Objection Reviewing Officer
USDA Forest Service
Northern Region, 26 Fort Missoula Road
Missoula, MT 59804

Re: Objection to the Tendoy Project Draft Decision Notice and Finding of No Significance (Project Number: 48576)

Dear Objection Reviewing Officer:

Trout Unlimited, Montana Wildlife Federation, Montana Trout Unlimited, Theodore Roosevelt Conservation partnership, and Hellgate Hunters and Anglers submit this timely objection, as well as recommendations for resolution, to the U.S. Forest Service's draft decision notice, finding of no significant impact (FONSI) and final environmental assessment (EA) for the Tendoy Project in the Dillon Ranger District.

Project Objected To

Pursuant to 36 C.F.R. § 218.8(d)(4) Trout Unlimited *et al.* object to the following project:

> *Project:* Tendoy Project, Dillon Ranger District, Beaverhead Deerlodge National Forest
>
> *Responsible Official:* Jamie Tripp, District Ranger, Dillon Ranger District

Lead Objector

Pursuant to 36 C.F.R. § 218.8(d)(3), the Objectors designate the "Lead Objector" as follows: Trout Unlimited

Interest and Participation of the Objectors

Our sportsmen and conservation organizations represent hunters, anglers and outdoor enthusiasts from across the state of Montana and the nation. Many of our members fish the streams and hunt the lands located on or that flow from public lands administered by the BLM's Dillon office and the Beaverhead-Deerlodge National Forest. Our organizations have been actively involved in the Tendoy Project process, having submitted comments on the Environmental Assessment as well as scoping comments.[1] In these comments we raised concerns about impacts to water resources, wildlife, and recreation. Moreover, some of the Objectors have been involved in this specific issue for over a decade, raising concerns with the Forest Service and BLM when the Tendoy project leases were initially offered for sale in 2007, protesting the lease sale, and appealing the issuance of the leasing to the Interior Board of Land Appeals[2].

I. BLM and the Forest Service must require measures that fully mitigate reasonably foreseeable impacts.

[1] *See* comments submitted December 30, 2019
[2] IBLA 2007-231

The National Environmental Policy Act (NEPA) requires the Forest Service to take a 'hard look' at environmental consequences[3] of a proposed project *before* the agency approves an action. "By so focusing agency attention, NEPA ensures that the agency will not act on incomplete information, only to regret its decision after it is too late to correct."[4] In our comments we raised concerns about the U.S. Forest Services failure to account for impacts to aquatic resources, wildlife, and recreational values. The Final EA has not resolved these concerns. The Forest Service must not only take a "hard look" at these impacts, but should also require conditions of approval that will fully mitigate these impacts before justifying a finding of no significant impacts (FONSI).

a. <u>BLM and the Forest Service must analyze potential impacts to aquatic resources</u>

As stated in our comments, Little Sheep Creek is a valuable native trout stream populated by a conservation population of upper Missouri River Basin westslope cutthroat trout. Westslope cutthroat trout are a Species of Concern for the state of Montana and a Forest Service and BLM Sensitive Species. Populations of Westslope cutthroat trout in the upper Missouri River Basin are especially rare, with genetically unaltered fish occupying less than 2 percent of their historical range. This makes the Little Sheep Creek population extremely valuable and vulnerable. The EA and proposed action fail fully account for potential impacts to this invaluable resource and implement mitigation measures that will reduce risks to this vulnerable aquatic ecosystem.

i. <u>Spills.</u>

As stated in our comments, the EA does not sufficiently analyze the potential impact of spills on aquatic habitat and fisheries, nor are adequate spill prevention measures required. In response to our comments, BLM and the Forest Service simply reiterate language already in the EA. In response to similar comments about oil spills, BLM and the Forest Service state "[t]he size of the spill and site characteristics (exact location, quantity, product) during the permitting phase is speculative; these site-specific characteristics will influence whether a spill could reach an aquatic habitat or drinking water resource. Spill prevention and response factors will be incorporated as Conditions of Approval of the APD and may reduce the severity of impacts to surface water resources from a spill if one should occur."[5]

The speculative nature of an oil spill does not relieve BLM or the Forest Service from their obligations to consider potential impacts, as well as fully mitigate those impacts. Once the "site specific nature" of the spill is known, consideration of impacts will be moot. As stated above, the purpose of NEPA is to allow the agency to consider potential impacts of an action, *before* the action is approved, allowing for adequate spill prevent measures to be required as conditions of approval. An oil spill is a potential outcome of this project, and the EA must consider the potential outcome of spills and the specific impacts that resources such as fisheries may experience in the event of a spill. In consideration of these impacts, a FONSI is only justified if the substantial, sufficient, and effective spill mitigation and prevention measures are required.

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[3] Metcalf v. Daley, 214 F.3d 1135, 1141 (9th Cir. 2000) (quoting Robertson v. Methow Valley Citizens Council, 490 U.S. 332, 348 (1989)).
[4] Marsh v. Or. Natural Res. Council, 490 U.S. 360, 371 (1989) (quoting 42 U.S.C. § 4321)
[5] *See* EA Appendix C at

While the EA does broadly discuss impacts under a “best case” and “worse case” scenario, this brief analysis provides only broad generalizations about oil spill impacts.[6] Such “general comments about possible effects and some risk do not allow for a fully informed decisions and the cautionary principle necessitates a robust set of conditions of approval that will prevent spills and minimize the impacts of a spill, should one occur.”

ii. Sedimentation.

As we noted in our comment, we are particularly concerned about the potential impacts of increased stream sedimentation on cold water fisheries. The EA simply notes that “[t]he risk of sedimentation to live water from roads crossing ephemeral drainages associated with this project is negligible due to distance from streams and the buffering of erosion and sediment movement by topography and vegetation. The Road Sediment Assessment Report (Appendix D) illustrates that road construction and upgrade associated with both location alternatives will reduce existing sediment loads on Big Sheep Creek Road and Little Sheep Creek Road by 10.49% and 48.55%, respectively…”[7] In response to comments the BLM and Forest Service simply reiterate the language in the EA and note that Appendix D provides a baseline analysis of existing conditions.[8] The baseline analysis provided in Appendix D simply provides a quantitative assessment of existing sedimentation, but provides no qualitative analysis as to the impacts of this sedimentation. Simply describing the amount of existing sedimentation does not amount to the “hard look” required by NEPA, especially as it related to the health of aquatic biota in Little Sheep Creek. Second, we are skeptical about the conclusion that the proposed project will lead to improved sedimentation loads. First, as recognized in the EA, the project will lead to increased traffic. There is no discussion as to whether this increased traffic may nullify any improvements to the roads.

Second, several of the assumed sediment reductions are dependent upon long-term maintenance activities (e.g., maintain road grade, reduce grazing activities) that will need to be continually performed in order to achieve net sediment reductions. In other words, the sediment mitigation measures must be completed *and maintained*, in order for the EA analysis to be valid. Yet there are no assurances that Lima Energy is going to continue with road maintenance and ongoing sediment reduction activities, especially if the exploration well is a dry hole and the company moves on. Notably, appendix D notes that “cooperation of the County Roads Department” will be required to achieve many of assumed reductions in sediment delivery. In other words, these are not necessarily mitigation measures that Lima Exploration can commit to, especially over the long run.

iii. Impacts from produced water.

The EA does not sufficiently analyze potential impacts resulting from water withdrawal or wastewater disposal. In our comments we noted our concerns about impacts due to the extraction and storage of produced water. In response to our concerns about the potential impacts from wastewater disposal, USFS simply stated “pursuant to Onshore Order No. 7, water produced from this well may be disposed of in an unlined pit for a period of 90 days from the date of initial

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[6] *See* EA at 41
[7] EA at 43
[8] EA, Appendix C Response to Comments

production. A permanent disposal method must be approved by the BLM and in operation prior to the end of this 90 day period."[9] This does not amount to an analysis of the potential impacts of storing wastewater in unlined pits. Wastewater contains contaminates that can overflow during a rain event, or if the pit is not sufficiently large. It also has the potential to leach directly into the ground contaminating soil and water. Allowing the use of unlined pits is unacceptable in this sensitive location.

Recommendations for resolution

1) Ensure NEPA analysis fully documents effects of the proposed project.
2) The USFS should require conditions of approval that Lima Exploration adhere to throughout the project, including:
    - Lima Exploration must be required to use lined pits.
    - To the maximum extent practicable given site conditions (e.g., slope), minimize surface disturbance by requiring the use of wooden oak mats for the access road and well pad. This technique has been used successfully by Encana in the Jonah Field and will greatly enhance the success of reclamation efforts due to minimizing vegetation and soil disturbance.
    - Frac fluids containing diesel shall not be used during well completions.
    - Frac tanks placed on location during well completion to contain flowback water shall be placed in secondary containment structures designed to hold 110 percent of the volume of the single largest tank in the contained area with sufficient freeboard to contain anticipated precipitation. All loading lines shall be placed inside the containment liner.
    - The frac tanks shall be visually inspected for leaks and spills 24 hours per day while in use.
    - All chemicals, solvents, and fuels (at least 5 gallons) shall be kept at least 150 feet away from streams and riparian areas, and on impermeable surfaces.
    - All refueling shall occur at least 150 feet away from streams and riparian areas.
    - Monitoring of interim and final reclamation will be monitored by a third party at the expense of Lima Exploration, and results will be documented bi-annually.
    - All usable water zones, potentially productive hydrocarbon zones, and valuable mineral zones will be isolated by cementing the open space between the casing and the bedrock.
    - Pre, during and post-construction monitoring to document baseline conditions and any changes (positive or negative) in water quality for any fresh waters that may be affected, including ground water and any seeps or springs.
    - All road work will comply with the Gold Book Standards for roads (BLM and Forest Service, 2007) as well as FP-03 Standard Specifications for Roads and Bridges (Federal Highway Administration, 2016).
    - Drilling and completion crews will carpool to reduce traffic and vehicle emissions, as well as fugitive dust.
    - A spill response plan to swiftly respond to an incident (truck accident) that results in a release of contaminants to surface waters, including Little Sheep Creek.

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[9] *See* EA Appendix C

- Lima Exploration shall educate all project personnel regarding environmental concerns and requirements, including weed identification, prevention, and control methods.
- Trash and garbage shall be placed in appropriate caged containers and the container and contents transported to an approved disposal facility. All containers shall be equipped with bear-resistant openings.

b. <u>BLM and the Forest Service must analyze and fully mitigate potential impacts to wildlife</u>

As we noted in our comments the project location provides important habitat for a variety of terrestrial wildlife species including highly valued big game, threatened species, and sage-grouse. Any development of new or existing roads and well pads in either of the proposed sites would result in negative impacts on wildlife and their habitat including removal and fragmentation, displacement of animals, and edge effects. The EA fails to sufficiently analyze potential impacts to these resources. Moreover, concerns remain that impacts are not being fully mitigated. As noted in the letter dated May 13, 2021 form Montana Fish, Wildlife and Parks, "Even with these mitigation measures, it may not be feasible to fully mitigate the disturbance associated with the exploratory well. If productive, additional wells and associated activities would likely mean further impacts to wildlife and recreational resources."

As stated in our comments, the White Pine Ridge area provides highly-productive mule deer and elk winter range. Hunting District 300, in the Tendoy Mountains, is one of the best trophy mule deer units in the state of Montana, and over 700 individual sportsmen apply for 30 coveted mule deer permits each year. With eight-foot-tall mountain mahoganies and southeast facing slopes, the White Pine Ridge area provides irreplaceable winter range to this deer herd. The area also provides important winter range to the Hunting District 302 bighorn sheep herd, which is currently the focus of restoration efforts by Montana FWP. Despite the significance of this area to mule deer, elk and, bighorn sheep, the EA concludes that the proposed project is not expected to have long term negative effects on these populations.[10] This conclusion seems to derive from the fact that this is an exploratory well, not a producing well. We disagree with the conclusion.

First, even if the impacts from an exploratory well may not be significant, it is "reasonably foreseeable" that production would result from an exploration; as reported in news stories, if the company is successful, "the future could bring 10 to 20 wells to the area[11]". These additional impacts from the development of resources can be modeled and must be analyzed. Second this conclusion ignores recent studies showing that as mule deer tend to avoid areas close to human disturbance,[12] indirect loss of deer forage due to human disturbance far exceeds direct habitat

[10] *See* EA 68-69

[11] Susan Dunlap, Oil company asking to drill test well west of Lima, Montana Standard, July 31, 2015

[12] In response to comments BLM and USFS suggest that only oil and gas production activities cause long term impacts. We do not believe such a conclusion can be drawn. While the studies looked at mule deer in areas under development, the conclusions were based on impacts from human disturbance. Furthermore, .the study notes that "well pads, specifically, have been shown to prompt behavioral responses of avoidance in mule deer (Sawyer et a. 2006)" This project will require the construction of a well pad.

loss from roads, wellpads and other oil and gas infrastructure.[13] Therefore even if the direct impacts to mule deer habitat may be "negligible" the indirect impacts are likely far more significant. BLM must consider this science when analyzing the impacts to mule deer habitat and, in turn, requiring effective mitigation measures. To do so, as we stated in our comments, BLM and USFS should develop a baseline understanding of the mule deer herd and wildlife use patterns in the area. Impacts from development should be documented, and an effective monitoring program needs to be adaptive with trigger points for actions that will abate undesirable effects.

Recommendations for resolution

1. Ensure sufficient NEPA analysis of the Proposed Action on elk, mule deer, and bighorn sheep.
2. Require conditions of approval that will fully avoid and mitigate wildlife impacts, including:
    - Develop a baseline understanding of the mule deer herd and wildlife use patterns in the area by conducting pre- and post-construction monitoring for breeding birds, grouse, raptors, bats, and big game.
    - Third-party monitoring to document effects of development and increased human presence in the White Pine Ridge area.
    - Establish an effective monitoring program with adaptive trigger points.
    - Document and report wildlife mortalities associated with well construction, production, and traffic.
    - Lima Exploration must be required to spray for and control weeds on well pads and well pad access roads and do so until comprehensive reclamation of sites is completed.
    - Straw or wattles or anything vegetative used to slow water or used to protect the soil shall be "certified weed-free" and "certified cheatgrass-free". Any seeds used for planting and erosion control shall be from a "certified weed-free" and "certified cheatgrass-free" native seed mix.
    - Upon completion of drilling described in this EA and as a function of interim reclamation and upon final reclamation, areas designated to be reclaimed shall be fenced with fencing sufficient to preclude cattle grazing and recreational use by the public to ensure substantial and sustainable reclamation and prevention of invasive plant infestation and proliferation. Fencing shall be maintained by Lima Exploration until such time as deemed unnecessary by the Authorized Officer and then Lima Exploration shall remove fencing. All fencing shall comply with appropriate wildlife protection features as defined by the designated Authorized Officer.
    - Environmental awareness training shall be provided describing the consequences of poaching and information on Montana wildlife laws, licensing, and residency requirements.

[13] Samantha P.H. Dwinnell et al "*Where to forage when afraid: Does perceived risk impair use of the foodscape*?" Ecological Applications 29(7):e01972. Available at: https://esajournals.onlinelibrary.wiley.com/doi/epdf/10.1002/eap.1972

- To the extent practicable given safety considerations, minimize lighting and use lighting designed to limit bird and bat mortality.

c. <u>USFS and BLM must mitigate recreation impacts</u>

As we noted in our comments, we have significant concerns about the impacts of the proposed project on recreation opportunities such as hunting, angling, and hiking. While the EA briefly addresses impacts to recreationists (for example increased traffic) it does not consider that impacts to wildlife and habitat will equally impact the hunting, fishing, and hiking experience. the hunting districts for elk, deer, and pronghorn antelope that encompass the project areas are amongst the highest producing areas for big game hunting expenditures in the state, with elk hunters in Hunting District 300 spending over $1.8 million in 2018. Given the recreation values of this area, and the benefits it brings to local communities and the State, it is vital that these impacts are fully understood and disclosed.

<u>*Recommendations for resolution*</u>

1) Develop a travel plan that minimizes construction traffic and trips, and limit operations during high recreation use periods, including holidays, weekends and during hunting season.
2) Trash and garbage shall be placed in appropriate caged containers and the container and contents transported to an approved disposal facility. All containers shall be equipped with bear-resistant openings.
3) Include signage along Little Sheep Road notifying public land users about current and future operations, timelines and project details.

II. <u>The Forest Service Failed to Comply with Applicable Bonding Requirements.</u>

New information has arisen since the objector's comments on the EA regarding the financial stability and health of Lima Exploration. This new information raises significant concerns about the company's ability to successfully and safely complete the obligation well for the Tendoy Unit and, importantly, to ensure full reclamation. According to recent news reports, Lima Exploration is a subsidiary of Great Western Oil and Gas (Great Western). Susan Dunlap, *Oil company asking to drill test well west of Lima*, Montana Standard, July 31, 2015. The companies also share the same address, per BLM records. *Compare* LR2000 Case Report, COC 078458 (listing the address for Great Western as 1801 Broadway, Suite 500, Denver, CO) *with* LR2000 Case Report, MTM 096679 (listing the same address for Lima Exploration). In February 2021, Great Western announced a debt restructuring program which included the offering of $235 million in lien notes. Jakema Lewis, *Great Western Petroleum sets price talk for $350 bond offering*, S&P Global, Feb. 4, 2021; Great Western Petroleum LLC, *Great Western Petroleum, LLC Announces Closing of Equity Recapitalization Plan and Senior Secured Second Lien Notes Offering*, Feb. 22, 2021. Fitch's has rated these notes "B-," which means they are "non-investment grade" or "junk." Jakema Lewis, *Great Western Petroleum sets price talk for $350 bond offering*, S&P Global, Feb. 4, 2021; *see also* Fidelity, *Junk Bond Ratings* ("High-yield (also referred to as ‘non-investment-grade’ or ‘junk' bonds) pertains to bonds rated Ba1/BB+ and lower.”).

This is alarming, in particular because of the oil and gas industry’s broader financial problems. “Eight producers filed [for bankruptcy] in Q1 2021, which is the highest Q1 total since 2016. . . .” Haynes and Boone, LLP, Oil Patch Bankruptcy Monitor (Mar. 31, 2021). Because of inadequate bonds, reclamation obligations are increasingly falling to taxpayers. In one recent example, a bankrupt company abandoned over 150 wells in Colorado. Because state officials had only collected $325,000 in bonds – a little over $2,000 for each of the company’s wells – “cleaning up all of them could cost [taxpayers] more than $4 million – more than 12 times the amount of the bond that was supposed to guarantee cleanup would be covered.” Naveena Sadasivam, *How bankruptcy lets oil and gas companies evade cleanup rules*, Grist, June 7, 2021.

This is made all the more concerning because the Forest Service failed to include a plugging and reclamation cost estimate in the EA. As a consequence, the Forest Service – and members of the public – are unable to determine whether the proposed bonding is adequate, as required by 36 C.F.R. § 228.109.[14] This endangers sensitive resources – in the event the operator walks away from their reclamation obligations and bonding is inadequate – and may force taxpayers to one day pay for the costs of reclaiming the White Pine drilling site.

a.) <u>The Forest Service failed to include a plugging and reclamation cost estimate in the EA.</u>

Contrary to applicable rules and policies, the Forest Service did not include a plugging and reclamation cost estimate in the EA. Under the Mineral Leasing Act, the Forest Service and Bureau of Land Management (BLM) must regulate all surface-disturbing activities conducted pursuant to any lease issued under this Act, and shall determine reclamation and other actions as required in the interest of conservation of surface resources.” 30 U.S.C. § 226(g). BLM has established “standards . . . to ensure that an adequate bond, surety, or other financial arrangement will be established prior to the commencement of surface-disturbing activities on any lease, to ensure the complete and timely reclamation of the lease tract, and the restoration of any lands or surface waters adversely affected by lease operations. . . .” *Id*. Those standards include minimum bond amounts for lease operations. 43 C.F.R. § 3104.1-.3.

The Forest Service has issued its own rules and policies on reclamation, which require an estimate of how much it would “cost . . . the Forest Service to reclaim those areas that would be disturbed by operations and to restore any lands or surface waters adversely affected by the lease operations after the abandonment or cessation of operations on the lease.” 36 C.F.R. §

[14] In comments on the Draft EA, the Objectors raised concerns for “significant” impacts to “numerous unique characteristics, including native trout, a popular wild trout fishery, important habitat for multiple wildlife species, a designated Backcountry Byway and wetlands” that “simply cannot be mitigated away. . . .” *E.g.*, Trout Unlimited & Montana Trout Unlimited, Comments on Proposed Tendoy Project (DOI-BLM-MT-L002-2020-0001-EA Tendoy 13-1/White Pine 18-1) 7 (Dec. 30, 2019). These concerns are directly related to the adequacy of Lima Exploration’s reclamation bond. Further, per 36 C.F.R. § 218.8(c), “new information” has arisen concerning the financial health of the operator’s parent company that goes to the very heart of the Objectors’ bonding concerns.

228.109(a). The Forest Service must then compare that estimate to "the financial instrument held by [BLM]. . . ." *Id.* If the financial instrument is not adequate – because reclamation costs could exceed the amount of that instrument – then the Forest Service "shall . . . give the operator the option of either increasing the financial instrument . . . or filing a separate instrument with the Forest Service in the amount deemed adequate . . . to ensure reclamation and restoration." *Id.* The Forest Service must base its estimate and subsequent appraisal of BLM's financial instrument on "the full cost of reclamation." Forest Service Manual 2840.3.

Here, the Forest Service did not include the required cost estimate in the EA. As a consequence, the Forest Service – and taxpayers – are in the dark concerning the potential costs to fully reclaim and restore the White Pine drilling site. Based on recent estimates from the Government Accountability Office (GAO) and others, those costs may amount to several hundred thousand dollars, if not more. In 2019, GAO reported that while "[c]osts for well reclamation vary widely and are affected by factors such as the depth of the well," the average cost to reclaim oil and gas wells on public lands ranges from $20,000 to $145,000. GAO, BLM Should Address Risks from Insufficient Bonds to Reclaim Wells 6 (2019) [hereinafter "GAO Report"].

Others have offered similar – and even higher – estimates. In May, the New Mexico State Land Office (SLO) released a study (prepared by the Center for Applied Research (CAR)) estimating that the average cost to plug and reclaim oil and gas wells on state and private lands ranged from $152,000 to $218,000. CAR, An Analysis of the Adequacy of Financial Assurance Requirements for Oil and Gas Infrastructure Located on State Trust and Private Lands in New Mexico (2021) [hereinafter "CAR Report"]. One month prior, Resources for the Future (RFF) issued a report finding that "median decommissioning costs are roughly $20,000 for plugging only, and $76,000 for plugging and surface reclamation," with "[e]ach additional 1,000 feet of well depth increases costs by 20 percent. . . ." RFF, Decommissioning orphaned and abandoned oil and gas wells: New estimates and cost drivers (2021) [hereinafter "RFF Report"].

Yet, the Forest Service did not identify or disclose any of these potential costs in the EA. According to the EA, the operator intends to drill to as much as 10,800 feet. EA at 15. Because "plugging and abandonment costs [can] range between . . . approximately $11.69 and $13.48 per foot of well depth plugged," those costs could exceed $145,000 for the White Pine well. CAR at 10. Reclaiming the site, which would involve "approximately 9.2 acres" of "permanent surface disturbance", could add a significant additional costs. Thus, it could cost more than $150,000 – perhaps far more – to fully plug and reclaim the White Pine drilling site. Yet, there is no discussion in the EA of whether, based on the site-specific conditions of the White Pine drilling site, its proximity to sensitive fish, wildlife, and water resources, and the drilling plan proposed by the operator, it could cost more (or less) to fully plug, reclaim, and restore the area.

b.) <u>The Forest Service failed to determine whether the Bureau of Land Management's reclamation bond is adequate.</u>

Because the Forest Service did not provide a "full cost estimate for reclamation," as required by its rules and policies, it is impossible to determine whether BLM's reclamation bond is adequate, the amount of which is also not disclosed in the EA. As noted above, operators must provide reclamation bonds for drilling activities on public lands. BLM has established – and typically defaults to – minimum bond amounts. However, the Forest Service must independently assess the adequacy of proposed bonds for drilling activities on national forests and require additional bonding in order to "fully" cover potential reclamation costs.

It is entirely foreseeable that BLM will require the operator to post the minimum bond amount—or $10,000 for single lease operations. 43 C.F.R. § 3104.2. According to GAO, "[t]he majority of bond values do not reflect reclamation costs in large part because most bonds—82 percent—remain at their regulatory minimum values," which are not at all "reflective of reclamation costs. . . ." GAO Report at 15-16. Notably, GAO has found that BLM does not typically base bonds on the "characteristics of individual wells *such as depth or location*," even though "such characteristics can affect reclamation costs." *Id*. at 16 (emphasis added); *see also* CAR Report at 10-11 (noting the impact of "well-specific parameters," such as well depth, on reclamation costs); RFF Report at 8-9 (listing several factors that can affect reclamation costs, including well depth, topography, and surface restoration). Thus, there is little assurance that BLM will consider the potential depth of the White Pine well (10,000+ feet), along with the unique and sensitive conditions of the drilling site and surrounding area, when setting the bond amount.

In short, there are serious concerns about the ability of Lima Exploration to fully plug and reclaim the White Pine drilling site. Those concerns are not examined in the EA. Moreover, the Forest Service has provided no assurance that it has evaluated the adequacy of BLM's bonding. If BLM defaults to the minimum bond amount, then, in the event the operator fails to fully plug and reclaim the site, taxpayers could face well over $150,000 in reclamation costs. This would be unacceptable and inconsistent with the Forest Service's rules and policies, which require bonding that reflects the "full cost of reclamation."

Recommendation for resolution

The BLM and the Forest Service must evaluate the potential costs to fully plug, reclaim, and restore the area, and require a bond commensurate with this estimate. As detailed above this could be well over $150,000 given the well's location, depth, sensitivity of the area and difficulty revegetating the site.

III. Lima Exploration may not have diligently pursued development of its leases.

Lessees are required to exercise reasonable diligence in developing its leases. In instances where the "lessee fails to comply with any of the provisions of…the lease, the lease may be canceled by the Secretary[15]."

In their comments, the Lead Objector noted a significant delay (3.5 years) from the original timeline for the environmental analysis and posed the question whether the delay was on the part of the agency, or Lima Exploration. The agency's response noted that the BLM may grant a suspension when lessees experience unavoidable delays (e.g., environmental documents), but

[15] 43 CFR § 3108.3(a)

this response did not address whether the excessive delay was, at least in part, due to action or inaction by the lessee.

If Lima Exploration has caused unnecessary delays in the environmental review process, their actions – not the actions of the agency – are the cause of the delay. As such, these delays may not have warranted a continuation of the lease suspensions.

Recommendations for resolution:

1) Disclose the cause(s) of significant delays in the environmental review process.
2) Require Lima Exploration to exercise due care and diligence in drilling the unit obligation well.
3) Do not award further suspensions that, while perhaps in the business interest of the lessee, are not in the public interest. For instance, raising capital, seeking investors, or pursuing development partners are not reasons to justify lease suspensions.

Conclusion

Thank you for the consideration of our perspective and recommendations to fully evaluate impacts of the proposed action; effectively mitigate impacts to the exemplary fish, wildlife and recreation resources found in the project area; and to ensure full reclamation. Our organizations would be happy to meet at your convenience to discuss the points we have raised and discuss reasonable solutions to resolve these concerns.