that “[a]lternatives that do not accomplish the purpose of an action are not reasonable and need not be studied in detail by the agency.” *Citizens’ Comm. to Save Our Canyons v. United States Forest Serv.*, 297 F.3d 1012, 1030 (10th Cir. 2002) (citations and internal punctuation omitted); *Biodiversity Conservation Alliance, et al. v. Bureau of Land Management, et al.*, 608 F.3d 709, 715 (10th Cir. 2010); *Northern Ala. Env’tl. Ctr., et al.*, 153 IBLA 253, 263 (2004). “NEPA does not require agencies to analyze the environmental consequences of alternatives it has in good faith rejected as too remote, speculative, or impractical or ineffective.” *Citizens’ Comm. to Save Our Canyons*, 297 F.3d at 1030-31 (internal punctuation omitted). Because Alternative B does

not comport with BLM's obligations under FLPMA and otherwise unreasonably restricts oil and gas operations and the associated socioeconomic benefits, it is not a reasonable alternative.

The removal of vast areas of land from future oil and gas development and potential restrictions on both leasing and development under Alternative B would significantly restrict regional earnings, jobs, and tax revenue. According to the Lander DRMP/EIS, the adoption of Alternative B would reduce the number of wells that could be drilled in the Planning Area significantly compared to the baseline estimates on Alternative A. See Lander DRMP/EIS, pg. 647. Annual revenue from potential oil and gas production would also be reduced under Alternative B. See Lander DRMP/EIS, pgs. 1110 - 1183, 1185 - 1189. The BLM should not adopt an alternative that would reduce economic development, decrease domestic energy supplies, and harm the local tax base particularly in these difficult economic times. The BLM's own analysis demonstrates that Alternative B would result in the loss of over 1,000 jobs within the Planning Area. Lander DRMP/EIS, pg. 1185. Alternative B inappropriately restricts fluid mineral development in the Planning Area and must not be selected.

Further, the BLM has not analyzed or disclosed the potential impacts the limited future leasing under Alternative B may have upon existing leases. Devon owns numerous leases within the Planning Area, but to the extent such of these leases are isolated, they are virtually impossible and not economically feasible to develop. Any responsible oil and gas producer who decides to take the risk of exploring by drilling a wildcat area must do so only after assembling a large enough block of leasehold acreage so that, if the drilling is successful, it can obtain an adequate return on the high risk dollars invested. The BLM has, in other contexts, recognized this need for control of a reasonable acreage block. See *Prima Oil & Gas Co.*, 148 IBLA 45, 51 (1999) (BLM policy to suspend leases when "a lessee is unable to explore, develop, and produce leases due to the proximity, or commingling of other adjacent Federal lands needed for logical exploration and development that are currently not available for leasing"). The BLM must recognize, study, and report the economic impact its decision to close significant portions of the Planning Area to leasing, or to make significant portions only available with major constraints, will have upon future exploration and development in the area. It is not enough for the BLM to simply assert that existing lease rights will be protected. Rather, the BLM must analyze how existing lease rights will be impacted by future limitations on future additional leasing and development and identify the protections it will afford to existing leases.

Under all of the Alternatives, BLM should acknowledge that it cannot impose stipulations or new restrictions on existing leases and particularly cannot impose new NSO restrictions on existing leases. Courts have recognized that 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"). Devon has serious concerns that the language currently proposed by the RMP would encourage or allow the BLM to adopt management directives that will preclude or limit Devon's rights under its existing leases, or will later adopt COAs that are inconsistent with Devon's rights. As already noted, the Lander RMP, when revised, cannot defeat or materially restrain Devon's valid and existing rights to develop its leases through COAs or other means. See *Colorado Environmental Coal., et al.*, 165 IBLA 221, 228 (2005) (citing *Colorado Environmental Coal.*, 135 IBLA 356, 360 (1996) *aff'd*, *Colorado Environmental*

Coal. v. Bureau of Land Management, 932 F.Supp. 1247 (D.Colo. 1996). Finally, should the BLM deny or unreasonably delay Devon's ability to develop its leases, the BLM's action may constitute a taking in violation of the Fifth Amendment to the U.S. 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 Devon's leases, Devon will be able to demonstrate a taking. The BLM must not adopt an alternative that unconstitutionally takes Devon's property and contract rights. Devon is also opposed to the limitations under mineral leasing proposed in the Beaver Rim Master Leasing Plan Area. Lander DRMP/EIS, pg. 73. The BLM has not adequately justified the need to limit oil and gas leasing and development in this area. Devon is particularly concerned about the BLM's proposed management action limiting oil and gas development to protect wild horse migration corridors. As far as BLM is aware, there is no science justifying the creation of wild horse migration corridors. Devon further understands that on most BLM lands wild horse populations are far over, not under, current carrying capacity.

Leasable Minerals - Designated Development Areas

Devon strongly supports the BLM's creation of DDAs under Alternative D and encourages the BLM to adopt DDAs in the Lander RMP. Lander DRMP/EIS, Record Nos. 2017 - 2021, pgs. 77 - 78. Given the numerous restrictions on development within the vast majority of the Lander Planning Area, it is appropriate to have specific areas dedicated to promote the production of oil and gas resources. Such a designation is fully consistent with the BLM's multiple use mandate under FLPMA. Allowing oil and gas operations to be conducted year-round in these areas may actually reduce long-term impacts to wildlife species because it will allow potentially disruptive drilling and construction operations to be completed in a shorter period of time. Rather than development being spread out over a number of years as operators drill within limited seasonal periods, they may be able to focus development activities in concentrated periods. *See generally* Final Supplemental Environmental Impact Statement for the Pinedale Anticline Oil and Gas Development Project, Section 4.20 (2008). This would allow operations to be completed quickly and interim reclamation activities to begin as soon as possible.

Devon also encourages the BLM to adopt language encouraging the BLM to work cooperatively with operators and the United States Fish and Wildlife Service ("USFWS") to relax raptor timing limitations within oil and gas management areas. Although Devon appreciates the BLM's willingness to consider exceptions to seasonal big game stipulations, unless stipulations for raptors are also relaxed, oil and gas development will still be significantly constrained. Further, Devon encourages BLM to work with the Wyoming Game and Fish Department ("WGFD"), the Wyoming Governor's Office, and the USFWS to pursue and encourage exceptions and leniency for sage-grouse and other BLM sensitive species timing restrictions within the DDAs. For the same reasons, with respect to raptors, unless relief is also provided for sensitive species-related timing stipulations, the relaxation of big game stipulations within the oil and gas management areas will not encourage and foster additional oil and gas development.

Devon supports the language in the Lander DRMP/EIS that allows for the modification and expansion of DDAs in the event oil and gas development extends beyond the currently identified DDAs. Lander DRMP/EIS, Record No. 2021, pg. 78. Devon believes the expansion of existing DDAs is appropriate through a project level analysis. Such an approval is consistent with other RMPs in Wyoming. The Pinedale RMP authorized the expansion of "Intensively Developed Fields" in two situations. First, an expansion of an existing oil and gas field without the need to amend the Pinedale RMP when bottom-hole density reached a specific level and when geology and reservoir analysis determined additional bottom-hole development is necessary to effectively drain a resource. See Record of Decision and Approved Pinedale RMP, pg. 2-22 (2008). Second, the Pinedale RMP authorizes the creation of new Intensively Developed Fields through an amendment to the Pinedale RMP if the above-referenced geologic criteria are met, but the new field is not located adjacent to an existing Intensively Developed Field. *Id.* Devon strongly encourages the BLM adopt measures in the Lander RMP that are similar to the Pinedale RMP and allow for the efficient expansion of the DDAs.

Devon believes, however, that the BLM should automatically lift all seasonal wildlife restrictions within the DDAs in the Lander RMP, rather than waiting for the restrictions to be lifted seasonally upon operator request. This provides the operators the certainty they need to commit to year-round operations and thus, potentially, agree to additional best management practices. Knowing they will be able to conduct operations year-round may also allow operators to secure more efficient and less polluting drilling rigs and may even allow operators to commit to significantly more directional drilling because they will be able to fully develop all of the wells from a single pad to the maximum extent possible without moving a rig. With the existing seasonal stipulations, operators are often required to limit their use of directional drilling to the number of wells that can be drilled in a short seasonal period. If the operators know they can commit to a single pad for an extended duration, they may be able to significantly increase the amount of directional drilling they are doing within certain formations within the Lander Planning Area. Rather than requiring operators to request exceptions annually, which creates more paperwork for the BLM, year-round operations should be allowed unless BLM elects to close the areas to year-round operations after consultation with the WGFD and operators.

Finally, Devon questions why the BLM did not create DDAs under Alternative C. Because DDAs would, necessarily, increase oil and gas operations and make development more feasible, the BLM should have analyzed and included DDAs under Alternative C, not just Alternative D. It was inappropriate for the BLM to unreasonably restrict the use of DDAs to Alternative D despite the clear language in the description of Alternative C that it was intended to emphasize resource development. See Lander DRMP/EIS, pg. 49.

Geophysical Exploration

The BLM should delete entirely Record No. 2005 because it unreasonably interferes with private contracts and private relationships between companies. Lander DRMP/EIS, Record No. 2005, pg. 74. The BLM does not have the authority or a right to encourage operators to share seismic data information with other companies. As the BLM is well aware, seismic information is extremely important to the future development of oil and gas operations and highly confidential. Seismic surveys can be extremely expensive, and it is inappropriate for the BLM to either require or encourage operators to share such information.

Devon is concerned that the language as currently drafted may encourage the BLM to prohibit additional seismic surveys within lands that have been surveyed by another oil and gas company. Although operators strive to utilize existing data before committing the time and resources necessary for duplicate surveys, private business relationships and the need for confidential information sometimes require potentially overlapping efforts. The BLM should not unreasonably interfere with these private business relationships.

The BLM should ensure that it does not place unnecessary requirements, limitations, or procedures on seismic and geophysical surveys. The BLM indicates that under the revised RMP, geophysical exploration will be allowed within the constraints necessary to protect other resources. Lander DRMP/EIS, Record No. 2014, pg. 76. On a national scale, the BLM has recognized that geophysical exploration is the type of activity that does not individually have a significant effect on the human environment because geophysical exploration has been identified as a Department-wide categorical exclusion. "Approval of Notices of Intent to conduct geophysical exploration of oil, gas, or geothermal exploration of oil, gas, or geothermal, pursuant to 43 C.F.R. 3150 or 3250, when no temporary or new roads construction is proposed." DOI Manual - 516 DM 11.9.B.6., 72 Fed. Reg. 45504, 45539 (Aug. 14, 2007); *see also* BLM NEPA Handbook, H-1790-1, Appendix 4, B.6 (Rel. 1-1710, 01/30/2008); 40 C.F.R. § 1508.4(2010) (defining categorical exclusions). The BLM's manual regarding seismic operations similarly recognizes that an environmental assessment is not required in most cases. "An [Environmental Assessment] EA is not required if there are no exceptions listed in 516 DM 2, Appendix 2 that apply and the NOI qualifies as a categorical exclusion under 516 DM 2, Appendix 1, Number 1.6." BLM Manual 3150.21.A. The BLM's seismic operation manual recognizes that geophysical operations are actually designed to reduce potential impacts. "Vibroseis, shothole, etc. programs are designed to avoid significant surface modifications and generally are considered to be nondestructive data collection." BLM Manual 3150.21.A. The BLM should ensure that nothing in the Lander RMP when revised eliminates or discourages the use of geophysical exploration or the approval of such exploration using categorical exclusions.

Even if an EA is prepared for a potential seismic or geophysical project, the EA need not be long or complicated. "The EA process need not be time-consuming or complicated. The level of assessment should be commensurate with the anticipated impacts and the degree of public interest." BLM Manual 3150.21.C. The BLM's handbook for seismic exploration similarly states: "The level of assessment should be commensurate with the anticipated impacts and the degree of public concern. The manager responsible for preparing the EA determines the appropriate format within established standards. The EAs may range from a short (1 to 2 pages) finding of no significant impact ("FONSI") Decision Record document characterized by only a few headings to a relatively long (10 to 15 pages) document characterized by several headings and subheadings." BLM Handbook H-3150-1.II.D (Rel. 3-289 6/7/94). "The environmental effects of most geophysical proposals can be adequately addressed by using the short document form." BLM Handbook H-3150-1.II.D (Rel. 3-289 6/7/94). The language in the Lander RMP/EIS does not sufficiently recognize the fact that geophysical surveys are designed to have very little impact and rarely cause adverse impacts to the natural environment. The BLM should develop language to encourage seismic exploration in the Lander RMP.

The BLM should also encourage seismic exploration in the Lander Planning Area because it will reduce surface disturbing operations and impacts in the long term by helping operators avoid drilling dry holes. Devon encourages the BLM to develop language in the Lander RMP promoting the use of and streamlining the approval process for seismic exploration.

Table 2.19 - 4000 Biological Resources - Riparian-Wetland Resources

Devon supports BLM Record No. 4033 that allows the BLM to authorize locations closer than five hundred feet (500') from surface water on a site-specific basis when sufficient protections can be demonstrated. Lander DRMP/EIS, Record No. 4033, pg. 94. Devon specifically supports the management under Alternative C that would allow the 500-foot NSO around surface water be lifted on a case-by-case basis, and believes that it should be included in the agency's Preferred Alternative. Although Devon supports lifting this surface occupancy restriction within DDAs as proposed under Alternative D, it believes the agency should have the authority to lift this restriction within the entire Planning Area rather than just within specific areas. Doing so will provide the BLM the greatest management flexibility and will not unreasonably interfere with oil and gas operations while still providing significant and sufficient protection for water resources.

Devon does not support the BLM's proposed objective BR:8.1 which prohibits no greater than a ten percent (10%) loss of acres of big game crucial winter range over the life of the plan. Lander DRMP/EIS, Table 2.20, pg. 95. This objective could be used to unreasonably restrict oil and gas development, especially when so many surface disturbing activities occur outside of the BLM's control. Operators should not have their activities curtailed because other users are impacting big game critical habitat. Further, as drafted, the BLM would effectively impose undue restrictions on federal lands to compensate for lost habitat on state and private lands.

Devon suggests the BLM revise Record No. 4055 to eliminate the word "minimize." Lander DRMP/EIS, Record No. 4055, pg. 98. As currently drafted, this management action could be viewed as unnecessarily restricting oil and gas development activities and other operations within the Lander Planning Area. Devon supports the idea that surface disturbance should be restricted to the smallest area that is safe and feasible, but is concerned that the word "minimize" could be used to justify unreasonable expectations or limitations on development. Rather, Devon suggests the BLM use the word "reduce" rather than "minimize."

Table 2.20 - 4000 - Fish and Wildlife Resources

Record No. 4051, pg. 47, states that BLM will utilize recommendations found in *WGFD Recommendations for Development Oil and Gas Resources within Crucial and Important Wildlife Habitats* (WGFD 2009). The BLM must revise these statements to clarify that it will consider, not necessarily "utilize" all of the WGFD's recommendations. The BLM alone has primacy and the responsibility to manage federal lands under its jurisdiction in Wyoming. The statement in Record No. 4051 could be misconstrued to suggest that the BLM is required to utilize the WGFD's recommendations rather than simply consider the management suggestions contained therein. The BLM is not required to cede its authority when making individual management decisions that will implement the final Lander RMP. FLPMA requires RMPs to "be

consistent with State and local plans to the maximum extent [the Secretary] finds consistent with Federal law and the purposes of this Act.” 43 U.S.C. §1712(c)(9); *accord* 43 C.F.R. § 1610.3-2.³ While the BLM is free to consider recommendations from the State of Wyoming and its agencies, it is not required to and should not agree to implement all of the mitigation measures in the WGFD’s recommendations. The BLM should revise the language in Record No. 4051 to make it clear it will consider, but is not required to adopt or comply with the recommendations of the WGFD.

As discussed earlier, Devon supports the BLM’s proposal under Alternative D to create DDAs where discretionary seasonal stipulations would be relaxed. Lander DRMP/EIS, Record No. 2021, pg. 78. Given the advances in drilling and development techniques, more and more operators are using horizontal and directional drilling techniques to access shales and other similar geologic formations. Accessing these resources requires longer drilling times for individual wells, making requests for exceptions to seasonal stipulations more common and necessary. The benefit of the horizontal development, however, is a dramatic decrease in the number of individual wells and well locations necessary to develop the oil and gas resources. The BLM must realize that stringent seasonal stipulations as imposed under most of the Alternatives may prevent this type of development from occurring, which could result in more pads and wells. Given the seasonal stipulations and the uncertainty associated with seasonal exceptions, operators will be required to drill more wells with more habitat fragmentation and surface disturbance in order to develop the same resource. Strict adherence to seasonal stipulations and the number of overlapping stipulations present in the areas subject to Major Restrictions may lead to more adverse impacts to wildlife in the long term than exceptions and flexibility in seasonal stipulations will have on such species. The BLM is unnecessarily and unreasonably limiting its flexibility and the flexibility of operators in the area. Devon encourages the BLM to provide itself with as much flexibility as possible to waive or modify seasonal stipulations.

Devon is strenuously opposed to the BLM’s proposed management action under Alternatives B or D that would allow the BLM to apply wildlife seasonal “protections for surface-disturbing and disruptive” activities on the maintenance and operations of developed projects. Lander DRMP/EIS, Record No. 4056, pg. 98. As the BLM is aware, current seasonal stipulations in the existing Lander RMP prohibit construction and drilling activities in specific crucial winter ranges, but do not prohibit routine production operations necessary to safely maintain facilities. It would be inappropriate for the BLM to preclude all production operations in crucial winter range areas. Such a decision would essentially preclude year-round production operations and would lead to a significant decrease in domestic energy production. Moreover, many species such as pronghorn and mule deer have been found to habituate to increased traffic so long as the movement remains predictable. *See* Reeve, A.F. 1984. *Environmental Influences on Male Pronghorn Home Range and Pronghorn Behavior*. PhD. Dissertation; Irby, L.R. et al., 1984; “*Management of Mule Deer in Relation to Oil and Gas Development in Montana’s Overthrust Belt*” Proceedings III: Issues and Technology in the Management of Impacted Wildlife.

³ There is no indication the WGFD’s Recommendations constitute an officially approved state plan, but is rather a “working document” that specifically recognizes the authority of the BLM to make management decisions on federal land. *See* WGFD’s Recommendations for Development of Oil & Gas, pgs. i, ii (Version 6.0, April 2010).

Devon is also concerned that the BLM's proposed management action would allow the BLM to apply wildlife seasonal protections to maintenance activities and operations would propose significant safety concerns to existing facilities. To the extent the BLM applies the limitation on even routine maintenance in this action, it is very possible minor issues necessitating repairs will not be noticed which could contribute to significant or even catastrophic spills and other hazards. Devon encourages the BLM not to adopt this radical alternative.

Even the very threat of such a radical and unjustified restriction on production operations would seriously hamper future oil and gas development in the Lander Planning Area because oil and gas operators would be unwilling to invest the millions of dollars necessary to drill an oil and gas well if they would be unable to produce the wells throughout the year. The BLM's belief that any oil and gas wells would be drilled in big game winter range given such overly restrictive limitations on future production is specious. The BLM would effectively eliminate all oil and gas development in identified crucial range. Further, the BLM has not analyzed or apparently even considered the damage that could be done to oil and gas wells if they are shut-in on an annual basis. The BLM has also not analyzed the very real threat that federal minerals would be effectively drained by offsetting wells on State of Wyoming and private lands if federal wells are annually shut-in. The BLM must prepare this analysis in order to disclose the significant adverse impacts that would be associated with the closure of oil and gas development on a seasonal basis, including the potential loss of federal reserves and royalties.

It also appears the BLM failed to consider the significant detrimental impact seasonal prohibition on oil and gas operations would have upon the local economy. By precluding production during several months of the year, the BLM would force operators to significantly reduce their workforces on an annual basis. The management action would create a seasonal boom and bust cycle with routine maintenance workers and pumpers being laid off annually. The inconsistent nature of the work would almost certainly reduce the number of local employees lessees are able to hire, which would restrict or eliminate the long-term beneficial impacts of the oil and gas development to the local economy. The BLM's current socio-economic analysis does not account for this cycle. The BLM must eliminate this proposed management action under Alternatives B and D.

To the extent the BLM intends to apply these restrictions to existing leases, the BLM may be both violating Devon's existing lease rights or engaging in a taking of Devon's property rights. BLM should carefully review Devon's earlier comments regarding its existing lease rights when considering how or if it can impose these unreasonable restrictions. Once the BLM has issued a federal oil and gas lease without NSO 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). Only Congress has the right to completely prohibit development once a lease has been issued. *Western Colorado Congress*, 130 IBLA 244, 248 (1994). Further, the BLM cannot deprive Devon of its valid and existing lease rights either directly or indirectly. When it enacted FLPMA, Congress made it clear that nothing therein, or in the land use plans developed thereunder, was intended to terminate, modify, or alter any valid or existing property rights. *See* 43 U.S.C. § 1701 (2010).

Devon is opposed to the BLM's proposed management actions to protect reptile habitat under both Alternative B and Alternative D. Lander DRMP/EIS, Record No. 4057, pg. 99. The BLM has not identified specific reptiles or reptile habitat that needs to be protected, demonstrated that such protections are reasonable, or provided information justifying this new restriction. To the extent potential reptiles are already identified on the BLM's list of Sensitive Species for Wyoming, the BLM Manual 6840 provides adequate protections and authority for the BLM to impose conditions of approval or other restrictions to protect the species. The blanket restrictions are unduly onerous and have not been demonstrated to be necessary. Devon suggests the BLM not adopt the language proposed under Record No. 4057 under either Alternative B or Alternative D in the selected alternative.

Devon is very concerned about the proposed increase in the buffer area when timing restrictions associated with raptor nests under Alternative B will be applied. Lander DRMP/EIS, Record No. 4066, pg. 101. The BLM has not provided adequate justification or information to support this change. Devon encourages the BLM to retain the existing management limitations rather than to adopt the new proposed restrictions on raptor species.

Table 2.21 - 4000 - Special Status Species

Devon generally supports the goals outlined by the BLM for sensitive status species. See Lander DRMP/EIS, pg. 102. The BLM should, however, revise BR Goals 13.1 and 14.1 to make it clear the BLM will maintain large patches of high quality sage brush habitat, while still providing for multiple use management. Although preserving the sage-grouse is of paramount importance to the State of Wyoming, the BLM, and operators like Devon, management for the species must be considered in the larger multiple-use mandate requirements imposed by FLPMA for the BLM.

The BLM should also clarify its proposed goal to indicate how it will maintain connections between sage brush habitats occupied by greater sage-grouse. Lander DRMP/EIS, BR 13.2, pg. 102. Devon is opposed to the creation of so-called "connection areas" in the Planning Area, beyond those identified in the State of Wyoming's Executive Order 2011-005. Absent a clear understanding of how sage-grouse connection areas may impact oil and gas operations, it is difficult, if not impossible, for Devon to understand how its operations will be impacted. The BLM should revise or eliminate this goal in the proposed RMP.

The BLM has proposed restrictions to protect Mountain Plover habitat from April 10 to July 10 unless surveys demonstrate the absence of breeding/nesting Mountain Plovers. Lander DRMP/EIS, Record No. 4073, pg. 103. When evaluating this restriction, the BLM should also recall that the USFWS announced its decision to withdraw the proposed listing of the Mountain Plover as a threatened species on May 12, 2011. 76 Fed. Reg. 27756 (May 12, 2011). The USFWS specifically determined that "after a thorough review of all available scientific and commercial information, we have determined that the species is not endangered or threatened throughout all or a significant portion of its range." *Id.* Given its current status, the BLM should carefully consider whether or not additional restrictions in plover habitat are necessary.

Devon is opposed to the proposed Management Action 4087 which would require the BLM to establish limits that accept cumulative habitat loss for identified priority species. Lander DRMP/EIS, Record No. 4087, pg. 104. The BLM has not provided a specific list of

“priority species.” Absent this information, Devon cannot assess how its operations may be impacted by this management requirement. Additionally, this proposed requirement is vague because it does not identify potential threshold or other “limits of acceptable cumulative habitat loss.” Lander DRMP/EIS, Record No. 4087, pg. 104. Using this vague restriction, the BLM could effectively foreclose any and all surface disturbing operations within the Lander Planning Area. Further, the requirement does not explain when or how surveys or limitations would be established to meet the management goal. Presumably, because the limitations would effectively preclude other surface disturbing operations and would constitute a major federal action, the BLM would prepare appropriate environmental analysis as required by NEPA prior to imposing any such restrictions. To the extent such restrictions are intended to impact Devon’s existing leases, such restrictions may also violate the terms of the contract between oil and gas operators such as Devon and the government. Devon suggests this management action be deleted from all Alternatives.

Greater Sage-Grouse

Devon is opposed to the BLM’s proposed timing limitations to protect sage-grouse areas under all Alternatives. Lander DRMP/EIS, Record Nos. 4095, 4096, pg. 106. None of the timing limitations presented in the draft document correspond to those identified in Wyoming Executive Order 2011-005. Under the Wyoming Sage-grouse Executive Order, activity will be allowed from July 1 to March 14 outside of the 0.6 mile perimeter of a lek in a Core Area where breeding, nesting, and early brood-rearing habitat is present. State of Wyoming Executive Order, 2011-005, pg. 9 item 3. Under Alternative D, however, BLM extends the season of use restriction by two weeks by placing a timing limitation on surface disturbing activities from March 1 to June 30. The Wyoming sage-grouse Implementation Team and the Governor of Wyoming carefully developed the Core Area policy for sage-grouse based on the best scientific information available and in cooperation with operators and the WGFD. It is inappropriate to increase these timing restrictions in the BLM Land Use Plan. Devon encourages the BLM to revise its timing limitations to correspond directly with the State of Wyoming policy. Overall, Devon encourages the BLM to modify the sage-grouse stipulations such that they are consistent with Executive Order 2011-5. This will ensure consistent management of sage-grouse and habitat throughout Wyoming and illustrate the State of Wyoming and the BLM are dedicated to protecting and preserving sage-grouse to prevent listing under the Endangered Species Act.

Devon is opposed to the sage-grouse management proposed under Alternative B. Lander DRMP/EIS, Record Nos. 4093 - 4104. The proposed management actions under Alternative B are unnecessarily restrictive and will have a significant detrimental impact on oil and gas operations within the Lander Planning Area. Devon views the proposed management actions under Alternative D as more reasonable to the extent they are restricted to the State of Wyoming’s Core Areas but is still concerned operations will be adversely impacted. Devon is particularly opposed to BLM’s proposal to make all Sage-Grouse Core Areas unavailable for leasing and designated right-of-way (“ROW”) exclusion areas. Lander DRMP/EIS, Record No. 4093, pg. 106. Such unreasonable measures are unnecessary and contrary to State of Wyoming’s policy. Devon understands the need to analyze a variety of alternatives, but encourages the BLM not to adopt Alternative B.

Devon is opposed to the proposed restrictions on noise levels to 10dBA above ambient noise contained in Alternatives B, C and D. Lander DRMP/EIS, Record No. 4101, pg. 108. The BLM has also not identified background noise levels or identified a means to determine such levels. The BLM has not explained how background noise levels would be measured or quantified to determine how or whether noise levels have been impacted by new operations. Finally, as the BLM should be aware, 10dBA is a very, very low threshold and the BLM has not explained or justified the benefit of such an unduly restrictive limit. Just for the sake of comparison, a soft whisper approximates 20dBA and the sound of leaves rustling or very soft music easily reaches 30dBA. Normal human speech is usually as high as 60dBA and the sound of lawn mowers or shop tools can be 90dBA. Limiting noise levels from facilities to only 10dBA above ambient noise is extraordinarily limiting, wholly unreasonable, and not justified by current science. The BLM should eliminate this requirement. As currently drafted, the requirement is not reasonable or practicable.

To the extent possible, the BLM should identify potentially occupied pygmy rabbit habitat in the Lander RMP. The prohibition on surface disturbing activities within pygmy rabbit habitat is otherwise overly vague. Lander DRMP/EIS, Record No. 4104, pg. 108. Absent an accurate map, Devon cannot ensure how its operations may be impacted by this proposed restriction. The BLM has not justified the proposed 200 foot restriction around pygmy rabbit habitat. As far as Devon is aware, there is no science supporting this buffer zone around pygmy rabbit habitat. Further, the imposition of additional restrictions does not seem to recognize the fact that the USFWS specifically determined there was not a sufficient need to list the species under the Endangered Species Act at this time. 75 Fed. Reg. 60516 (Sept. 30, 2010). Given the determination of the USFWS not to list the species, the BLM must justify this unnecessary restriction.

BLM suggests that Record No. 4105 be modified under Alternative D to indicate that surface disturbing activities within white-tailed prairie dog colonies will be avoided to the extent consistent with existing lease rights. Lander DRMP/EIS, Record No. 4105, pg. 109.

Table 2.25 - 5000 - Visual Resource Management

Devon is opposed to Record No. 5034 which would prohibit surface disturbing activities within visual resource management ("VRM") Class I and II Areas under all Alternatives. Lander DRMP/EIS, Record No. 5034, pg. 124. Such a restriction is not only inconsistent with existing lease rights, it is also subject to significant discretion on the part of the BLM. Further, this restriction is not consistent with the BLM's Manual that allows for some modification to the surface in VRM Class II Areas. BLM Manual Handbook 8410-1 at 6. The BLM should eliminate this management action in the Lander RMP.

Further, given the fact the BLM has determined that no surface disturbing operations will be allowed in either VRM Class I or VRM Class II Areas, the BLM must provide new maps clearly demonstrating that all VRM Class I and II Areas will be subject to major constraints. BLM's current Maps 29, 30, 31, and 32 do not appear to identify VRM Class II Areas as subject to major constraints. Given the prohibition on surface disturbing activities within these areas, these maps are not accurate and do not provide the reader with adequate information. Additionally, these restrictive closures will require the BLM to redo its economic analysis and its RFD Scenario under Alternatives B and D in particular given the significant restriction on oil and gas development that could result from this decision.

The BLM needs to prepare new VRM maps for all four alternatives presented in the Lander DRMP/EIS. As currently drafted, Maps 75, 76, 77, and 78 appear to impose BLM VRM restrictions on BLM, private, and State of Wyoming lands without regard to ownership. The BLM has no right or authority to impose VRM restrictions on either State of Wyoming or private lands. As the BLM should be aware, one of the reasons the BLM Director remanded portions of the Rawlins RMP in 2008 was the BLM's apparent attempt to impose VRM restrictions on State of Wyoming and private lands. See Director's Protest Resolution Report, Rawlins Resource Management Plan, December 24, 2008, pgs. 139 - 140; see also Rawlins RMP pg. 1-1. The BLM must prepare new maps for the Lander RMP final EIS that exclude State of Wyoming and private lands within the Planning Area.

Devon is opposed to the BLM's management action under all Alternatives that would encourage the BLM to work with willing land owners and partners to pursue conservation easements on lands adjacent to those managed as VRM Class I and Class II. Lander DRMP/EIS, Record No. 5035, pg. 124. It is inconsistent with BLM's multiple use management policies and its role as a government agency to pursue or encourage land owners to enter into conservation easements. Through this proposed management action, the BLM is essentially encouraging private land owners to manage private lands in a manner consistent with the personal preferences of the BLM. This language could be particularly dangerous if it encourages members of the BLM to pursue their own personal objectives over private lands when negotiating with oil and gas operators, private land owners, or grazing allottees. This proposed management action must be eliminated from the Lander RMP.

Under Alternatives B and D, the BLM proposes to substantially increase the number of acres subject to Class II VRM restrictions. Lander DRMP/EIS, Record No. 5036, pg. 125. Much of the area is not currently subject to VRM Class II restrictions. When proposing VRM restrictions in areas already leased for oil and gas development, the BLM cannot attempt to impose new VRM objectives or operations on existing leases. The IBLA has clearly recognized that BLM cannot impose visual resource objectives inconsistent with lease rights, and the BLM must consider the impacts of oil and gas operations and existing leases when developing VRM objectives during the planning process. See *Southern Utah Wilderness Alliance, et. al.*, 144 IBLA 70, 84-88 (1998). The BLM cannot impose VRM objectives without considering existing leases and ongoing oil and gas operations. The BLM's decision to increase areas subject to VRM Class II restrictions is particularly concerning given its position that all surface disturbing operations will be prohibited in Class II areas. Lander DRMP/EIS, Record No. 5034, pg. 124.

When the BLM has issued oil and gas leases, it has made the decision to allow the surface disturbance and facilities that accompany oil and gas development. 43 C.F.R. § 3101.1-2. VRM Class II objectives, on the other hand, provide that the level of impact to the visual resources should be low. BLM Manual Handbook 8410-1 at 6. In a VRM Class II area, "management activities may be seen, but should not attract the attention of the casual observer." *Id.* VRM Class II objectives may be viewed as inconsistent with even the most responsible development of Devon's existing leases. The proposed VRM Class II designation for lands covered by leases may be in conflict with, and provide confusion about, prior decisions made to lease the same lands without restrictions for visual resources under the current RMP.

The IBLA has addressed a similar situation in the past. In *Southern Utah Wilderness Alliance*, 144 IBLA 70 (1998) ("SUWA") a resource management plan designated certain lands as VRM Class II. The BLM had leased the same lands for oil and gas development under the

existing RMP. The IBLA found this improper, and it criticized the San Juan, Utah Resource Area BLM office for applying VRM Class II restrictions to lands where it had previously approved oil and gas leases. The IBLA stated that where the BLM has made the decision to issue oil and gas leases, the BLM should not put the same lands in VRM Class II because it is "inherently contradictory" and creates a "conflict." *Southern Utah Wilderness Alliance*, 144 IBLA 70, 87 (1998). The IBLA stated that the VRM classification should not have been set at VRM Class II but that in the RMP "the VRM classifications should have expressly been adjusted to at least VRM Class III." *Southern Utah Wilderness Alliance*, at 85.

The approach outlined by the IBLA in SUWA must be followed by the BLM in this case. The BLM has made management decisions to allow oil and gas to be developed where it has issued leases. Putting these same areas in a VRM Class II designation in the proposed Lander RMP does not take into account the past leasing decisions and valid existing rights. The BLM must make its new VRM class designations consistent with its prior leasing decisions. The BLM can achieve this harmony, and follow the IBLA's guidance, by designating areas previously leased for oil and gas lease development as VRM Class III in the Lander RMP. The BLM needs to revise its VRM objectives and future criteria. VRM II classifications must not be imposed on any areas with existing oil and gas leases.

The BLM's proposed VRM under Alternatives B and D is unnecessarily restrictive. Placing VRM Class I or II restrictions on a significant portion of the Planning Area would significantly restrict oil and gas development, potentially even on existing leases. Lander DRMP/EIS, Record No. 5036, pg. 125. Based on past experience, and even language in the Lander DRMP/EIS itself, the BLM will essentially preclude oil and gas development in VRM Class I and Class II areas. Lander DRMP/EIS, Record No. 5034, pg. 124. Devon is concerned it may not be able to develop its existing leases if the BLM is precluded from proving rights-of-way or facility locations across newly created VRM I and II areas that did not exist at the time its leases were issued. The imposition of unreasonable restrictions on existing leases or federal units may result in an illegal taking of Devon's contractual and property rights. The fact that temporary drilling rigs may be excluded from this prohibition is appreciated, but may not be sufficient if pads and production equipment cannot be located in the area. Finally, the BLM has not adequately studied the potential economic or socio-economic impacts the creation of new VRM Class I and II areas may have upon the public or the human environment as required by FLPMA and NEPA.

Table 2.28 - 6000 - Rights-of-Way and Corridors

Devon is opposed to the BLM's proposal under Alternative B and Alternative D to substantially increase the number of acres subject to ROW exclusion and avoidance areas in the Lander RMP. Lander DRMP/EIS, Record Nos. 6022, 6023, pg. 130. The BLM has not justified this substantial increase in the number of acres subject to ROW exclusion and avoidance areas. Devon is particularly concerned that the ROW exclusion and avoidance areas will be utilized to significantly hamper or decrease oil and gas operations. The BLM must be willing to work with oil and gas lessees and operators to design access routes for proposed oil and gas development projects. Future limitations on road construction could impact Devon's valid and existing lease rights or its rights as the operator of a unit such as the Beaver Creek Unit. While the issuance of an oil and gas lease does not guarantee access to the leasehold, a federal lessee is entitled to use such part of the surface as may be necessary to produce the leased substance. 43 C.F.R. § 3101.1-2. With respect to approved oil and gas

units, the IBLA has noted that “when a federal unit has been approved and the unitized area is producing, rights-of-way are generally not required for production facilities and excess roads within the units.” *Southern Utah Wilderness Society, et. al.*, 127 IBLA 331, 372 (1993). The BLM must recognize the lessee’s right to use the lands included within their leasehold or units in order to develop oil and gas resources. Obviously, if lessees are not allowed access to their lease parcels, or are prohibited from installing pipelines necessary to transport the produced resource, they are deprived of the economic benefit of the lease. In such situations, the lessee, the public, the State of Wyoming, and the federal government will be deprived of the economic benefit of potential oil and gas development. Devon encourages the BLM to reduce the area subject to rights-of-way avoidance or exclusion limitations as they may adversely impact oil and gas development in the area.

Table 2.32 - 7000 - Congressionally Designated Trails

Devon believes the BLM is proposing overly restrictive and unnecessary limitations on oil and gas development for the alleged purpose of protecting historic trails. Devon objects to the BLM’s proposed management under Alternative B and Alternative D that would prohibit surface disturbing activities within 5 or 3 miles of historic trails. Lander DRMP/EIS, Record Nos. 7003, 7004, 7005, 7006, pgs. 159 - 163. Devon also objects to the BLM’s proposal under Alternative B and Alternative D to prohibit surface disturbing activities within up to 5 miles of historic trails. The BLM has not justified the necessity of protecting the trails to such an extent. The BLM’s radical departure from its previous management, which only protected areas within one-quarter mile of these historic trails, is unnecessary, unjustified, and inconsistent with existing lease rights. The BLM must substantially revise its proposed management for historic trails in the Lander RMP prior to their finalization. Devon is strenuously opposed to all of the BLM’s proposed management actions under Alternatives B and D regarding all trails in the Planning Area. Lander DRMP/EIS, Record Nos. 7001 - 7013, pgs. 159 - 168.

Devon supports only mitigation and protection measures within ¼ mile or the visual horizon, whichever is less, on either side of a Congressionally designated trail. Further, only Congressionally designated trails necessitate significant protection, other so-called historic trails and roads should not be protected. Additionally, the BLM must ensure it is only attempting to protect contributing segments of trails; there is no reason to protect segments that are not contributing. Further, the BLM should only attempt to protect areas outside of the trail when setting is a critical component. According to the State Historic Preservation Office, setting is an important criterion in very few parts of the Planning Area. Historic trails such as the Bridger Trail should not be protected with the same restrictions as those Congressionally designated trails because they do not have the same status and are not entitled to equivalent protections. Finally, it is important for the BLM to recognize that only contributing segments of trails are entitled to or deserving of any protection. Non-contributing segments should be utilized for all multiple use activities without restrictions.

Devon does not support the BLM’s decision to close all areas within three miles of trails and trail-related SRMAs with NSO stipulations or controlled surface use restrictions within five miles of said trails. Lander DRMP/EIS, Record No. 7008, pg. 164. Similarly, Devon does not support the proposal to virtually close geophysical exploration within one mile of the trails and to generally prohibit activities between June 1 and October 31, the time of year geophysical exploration is almost always conducted. Lander DRMP/EIS, Record No. 7008, pgs.

164 - 165. As discussed earlier, seismic operations have very few environmental impacts and would not interfere with recreational use of these trails. The BLM has not justified the significant increase in the restrictions associated with trails in the Lander RMP. The restrictions are unnecessary and may significantly curtail oil and gas development within the area.

Devon is also opposed to Management Action 7013 on page 168 of the Lander DRMP/EIS and Management Action 7110 on page 193 of the Lander DRMP/EIS that imposes sound restrictions along designated trails. The BLM has provided no mechanism to monitor or enforce noise restrictions within these areas and has not justified the significant restrictions these management actions could impose on oil and gas operations. Devon encourages the BLM to delete these unnecessary restrictions.

Table 2.34 - 7000 - Wild and Scenic Rivers

Devon does not support any new Wild and Scenic Rivers or associated ACECs in the Lander Planning Area. Lander DRMP/EIS, Record Nos. 7023 - 7036, pgs. 171 - 174.

Table 2.35 - 7000 - Areas of Critical Environmental Concern

Overall, Devon does not support the creation of new areas of critical environmental concern ("ACEC") for the expansion of ACECs within the Planning Area. The BLM has identified sufficient ACECs in the previous planning documents and has not significantly justified the need to expand these ACECs. Devon is concerned that the BLM may limit oil and gas development in any new or expanded ACEC. In particular Devon is concerned about ACECs in areas with high potential for oil and gas, including the Cedar Ridge ACEC. Lander DRMP/EIS, Record Nos. 7040, 7150, pgs. 175 - 209. In virtually all of the ACECs, the BLM intends to significantly curtail surface disturbing activities associated with oil and gas or close the areas entirely. As such, Devon opposes these ACECs. The BLM must ensure that its newly created ACECs do not limit or curtail rights of existing oil and gas operators including those within existing and developed units. The BLM's creation of an ACEC for the Cedar Ridge and the regional historic trails and early highways is particularly concerning. Lander DRMP/EIS, Record Nos. 7113 - 7120, Record Nos. 7134 - 7140, pgs. 197 - 199, 205 - 207. Devon specifically opposes the proposal to effectively close or significantly curtail operations within two miles of regional historic trails and early highways. Lander DRMP/EIS, Record No. 7137, pg. 206. Alternative B and Alternative D are both unacceptable because of the limitations they impose on oil and gas operations around regional historic trails and early highways. Devon only supports Alternative A, which would not create a new ACEC. Finally, Devon opposes the creation of the Government Draw/Upper Sweetwater Sage-Grouse ACEC. Lander DRMP/EIS, Record Nos. 7141 - 7150, pgs. 208 - 209. Devon is particularly concerned because the ACEC may interfere with the installation of regional and national ROWs for gas transportation and utility lines as well as the proximity of the proposed ACEC to its existing leases and the existing Beaver Creek Unit. Lander DRMP/EIS, Map 131. As such, Devon opposes the Alternative B's creation of the ACECs identified above. Devon does not support any creation of additional ACECs for Congressionally Designated Trails. Lander RMP/DEIS, pg. 196.

Table 2.51 - 8000 - Socioeconomic Resources

Devon opposes Record No. 8008 regarding increasing bond amounts within the Lander Planning Area. Bonds are adequately addressed in the BLM's own regulations at 43 C.F.R. subpart 3104. As such, there is no need for the BLM to address bonds in this planning document.

Devon is vehemently opposed to the proposal in Record No. 8014 to consider or curtail oil and gas development activities to avoid adverse impacts to socioeconomic conditions. Lander DRMP/EIS, pg. 212. Throughout the history of the organization, the BLM has not limited the pace of development recognizing that commodity prices and other factors beyond the control of oil and gas operators are responsible for the pace of development. Further, the proposal is inconsistent with the BLM's own determination on pages 21 and 22 of the Lander RMP which indicates the BLM should not inappropriately involve itself in industry financial decisions or regulate the pace of development. Lander DRMP/DEIS, pg. 21-22. Such a restriction would also be inconsistent with Devon's existing obligations under BLM's regulations which are required to ensure maximum ultimate recovery of oil and gas resources. 43 C.F.R. § 3162.1(a). The BLM should eliminate Record No. 8014 entirely from the Lander RMP.

CHAPTER 3

Overview of the Lander Field Office Planning Area

Devon agrees with the BLM's statement that "oil and gas development is an important economic component of public land use in the Planning Area." Lander DRMP/EIS, pg. 228. Devon encourages the BLM not to undertake any actions or decisions that would unreasonably interfere with oil and gas development and the crucial economic activity and revenue associated therewith.

Section 3.1.1 - Air Quality

Air quality in Wyoming continues to be an important issue for oil and gas operators, the public, and the regulatory agencies. Fortunately, according to BLM's analysis in the Lander DRMP/EIS, air quality in the Planning Area is very good. Lander DRMP/EIS, pgs. 238 - 250. The available data collected in the Planning Area demonstrate compliance with all national and Wyoming Ambient Air Quality Standards ("NAAQS" and WAAQS"). *Id.* With respect to visibility, the information in the Lander DRMP/EIS indicates that visibility in the area is excellent. *Id.*, 238, 245 - 246. Figure 3-10 and Figure 3-11 demonstrate that visibility near the Planning Area remains constant and may even be improving. Lander DRMP/DIS, pg. 246.

Although there is only limited data available regarding air quality in the Lander Planning Area, all of the available information demonstrates that the air quality in the region is very good. Included herein are copies of all the quarterly reports from the Spring Creek monitoring station installed in February of 2009 and funded by Devon and other operators. This data confirms that air quality in the region is excellent and should be referenced in the Lander final EIS and contained in the administrative record.

The BLM indicates on page 249 of the Lander DRMP/EIS the Environmental Protection Agency is currently evaluating the level of the ozone standard and may reduce the ozone NAAQS between 60 and 70 parts per billion (“ppb”) in the near future. In the final EIS for the Lander RMP, the BLM should clarify that the EPA is no longer in the process of evaluating the ozone NAAQS and instead going to wait for the normal review process for NAAQS and will initiate a revision in the Fall of 2013 and finalize any revisions to the standard in 2014. Until the rulemaking is complete, the ozone NAAQS will remain 0.75 ppb.

Additionally, in the Lander DRMP/EIS, the BLM indicates that other challenges faced by the agency include developing effective rules and management actions to maintain compliance with air quality standards. Lander DRMP/EIS, pg. 250. As discussed extensively above, the BLM does not have direct authority over air quality or air emissions in the State of Wyoming. The BLM should not attempt to develop any management actions designed to control emissions within the Planning Area beyond its limited authority to enact such measures.

Section 3.1.4 - Water

General Comments

The BLM should recognize in the Lander RMP/EIS that the WDEQ regulates all surface discharge of water, including water produced from oil and gas development and storm water discharges, through the Wyoming Pollutant Discharge Elimination System Permit process. Although the document mentions the WDEQ’s role in managing surface waters, the document should describe the State’s primacy over such issues. The BLM should ensure that nothing in the Lander RMP interferes with the WDEQ’s regulatory process given both the WDEQ’s expertise and its direct authority under the CWA over water quality.

For example, in its recently released Bighorn Basin RMP/DEIS, the BLM stated as follows: “the Wyoming DEQ regulates all surface discharge of water, including water produced from oil and gas development and storm water discharges, through the Wyoming pollutant discharge elimination system permit process.” Bighorn Basin RMP/DEIS, pg. 3-33. The BLM should include similar language in the Lander RMP/EIS. Further, the BLM should recognize that produced water from oil and gas development can have a beneficial impact within the Planning Area. This finding was similarly recognized in the Bighorn RMP/DEIS which indicated that most users in the Planning Area overwhelmingly view produced water as beneficial. Bighorn RMP/DEIS, pg. 3.36. Devon encourages the BLM to continue to work with oil and gas operators, the WDEQ, and other users in the Planning Area to maximize the appropriate and best use of produced water.

Devon agrees with the BLM statements on page 274 of the Lander DRMP/EIS that standard safeguards such as casing design and selection of injection well receiving horizons adequately protect ground water quality from oil and gas operations. Lander DRMP/EIS, pg. 274. Oil and gas operations are carefully monitored by the BLM, WDEQ, and the Wyoming Oil and Gas Conservation Commission (“WOGCC”).

Section 3.2.4 - Leasable Minerals - Oil and Gas

General Comments

The BLM acknowledges that oil and gas development in the Planning Area dates back to 1884, prior to the formal admission of the State of Wyoming to the United States of America. Lander DRMP/EIS, pg. 292. That field, the Dallas Field, continues to produce today. Oil and gas development is an historic and important resource within the Lander Planning Area and the BLM should take every opportunity to foster, not limit or prohibit, development opportunities in the Lander Planning Area.

In the recently released Bighorn RMP/DEIS, the BLM acknowledges that its general policy for the oil and gas program is to foster a fair return to the public for its resources, to ensure the activities are environmentally acceptable, and to provide for the conservation of the fluid mineral resource without compromising the long-term health and diversity of the land. Bighorn RMP/DEIS, pg. 3-47. The BLM should add a similar statement to the Lander DRMP/EIS. The BLM should also inform the public that under BLM regulations, oil and gas lessees are also required to ensure the "maximum ultimate economic recovery of oil and gas with minimum waste and with minimum adverse effect on ultimate recovery of other mineral resources." 43 C.F.R. § 3162.1. Devon and all other oil and gas operators are contractually bound and required by the BLM regulations to maximize recovery of oil and gas development from their leases. The BLM often appears to forget this contractual obligation when developing revised RMPs.

Oil and Gas Resource Estimates in the Planning Area

In the Lander DRMP/EIS, the BLM partially recognizes the significant potential for oil and gas development in the Planning Area. In the accompanying Reasonable Foreseeable Development Scenario for Oil and Gas in the Lander Planning Area, Wyoming Second Draft Report issued by the BLM on February 9, 2009 ("RFD Report"), the BLM estimates the Planning Area contains an undiscovered volume of 35.39 million barrels of oil, 3.73371 trillion cubic feet of natural gas, and 54.55 million barrels of natural gas liquids. Lander DRMP/EIS, pg. 301; RFD Report Table 10. The BLM additionally estimates the Planning Area's oil resources could range from 9.51 to 76.12 million barrels of oil, the gas resource could range from 1.5389 to 5.49116 trillion cubic feet, and the natural gas liquid resources could range from 19.55 to 93.62 million barrels. *Id.* Given recent advances with drilling and development techniques, the oil and gas potential in the Lander Planning Area may even be higher. The BLM should foster the production of this important resource.

The Reasonably Foreseeable Development Scenario

In the process of revising the Lander RMP, the BLM has prepared an RFD Scenario in order to estimate the potential future environmental impacts of oil and gas operations within the Planning Area. When discussing the RFD Scenario, the BLM must be aware, and carefully describe to the public, that the RFD Scenario is not a limit or threshold on future development. Rather, the RFD Scenario is a tool utilized by the BLM to estimate the potential impacts of oil and gas development. The development of the RFD Scenario is not expressly required by FLPMA, NEPA, or the BLM's planning regulations at 43 C.F.R. Part 1600. Rather, the concept arises from NEPA's general requirement to consider the potential cumulative

impacts of a major federal action significantly affecting the quality of the human environment. The regulations implementing NEPA require agencies to consider cumulative impacts when conducting NEPA analysis. 40 C.F.R. §§ 1508.7, 1508.25(c). The BLM adopted this requirement into its planning regulations by requiring resource management plans to estimate the potential physical, biological, economic, and social effects of each alternative considered. 43 C.F.R. § 1610.4-6. The regulations specifically note that this estimate may be stated in terms of probable ranges where effects cannot be precisely determined. 43 C.F.R. § 1610.4-6.

In order to estimate the potential impacts of oil and gas development within a particular resource area, the BLM developed the requirement for the agency to prepare the RFD Scenario in connection with the preparation of the environmental impact statement accompanying a new or revised RMP. See 43 C.F.R. § 1601.0-6 (requiring the preparation of an environmental impact statement when preparing a new or revised RMP). The BLM incorporated this requirement into the BLM Land Use Planning Handbook H-1624 - Planning for Fluid Mineral Resources. See BLM Land Use Planning Handbook H-1624 - Planning for Fluid Mineral Resources, Chapter III (Rel. 1-1582 5/7/90). Thus, the BLM's Fluid Mineral Planning Handbook is the original source of the term "RFD Scenario." The BLM's Fluid Mineral Planning Handbook provides that the cumulative impacts of RFD are one of three factors for analysis which should be considered when making fluid mineral determinations in RMPs or plan amendments. See BLM Land Use Planning Handbook H-1624 - Planning for Fluid Mineral Resources, Chapter III.A. (Rel. 1-1582 5/7/90). Rather than limit, the RFD Scenario is intended to serve as a tool assisting in NEPA compliance. "To ensure NEPA compliance a minimum level of exploration and development activities should be projected." See BLM Land Use Planning Handbook H-1624 - Planning for Fluid Mineral Resources, Chapter III.B.4.a.(2) (Rel. 1-1582 5/7/90).

The BLM more recently defined and interpreted the purpose and role of the RFD Scenario in an Instruction Memorandum and amendment to the BLM Land Use Planning Handbook H-1624 - Planning for Fluid Mineral Resources issued in 2004. See BLM Instruction Memorandum 2004-089, Policy for Reasonably Foreseeable Development ("RFD") Scenario for Oil and Gas (Jan. 16, 2004) (I.M. 2004-089).⁴ The RFD Scenario is defined by the BLM as a "baseline scenario of activity assuming all potentially productive areas can be open under standard lease terms and conditions, except those areas designated as closed to leasing by law, regulation or executive order." See I.M. 2004-089, Attachment 1-1. The RFD is neither a Planning Decision nor the "No Action Alternative" in the NEPA document. See I.M. 2004-089, Attachment 1-1. "In the NEPA document, the RFD baseline scenario is adjusted under each alternative to reflect varying levels of administrative designations, management practices, and mitigation measures." See I.M. 2004-089, Attachment 1-1. "The RFD is based on review of geologic factors that control potential for oil and gas resource occurrence and past and present technological factors that control the type and level of oil and gas activity." See I.M. 2004-089, Attachment 1-3. "The RFD also considers petroleum engineering principles, as well

⁴ The heading on BLM Instruction Memorandum 2004-089, Policy for Reasonably Foreseeable Development (RFD) Scenario for Oil and Gas (Jan. 16, 2004) indicates that it expired on September 30, 2005, but the actual text of the Instruction Memorandum states that "This policy becomes effective upon date of issuance and remains in effect until cancelled or amended." See BLM Instruction Memorandum 2004-089, Policy for Reasonably Foreseeable Development (RFD) Scenario for Oil and Gas (Jan. 16, 2004), pg. 1. Devon, therefore, assumes Instruction Memorandum 2004-089 is still in effect.

as practices and economics associated with discovering and producing oil and gas.” See I.M. 2004-089, Attachment 1-3.

The Secretary of the Interior, through the IBLA, has made clear in at least nine separate decisions—mostly involving development in Wyoming—that the RFD Scenario is not a planning decision, nor is it a limit on future development.⁵ *Wyoming Outdoor Council, et al.*, 176 IBLA 15, 45 (2008); *Biodiversity Conservation Alliance, et al.*, 174 IBLA 1, 9 - 13 (2008) (holding with respect to the Great Divide RMP that the RFD Scenario is not a limitation on development); *Deborah Reichman*, 173 IBLA 149, 157 - 158 (2007) (holding with respect to the Dakota Prairie Grasslands Little Missouri National Grasslands RMP that the RFD Scenario is not a limitation on development); *National Wildlife Fed'n*, 170 IBLA 240, 249 (2006) (holding with respect to the Great Divide RMP that the RFD Scenario is not a limitation on development); *Wyoming Outdoor Council, et al.*, 164 IBLA 84, 99 (2004) (holding with respect to the Pinedale RMP that the RFD Scenario does not establish “a point past which further exploration and development is prohibited”); *Southern Utah Wilderness Alliance*, 159 IBLA 220, 234 (2003) (holding that the Book Cliffs RMP did not establish a well limit); *Theodore Roosevelt Conservation Partnership, et al.*, IBLA Docket No. 2007-208, Order at *22 (Sept. 5, 2007); *Wyoming Outdoor Council, et al.*, IBLA Docket No. 2006-155, Order at *26 - 27 (June 28, 2006) (determining RFD Scenario for Pinedale RMP is not a limitation on future development); *Biodiversity Conservation Alliance, et al.*, IBLA No. 2004-316, Order at *7 (Oct. 6, 2004) (citing *Southern Utah Wilderness Alliance*, 159 IBLA at 234) (holding with respect to the Great Divide RMP that the “RFD scenario cannot be considered to establish a limit on the number of oil and gas wells that can be drilled in a resource area.”).

Even more recently, two federal courts, in rulings about oil and gas development in Wyoming, confirmed that the RFD Scenario is not intended as a limit on oil and gas development. First, the United States District Court for the District of Columbia recently affirmed the Secretary’s position that the RFD Scenario is not a limit on future development in a case regarding oil and gas development in the Atlantic Rim Project Area. *Theodore Roosevelt Conservation Partnership v. Salazar*, 605 F.Supp.2d 263, 283 (D.D.C. 2009). The trial court’s determination was again affirmed by the United States Court of Appeals for the District of Columbia Circuit, a decision that can only be overturned by the Supreme Court of the United States. In the recent decision, the federal appellate court determined, again in a project about oil and gas development on federal lands in Wyoming, that the RFD scenario is merely an analytical tool, not “a point past which further exploration and development is prohibited.” *Theodore Roosevelt Conservation P’ship v. Salazar*, 616 F.3d 497, 509 (D.C. Cir 2010). Nonetheless, multiple appeals are pending before the IBLA and federal courts across the nation. Groups opposed to continued energy development persist in arguing the RFD Scenario as a cap to preclude further domestic energy development.

As indicated by the number of decisions cited above, the purpose of the RFD Scenario continues to be a source of confusion and litigation. Even now appeals are pending before the IBLA and federal courts across the nation in which groups opposed to continued energy development are attempting to argue the RFD Scenario as a cap to preclude further domestic

⁵ The IBLA is the authorized representative of the Secretary of the Interior, 43 C.F.R. § 4.1, and is the final decision-maker for the Department of the Interior. See 43 C.F.R. § 4.21(d), 4.403 (2008). See also *the Morgan Corp.*, 120 IBLA 245, 252 (1991) (describing the authority of the IBLA).

energy development. In other field offices in Wyoming and Colorado, the BLM continues to express concern about the RFD scenario and whether it serves as a cap on development.

Thus, the BLM must carefully explain to the public that the RFD Scenario is not a cap or limitation on future development. In the most recent published decision from the IBLA regarding the RFD Scenario, the IBLA unequivocally determined that the RFD Scenario is not, and cannot be used as, a limitation on future oil and gas development. "While an important tool in the land use planning process, RFD scenarios do not constitute fixed or maximum limits on development under FLPMA such that exceeding them constitutes a violation of that statute." *Biodiversity Conservation Alliance, et al.*, 174 IBLA 1, 11 (2008).

In order to prevent future litigation and appeals, the BLM must include language in the Record of Decision and the Lander RMP describing the purpose of the RFD Scenario and the fact that the RFD Scenario is not a planning decision or limitation on future oil and gas development. Instruction Memorandum 2004-089, Policy for Reasonably Foreseeable Development (RFD) Scenario for Oil and Gas (Jan. 16, 2004). For example, the BLM could expressly adopt and incorporate the position the Secretary of the Interior, through the IBLA, has expressed regarding the RFD Scenario in a recent published opinion:

Noting that an RFD scenario is an analytical tool, we expressly rejected both the idea that it establishes a point past which further exploration and development is prohibited, and the assumption that the underlying environmental analysis has no validity beyond the RFD scenario. In rejecting that assertion, we implicitly agreed with BLM that an RFD scenario is neither a planning decision nor the No Action Alternative in the NEPA document.

National Wildlife Federation, et al., 170 IBLA 240, 249 (2006) (internal quotations and citations omitted). The BLM must carefully draft any and all references to the RFD Scenario in the Lander RMP and accompanying EIS.

It is particularly important for the BLM to accurately describe that the RFD Scenario is not a limit on future oil and gas development within the Lander Planning Area because it appears the RFD Scenario for the Lander Planning Area is too low. The BLM currently anticipates that as many as 2,566 wells (not including coalbed natural gas) could be drilled in the Planning Area during the next 20 years. In addition to Devon's proposed coalbed natural gas and oil and gas development activities within the Beaver Creek Unit, there is the potential drilling and development of 228 coalbed natural gas wells and conventional wells within the existing Beaver Creek Unit. Devon additionally understands that Encana Oil & Gas (USA), Inc. ("Encana"), Burlington Resources Oil & Gas Company LP ("Burlington"), and Noble Energy, Inc. ("Noble") have proposed the drilling and development of approximately 4,200 wells within existing federal units and other lands surrounding Lysite, Wyoming. Although a portion of these wells will be located within the Casper Field Office boundaries, it, nonetheless, appears the BLM's RFD Scenario for the Lander Planning Area may have underestimated the potential for future oil and gas development within this region.

3.4.6 - Fish and Wildlife Resources - Wildlife

The BLM should ensure that the wildlife maps provided in the Lander RMP/DEIS, including Maps 29 through 35, are consistent with the most recent, and most accurate, WGF

maps. In particular, the BLM must ensure that its crucial habitat maps for big game species are entirely consistent with the WGFD critical range maps. Both the BLM and WGFD must also ensure that its maps are entirely accurate, and scientifically supportable.

The BLM indicates in Chapter 3 that mule deer populations have declined because of decline in habitat quality and quantity. Lander DRMP/EIS, pg. 356. The BLM has not, however, provided sufficient data to support this analysis. Researchers in Colorado have attributed decline in Colorado mule deer populations primarily to competition from increased populations, loss of vegetation by overgrazing by deer in the 20th Century, and the loss of habitat due to farmland conversion. R. Bruce Gill, Colorado Division of Wildlife. 1999. *Declining Mule Deer Populations in Colorado: Reasons and Responses*. Importantly, mule deer populations in the area appear to be increasing. Devon hopes this trend continues and will continue to work with BLM to reduce potential impacts to big game.

Section 3.4.9 - Special Status Species - Wildlife

The BLM suggests that the Mountain Plover is still a proposed threatened species in the Lander DRMP/EIS. Lander DRMP/EIS, pg. 371. The USFWS published a withdrawal of the proposed listing of the Mountain Plover on May 12, 2011. 76 Fed. Reg. 27756 (May 12, 2011). The BLM should update this information in the final EIS for the Lander RMP.

The BLM identifies a 2008 Wyoming Office of the Governor Executive Order as the most recent guidance from the State of Wyoming regarding sage-grouse. In fact, two Executive orders have been issued since 2008 that each replaced the 2000 Order. As the BLM is aware, the current Governor of Wyoming issued an updated Executive Order regarding sage-grouse management in 2011 that should be analyzed and incorporated into the Lander RMP. Wyoming Executive Order No. 2011-5 (June 2, 2011).

The BLM appropriately acknowledges that in the 2000s, sage-grouse populations in the Planning Area increased as a result of precipitation events. Lander DRMP/EIS, pg. 370. Ongoing mitigation efforts for sage-grouse developed by the BLM, WGFD, and oil and gas operators have undoubtedly also contributed to the increased populations and should be noted in the Lander RMP.

In addition to the studies noted and identified in the Lander DRMP/EIS, the BLM should specifically reference and incorporate the findings of the Conservation Assessment of Greater sage-grouse and Sagebrush Habitats from the Western Association of Fish and Wildlife Agencies (2004). Although the document is included in Chapter 6 of the Lander DRMP/EIS, at least one federal court recently criticized the BLM in Wyoming for not referencing the study more prominently in another RMP in Wyoming. Although the court's decision seems bizarre, there is no reason to create potential appealable issues for the Lander RMP.

Section 3.5.1 - Cultural Resources

In its discussion of cultural resources, the BLM appropriately recognizes that almost all of the compliance investigations of prehistoric cultural resources in the Planning Area in the past 30 years have been associated with proposed development projects. Lander DRMP/EIS, pg. 392. Most likely virtually all of these proposed development activities have been associated with oil and gas operations. The BLM should acknowledge that oil and gas

development has contributed to significant scientific and cultural discoveries over the past 30 years in the Planning Area and across the State of Wyoming as a whole.

On page 393 of the Lander DRMP/EIS the BLM indicates that it entered into a programmatic agreement with the advisory council on historic preservation (“ACHP”) and the National Conference of State Historic Preservation Officers (“NCSHPO”) in 1997 but the citation said Memorandum of Understanding (“MOU”) is dated 2006. Lander DRMP/EIS, pg. 393. The BLM should clarify when the MOU is updated so that a reviewer accurately understands how the MOU may impact operations within the Lander Planning Area.

Devon disagrees with the BLM’s statement in the Lander DRMP/EIS that continued Wyoming oil and gas exploration will increase “pressures” on cultural resources. As the BLM has already noted in the Lander DRMP/EIS, there are oil and gas operations that have actually lead to significant historical discoveries within the Planning Area. Lander DRMP/EIS, pg. 392. The statement on page 397 of the Lander DRMP/EIS does not acknowledge the significant mitigation measures operators in the Planning Area engage in prior to any surface disturbing activities. Devon additionally disagrees with the BLM’s position that setting is critical to the protection of historic trails and roads. That mindset is not justified and may allow the BLM to unreasonably and unnecessarily restrict oil and gas operations.

Section 3.5.3 - Visual Resources

Devon appreciates BLM’s acknowledgement that the recent advances in mitigation techniques and greater awareness of VRM resources has been upward, benefitting visual resources. Lander DRMP/EIS, pg. 404. Devon and other oil and gas operators in the area strive to ensure their potential physical impact is reduced to the greatest extent possible, while still honoring valid, existing rights and the need to effectively develop oil and gas resources.

Section 3.7.1 - Congressionally Designated Trails

As discussed above, Devon believes BLM’s current management for historic trails is adequate. The BLM has historically protected an area within one-quarter mile on an area slightly beyond the one-quarter mile or visual horizon, whichever is less setting of the trails. Anything larger than this buffer is unreasonable and unnecessary, especially given the current location of highways and county roads along existing trails in the Planning Area.

The BLM does not include a clear map for the national historic trails ACEC under Alternatives A or D. See Lander DRMP/EIS, Map 132; Map 127. The BLM should include a more definite map of the national historic trails ACEC so operators and other parties can adequately understand how the existing ACEC or the proposed expansion thereof will impact potential operations.

Section 3.7.4 - Areas of Critical Environmental Concern

As already discussed, Devon does not support the creation of any additional ACECs within the Lander Planning Area. The BLM has adequately described and protected sufficient lands with the ACEC designation and has not justified the creation or expansion of additional ACECs at this time.

Section 3.8 - Socioeconomic Resources

As the BLM acknowledges in the Lander DRMP/EIS, the oil and gas industry contributes substantially to state and local tax revenues. Lander DRMP/EIS, pg. 489. Severance tax and royalties in the Planning Area have resulted in substantial economic benefits to the local counties and the State of Wyoming. Each of the counties within the Planning Area earned millions from production and the State of Wyoming earned billions in revenue from the Planning Area over the years. Lander DRMP/EIS, pgs. 491 - 523. The disbursement of federal mineral royalties to Planning Area counties has also substantially added to their coffers. The BLM should do everything in its authority to promote oil and gas development, not restrict it within the Planning Area. Although recreation also contributes some revenue, the amounts are far less. Lander DRMP/EIS, pg. 522.

Devon appreciates the BLM's acknowledgement that oil was discovered near Riverton, Wyoming in 1918 and that other oil and gas was discovered in the Planning Area in 1884. Lander DRMP/EIS, pg. 483.

CHAPTER 4 - ENVIRONMENTAL CONSEQUENCES

Section 4.1.1 - Air Quality

The BLM indicates in Section 4.1.1.1 that emission factors used to measure proposed emissions within the Lander Planning Area were obtained using a variety of sources including EPA, WDEQ, and the American Petroleum Institute. The Lander DRMP/EIS also suggests information from WDEQ's 2010 air quality rules was utilized. Lander DRMP/EIS, pg. 543 - 544. The BLM should clarify whether it utilized best available control technology ("BACT") standards from 2011 or earlier standards. The WDEQ recently completed a rule making significantly modifying and reducing BACT standards in Wyoming. These new standards will undoubtedly reduce emissions from oil and gas projects. To the extent the BLM has not utilized the most recent BACT information, the information contained in Chapter 4 and in Appendix U will not be accurate.

The BLM discussed that air quality impacts would primarily result from minerals development and production, and oil and gas activities. Lander DRMP/EIS, pgs. 543, 547. In fact, previous modeling performed by the State of Wyoming, EPA, and the Forest Service suggested that 90% of the air quality impacts at the Bridger Wilderness Area are attributable to distant forces outside of Wyoming, and not local sources within Wyoming. *See The Southwest Wyoming Regional Calpuff Air Quality Modeling Study: Final Report ("SWWYTAF")* (February 2001). Oil and gas development may contribute to emissions in the region, but the SWWYTAF study indicates that the overwhelming majority of sources that impact air quality in Wyoming, and particularly the Bridger Wilderness Area south of the Planning Area, are outside of Wyoming. The BLM should correct this information in the final EIS.

The BLM properly recognizes that WDEQ has the authority to implement emission controls for sources recording air pyramids under Wyoming Air Quality Standards and Regulations. Lander DRMP/EIS, pg. 548. The BLM should not interfere with WDEQ's authority or attempt to regulate air emissions in Wyoming.

Devon is concerned that the BLM statements on page 548 of the Lander DRMP/EIS indicate it will impose mitigation measures to minimize potential adverse impacts to air quality from development projects. Lander DRMP/EIS, pg. 548. As discussed extensively above, the BLM does not have direct authority over air quality emissions within the State of Wyoming. Such authority is reserved exclusively to the WDEQ and EPA pursuant to the Clean Air Act. BLM should not attempt to implement air quality control measures beyond its authority either through this planning document or through Lander project-level decisions.

Devon agrees with the BLM's conclusion that implementation of any of the alternatives will not likely cause or contribute to any exceedance of a national or state ambient air quality standard. Oil and gas operators such as Devon strive to reduce emissions to the extent possible and the WDEQ has developed some of the most comprehensive and rigorous air quality controls anywhere in the United States.

The BLM must ensure that its proposed Lander Air Resources Management Plan in Appendix F is entirely consistent with the EPA MOU entered into by the Department of the Interior, the Department of Agriculture and the EPA earlier this year. The language on page 548 and 570 of the Lander DRMP/EIS appears to contradict portions of the EPA MOU that allow the BLM, in consultation with EPA, not to require air quality modeling for specific, smaller oil and gas development projects. Nothing in the Lander RMP should in any way conflict with the agreement reached by the Department of the Interior, the Department of Agriculture and the EPA in the MOU.

Devon understands that the BLM may be receiving increased pressure from the EPA for the BLM to prepare a quantitative model addressing potential impacts of oil and gas development within the Planning Area during the revision to the Lander RMP. As the BLM is aware, the United States Department of Agriculture, the United States Department of the Interior, and the United States Environmental Protection Agency recently entered into a Memorandum of Understanding Regarding Air Quality Analyses and Mitigation for Federal Oil and Gas Decisions through the NEPA process ("Air Quality MOU"). Pursuant to the terms of the Air Quality MOU, it does not apply to the Lander DRMP/EIS because it was issued within the transition period provided for in the Air Quality MOU. See Air Quality MOU Section X, C. Further, the Air Quality MOU should not be applied to the Lander RMP Final EIS because it would not be cost effective to do so. The Air Quality MOU specifically allows for agencies not to comply with the time consuming and expensive modeling required by the Air Quality MOU if it is not cost effective or timely to implement the procedures of the Air Quality MOU. *Id.* Given the lack of air quality analysis or emission inventories for the Lander Planning Area, it would require substantial time, effort, and funds for the BLM to gather the necessary data to develop an adequate model. And given current funding shortages for the BLM--and its numerous other responsibilities--it would not be responsible or appropriate for the BLM to attempt to comply with the Air Quality MOU for the Lander RMP Process. Further, as discussed elsewhere in these comments, given the BLM's lack of authority over air quality it would not be a responsible or appropriate use of BLM's efforts or funds to develop a model at this point in time. As noted by the BLM, the agency is already developing a significant model to analyze potential impacts of oil and gas development in the Planning Area.

Finally, as also recognized by the Air Quality MOU, the CEQ regulations implementing NEPA do not require agencies to develop information that is not reasonably available. 40 C.F.R. § 1502.22. Rather, when the agency is faced with a situation where it does not have

complete information, the agency is merely required to inform the public about the inadequate data and explain why it would not be feasible to develop such data. *Id.* Given the lack of emissions data or available information regarding air quality in the Planning Area, the BLM has adequately explained why modeling is not required at this time. Lander DRMP/EIS, pg. 547.

Section 4.1.3 - Soils

The BLM states on page 577 of the Lander DRMP/EIS that it assumes erosion rates following surface-disturbing activities return to background levels within three to five years following full reclamation. Lander DRMP/EIS, pg. 577. The BLM has not adequately justified or explained this statement. Given the State of Wyoming's extensive stormwater control and prevention measures, and the BLM's rigorous reclamation requirements, it seems entirely inaccurate to assume that erosion rates will continue within three to five years following full reclamation. Wyoming's stormwater permitting procedures require full Stormwater Pollution Prevention Plans ("SWPP") for surface disturbing activities of virtually any size. WDEQ Rules, Chapter 2, Section 6. These plans will fully protect and prevent unnecessary erosion. Additionally, after full reclamation it is very unlikely there will be any soil erosion caused by surface disturbing activities. The BLM should justify and include its explanation for this statement.

As discussed earlier, Devon is opposed to the management action or Alternative B that would prohibit surface-disturbing and disruptive activities in LRP areas. Lander DRMP/EIS, pg. 584. Oil and gas operators such as Devon have demonstrated their commitment to reclamation activities and are confident that they can adequately reclaim even in LRP areas. Devon is additionally opposed to the prohibitions in Alternative B that would prevent surface-disturbing activities on slopes in excess of 15%. Lander DRMP/EIS, pg. 584. As already noted, Devon and other oil and gas operators have developed appropriate means to mitigate and reclaim these areas.

Section 4.1.4 - Water

The BLM does not appropriately recognize that the State of Wyoming has primacy regarding water, water quality, and discharge within the Lander Planning Area. The BLM should clearly and carefully state in the final EIS for the Lander RMP that the WDEQ has primacy over water quality issues within the State of Wyoming. The BLM should also more clearly recognize that under all Alternatives, the implementation, inspection, and maintenance of SWPP as required by the WDEQ would minimize sedimentation in watersheds. Finally, the BLM should remind the public that reclamation plans are currently required for all oil and gas operations under Onshore Order No. 1. The BLM should quantify or explain how or why it believes the reclamation plan as required under Alternative D will increase reclamation success over that already required on federal lands.

Devon disagrees with the BLM's statement on page 595 of the Lander DRMP/EIS that oil and gas techniques such as stimulation methods can directly impact ground water. Lander DRMP/EIS, pg. 595. To date, as recognized by the Secretary of the Interior, there are no confirmed instances of oil and gas stimulation methods directly impacting ground water resources. The BLM has provided no analysis or support for this assertion and it should be removed from the final EIS for the Lander RMP. It is irresponsible and inappropriate for the

BLM to make inaccurate and unsupported assertions in a public document such as the Lander DRMP/EIS.

Section 4.1.6 - Lands with Wilderness Characteristics

Devon is opposed to the BLM's proposed management of so-called lands with wilderness characteristics or the expansion of ACECs under Alternatives B or D. Vast portions of these areas have already been leased for oil and gas development. The BLM cannot attempt to limit oil and gas operations on existing leases within lands with wilderness characteristics. The BLM must allow the leases to be developed pursuant to the terms of the existing stipulations and cannot attempt to impose COAs or other mitigation measures that are inconsistent with existing lease rights. As noted repeatedly above, the BLM is required to honor all valid and existing rights. Further, the Secretary of the Interior and federal courts have interpreted "valid and existing rights" to mean the BLM cannot impose stipulations or COA to limit development on existing oil and gas leases making them uneconomic or unprofitable. See *Connor v. Burford*, 84 F2d. 144, 149 - 50 (9th Cir. 1988). Devon is opposed to the BLM's proposal under Alternatives B and D to create new lands with wilderness characteristics or the BLM's attempt to impose unreasonable mitigation measures or COAs on existing leases in the Planning Area.

Section 4.2.4 - Leasable Minerals - Oil and Gas

Devon is disappointed that under all Alternatives other than Alternative A, the BLM intends to close more areas to oil and gas development than currently allowed under the current RMP. Lander DRMP/EIS, pg. 636. Devon is concerned that the BLM intends to impose significantly more restrictions on oil and gas development under Alternative B, Alternative C, and Alternative D than under the existing Lander RMP. *Id.* As described in more detail throughout these comments, Devon believes the BLM is unreasonably limiting oil and gas development under Alternatives B, C, and D and encourages the BLM to consider less restrictive management measures for oil and gas development.

The BLM recognizes on page 637 of the Lander DRMP/EIS that an oil and gas lease grants a lessee the rights and privileges to drill for, extract, remove, and dispose all oil and gas deposits on leased lands subject to the terms and conditions incorporated in the lease. Lander DRMP/EIS, pg. 637. The BLM should also remind the public that oil and gas operators are required to ensure maximum recovery of oil and gas deposits from their leasehold as well. 43 C.F.R. § 3162.1(a).

The BLM very appropriately recognizes in Section 4.2.4.2 that the RFD projected for oil and gas does not limit or cap the number of wells that can be drilled in the Planning Area. Lander DRMP/EIS, pg. 637. Throughout Section 4.2.4, the BLM relied on its estimated RFD to project potential impact on oil and gas development on other resources in the Lander RMP. If development exceeds the RFD in the Planning Area, the analysis in Section 4.2.4 is not necessarily invalidated. Rather, the BLM must evaluate whether the impacts from additional development have been adequately analyzed in Section 4.2.4 or, alternatively, whether additional environmental review is required. *National Wildlife Federation*, 170 IBLA 240, 249 (2006). The BLM should expressly state in the final EIS for the Lander RMP that the RFD is not a limit on development, and that any development in excess of the RFD will not necessarily result in impacts beyond those analyzed in Section 4.2.4.

The BLM describes areas of having high oil and gas potential if there is a potential for more than 100 wells per township. The BLM describes areas of moderate potential as having between 20 and 100 wells per township. Lander DRMP/EIS, pg. 638. Although such descriptions were generally true for traditional vertical oil and gas development, the same is not true for more recent horizontal development. More and more often oil and gas operators are often drilling long horizontal well bores capable of developing a single 640 acre section with a single well bore. As such, an extremely prolific area may have only 36 oil and gas wells within an entire township, yet it will be fully and effectively developed. In addition to the traditional analysis, the BLM should recognize that estimating oil and gas development potential by wells per township is not, necessarily, accurate given recent advances in technology. Instead, the BLM should focus on the oil and gas potential in terms of oil and gas in place ("OGIP") and estimated ultimate recovery ("EUR").

Devon appreciates the BLM's statement in Section 4.2.4.2 that the BLM cannot retroactively apply new stipulations or restrictions on valid existing leases. Lander DRMP/EIS, pg. 638. The BLM should also recall that it cannot impose unreasonable restrictions on development either when leases were issued without stipulations.

The BLM indicates in Section 4.2.4.2 that it intends to apply site-specific COAs on applications for permits to drill on existing leases through project specific revisions. Lander DRMP/EIS, pg. 638. The BLM cannot utilize COAs to attempt to modify or constrain valid existing rights. The Secretary of the Interior and the federal courts have interpreted the phrase "valid existing rights" to mean that BLM cannot impose stipulations or COAs that make development on the existing leases either uneconomic or unprofitable. *See Utah v. Andres*, 486 F.Supp. 995, 1011 (D Utah 1979); *Connor v. Burford*, 84 F.2d 1441, 1449-50 (9th Cir. 1988); 43 C.F.R. § 3101.1-2 (BLM can impose only "reasonable mitigation measures . . . to minimize adverse impacts . . . to the extent consistent with lease rights granted"). The BLM cannot attempt to impose unreasonable mitigation measures or COAs on Devon's existing leases within the Lander Planning Area; the BLM must fully and completely honor all valid existing rights. Because the authority conferred in FLPMA is expressly made for the development of valid existing rights, 43 U.S.C. § 1701 note, an RMP prepared pursuant to FLPMA after lease execution and after drilling and production are commenced is likewise subject to existing rights. *Colorado Environmental Coal., et al.*, 165 IBLA 221, 228 (2005). The Lander RMP, when revised, cannot defeat or materially restrain Devon's valid existing rights to develop its leases. *Colorado Environmental Coal., et al.*, 165 IBLA 221, 228 (2005) (citing *Colorado Environmental Coal.*, 135 IBLA 356, 360 (1996) *Aff'd*, *Colorado Environmental Coal. v. Bureau of Land Management*, 932 F.Supp. 1247 (D.Colo. 1996)).

It is not entirely clear whether BLM identifies a VRM Class II restriction as a major or moderate constraint on oil and gas development. Lander DRMP/EIS, pgs. 638, 642. Given the extreme restrictions on oil and gas development within VRM Class II areas including no surface occupancy restrictions, Lander DRMP/EIS, Record No. 5034, pg. 124, Devon urges the BLM to treat VRM Class II restrictions as a major restriction on oil and gas development, not a moderate restriction. In the final EIS for the Lander RMP, the BLM should appropriately recognize Class II restrictions as a major restriction on oil and gas development and adjust its analyses under all the Alternatives in accordance with this recognition.

Devon questions whether the BLM has provided for adequate surface disturbance in Table 4.2 for the RFD Scenario. Lander DRMP/EIS, pg. 638. As the BLM is aware, oil and gas operators are currently utilizing horizontal development techniques in Wyoming to develop and produce oil and gas from shale or other formations that previously could not be developed. The use of horizontal drilling techniques, however, requires the creation of much larger individual well pads than traditional vertical or directional development. Although the number of actual wellbores may be less and, as noted above, as little as one well pad per section, individual well pads are often significantly larger—as large as ten or twelve acres in size prior to interim reclamation. The larger well pad size is necessary to accommodate larger drilling rigs utilized for horizontal development and to accommodate the significant amount of equipment necessary for large stimulation and hydraulic fracturing processes necessary to develop these resources. As many as 100 individual tanks may be necessary to store the water, sand, and other materials necessary to hydraulically fracture a single horizontal well. The BLM should account for this additional disturbance in its RFD Scenario to ensure that it has adequately and properly analyzed potential impacts on oil and gas development in the Lander DRMP/EIS.

The BLM again suggests through Chapter 4 it intends to impose additional mitigation measures on exploration and development activities, or COA on operations in areas that have been designated unavailable for leasing in the revised RMP in order to exclude surface occupancy and restrict surface disturbance. See, e.g. Lander DRMP/EIS, pg. 642. As discussed above, the BLM has no authority to impose COAs or other mitigation measures on valid existing rights. Even in areas where the BLM has determined that lands should not be available for leasing in the revised Lander RMP, the BLM cannot limit surface use and occupancy. Doing so constitutes a taking of valid property rights in contravention of federal law and the Constitution of the United States. The BLM should remove these egregious and legally incorrect statements from the Lander RMP.

Devon further remains opposed to the BLM's proposition under Alternative B to expand seasonal wildlife restrictions to operation and maintenance activities. Lander DRMP/EIS, pg. 649. Such a restriction is unreasonable and untenable. Further, Devon does not believe the BLM has adequately described the potentially adverse impacts such a restriction would have on oil and gas operations. Rather than a simple loss of revenue, the proposed measure could effectively eliminate all oil and gas development within a huge portion of the Lander Planning Area. Operators would be hesitant to purchase leases or drill wells if they would be unable to adequately and safely maintain such assets. Such a restriction would additionally lead to significant losses of revenue for the local, state and federal treasuries as well as significant losses in regional jobs. The BLM must more accurately describe these impacts in the Lander DRMP/EIS.

Additionally, the BLM has not adequately described the potential impacts the protective restrictions for sage-grouse would have upon oil and gas development. The significant timing in NSO limitations proposed under Alternative B would effectively eliminate oil and gas development across large portions of the Planning Area. The BLM's extremely unreasonable restrictions may have significant detrimental impacts to oil and gas development. The BLM must more accurately describe these impacts in the RMP so the public is aware of the significant losses of revenue and jobs caused by the BLM's proposed management activities. Lander DRMP/EIS, pgs. 648 - 649.

Devon is very concerned about the significant decrease in the RFD Scenario under Alternatives D and B. This would result in significant loss of revenue for the state, local, and federal treasuries as well as loss of regional employment. The BLM should not authorize such significant decrease in oil and gas development across the Planning Area.

Devon continues to remain concerned regarding the BLM's restrictive management for oil and gas operations under Alternative D. Under Alternative D, the BLM closes or places major restrictions on almost two million acres within the Lander Planning Area. The BLM places similar restrictions or closures for geophysical operations. Lander DRMP/EIS, pg. 653. Devon appreciates the BLM's efforts to manage areas with high oil and gas potential with fewer restrictions, but is concerned that the BLM has ignored increased potential for oil and gas development as a result of changing technology and new geologic information. Devon remains opposed to BLM's proposed expansion of seasonal protections for wildlife to include operation maintenance activities. Lander DRMP/EIS, pg. 656. Rather than minor economic consequences as assumed by the BLM, this restriction could significantly curtail both investment and future leasing and investment in development both in the Lander Planning Area. Operators would be unwilling to invest the millions of dollars necessary to conduct oil and gas operations if they fear they will be unable to undertake maintenance activities necessary to ensure wells are safely and effectively producing.

Section 4.4.6 - Fish and Wildlife Resources - Wildlife

The BLM describes the potential impacts from oil and gas operations to big game species in the Lander DRMP/EIS. See e.g. Lander DRMP/EIS, pgs. 796 - 797. The BLM does not, however, include information regarding how species habituate to oil and gas activities. See Reeve, A.F. 1984, *Environmental Influences on Pronghorn Range and Pronghorn Habitat*, PhD Dissertations, Erv, Irby, L.R., et al., 1984; "Management of Mule Deer in Relation to Oil and Gas Development in Montana" *Proceedings III: Issues in Technology in the Management of the Impact to Wildlife*. The BLM should update the RMP with this information. As currently drafted, the RMP unfairly describes impacts to big game species from oil and gas activities.

Devon is concerned about the number of acres closed to ROW development under Alternative D. The BLM proposes to close approximately 80% of the Planning Area with ROW exclusion area restrictions. These restrictions are significant and could unreasonably curtail oil and gas development within the Planning Area. Obviously if an operator is unable to access its leasehold, it is prevented from developing oil and gas resources. Lander DRMP/EIS, pg. 819. Devon is additionally concerned about the significant number of lands closed to oil and gas leasing development under Alternative B and the huge increase in new ACECs all of which may unreasonably restrict oil and gas development.

As discussed earlier, Devon is concerned with the language under Alternative D that would require surface-disturbing activities be minimized to the smallest footprint practical to minimize the impacts to wildlife from habitat loss and fragmentation. Lander DRMP/EIS, pg. 830. Devon is concerned that this language could be used to unreasonably limit oil and gas activities and serve as a tool for opponents of oil and gas development to challenge oil and gas development authorizations. In addition to safety and maintenance issues requiring a larger footprint, the BLM should also maximize its flexibility by indicating that surface serving operations will consider a maximization of oil and gas resource recovery.

Devon continues to support the designation of DDAs in the Beaver Creek area. Lander DRMP/EIS, pg. 830. As noted earlier, Devon does, however, believe that BLM should allow exceptions for sage-grouse and other special status species at the discretion of the BLM. This will ensure the BLM has maximum flexibility when approving oil and gas operations within the Lander Planning Area. Often allowing operators to infringe upon the restrictive seasons will actually allow operators to complete development within a single season rather than spreading development out over multiple seasons. This undoubtedly leads to additional benefits for all potentially impacted wildlife species.

The BLM should also modify its restrictions on surface-disturbing activities within 500 feet of water and riparian wetland areas outside of DDAs. Lander DRMP/EIS, pg. 832. Devon fully supports the need to protect riparian and wetland areas, but the BLM should ensure it has sufficient management flexibility to authorize such activities when necessary for oil and gas operations or when adequate mitigation measures can be imposed to protect the resources.

Section 4.4.9 - Special Status Species - Wildlife

Devon generally supports the management action for sage-grouse codified in Wyoming Governor's Executive Order 2011-5, Greater Sage-Grouse Core Area Protection, and urges the BLM only to adopt an Alternative that specifically enforces this management action. The Department of the Interior recently recognized the suitability and appropriateness of the Wyoming Governor's sage-grouse strategy in BLM Instruction Memorandum 2012-043 (Dec. 27, 2011), which specifically endorses and recognizes the appropriateness of the Wyoming sage-grouse strategy. Devon only supports an Alternative in the Lander RMP that specifically and unequivocally codifies the Governor's sage-grouse strategy.

The BLM states on page 865 that all Alternatives require surface-disturbing activities and facilities to have the smallest footprint possible to minimize the impacts of habitat loss and fragmentation. Lander DRMP/EIS, pg. 865. The statement is not, however, consistent with the language on page 822 of the Lander DRMP/EIS and the description of Alternative C. The BLM should correct this inconsistency in the final EIS for the Lander RMP.

Devon remains opposed to the unreasonable timing and controlled surface occupancy restrictions proposed under Alternative B. Extending the timing limitation buffer around raptor nests to 1.5 miles is excessive and unnecessary. Lander DRMP/EIS, pg. 881. The BLM has not provided any analyses demonstrating such a restriction is necessary. Additionally, the BLM's proposal to increase the protection for sage-grouse habitat is also excessive and unnecessary. A 600% increase in habitat protected under Alternative B as compared to Alternative A has not been justified. Further, the BLM's proposal to limit noise from facilities to 10 decibels above natural ambient noise levels is extremely restrictive and has not been adequately justified. Lander DRMP/EIS, pg. 882.

Devon remains vehemently opposed to the proposal under Alternative D to extend seasonal protections for greater sage-grouse, Mountain Plover and raptor species for operation and maintenance activities outside DDAs. Lander DRMP/EIS, pg. 903. Such a prohibition reduces the BLM's management flexibility and may unreasonably interfere with oil and gas operations. In order for Alternative D to be in any way acceptable or workable, the BLM must ensure it has sufficient flexibility to authorize oil and gas activities to the greatest extent

possible within DDAs. The vast majority of the Lander Planning Area is subject to significant restrictions and limiting the number of restrictions within DDAs is the only means by which the BLM can continue to abide by a fair and balanced multiple use regimen.

Section 4.5 - Heritage and Visual Resources

The BLM should acknowledge that the knowledge of cultural resources can increase with oil and gas development. As surface disturbing operations are proposed and necessary research and consultation is conducted pursuant to NEPA, the National Historic Preservation Act, and other laws, the BLM often gains significant additional information. The BLM should revise its analyses in Chapter 4 to clearly indicate to the public that oil and gas development often leads to potential beneficial impacts to cultural resources, not just potential negative impacts.

As discussed earlier, the BLM needs to prepare additional maps and analyses regarding visual resource management. As currently drafted, the Lander DRMP/EIS suggests that the BLM's VRM classifications will be applied to BLM lands as well as State of Wyoming and private lands within the Planning Area. Obviously, the BLM has no authority over either State of Wyoming or private lands and, thus, all references to those classifications on private and state lands should be removed. Further, the BLM should describe how operators such as Devon work with the BLM, the State of Wyoming, and private land owners to minimize potential visual impacts from oil and gas operations where appropriate. Given recent mitigation measures and BMPs, operators are often able to significantly reduce the potential visual impacts associated with oil and gas operations.

When proposing VRM restrictions in areas already leased for oil and gas development, the BLM cannot attempt to impose new VRM objectives on operations on existing leases. The IBLA has clearly recognized that the BLM cannot impose VRM objectives inconsistent with lease rights, and that BLM must consider the impacts of oil and gas operations and existing leases when developing VRM objectives during the planning process. *Southern Utah Wilderness Alliance, et al.*, 144 IBLA 70, 84 - 88 (1998). The BLM cannot impose VRM objectives without considering existing leases and ongoing oil and gas operations. Because the BLM failed to consider the number and nature of existing leases when preparing its visual resource assessment for the Lander Planning Area, the BLM must revise and redo its analyses. The BLM must correctly account for all oil and gas developments and, as recognized by the IBLA in the *Southern Utah Wilderness* case cited above, the BLM must not impose VRM restrictions higher than VRM Class III on existing leases.

Additionally, the BLM has not justified why visual resource inventory ("VRI") areas would ever be designated as VRM Class II. Designating a VRI Class III or IV area with greater protections than currently exist or have been justified is unnecessary and unreasonable. Lander DRMP/EIS, pgs. 954, 956. The BLM should not impose VRM classifications with VRI classifications of III or IV under either Alternative B or D.

Section 4.6.2 - Renewable Energy

The BLM indicates on pages 969 and 970 that a 5% surface disturbance cap applies under Alternative D for energy development. Devon is opposed to any surface disturbance caps imposed in the Lander RMP. There is also no clear source of this limitation other than its

general reference in Chapter 4. Does it apply to conventional energy development as well? Such restrictions are unreasonable and unnecessary and unreasonably limit the BLM's management flexibility. The BLM must remove any and all language regarding surface disturbing caps in the Lander RMP except as they pertain to sage-grouse core areas.

Section 4.6.3 - Rights-of-Way and Corridors

Overall, Devon supports the BLM's proposed management for ROW corridors under Alternative C because it ensures the most flexibility for future ROW corridors. Lander DRMP/EIS, pgs. 977 - 978. Oil and gas operations are obviously dependent on sufficient infrastructures to transport produced natural gas and other hydrocarbons. Unreasonably curtailing or limiting ROW corridors for a significant infrastructure project such as natural gas pipelines would unreasonably limit future oil and gas development within the entire Lander Planning Area. The proposed right-of-way exclusion areas and ROW avoidance areas under Alternative B are unreasonable. Lander DRMP/EIS, pgs. 975 - 977, 979 - 987. Prohibiting the creation of a new ROW within almost two million acres of the Lander Planning Area is inconsistent with the BLM's multiple use obligations and have not been sufficiently justified by the BLM.

Section 4.7 - Congressionally Designated Trails

Overall, Devon continues to support the BLM's management of Congressionally designated trails under Alternative A, and not Alternatives B or D. The prohibitions under Alternative A have adequately protected the historic trails within the Lander Planning Area since their designation and the adoption of the Oregon/Mormon Pioneer Historic Trail Management Plan in 1986. The BLM has not adequately justified the significant increase in development opportunities under Alternatives B or D. Alternative B in particular is unreasonable because it could restrict development activities within 15 to 20 miles of a national historic trail. Lander DRMP/EIS, pg. 1041. The decision to entirely close public lands within three miles of either side of a national historic trail under Alternative B is similarly unreasonable and may restrict oil and gas opportunities within the Lander Planning Area. Such a limitation is particularly egregious because it may impact transportation or other infrastructure facilities necessary to transport natural gas and hydrocarbons out of the Lander Planning Area. Devon is similarly opposed to the proposed restrictions under Alternative D that would impose NSO stipulations and CSU stipulations within three to five miles of the national historic trails. Lander DRMP/EIS, pg. 1045. Devon is also opposed to the management action under Alternative D that would close oil and gas leasing for five miles on either side of the historic trail which covers approximately 4,297,925 acres. *Id.* The BLM should also review the language on page 1045 of the Lander DRMP/EIS because in several instances the BLM describes Alternative B rather than Alternative D. Devon is also opposed to the significant VRM restrictions associated with national historic trails under Alternatives B and D.

Section 4.7.5 - Areas of Critical Environmental Concern

Overall, Devon does not support the creation of or expansion of existing ACECs within the Lander Planning Area. The BLM has already protected sufficient lands within the Lander Planning Area and has not sufficiently justified the creation of new or the expansion of existing ACECs. Devon is concerned that expansions to the Green Mountain ACEC and its

accompanying NSO restriction, see Lander DRMP/EIS, pg. 1124, would potentially interfere with oil and gas infrastructure and transmission lines necessary to transport oil and gas products from the Lander Planning Area to the market. The BLM should ensure that any NSO stipulations within the Green Mountain RMP do not unreasonably interfere with oil and gas operations.

Devon additionally is opposed to any potential expansion of the national historic trail ACEC under Alternative D. Devon is also opposed to any significant increase in VRM Class II around historic trails proposed under Alternative D as part of its extended ACEC management. Lander DRMP/EIS, pg. 1159. The BLM has not justified the creation or the expansion of the potential ACEC to protect national historic trails and Devon urges the BLM not to adopt an alternative which creates or expands the national historic trail ACEC.

Given the proximity of the Government Draw/Upper Sweetwater Sage-Grouse proposed ACEC to Devon's Beaver Creek Unit, Devon also opposes the creation of the Government Draw/Upper Sweetwater Sage-Grouse ACEC. Although Devon supports the protection of sage-grouse habitat to the extent consistent with existing lease rights, Devon does not believe the BLM has sufficiently justified the creation of such a huge ACEC under Alternatives B or D. Devon encourages the BLM to create a buffer of at least five miles surrounding its existing Beaver Creek Unit that is free of any ACEC designations. Devon further requests that the BLM not create an ACEC or impose additional mitigation measures or stipulations within this buffer to ensure that Devon's existing operations are allowed to continue and, if necessary, expand within the lands surrounding Devon's Beaver Creek Unit. Devon is concerned that opponents to oil and gas operations will utilize the proximity of the ACEC to encourage the BLM to restrict potential development operations even on existing leases within the existing unit. Devon is particularly opposed under Alternative D to create NSO restrictions for oil and gas in the entire proposed ACEC. Lander DRMP/EIS, pgs. 1166 - 1167.

Section 4.8 - Socioeconomic Resources

The socioeconomic information presented in the Lander DRMP/EIS demonstrates the importance of oil and gas development to the Lander Planning Area. Of particular note, the BLM's own analysis demonstrates that the adoption of Alternative B would result in a decrease of 1,000 jobs within the Planning Area. Lander DRMP/EIS, pg. 1175. This decrease would largely be a result of lost jobs within the oil and gas industry. *Id.* It would be entirely inappropriate for the BLM to adopt an Alternative in these trying economic times that would result in the loss of over 1,000 jobs. Devon encourages the BLM not to adopt Alternative B and to only consider how its decision would increase rather than decrease employment within the Planning Area. The BLM's own analysis additionally demonstrates that earnings, output, employment and tax revenue would be lower under Alternative D and Alternative B. Lander DRMP/EIS, pg. 1180. Once again, much of the differences from projected oil and gas activity is highest under Alternatives A and C. *Id.* Given the significant beneficial impacts of oil and gas development within the Planning Area, the BLM should encourage not discourage oil and gas development within the Lander Planning Area.

Overall, the information in Section 4.8 of the Lander DRMP/EIS demonstrates that oil and gas development within the Planning Area has the most significant impact upon the local and regional economy. Limitations on oil and gas development lead to significant adverse impacts to local earnings and tax revenues. See Lander DRMP/EIS, pgs. 1181, 1184 - 1185,

1186, 1188 - 1189. In these difficult economic times, it is incumbent upon the BLM to increase oil and gas development and the associated positive economic impacts, not limit such activities. According to the BLM, 3,309 jobs in the Planning Area relate to oil and gas development and production. Lander DRMP/EIS, pg. 1185. For this reason, the BLM must not select Alternative B which would lead to a decrease by approximately 1,000 jobs in the Planning Area as compared to Alternative A. Lander DRMP/EIS, pg. 1185. This decrease in jobs does not account for the cascade of impacts the loss of jobs under Alternative B would have upon the overall economy. The BLM cannot justify such a significant decrease and negative impact to the local economy.

The BLM's analysis also demonstrates that oil and gas development is the single largest economic driver in the Planning Area. Although livestock grazing and recreation provide some impacts on earnings and output, they are dwarfed by oil and gas. For example, under Alternative A, the existing planning regime, oil and gas has an impact on annual average earnings of \$66.5 million as compared to recreation that has only an \$18.1 million impact. Lander DRMP/EIS, Table 4.48, pgs. 1184 - 1185. The BLM's analysis also indicates that recreation will not be impacted under any of the Alternatives, even those that significantly restrict oil and gas development. *Id.* Comparatively, however oil and gas development will be significantly impacted under all of the Alternatives, and in particular Alternative B which would reduce oil and gas earnings significantly. *Id.* Given this economic information, there can be no doubt the BLM must not and should not select Alternatives B or D as both limit oil and gas development.

With respect to tax revenues, the story is even more compelling. Under the existing planning regime, oil and gas development in the Planning Area will contribute \$269.6 million in direct revenues from taxation. Under Alternative B, however, there will be a significant reduction and far less revenue will be earned by local governments from oil and gas tax. Given the dramatic decrease in revenues, the BLM should not adopt Alternatives B or D.

Section 4.9.1.3 - Climate Change

Devon appreciates the BLM's attempt to analyze the potential impact operations within the Planning Area may have upon global climate change. The BLM properly acknowledges that it is impossible to adequately or accurately quantify the potential impacts of local activities on global forces such as climate change. The IBLA has recognized that the BLM is not required to estimate potential environmental impacts that are too speculative for meaningful determination of material significance or reasonable foreseeability. "Such an 'analyses' would not serve NEPA's goal of providing high quality information for informed decision making." *Powder River Basin Resource Council*, 180 IBLA 119, 135 (2010). "[W]hether BLM is able to know and quantify precisely the 'ultimate effects' of development . . . is a very different question from whether BLM adequately considered and made a reasoned assessment of environmental impacts." *Id.* (other citations omitted). The BLM's analysis in the Lander DRMP/EIS is adequate and additional information is not necessary to comply with the agency's obligations under NEPA.

Section 4.10 - Cumulative Impacts to Greater Sage-Grouse

The BLM needs to correct information in Section 4.10 regarding cumulative impacts of greater sage-grouse in several ways. First, the BLM acknowledges the 2008 and 2010

Executive Orders issued by the Governor of Wyoming. As indicated earlier in these comments, however, the Governor of Wyoming has adopted a new Executive Order that is substantially similar to the 2008 and 2010 Orders. Nonetheless, the BLM should acknowledge the new Executive Order and its impacts on operations and the protection of sage-grouse in Wyoming. Lander DRMP/EIS, pg. 1208. Second, on page 1210, the BLM suggests that private lands are not subject to core area and noncore area stipulations, and it is likely that protective measures for sage-grouse will not be implemented. This information fails to take into account the fact that oil and gas operations, for example, are subject to the greater sage-grouse policy whether or not they are on private lands. The WOGCC and the WDEQ have made it clear that they will comply with the terms and conditions of the 2011 sage-grouse Executive Order on private lands wherever they occur in Wyoming. Therefore, oil and gas operators proposing oil and gas development on private lands will be subject to the same type of restrictions outlined in the Executive Order, including limits on the number of surface disturbing operations that can be located within a single 640 acre section. The BLM should include this information in the final EIS for the Lander RMP.

Section 4.10.2 - Cumulative Impacts to Air Quality

Devon applauds the BLM's thorough and complete analysis of potential cumulative impacts within the Planning Area. Devon owns oil and gas leases in a wide variety of BLM Field Offices and believes the analysis of potential cumulative impacts in the Lander DRMP/EIS is perhaps the most thorough cumulative impacts analysis of any RMP-level document it has reviewed. The BLM suggests on page 1220 of the Lander DRMP/EIS that the most recent state-wide air emission inventory was completed in 2005. In fact, the most current inventory was completed in 2008, and the WDEQ is currently in the process of gathering 2011 data for the most recent, on-going emissions inventory.

GLOSSARY

There are several definitions in the BLM's Glossary for the Lander DRMP/EIS that need to be updated.

“Core Area.” The definition should be updated to include the most recent Executive Order issued by the Governor of Wyoming in 2011.

“Downspacing.” The definition should be corrected to indicate downspacing involves increasing the number of wells needed to effectively drain an area while not decreasing the number of wells within the specific area.

“Setting.” The BLM should provide a source for this definition. Partaking the historical “setting” plays an important role in the BLM's management decision within the Lander DRMP/EIS, yet BLM does not provide a specific delegation of authority or further protection of the “setting.”

APPENDICES

Appendix A - Federal Laws, Regulation Policies, and Guidance

The BLM should review carefully the list of federal laws, regulations, policies, guidance, and other applicable mandates and authority provided in Appendix A to ensure they are accurate. In many circumstances the year attributable to a particular rule, regulation, or guidance is not accurate. For example, the BLM identifies many of the regulations appearing in 43 C.F.R. Parts 3160 and 3400 as dating to 1920. While these regulations were enacted pursuant to the authority of the Mineral Leasing Act of 1920, the regulations, in fact, have been promulgated in only the last 20 to 30 years and certainly do not date back to 1920. Similarly, the BLM identifies the oil and gas leasing regulations, which appear at 43 C.F.R. Part 3100 as originating in 1983. While a few individual sections of the regulations appearing at Part 3100 date from 1983, the vast majority of said regulations actually date to 1988 and were promulgated after the Federal Onshore Oil and Gas Leasing Reform Act of 1987. Surprisingly, the Federal Onshore Oil and Gas Leasing Reform Act is not identified in the list of statutes impacting BLM regulations and policies despite the fact it fundamentally altered the way federal oil and gas lands are offered for competitive lease.

Appendix D - Reclamation Objectives and Standards

Devon is concerned about the statement on pages 1391 - 1392 regarding the objective of final reclamation in non-DDAs claimed disturb sites to achieve landscape continuity, minimize INNS, and provide for a stabilized ecologically diverse plant community. This statement is overreaching and sets unreasonable and potentially unattainable reclamation requirements regardless of any and all reclamation practices attempted by operators. Similarly, Devon is concerned about the statement on page 1392 that requires 80% of the Erosion Indicator listed on the NRCS Reference Sheet for Ecological Site is met. Lander DRMP/EIS, pg. 1392. This statement is confusing and unclear. Devon's in-house experts familiar with NRCS Reference Sheets are not aware of any Erosion Indicator identified on said information sheets. Does this simply refer to 80% of the background cover? BLM needs to clarify what the Erosion Indicators listed on the NRCS Reference Sheet for Ecological Site mean and where that information can be located.

Devon believes that the statement on page 1393 of Appendix G requiring 100% of the Erosion Indicator on NRCS Reference Sheets as a form of reclamation standard is an unreasonable expectation to place on industry. BLM should reconsider or redraft this language.

Appendix E - Exception, Modification and Waiver Criteria

The BLM indicates in Appendix E that it can apply timing limitations and controlled surface use restrictions as COAs after an oil and gas lease has been issued. While this is true, the BLM cannot impose COAs or controlled surface use restrictions that are inconsistent with valid and existing rights. Congress made it clear when it enacted FLPMA that nothing therein, or in the land use plans developed thereunder, was intended to terminate, modify or alter any valid or existing property right. 43 U.S.C. § 1701 note (2010). Because the authority conferred in FLPMA is expressly made subject to valid and existing rights, 43 U.S.C. § 1701, an RMP prepared pursuant to FLPMA after a lease execution and after drilling and production has

commenced is likewise subject to valid existing rights. See *Colorado Environmental Coal., et al.*, 165 IBLA 221, 228, (2005). The Lander RMP, when revised, cannot defeat or materially restrain Devon's valid and existing rights to exploit its leases through COAs or other means. See *Colorado Environmental Coal., et al.*, 165 IBLA 221, 228 (2005) (citing *Colorado Environmental Coal.*, 135 IBLA 356, 360 (1996) *aff'd*, *Colorado Environmental Coal. v. Bureau of Land Management*, 932 F.Supp. 1247 (D.Colo. 1996)). Further, the BLM lacks the authority to impose mitigation measures on oil and gas leases that are not technically or economically feasible. See *Connor v. Burford*, 84 F.2d 1441, 1449 - 50 (9th Cir. 1988); 43 C.F.R. § 3101.1-2.

Devon supports the BLM's description of a specific procedure to determine when exceptions, waivers, and modifications will be granted. Devon thinks it is beneficial for this process to be described in detail for both operators and members of the public who may not be familiar with the process.

Appendix F - Lander Air Resources Management Plan

The BLM indicates in Section F.2.4 that it will include future oil and gas development in areas of existing development and will encourage future oil and gas development in areas located over 50 kilometers from the nearest Class I Area. The BLM has not, however, explained how it will manage these objectives. Does the BLM intend to close lands within 50 kilometers of Class I air sheds to future oil and gas leasing? Will BLM impose onerous or prohibitive mitigation measures and COAs on oil and gas operations in undeveloped areas? The BLM additionally indicates it will encourage future oil and gas development to be in areas considerable distances from major population centers and in geographic areas of relatively flat terrain. How will the BLM impose these requirements and objectives? Once the BLM has issued federal oil and gas leases, it cannot deprive the operators of those valid existing rights. The BLM indicates in Section F.3.4 that it will require project proponents to include measures for reducing air pollutant emissions in project proposals and plans of development. The BLM does not have direct authority over air quality or air emissions under the Clean Air Act ("CAA"). 42 U.S.C. §§ 7401 *et seq.* Under the express terms of the CAA, the Environmental Protection Agency ("EPA") has the authority to regulate air emissions. In Wyoming, the EPA has delegated its authority to the Wyoming Department of Environmental Quality. See 42 U.S.C. §§ 7401 - 7671q; 40 C.F.R. pts. 50 - 99 (2010); 40 C.F.R. § 52.2620 (Wyoming's State Implementation Plan); WYO. STAT. ANN. §§ 35-11-201 to 214 (LexisNexis 2011); Wyo. Air Quality Stds. & Regs. ("WAQSR") Chs. 1 - 14. The Secretary of the Interior, through the IBLA, has unequivocally determined that, in Wyoming, the State and not the BLM, has authority over air emissions:

In Wyoming, ensuring compliance with Federal and State air quality standards, setting maximum allowable limits (NAAQS and WAAQS) for six criteria pollutants CO (carbon monoxide), SO₂ (sulfur dioxide), NO₂, ozone and particulate matter (PM₁₀ and PM_{2.5}), and setting maximum allowable increases (PSD Increments) above legal baseline concentrations for three of these pollutants (SO₂, NO₂, and PM₁₀) in Class I and Class II areas is the responsibility of WDEQ [Wyoming Department of Environmental Quality], subject to EPA oversight.

Wyoming Outdoor Council, et al., 176 IBLA 15, 26 (2008). Decisions of the IBLA are binding upon the BLM and have the same force and effect of a Secretarial decision. 43 C.F.R. § 4.1 (2010) (noting that the Office of Hearings and Appeals, which includes the IBLA, may decide

matters as fully and finally as the Secretary of the Interior); *see also IMC Kalium Carlsbad, Inc. v. Interior Bd. of Land Appeals*, 206 F.3d 1003, 1009 (10th Cir. 2000) (holding that IBLA has *de novo* review authority over the decisions of subordinate agencies such as the BLM). Devon encourages the BLM to add a statement in the Lander RMP clarifying the scope of the BLM's authority as defined by the IBLA. The BLM does not have the authority to impose regulations or control measures on emission sources, including oil and gas operations, within Wyoming.

Devon is opposed to the BLM's proposal under Section F.4.2 to require the proponent for mineral development projects that have the potential to omit more than 100 tons per year of a certain criteria air pollutant to provide a minimum of one-year of base line ambient air monitoring data. Such a requirement could excessively and unnecessarily delay oil and gas projects within the Planning Area. The BLM should justify this requirement or, at the very least, clarify that operators have the opportunity to provide such data during the pendency of the required environmental analysis for the project rather than providing the data before the BLM will even evaluate a proposal. Devon further wants to remind the BLM that it has been cooperating with several other oil and gas operators with development plans within the Lander Planning Area to fund the Spring Creek monitoring station which has been gathering air quality data since 2009. Devon and the other oil and gas operators in the area funded this monitoring station voluntarily prior to any request from either the BLM or WDEQ to install the station. In Section F.4.4 the BLM identifies several mitigation measures that may be required of oil and gas operators within the Lander Planning Area. As described above in detail, the BLM has very limited authority over air emissions mitigation and should not attempt to impose mitigation measures beyond its authority. The vast majority of the mitigation measures identified in Section F.4.4 and Table F.1 are far beyond the BLM's authority and should be removed from this document. For example, the BLM in Wyoming has long acknowledged that it cannot implement specific drill rig emission reduction measures. In a letter to an oil and gas operator in December 2006, then Associate Field Manager Roger Bankert acknowledged that the BLM cannot implement drill rig emission reduction measures because "it has been administratively determined that BLM does not have the authority to regulate air quality. That authority rests with the Wyoming Department of Environmental Quality." Further, the regulation of mobile sources, such as drilling rigs, is exclusively the jurisdiction of the EPA. The BLM should eliminate Table F.1 from the Lander RMP.

Appendix G. - Example Detailed, Multi-phase Reclamation Plan

Overall, BLM needs to explain the purpose of Appendix G. As far as Devon is aware, Appendix G is a copy of the document that was being developed by the State of Wyoming, several oil and gas operators, including Devon, and the BLM Rawlins Office to develop a comprehensive reclamation approach. This policy was not, however, finalized or adopted by the BLM. If intended as an example only, the BLM should clearly and unequivocally include that information in the Lander final EIS and RMP. Notably, there are several discrepancies between the language, policies, and criterion set forth in Appendix D that are not consistent with Appendix G. The BLM should explain which document controls.

In part C VI.II.d, the BLM should delete the words "allowances for an improved and/or stable ecologic condition" from the sentence in that section. This language would be more clear and useful. In section D.I, the BLM should allow for monitoring or proclamation in the first season at the discretion of the BLM. Inserting such language would provide the BLM

additional flexibility to allow for circumstances when reclamation monitoring is appropriate prior to the second year.

Appendix I - Stipulations and Conditions of Approval in Designated Development Areas

As in an earlier comment, Devon strenuously supports the creation of DDAs within the Lander Planning Area. In order to make Appendix I more useful, however, Devon encourages the BLM to develop and clearly explain how exceptions and modifications will be treated within DDAs. The BLM indicates throughout the text of the Lander DRMP/EIS that oral requests for exceptions for wildlife timing limitations may be granted in DDAs, but does not lay out the procedure clearly in Appendix I.

CONCLUSION

Devon appreciates and applauds the BLM for the considerable efforts the agency has and will put forth in developing the revised Lander RMP. Devon encourages the BLM to proceed with the revision as quickly as possible.

Devon would like to continue its participation in the RMP revision process for the Bighorn Basin RMPs. Please ensure both myself and Dru Bower-Moore (P.O. Box 166, Worland, Wyoming 82401, Dru.Bower-Moore@dvn.com, (307) 347-4477) are on the Bureau of Land Management's mailing list for all future information regarding this project and do not hesitate to contact us should you require additional information. We request that you please specifically provide Devon complete paper copies of the final EIS and Record of Decision for this project at the address provided above.

Sincerely,



Randy Bolles
Manager, Regulatory Affairs
Western Division