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June 13, 2007

United States Senate
Committee on Energy and Natural Resources
Senator Jeff Bingaman, Chairman
Senator Pete V. Domenici, Ranking Member
304 Dirksen Senate Building
Washington, DC 20510

Via Facsimile: (202) 224-6163

Dear Senators Bingaman and Domenici:

I have watched with great interest your efforts to amend the Energy Policy Act of 2005 (Act). Today I write with the singular purpose of offering specific amendment language related to Section 390(b)(3) of the Act.

I understand that several amendment drafts have been put forward related to this specific provision, with the hope of capturing the intent of western governors, both in terms of individual governor's statements related to this provision of the Act and the Western Governors Association (WGA) Policy Resolution 07-01 "Protecting Wildlife Migration Corridors and Crucial Wildlife Habitat in the West." I do not write to you in my capacity as Chairman of the WGA nor do I write with any reference to WGA Policy Resolution 07-01 or any other governor's position on this subject. Rather, I write to you as the governor of Wyoming based upon my specific and individual concerns related to this provision of the Act and its application in my state.

My concerns with the existing language of Section 390(b)(3) of the Act are two-fold:

First, for nearly five years, my staff and I have been told that land use plans are "30,000-feet looks" at the management of federal lands. Each time we have endeavored to require site-specific management prescriptions in these land use plans, most commonly in the context of Bureau of Land Management (BLM) Resource Management Plans (RMPs), the BLM has admonished the state that these prescriptions are better addressed in the various project level environmental impact statements. Taking the BLM at their word, we have deferred our calls for site-specific management until project level analysis is put forward. As a result, these RMPs lack, among other things, site-specific wildlife and wildlife habitat and quantitative air impact analyses. Given the deliberately limited analysis of the land use plans, Section 390(b)(3) and its application of categorical exclusions for drilling at the land use planning level seems wholly

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inappropriate, especially given the implications for wildlife and air quality – two resources under tremendous pressure in Wyoming.

Second, the application of categorical exclusions for drilling based on "any environmental document prepared pursuant to NEPA" where drilling was analyzed as a reasonably foreseeable activity seems to make inherent sense – but only where the analysis is current and the proposed drilling is contemplated in and consistent with the analysis set forth in the "environmental document prepared pursuant to NEPA." With the requirement that the document had to have been approved within 5 years prior to the date of spudding the well, the "freshness" of the analysis is not really concerning. Thus, so long as the drilling proposed to be categorically excluded under Section 390(b)(3) is required to be contemplated in and consistent with the underlying document, I can be made comfortable with the application of a categorical exclusion in this specific context. If the categorical exclusion is not specifically conditioned, I fear that the language of Section 390(b)(3) is potentially broad enough to allow most any drilling operation anywhere in the "developed field," even where such drilling would contravene the analysis set forth in the underlying NEPA document (e.g. categorically excluding NEPA analysis for drilling in wildlife habitat that was otherwise protected).

The specific amendment language that deals with these concerns is enclosed for your review and consideration. I believe that the language is narrowly tailored to ameliorate my concerns with the existing provisions of Section 390(b)(3) of the Act.

I make no representations concerning the balance of your proposed actions related to the Energy Policy Act of 2005 – other than to say that I am generally comfortable with the other categorical exclusion language that is currently set forth in Section 390 of the Act. However, I would add that it is my hope that the application of these categorical exclusions would not become "the rule" but would instead remain "the exception to the rule." The "hard look" analysis required under the National Environmental Policy Act, while unwieldy at times, is generally the best course to ensure that development happens in a responsible and orderly fashion.

Thank you for the opportunity to provide my thoughts on this important legislative effort.

Best regards,

Dave Freudenthal
Governor

DF:RL:pjb
Enclosure
c: Senator Mike Enzi