The Wilderness Society · Conservation Colorado
Western Slope Conservation Center

July 17, 2018

Delivered via BLM's Comment Submission Form at *https://eplanning.blm.gov/epl-front-office/eplanning/comments/commentSubmission.do?commentPeriodId=68061*

Bureau of Land Management
Uncompahgre Field Office
2465 S. Townsend Ave.
Montrose, CO 81401

Re: Scoping comments on the Uncompahgre Field Office parcels in BLM Colorado's December 2018 Oil and Gas Lease Sale

To whom it may concern:

Please accept and fully consider these scoping comments on the Uncompahgre Field Office parcels under consideration for inclusion in BLM Colorado's December 2018 oil and gas lease sale, submitted on behalf of The Wilderness Society, Conservation Colorado and Western Slope Conservation Center. Our organizations and our members are deeply invested in sound stewardship of our public lands, and we appreciate that BLM is offering a public scoping comment opportunity for the December 2018 oil and gas lease sale.

I. National Environmental Policy Act

A. BLM must take the "hard look" required by NEPA prior to issuing oil and gas leases.

The National Environmental Policy Act (NEPA) is our "basic national charter for the protection of the environment." 40 C.F.R. § 1500.1 NEPA achieves its purpose through "action forcing procedures. . . requir[ing] that agencies take a hard look at environmental consequences." *Id*.; *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989) (citations omitted). This includes the consideration of best available information and data, as well as disclosure of any inconsistencies with federal policies and plans.

Federal agencies must comply with NEPA before there are "any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented." 42 U.S.C. § 4332(C)(v); *see also* 40 C.F.R. §§ 1501.2, 1502.5(a). Federal courts have held that site-specific analysis is required prior to issuing oil and gas leases where there is surface that is not protected by no-surface occupancy stipulations (NSO) and where there is reasonable foreseeability of environmental impacts. *See e.g.*, *New Mexico ex rel. Richardson v. BLM*, 565 F.3d 683, 718 (10th Cir. 2009); *Pennaco Energy, Inc. v. United States DOI*, 377 F.3d 1147, 1160 (10th Cir. 2004).

This is because oil and gas leases confer "the right to use so much of the leased lands as is necessary to explore for, drill for, mine, extract, remove and dispose of all the leased resource in a leasehold" and therefore would constitute an "irreversible and irretrievable commitment of resources." *New Mexico ex rel. Richardson*, 565 F.3d at 718; 40 C.F.R. § 3101.1-2; *see also Sierra Club v. Hodel*, 848 F.2d 1068, 1093 (10th Cir. 1988) (agencies are to perform hard look NEPA analysis "before committing themselves irretrievably to a given course of action so that the action can be shaped to account for environmental values").

In order to take the required "hard look" at potential impacts, BLM must prepare an Environmental Assessment (EA) or Environmental Impact Statement (EIS) for this lease sale. The 1989 Uncompahgre Basin RMP is insufficient to support new oil and gas leasing. The affected environment has changed dramatically in the past 30 years, and a significant amount of new information exists that must be considered when making leasing decisions. BLM is obligated to "describe the environment of the areas to be affected or created by the alternatives under consideration." 40 C.F.R. § 1502.15. Establishment of baseline conditions is an important requirement of NEPA. In *Half Moon Bay Fisherman's Marketing Ass'n v. Carlucci*, 857 F.2d 505, 510 (9th Cir. 1988), the Ninth Circuit states that "without establishing . . . baseline conditions . . . there is simply no way to determine what effect [an action] will have on the environment, and consequently, no way to comply with NEPA." The court further held that "[t]he concept of a baseline against which to compare predictions of the effects of the proposed action and reasonable alternatives is critical to the NEPA process." Without an updated baseline, BLM cannot fully analyze the direct, indirect and cumulative effects of leasing and development on the affected environment.

Both NEPA and the Federal Land Policy and Management Act (FLPMA) contemplate and require working from up to date information in land use plans and the associated environmental analyses. *See e.g.*, 43 U.S.C. §§ 1711(a) and 1712(a) (inventories required on a "continuing" basis and must be kept "current" and land use plans must be revised "when appropriate") and 40 C.F.R. § 1502.9(c)(ii) (supplemental environmental impact statements required if there are "significant new circumstances or information"). The best way for BLM to ensure it is meeting its obligations under these statutes would be to complete the revision of the Uncompahgre RMP before oil and gas leasing is authorized. However, at a minimum, an EA is warranted and BLM may likely find that an EIS is needed.

Importantly, BLM cannot rely on a Determination of NEPA Adequacy (DNA) for this lease sale. DNAs, unlike Environmental Assessments and Environmental Impact Statements, are not NEPA documents. They do not analyze impacts, but rather determine the adequacy of existing NEPA documents. *See e.g., S. Utah Wilderness Alliance v. Norton*, 457 F. Supp. 2d 1253, 1261-62 (D. Utah 2006). The use of DNAs is governed by provisions in the Department of the Interior Departmental Manual, the BLM's NEPA Handbook, and BLM Instruction Memorandum (IM) 2010-117 (Oil and Gas Leasing Reform—Land Use Planning and Lease Parcel Reviews). Under the Departmental Manual, a DNA can only be used when (1) the proposed action is adequately covered by

existing NEPA analysis and (2) there are no new circumstances, information, or unanticipated or unanalyzed environmental impacts that warrant new or supplemental analysis. Departmental Manual Part 516 Section 11.6. A DNA "does not itself provide NEPA analysis." *Id.* The proposed lease sale does not meet these criteria because existing NEPA analyses do not adequately analyze potential impacts to resources such as water supplies and climate change, as detailed below. Additional, site-specific NEPA analysis is unquestionably required.

The EA or EIS for this lease sale must specifically analyze the following resources and impacts in the Uncompahgre Field Office:

i. Visual Resources

The North Fork Valley is known for its dark skies, rural charm, bucolic beauty, and stunning views. The communities and farms of the valley are stitched together by the world-famous West Elk Loop Scenic Byway. These scenic resources are valued by local residents and draw tourists who contribute to the local economy. BLM must analyze potential impacts to visual resources from oil and gas development that would be reasonably foreseeable as a result of issuing new leases, and ensure the overall rural and scenic character of the Valley is protected—which draws in an ever-increasing number of tourists and residents, benefits the wineries and farm stands, and fuels the creative muses of the area's growing number of artists, performers and authors.

ii. Water Resources

The water quality of the North Fork of the Gunnison River is currently good, and industrial pollutants remain low. Local citizens have been collecting baseline surface water quality data for over 17 years through the state-supported River Watch program.[1] The primary water quality issues for irrigators are related to salinity and selenium loads, which increase as the river and ditches flow down valley, and which are exacerbated by development on the highly erodible Mancos soils that comprise much of the region. BLM must analyze how oil and gas development that would be reasonably foreseeable as a result of new leasing would potentially impact the surface water quality of the North Fork.

In addition, impacts in source areas carry real risk of groundwater harm. Recharge areas for aquifers are both broad and shallow, as noted in a comment from one local domestic water company.

> These springs are primarily fed by subsurface collection of precipitation percolating through talus and glacial deposits into a larger sub-surface groundwater storage in the till deposits. These springs are dependent entirely upon precipitation and surface runoff for their supply and recharge of the underground well system (Wright Engineering Study of 1977, extracting data from U.S. Geological Survey's Professional Paper No. 617 entitled "Quaternary Geology of

[1] Western Slope Conservation Center - http://westernslopeconservation.org/external-resources/

> the Grand and Battlement Mesas Area, Colorado") and do so from an area of greater than 1 sq. mi.[2]

Potential impacts to groundwater must be analyzed in the NEPA document prepared for this lease sale.

iii. Agriculture

In addition to analyzing potential impacts on water resources generally, BLM must specifically analyze the impacts to agriculture, both related to water supply and otherwise. Protection of the North Fork Valley's water supply relies on preventing pollution, protecting source water areas, protecting water bodies and riparian areas, and protecting water systems and conveyances. For agricultural operators, water quantity and quality are both of utmost importance. Organic agriculture, specialty crops and high quality hay all depend on abundant water free from contamination.

The North Fork Valley is home to Colorado's highest concentration of organic farms. Irrigation in the valley relies on an interconnected series of canal, ditches and tail-water impoundments. Surface contamination and spills, which occur regularly in Colorado oil and gas fields, could spread rapidly though the irrigation systems that water the valley.[3] BLM must analyze potential impacts to irrigation systems from oil and gas development that would be a reasonably foreseeable result of issuing new leases.

BLM must also analyze other impacts to agriculture that are reasonably foreseeable from oil and gas leasing, including impacts to air quality and climate. According to NOAA, the Gunnison River Basin is "a microcosm" of the broader climate and water troubles bedeviling the state.[4] Climate impacts, which would be exacerbated by additional leasing and development, are already affecting agriculture in the Gunnison River Basin:

> Higher temperatures mean precipitation is increasingly falling as rain rather than snow. That has decreased the Rockies' snowpack, a natural reservoir that feeds the Colorado River system's summer streams. Now, there's less to melt. Crops go parched. Riverbeds go dry. Farmers' pockets go empty.[5]

Therefore, in addition to analyzing climate change impacts generally, as discussed further in these comments, BLM must analyze climate impacts on agriculture specifically.

---

[2] Pitkin Mesa Pipeline Company comments on the Uncompahgre Draft RMP/EIS.
[3] "Oil and gas companies in Colorado reported 615 spills in 2015," Denver Post March 17, 2016. Online at www.denverpost.com/2016/03/17/oil-and-gas-companies-in-colorado-reported-615-spills-in-2015/
[4] "If Trump gets his oil boom, leases could cover this valley," ClimateWire July 13, 2018. Online at https://www.eenews.net/stories/1060088927
[5] *Id.*

iv. Wildlife Habitat

The BLM lands in and around the North Fork Valley provide for an abundance and diversity of wildlife, from moose, bear and lynx in the upper reaches, to Gunnison sage grouse, Yellow-bill Cuckoo, fox and coyote in the bottomlands—which are critical winter range for herds of elk and deer. Waterbodies and riparian areas provide important habitat and travel routes for a variety of species. Upland migration routes and connectivity are critical elements to maintaining healthy populations, from endangered and sensitive species to big game. Specific habitat areas—nesting sites, leks, floodplains and fish habitat, migration routes, and winter range are all important wildlife resources that must be analyzed in the NEPA document prepared for this lease sale.

Streams and rivers that head on the Grand Mesa and West Elks contain important trout fisheries, and the Gunnison River just below the confluence is a Colorado Gold Medal trout stream. The Gunnison River is also home to three species of endangered fish that are known to be impacted by activity on the selenium rich soils of the North Fork Valley.

Colorado Parks and Wildlife, in previous comments on oil and gas leasing in the North Fork Valley, emphasized the importance not only of protecting the critical winter habitat that covers nearly all of the valley, but of the important migration routes that connect the winter range with uplands and calving areas.[6] BLM must thoroughly analyze potential impacts to habitat and migration routes and apply necessary stipulations to protect those resources.

v. Recreation

Hunting is a mainstay that brings large revenue for western Colorado coffers. The economic contributions made by maintaining healthy and abundant fish and wildlife populations are substantial. The CPW comments on the March 2012 oil and gas lease sale emphasized the economic importance of protecting this habitat for the hunting opportunities provided.

> ...benefits from hunting and fishing recreational activities are a sustainable annual source of economic benefit for Delta and Gunnison counties only if wildlife populations, and particularly big game populations, are maintained and quality hunting opportunities continue to exist.[7]

Hunting and fishing are multimillion dollar industries in the region, estimated at over $80 million annually (in 2007) for the two counties.[8] River sports, hiking, camping, mountain biking, climbing and trail running are other highly popular recreation activities in the North Fork Valley. BLM must analyze potential impacts to all of these recreation resources from oil and gas leasing and development.

[6] Colorado Park and Wildlife comments on March 2012 oil and gas lease sale, February 3, 2012.
[7] *Id.*
[8] *Id.*

vi. Cumulative Impacts

In order to take the "hard look" required by NEPA, BLM is required to assess impacts and effects that include: "ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, *whether direct, indirect, or cumulative*." 40 C.F.R. § 1508.8. (emphasis added). NEPA regulations define "cumulative impact" as:

> the impact on the environment which results from the *incremental impact of the action when added to other past, present, and reasonably foreseeable future actions* regardless of what agency (Federal or non-Federal) or person undertakes such other actions. *Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time*.

40 C.F.R. § 1508.7 (emphasis added). To satisfy NEPA's hard look requirement, the cumulative impacts assessment must do two things. First, BLM must catalogue the past, present, and reasonably foreseeable projects in the area that might impact the environment. *Muckleshoot Indian Tribe v. U.S. Forest Service*, 177 F.3d 800, 809–10 (9th Cir. 1999). Second, BLM must analyze these impacts in light of the proposed action. *Id.* If BLM determines that certain actions are not relevant to the cumulative impacts analysis, it must "demonstrat[e] the scientific basis for this assertion." *Sierra Club v. Bosworth*, 199 F.Supp.2d 971, 983 (N.D. Ca. 2002). A failure to include a cumulative impact analysis of actions within a larger region will render NEPA analysis insufficient. *See, e.g., Kern v. U.S. Bureau of Land Management*, 284 F.3d 1062, 1078 (9th Cir. 2002) (analysis of root fungus on cedar timber sales was necessary for an entire area).

As part of the NEPA analysis for this lease sale, BLM must evaluate the cumulative impacts of BLM Colorado's December 2018 oil and gas lease sale in its entirety. BLM Colorado is analyzing 227 parcels covering 236,009 acres across the state for the December lease sale. However, BLM is analyzing these parcels in four separate NEPA documents, one of which is for the Uncompahgre field office. In addition to addressing direct, indirect and cumulative impacts of leasing the parcels in this field office, BLM must analyze the cumulative impacts of the additional parcels being considered for the December lease sale in Colorado.

B. BLM must consider a range of alternatives.

BLM must evaluate a reasonable range of alternatives in the NEPA document prepared for this lease sale. NEPA generally requires the lead agency for a given project to conduct an alternatives analysis for "any proposal which involves unresolved conflicts concerning alternative uses of available resources." 42 U.S.C. § 4332(2)(E). The regulations further specify that the agency must "rigorously explore and objectively evaluation all reasonable alternatives" including those "reasonable alternatives not within the jurisdiction of the lead agency," so as to "provid[e] a clear basis for choice among the option." 40 C.F.R. § 1502.14. This requirement applies equally to EAs and EISs. *Davis*

v. Mineta, 302 F.3d 1104, 1120 (10th Cir. 2002); *Bob Marshall Alliance v. Hodel*, 852 F.2d 1223, 1228-29 (9th Cir. 1988).

The range of alternatives is the heart of a NEPA document because "[w]ithout substantive, comparative environmental impact information regarding other possible courses of action, the ability of [a NEPA analysis] to inform agency deliberation and facilitate public involvement would be greatly degraded." *New Mexico v. BLM*, 565 F.3d 683, 708 (10th Cir. 2009). That analysis must cover a reasonable range of alternatives, so that an agency can make an informed choice from the spectrum of reasonable options. By contrast, in evaluating lease sales, BLM frequently evaluates only two alternatives: a no action alternative, which would exclude all lease parcels from the sale; and a "lease everything" alternative, which would offer for lease all nominated parcels. An EA offering a choice between leasing every parcel nominated, and leasing nothing at all, does not present a reasonable range of alternatives.

For this lease sale, BLM must consider reasonable alternatives that fall between the two extremes. At a minimum, BLM should analyze the following alternatives:

- Defer all leases in the Uncompahgre Field Office;
- Alternatives that would minimize and/or mitigate GHG emissions, such as deferring leases, phasing leasing, and requiring technology to mitigate emissions.
- Alternatives that apply the following stipulations to protect important resources in the North Fork Valley, all of which are under consideration in the Uncompahgre Draft RMP:

Resource	**No Leasing**	**No Surface Occupancy**	**Controlled Surface Use**
Character of place			
Visual resources, local economies, farms & communities, sensitive landscapes, river corridors	NL-11 Prominent landmarks; NL-13 Coal leases; NL-3 Major river corridors.	NSO-52 Travel & Scenic Corridors; NSO-5 High geologic hazards; NSO-67* High occupancy buildings (Alts. B, D); NSO-68 Community facilities; NSO-3 Agricultural operations; NSO-7 Major river corridors.	CSU-7 Moderate geologic hazards; CSU-47 Vistas.
Water supply			
Waterbodies, private wells, water systems, public water source areas, irrigation facilities, river system	NL-1 Selenium soils; NL-4 Water bodies; NL-6* Public water supplies (Alt. B); NL-7 Public water supplies; NL-9 Domestic wells and water systems; NL-5 Water ways; NL-3 Major river corridors.	NSO-2 Selenium soils; NSO-15 Domestic wells and water systems; NSO-16 Water conveyance systems; NSO-12 Public water systems; NSO-55* BuRec dams & facilities (Alts. B,C,D).	

Wildlife habitat and migration			
Wildlife and species habitat, floodplains, riparian areas	NL-4 Water bodies; NL-5 Water ways; NL-10* Gunnison sage grouse (Alt. B).	NSO-35 Raptor sites; NSO-33 Gunnison sage grouse; NSO-27 Leopard frog; NSO-25 CRCT habitat; NSO-30* Yellow billed cuckoo (Alt. B); NSO-39* Mexican spotted owl (Alt. B); NSO-21 Deer & elk habitat; NSO-17* Rare plant communities (Alt. B); NSO-20* Ecological Emphasis Area (Alt. B); NSO-8 Floodplains.	
Recreational areas and access			
Jumbo Mountain SRMA, river access, hunting opportunities, visual resource protection	NL-11 Prominent landmarks; NL-14* Parks (Alt. B); NL-3 Major river corridors.	NSO-57 Recreation-Jumbo Mnt SRMA (VRM II); NSO-52 Travel & Scenic Corridors; NSO-25 CRCT habitat; NSO-21 Deer & elk habitat; NSO-7 Major river corridors.	CSU-47 Vistas.

Failing to analyze such middle-ground options would violate NEPA. *See TWS v. Wisely*, 524 F. Supp. 2d 1285, 1312 (D. Colo. 2007) (BLM violated NEPA by failing to consider "middle-ground compromise between the absolutism of the outright leasing and no action alternatives"); *Muckleshoot Indian Tribe v. US Forest Serv.*, 177 F.3d 800, 813 (9th Cir. 1999) (NEPA analysis failed to consider reasonable range of alternatives where it "considered only a no action alternative along with two virtually identical alternatives").

Failing to consider alternatives that would protect other public lands resources from oil and gas development would also violate FLPMA. Considering only one alternative in which BLM would offer all nominated oil and gas lease parcels for sale, regardless of other values present on these public lands that could be harmed by oil and gas development, would indicate a preference for oil and gas leasing and development over other multiple uses. Such an approach violates the agency's multiple use and sustained yield mandate, as detailed in Section II of these comments.

C. BLM must not authorize oil and gas leasing which would preclude alternatives under consideration in the Uncompahgre RMP revision.

The RMP revision is the avenue through which BLM gathers information and updates inventories of the resources of the public lands in accordance with FLPMA and makes management decisions that serve the public interest. All of the parcels in the Uncompahgre Field Office would be subject to new stipulations in the revised RMP. The majority of the parcels would be unavailable for leasing under Alternative B1, and others would have NSO stipulations. (See Figure 1.) Additionally, the parcels would be subject to NSO and CSU stipulations under the agency's preferred Alternative D. Uncompahgre Draft RMP, Map 2-23.

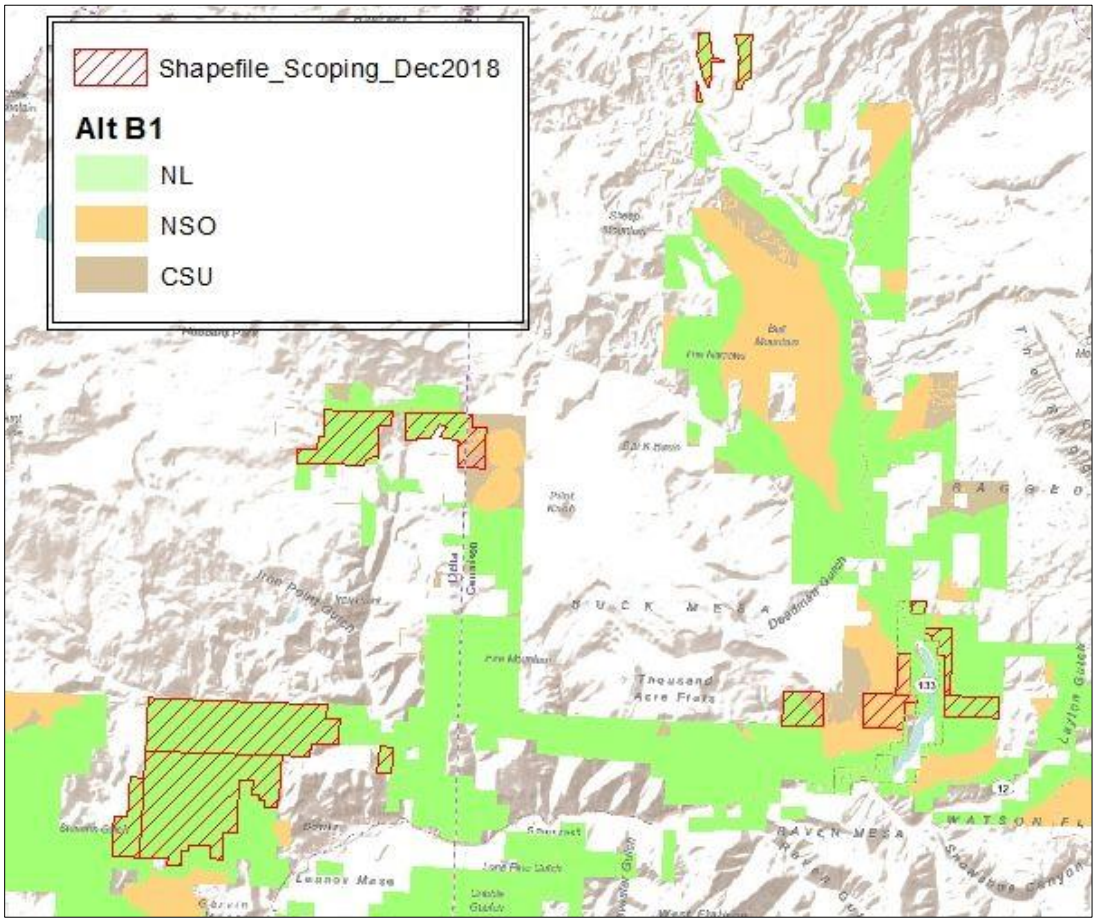

Figure 1. Proposed lease sale parcels and stipulations in the Uncompahgre Draft RMP, Alt. B1.

Moving forward with the proposed lease sale at this time would undermine the ongoing RMP revision by foreclosing management alternatives that might otherwise protect the natural resource values of the area. This would contravene NEPA, which provides that:

> (a) Until an agency issues a record of decision as provided in Sec. 1505.2 (except as provided in paragraph (c) of this section), no action concerning the proposal shall be taken which would:
> 1. Have an adverse environmental impact; or

2. Limit the choice of reasonable alternatives.

. . . .

(c) While work on a required program environmental impact statement is in progress and the action is not covered by an existing program statement, agencies **shall not** undertake in the interim any major Federal action covered by the program which may significantly affect the quality of the human environment unless such action:
1. Is justified independently of the program;
2. Is itself accompanied by an adequate environmental impact statement; and
3. Will not prejudice the ultimate decision on the program. Interim action prejudices the ultimate decision on the program when it tends to determine subsequent development or limit alternatives.

40 C.F.R. § 1506.1 (emphasis added). Offering leases in areas that are under consideration for leasing closure and major constraints will limit the choice of alternatives and prejudice the ultimate decision in the ongoing Uncompahgre RMP revision.

It is well within BLM's authority to defer all of the parcels in the Uncompahgre Field Office. Neither the MLA, FLPMA nor any other statutory mandate requires that BLM must offer public lands and minerals for oil and gas leasing that are nominated for such use, even if those lands are allocated as available to leasing in the governing land use plan. BLM's Land Use Planning Handbook 1601-1, § VII (E) specifically states that it may defer decisions in a planning area if the choice of alternatives in an RMP revision may be impacted. The 10th Circuit Court of Appeals confirmed this discretion in *New Mexico v. BLM*, 565 F.3d. 683 at 698 (10th Cir. 2009) when it stated, "[i]f the agency wishes to allow oil and gas leasing in the plan area it must undertake additional analysis…but it retains the option of ceasing such proceedings entirely".

D. BLM must analyze climate change impacts.

It is well established that federal agencies must analyze climate change when conducting NEPA, including in this lease sale analysis. In 2009, the Environmental Protection Agency (EPA) issued a finding that the changes in our climate caused by elevated concentrations of greenhouse gases in the atmosphere are reasonably anticipated to endanger the public health and welfare of current and future generations. EPA, Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act, 74 Fed. Reg. 66,496 (Dec. 15, 2009). The D.C. Circuit upheld this decision as supported by the vast body of scientific evidence on the subject. *See Coal. for Responsible Regulation, Inc. v. EPA.*, 684 F.3d 102, 120-22 (D.C. Cir. 2012).

The NEPA requirement to consider climate change has been repeatedly upheld by the courts. In *Center for Biological Diversity v. National Highway Traffic Safety*

Administration, the U.S. Court of Appeals for the Ninth Circuit assessed an agency's NEPA analysis for a rule requiring automobile manufacturers to increase the fuel efficiency of their vehicles, thereby lowering average tailpipe emissions per mile driven. The Court stated that "[t]he impact of greenhouse gas emissions on climate change is precisely the kind of cumulative impacts analysis that NEPA requires agencies to conduct." *Ctr. for Biological Diversity*, 538 F.3d 1172, 1217, 1223-25 (9th Cir. 2008). Likewise, in *Mid States Coalition for Progress v. Surface Transportation Board*, the Eighth Circuit held that NEPA requires an agency to disclose and analyze the impacts of future combustion of mined coal when deciding whether to approve a railroad line providing access to coal mining areas. 345 F.3d 520, 549-50 (8th Cir. 2003).

Because the current RMP governing the Uncompahgre Field Office was finalized in 1989, and BLM has not completed other programmatic NEPA analysis for the field office related to oil and gas leasing and climate change, BLM must analyze climate impacts as part of lease sale NEPA prior to offering oil and gas leases for sale.

Climate change effects must be integrated into the NEPA analysis as part of the environmental baseline. Agencies are required under NEPA to "describe the environment of the areas to be affected or created by the alternatives under consideration." 40 C.F.R. § 1502.15. The current affected environment sets the "baseline" for the impacts analysis and comparison of alternatives. As the Ninth Circuit held, "without establishing the baseline conditions . . . there is simply no way to determine what effect the proposed [action] will have on the environment and, consequently, no way to comply with NEPA." *Half Moon Bay Fisherman's Marketing Ass'n v. Carlucci*, 857 F.2d 505, 510 (9th Cir. 1988). Excluding climate change effects from the environmental baseline ignores the reality that the impacts of proposed actions must be evaluated based on the already deteriorating, climate-impacted state of the resources, ecosystems, human communities, and structures that will be affected. Accordingly, existing and reasonably foreseeable climate change impacts must be included as part of the affected environment, assessed as part of the agency's hard look at impacts, and integrated into each of the alternatives, including the no action alternative. Simply acknowledging climate impacts as part of the affected environment is insufficient. Rather, agencies must incorporate that information into their hard look at impacts and comparison of alternatives.

BLM cannot make an informed decision about how much disturbance issuing new oil and gas leases will have on the region or what the ecosystem can withstand under changing conditions without fully understanding the baseline and adequately assessing the action's direct, indirect, and cumulative effects. Direct effects are those "which are caused by the action and occur at the same time and place." 40 C.F.R. § 1508.8(a). Indirect effects are those "caused by the action, and later in time or further removed in distance, but still reasonably foreseeable." *S. Fork Band Council of W. Shoshone of Nev. v. U.S. Dep't of the Interior*, 588 F.3d 718, 725 (9th Cir. 2009) (quoting 40 C.F.R. § 1508.8(b)). Cumulative effects are the effects of the action in combination with "other past, present, and reasonably foreseeable future actions." *See Klamath-Siskiyou Wildlands Ctr. v. Bureau of Land Mgmt.*, 387 F.3d 989, 993 (9th Cir. 2004) (quoting 40 C.F.R. § 1508.7). As a result, NEPA requires agencies to assess the climate effects of direct emissions from

a project, such as emissions from construction activities, the indirect environmental impacts, such as degraded air quality, and the long-term collective impacts caused by the project's development and continued activity.

BLM's analysis of indirect impacts must include the consumption of natural gas that would be produced from the leases. A U.S. District Court in New Mexico recently set aside oil and gas leases issued on federal lands in New Mexico due to BLM's failure to analyze these types of indirect impacts: "Accordingly, it is erroneous to fail to consider, at the earliest stage feasible, 'the environmental consequences of the downstream combustion of the coal, oil, and gas resources potentially open to development' under the proposed agency action. *See, e.g., W. Org. of Res. Councils*, 2018 WL 1475470, at *13." *San Juan Citizens Alliance v. U.S. Bureau of Land Management*, No. 16-CV-376-MCA-JHR, 2018 WL 2994406, at *24 (D.N.M. June 14, 2018) The court explained further that "[t]his error also requires that BLM reanalyze the potential impact of such greenhouse gases on climate change in light of the recalculated amount of emissions in order to comply with NEPA." *Ibid.*

Additionally, BLM cannot wave off cumulative impacts of greenhouse gas emissions as insignificant in a global context, as BLM frequently attempts to do when analyzing oil and gas leasing. For example, in BLM Colorado's EA for the May 2017 oil and gas lease sale, the agency stated: "It is not possible to identify specific local, regional, or global climate change impacts based on potential GHG emissions from any specific project's incremental contributions to the global GHG burden." DOI-BLM-CO-NO5-2016-0099-EA, p. 36. The U.S. District Court in New Mexico ruled that similar language contained in BLM New Mexico's EA for its October 2014 oil and gas lease sale violated NEPA:[9] "Accordingly, [40 C.F.R.] Section 1508.7 acknowledges that the impact of the action alone may be individually insignificant, but also that the impact may be significant only in combination with other actions. It is the broader, significant "cumulative impact" which must be considered by an agency, but which was not considered in this case." *San Juan Citizens Alliance,* 2018 WL 2994406, at *32.

To comply with NEPA and applicable case law, BLM must at a minimum conduct NEPA analysis for this lease sale to include the following components before issuing these leases, including:

- Complete an EA or EIS to appropriately analyze climate change impacts and mitigation opportunities. This analysis must include methane emissions and social cost of carbon.
- Quantify GHG emissions.
- Analyze direct, indirect and cumulative impacts of leasing, including end-use of fossil fuel extraction.

[9] The EA specifically stated: "The incremental contribution to global GHGs from the proposed action cannot be translated into effects on climate change globally or in the area of this site-specific action. It is currently not feasible to predict with certainty the net impacts from the proposed action on global or regional climate." DOI-BLM-NM-F010-2013-0451-EA, p. 44.

- Develop alternatives that allow the public and the decisionmaker to compare the anticipated levels of GHG emissions from each alternative, including the no action alternative.
- Consider alternatives to mitigate GHG emissions and identify potential mitigation measures.
- Attach a lease notice to preserve BLM's ability to impose mitigation or offsets at the APD stage, or to delay/disapprove development.

E. BLM must analyze potential impacts associated with hydraulic fracturing.

BLM has never, including in the 1989 Uncompahgre Basin RMP, evaluated the impacts of hydraulic fracturing (or "fracking") on non-mineral resources within the Uncompahgre Field Office, including surface and ground water, air quality, human health and safety, and seismicity. This lack of analysis is particularly relevant due to the close proximity of the majority of the lease parcels to the Paonia Reservoir, the Paonia Reservoir Dam, and the workings of active coal mines in the North Fork Valley.

The U.S. District Court for the Northern District of California has ruled that BLM must analyze hydraulic fracturing prior to issuing oil and gas leases. In 2011, BLM auctioned oil and gas lease parcels in the Hollister Field Office in California without adequately analyzing the potential impacts of hydraulic fracturing. BLM attempted to defer NEPA analysis of hydraulic fracturing on the parcels at issue until it received a site-specific proposal, because the exact scope and extent of drilling that would involve fracking was unknown. The U.S. District Court for the Northern District of California ruled against BLM's decision, holding that BLM's "unreasonable lack of consideration of how fracking could impact development of the disputed parcels went on to unreasonably distort BLM's assessment," and explained:

> "[T]he basic thrust" of NEPA is to require that agencies consider the range of possible environmental effects before resources are committed and the effects are fully known. "Reasonable forecasting and speculation is thus implicit in NEPA, and we must reject any attempt by agencies to shirk their responsibilities under NEPA by labeling any and all discussion of future environmental effects as 'crystal ball inquiry.'"

Center for Biological Diversity & Sierra Club v. BLM, 937 F. Supp. 2d 1140, 1157 (N.D. Cal. 2013) (citing *City of Davis v. Coleman*, 521 F.2d 661, 676 (9th Cir. 1975)). In that case, the Hollister RMP (like the Uncompahgre Basin RMP) had not analyzed fracking or its impacts on public lands resources. The court noted the analysis in the EIS produced with the Hollister RMP "makes no explicit mention of fracking at all." The Uncompahgre Basin RMP also does not explicitly mention or discuss fracking. Ultimately, the court found that "evidence before BLM showed that the scale of fracking in shale-area drilling today involves risks and concerns that were not addressed by the PRMP/FEIS' general analysis of oil and drilling development in the area." Therefore, the court concluded, because the BLM did "not address these concerns that are specific to these 'new and significant environmental impacts,' further environmental analysis was necessary."

We note that in the case discussed above, BLM had prepared an EA for the lease sale, which the court still found inadequate to analyze fracking impacts without a sufficient analysis in the governing land use plan. BLM should appropriately analyze fracking in an EIS for the December lease sale.

Furthermore, the U.S. District Court in New Mexico recently affirmed that BLM can and must analyze potential water impacts related to hydraulic fracturing at the leasing stage:

> At the permitting stage, BLM will know the proposed technique of hydraulic fracturing and whether any water conserving measures are proposed. Thus, at that stage, BLM's estimates of the impact of the action on water quality will become even more precise. Nonetheless, the record indicates that sufficient information is available at this stage to make estimates of potential water usage for the different methods of hydraulic fracturing, and thus BLM must use that information in deciding whether the action results in a significant impact.

San Juan Citizens Alliance v. U.S. Bureau of Land Management, No. 16-CV-376-MCA-JHR, 2018 WL 2994406, at *44 (D.N.M. June 14, 2018) (emphasis added; citations omitted).

II. Federal Land Policy and Management Act (FLPMA)

A. Prioritizing oil and gas leasing is inconsistent with FLPMA's multiple-use mandate.

Under FLPMA, BLM is subject to a multiple-use and sustained yield mandate, which prohibits the Department of the Interior (DOI) from managing public lands primarily for energy development or in a manner that unduly or unnecessarily degrades other uses. *See* 43 U.S.C. § 1732(a). Instead, the multiple-use mandate directs DOI to achieve "a combination of balanced and diverse resource uses that takes into account the long-term needs of future generations." 43 U.S.C. § 1702(c). Further, as co-equal, principal uses of public lands, outdoor recreation, fish and wildlife, grazing, and rights-of-way must receive the same consideration as energy development. 43 U.S.C. § 1702(l).

DOI appears to be pursuing an approach to oil and gas management that prioritizes this use above others in violation of the multiple use mandate established in FLPMA. For example, a March 28, 2017 Executive Order and ensuing March 29, 2017 Interior Secretarial Order #3349 seek to eliminate regulations and policies that ensure energy development is balanced with other multiple uses. Similarly, BLM Colorado frequently begins its press releases announcing oil and gas lease sales by stating: "In keeping with the Administration's goal of strengthening America's energy independence…" This rhetoric seems to indicate that BLM is prioritizing oil and gas leasing and development above other multiple uses.

None of the overarching legal mandates under which BLM operates – be it multiple-use or non-impairment – authorizes DOI to establish energy development as the dominant use of public lands. On our public lands, energy development is an allowable use that must be carefully balanced with other uses. Thus, any action that attempts to enshrine energy development as the dominant use of public lands is invalid on its face and inconsistent with the foundational statutes that govern the management of public lands.

Federal courts have consistently rejected efforts to affirmatively elevate energy development over other uses of public lands. In the seminal case, *N.M. ex rel. Richardson v. BLM*, the Tenth Circuit put to rest the notion that BLM can manage chiefly for energy development, declaring that "[i]t is past doubt that the principle of multiple use does not require BLM to prioritize development over other uses." 565 F.3d 683, 710 (10th Cir. 2009); *see also S. Utah Wilderness Alliance v. Norton*, 542 U.S. 52, 58 (2004) (defining "multiple use management" as "striking a balance among the many competing uses to which land can be put"). Other federal courts have agreed. *See, e.g., Colo. Envtl. Coalition v. Salazar*, 875 F. Supp. 2d 1233, 1249 (D. Colo. 2012) (rejecting oil and gas leasing plan that failed to adequately consider other uses of public lands). Thus, any action by BLM that seeks to prioritize oil and gas leasing and development as the dominant use of public lands would violate FLPMA. BLM must therefore consider a reasonable range of alternatives for this lease sale that considers and balances the multiple uses of our public lands, consistent with NEPA and FLPMA.

Conclusion

Thank you again for the opportunity to comment. Lastly, we urge BLM to provide an email address(es) to accept comments in addition to the web forms, as BLM Colorado had been doing for lease sales prior to this one.

Sincerely,

Alex Johnson, Executive Director
Western Slope Conservation Center
2014 Poplar Avenue
Paonia, CO 81428
(970) 527-5307
director@theconservationcenter.org

Luke Schafer, West Slope Advocacy Director
Conservation Colorado
529 Yampa Ave
Craig, CO 81625
(303) 405-6761
luke@conservationco.org

Juli Slivka, Senior Planning & Policy Specialist
The Wilderness Society
11050 Pioneer Trail Ste. 202

Truckee, CA 96161
(303) 650-1179
jslivka@tws.org