



State of Utah

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Office of the Governor
PUBLIC LANDS POLICY COORDINATING OFFICE

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May 23, 2018

Submitted via electronic mail: showard@blm.gov

Stephanie Howard
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Bureau of Land Management, Vernal FO
170 S 500 East
Vernal, UT 84078

Subject: **Greater Chapita Wells Natural Gas Infill Project Draft EIS**
DOI-BLM-UT-G010-2014-0004-EIS
RDCC Project No. 62543

Dear Ms. Howard:

The State of Utah appreciates the opportunity as a cooperating agency to review and provide comment on the Draft Environmental Impact Statement (DEIS) for the Greater Chapita Wells Natural Gas Infill Project. The State of Utah is and has been in full support of Alternative B, EOG Resources Inc.'s proposal to develop the hydrocarbon resources from existing oil and gas leases within the Greater Chapita Wells Project Area located in Uintah County. The State encourages the BLM to adopt the Proposed Action, Alternative B. Alternative B would best protect and recognize the State's interests and Utah School and Institutional Trust Lands Administration (SITLA) mineral interests and both existing and future lease rights for the development of school trust fund revenues. SITLA beneficiaries have received millions of dollars to-date from EOG operations in the Chapita Wells area.

The State previously submitted comments to the BLM in letters dated June 19, 2014, May 15, 2015, and May 17, 2016. The State reaffirms its comments submitted at those times, and notes that the issues raised previously have not been seriously considered and adequately addressed. Specifically, Alternative C, the agency Preferred Alternative, and Alternative D would fail to recover valuable petroleum resources by limiting the location wells needed to economically recover those resources. The State in collaboration with the Utah School and

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Institutional Trust Lands Administration (SITLA) have prepared the following comments for your consideration.

SITLA Background

Utah's school and institutional trust lands were granted by Congress during statehood, through the Enabling Act of 1894. These lands are legally mandated to provide financial support for the State's K-12 public schools and 11 other public institutions. SITLA is an independent state agency that manages these lands, approximately 2,674 mineral acres and 1,954 surface acres of which are located within the 43,071 total acres covered by the DEIS. These trust lands are adjacent to or scattered among federal, tribal, and private lands and represent approximately 6.21 percent of the area's mineral interests and 4.54 percent of the area's surface interests (See DEIS; Ch. 1.0, Pg. I-I Table 1-1 -Introduction and Background).

Financial Impact to Utah

The State and SITLA have been very pleased with EOG's demonstrated stewardship. Alternative B would provide for up to 15 years of infill drilling on approximately 2,800 wells; would implement spacing at one well pad per 40-acres; allow expansion of up to 960 existing well pads; and would provide for the construction of up to 233 new well pads. Alternative B potentially allows for up to 2,685 acres of new surface disturbance, 1,034 acres of surface disturbance are already being assessed in the National Environmental Policy Act (NEPA) analysis for Phase 2 liquids gathering system (*id* Ch. 2.0, Pg. 2-1 Line 19 - Proposed Action and Alternatives). In 2013 EOG submitted the proposal underlying Alternative B in response to increased concerns over winter time ozone. That proposal revised the originally proposed 2009 plan of one well pad per every 20 surface acres, totaling 7,028 wells, from up to 1,679 new and expanded well pads (*id* Chapter 1.0, Pg. 1-4 Line 1).

BLM Preferred Alternative C Restrictions

Alternative C limits the number of new pads to 162, or 71 fewer locations than in Alternative B, which may have an adverse impact on EOG's planned operations. "It is EOG's opinion that directional drilling does not currently provide an economically viable production strategy for Wasatch reservoirs in the GCWP A. Therefore, it is EOG's opinion that development of the Wasatch Formation by the Proposed Action would utilize vertical wells. However, based on the recent experience of other operators in the area, BLM does not agree with EOG's assertion" (*id* Ch. 2.0, Pg. 2-5 Line 4). The State maintains that operating companies are in the best position to determine what drilling programs are most conducive to

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economic development. The State requests that EOG be provided with the opportunity to defend Alternative B before being subject to an overreaching action that could put undue constraints on EOG's operations. As previously mentioned above, EOG has already made compromises and reduced its drilling program dramatically (by 60 percent) from 7,000 to 2,800 wells, in response to identified air pollution problems in the Uinta Basin, particularly winter ground-level ozone (*id* Ch. 2.0, Pg. 2-31 Line 26 - Air Quality- General).

Environmental Considerations

EOG is currently planning ahead and looking to further reduce emissions from operations through continued installation of liquids gathering system in its Phase 2 infrastructure. Phase 1 was approved under the 2013 CWU Liquids Gathering System Project EA, and EOG now seeks to increase its infrastructure in the 2015 CWU Northern Liquids Gathering System Project EA, pending approval (*id* Ch. 2.0, Pg. 2-2 Line 9). In response to elevated winter time ozone in the Uinta Basin, EOG began examining its oil and gas development operations in 2010 with the intent to institute controls to reduce or eliminate ozone precursors. The most important contributor to these mitigation efforts was a liquids gathering system (LGS). The implementation of the LGS will reduce ozone emissions by 47 percent in existing wells and by 51 percent in the EIS project wells in the future (*id* Ch. 2.0, Pg. 2-6 Line 12). This is encouraging news. EOG's best practices approach should help ensure continued development in the Uinta Basin in an environmentally responsive manner.

In April 2012, the United States Environmental Protection Agency (EPA) designated the ozone attainment status of Duchesne and Uintah counties within the Uinta Basin as unclassifiable based on inadequate monitoring information. On September 29, 2016, Utah Governor Gary Herbert requested nonattainment designation from the US EPA for portions of Uintah and Duchesne counties within the Uinta Basin, which the US EPA issued a response to Governor Herbert on December 20, 2017 stating that the USEPA generally agrees with Utah's recommendations to designate portions below 6,250 feet as nonattainment for the 2015 ozone standard (*id* Ch. 3.0, Pg. 3.3-6 Line 3 Air Quality and Greenhouse Gas Emissions). The EPA formally designated the said as "Marginal" Nonattainment under the Clean Air Act (CAA) on May 1, 2018. The Utah Department of Environmental Quality (DEQ) now has three years to meet the current standard, but does not have to put in force a State Implementation Plan (SIP). This evidence shows that emission levels are not in extreme excess and further supports the potential for continued development within the DEIS when combined with EOG's LGS Phase 2 system best practices, providing economic benefit to the Uinta Basin while mitigating ozone precursor emissions.

The NEPA process should not be used as a surrogate to promulgate additional air

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quality emission controls or mitigation measures that go beyond applicable CAA requirements, as reflected in the State of Utah's applicable air quality permitting rules. The recent designation of Uintah County as marginal nonattainment for ozone does not require the BLM to make a CAA General Conformity determination for projects at this time. Specifically, the BLM is not required to make a CAA General Conformity determination until one year after designation, which would be May 1, 2019. Further, conformity requirements do not apply to sources subject to New Source Review permits such as Utah's Permit by Rule for oil and gas resources. In summary, the entities responsible for implementing the CAA, EPA and the State of Utah, are satisfying the requirements applicable to the marginal nonattainment area.

Avoidance Measures

Hookless Cactus encompasses 19,859 acres of potential habitat inside the DEIS, with 2,498 acres in Level 1 CCA (Core Conservation Area) and 5,646 acres in Level 2 CCA's, which will require mitigation by EOG to avoid adverse impact. The State interprets EOG's plan as acceptable and a best efforts approach. The impact in Alternative B is estimated by multiplying the percentage of potential disturbance acreage of 56 percent for potential habitat, 6 percent for Level 1 CCA' s and 13 percent for Level 2 CCA's, by the amount of acreage that would be impacted by new surface disturbance associated with Alternative B (2,909 acres). "As a result, approximately 2,005 acres of potential cactus habitat (less than 1 percent of potential habitat across the entire range) would be impacted under this alternative" (*id* Ch. 4.0, Pg. 4.6-1 O Line 13 - Vegetation).

The BLM cannot limit access to and development of the State's and SITLA' s contractual right to shared minerals within Federal Unit interests by adopting or acceding to overly restrictive U.S. Fish and Wildlife Service (FWS) conservation measures related to the Hookless Cactus. FWS never consulted the State or SITLA regarding the core conservation areas designated for the Hookless Cactus. The *de facto* creation of critical habitat *via* these "core conservation areas" absent the requisite regulatory and statutory procedures is contrary to the plain language of the ESA, relevant regulations and legal precedent. Without public notice and comment, or absent any consideration of the economic impacts caused by restricted development, the FWS is clearly without authority to designate "core conservation areas" to protect the Hookless Cactus and significantly restrict access to mineral development in the State of Utah. Similarly, the BLM cannot use the NEPA process to impose management prescriptions on this species that exceed the legal boundaries of the ESA.

Moreover, the BLM has no legal authority to protect potential, suitable, or potentially suitable habitat, especially when surveys have found no existence of species on those lands.

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Neither the BLM nor the FWS can use the NEPA process and draft EIS to exceed the contours of the ESA. BLM must follow Section 7 of the ESA and the guidelines that limit its consultation to the species and its critical habitat. The BLM should analyze the specific economic effect on school trust lands rendered by its actions by virtue of establishment of core conservations designations and associated restrictions.

Conclusion

Alternative B, the Proposed Action, was originally submitted to the BLM by EOG on September 29, 2009, as the proposed action for an Environmental Impact Statement (*id* Ch. 2, Pg. 2-35 Line 35). EOG began reviewing and revising its proposed action plan in early 2013 to reduce air emissions and ozone precursors (*id* Ch. 1.0, Pg. 1-4 Line 5). On November 14, 2013, the BLM Vernal Field Office held an internal scoping meeting with multiple agencies to discuss the revisions and new alternatives (*id* Ch. 1.0, Pg. 1-14 Line 17). The DEIS is nine (9) years in the making, and EOG has been very patient as it has implemented its best practices to establish a conducive development plan for the Greater Chapita Wells Project Area. The State and SITLA support continued development under Alternative B, as the best way to provide its trust beneficiaries with revenue.

The State appreciates the opportunity to provide comment and looks forward to continually working with the BLM. The State supports Alternative B as the most prudent method of orderly development.

Thank you for your consideration of our comments and your collaboration. Please direct any written questions in regard to this correspondence to the Public Lands Policy Coordinating Office at the address below, or call to discuss any questions or concerns.

Sincerely,



Kathleen Clarke
Director

cc: Ed Roberson
BLM State Director
Email via eroberso@blm.gov