



February 20, 2024

Submitted via eplanning.blm.gov

Attn: Director Doug Vilsack
BLM Colorado State Director
Denver Federal Center, Building 40
Lakewood, Colorado 80225

Subject: BLM_CO_FRN_MO4500175963 – Comments on the Notice of Intent to Amend the Resource Management Plan for the Uncompahgre Field Office and Prepare an Associated Environmental Impact Statement, Colorado.

Dear Director Vilsack:

Western Energy Alliance, the West Slope Colorado Oil and Gas Association, and the Colorado Oil and Gas Association (“the Trades”) timely submit the following comments on the U.S. Bureau of Land Management’s (“BLM”) Notice of Intent to Amend the Resource Management Plan (“RMP”) for the Uncompahgre Field Office (“UFO”) and Prepare an Associated Environmental Impact Statement (“EIS”) as noticed for availability in the Federal Register on January 5, 2024. The Trades are concerned that, four short years after conducting comprehensive analysis spanning both the Obama and Trump Administrations, BLM appears to be moving forward with closing large areas of the planning area to oil and natural gas leasing in response to two settlement agreements.

The settlements require BLM to reconsider the eligibility of lands open to oil and natural gas leasing. They also require BLM to reconsider the designation of Areas of Critical Environmental Concern, the management of lands with wilderness characteristics, and the application of No Surface Occupancy (“NSO”) on at least 350,000 acres, as presented in alternatives B and B.1 from the 2020 RMP amendment. However, the settlement agreements do not in any way mandate that BLM adopt these large closures of land to leasing nor that BLM adopt alternatives B and B.1. Further, the settlement agreements do not alleviate BLM from the obligation of providing convincing evidence and justification for making any drastic changes just four years after

completing the 2020 plan. BLM should not expand the scope of the amendment process and settlement agreements.

Western Energy Alliance (“the Alliance”) is the leader and champion for independent oil and natural gas companies in the West. Working with a vibrant membership base for nearly 50 years, the Alliance stands as a credible leader, advocate, and champion of industry. Our expert staff, active committees, and committed board members form a collaborative and welcoming community of professionals dedicated to abundant, affordable energy and a high quality of life for all. The majority of independent producers are small businesses, with an average of fourteen employees.

West Slope Colorado Oil & Gas Association (“WSCOGA”) is a member-based organization focused on promoting the development of natural gas and oil resources in Northwest Colorado. WSCOGA provides a unified political and regulatory voice for the oil and natural gas industry in the Piceance Basin and Western Colorado. WSCOGA represents over 90 member companies, and its mission is to promote the development of Western Colorado natural gas and petroleum products for the benefit of society. WSCOGA is an affiliated chapter of the Colorado Oil & Gas Association (“COGA”).

COGA is a nationally recognized trade organization that represents over 200 companies throughout the state of Colorado. For nearly 40 years, COGA has sought to create a thriving, innovative and respected oil and natural gas industry in Colorado that embodies the values of our communities, prioritizes the protection of our environment, and provides the natural resources that advance our society. COGA provides a positive, unified, and proactive voice for the oil and natural gas industry in Colorado.

I. BLM Should Not Designate Areas of Critical Environmental Concern that Were Previously Proposed and Fully Considered but Not Designated as Part of the 2020 Approved RMP Without New Justifications as to Why They Should Now Be Designated.

On April 10, 2020, less than four years ago, BLM published the Record of Decision (“ROD”) and approved RMP for the UFO. As part of BLM’s analysis, BLM fully considered a total of 23 Areas of Critical Environmental Concern (“ACEC”) and eventually adopted six in the preferred alternative (alternative E) totaling 30,100 acres that would be off limits to oil and natural gas development.

Appendix O of the 2020 RMP states “As part of the land use planning process for the Uncompahgre RMP, a BLM interdisciplinary team reviewed 25 proposals for ACECs. The team

analyzed the areas to determine if they are within the planning area and if they contain values that meet the relevance and importance criteria for consideration as potential ACECs.”¹

Appendix O continues: “*The Evaluation of Existing and Proposed Areas of Critical Environmental Concern for the Uncompahgre Planning Area* report² (BLM 2013e) presents evaluations of all existing and nominated ACECs. The BLM found that 23 areas meet the relevance and importance criteria.... Areas found to meet the relevance and importance criteria are identified as potential ACECs and have been fully considered for designation and management.”³

The Evaluation of Existing and Proposed Areas of Critical Environmental Concern for the Uncompahgre Planning Area report is a 98-page analysis conducted by an interdisciplinary team that analyzed proposed ACECs from members of the public, BLM staff, and other agencies. As part of this process, BLM formulated a five-step process for each proposed ACEC. These five steps were as follows:

1. Nomination.
2. Relevance and Importance Criteria.
3. Consideration of Potential ACECs.
4. Comments on Proposed ACECs.
5. Designation.

This five-step process was followed for all 23 proposed ACECs with analysis summarized in the 2013 report, which was used for designation of the six ACECs in alternative E of the 2020 approved RMP. Furthermore, a January 2024 ACEC fact sheet from the BLM states: “The BLM fully considered all 23 potential ACEC’s for designation and management under various alternatives as part of the 2019 RMP revision.”⁴

As part of the approved RMP, BLM proposed designating 15 of these 23 ACECs in alternative B. All 15 of these ACECs were fully considered and analyzed for formal designations per the above process. Two of these 15 ACECs (Needle Rock and Paradox Rock Art) were already designated in the RMP under alternative E. The remaining 13 ACECs in alternative B not designated include the following:

¹ BLM Uncompahgre Field Office Record of Decision and Approved Resource Management Plan, [Appendix O Summary of Areas of Critical Environmental Concern Report](#) (RMP Appendix O) at O-1.

² BLM Uncompahgre Field Office, [The Evaluation of Existing and Proposed Areas of Critical Environmental Concern for the Uncompahgre Planning Area](#) (ACEC 2013 Evaluation).

³ RMP Appendix O at O-1 and O-2.

⁴ BLM, [Areas of Critical Environmental Concern](#) at 1

1. Salt Desert Shrub Ecosystem (34,510 acres).
2. Fairview South (with CNHP Expansion) (4,250 acres).
3. Roubideau-Potter-Monitor (20,430 acres).
4. Lower Uncompahgre Plateau Cultural (31,810 acres).
5. San Miguel River ACEC Expansion (35,180 acres).
6. San Miguel Gunnison Sage-grouse (470 acres).
7. Sims Cerro Gunnison Sage-grouse (25,620 acres).
8. Dolores Slickrock Canyon (10,670 acres).
9. La Sal Creek (10,1940 acres).
10. Coyote Wash (2,100 acres).
11. East Paradox (7,360 acres).
12. West Paradox (5,190 acres).
13. Tabeguache Pueblo/Tabeguache Caves (26,300 acres).

These 13 ACECs combined make up 214,780 acres of land, which would represent a 614% increase of lands that would be off limits to oil and natural gas development in the UFO planning area due to ACECs. The approved RMP in Table 2-1⁵ demonstrates the large disparity between lands closed for fluid mineral leasing in alternative B and B.1 compared to all other alternatives. This table shows the following acres closed off to leasing by alternative:

- Alternative A (no action alternative) – 44,220 acres.
- Alternative B – 219,580 acres.
- Alternative B.1 – 306,670 acres.
- Alternative C – 44,220 acres
- Alternative D – 50,060 acres.
- Alternative E – 44,220 acres.

The Trades acknowledge that BLM is undertaking these revisions due to two settlement agreements.^{6 7} These two settlement agreements use almost exact language and direct the BLM to “...[R]econsider the eligibility of lands open to oil and gas leasing, the designation and management of Areas of Critical Environmental Concern (“ACEC”), and management of lands with wilderness characteristics.”⁸ The settlement agreement goes on to state: “BLM will prepare a new EIS.... The EIS **must analyze** the following elements ... Protections for lands with wilderness

⁵ BLM Uncompahgre Field Office Record of Decision and Approved Resource Management Plan, [Chapter 2 Alternatives](#) (Approved RMP) at 2-8.

⁶ [Citizens for a Healthy Community Settlement Agreement.](#)

⁷ [West Slope Conservation Center Settlement Agreement.](#)

⁸ *Id.* at 3 (emphasis added).

characteristics and ACECs that are the same as those analyzed in Alternative B/B.1 of the FEIS for the RMP.”⁹

It is important to note that the settlement agreements do not in any way mandate that BLM formally designate any ACECs that BLM previously fully considered under alternatives B and B.1. The agreements simply state BLM must reconsider and analyze them further.

Importantly, these settlement agreements do not alleviate BLM from the obligation to provide compelling reasons as to why, after such a brief period of time, that ACECs that were fully considered and analyzed by an interdisciplinary team and not designated then, would now become designated. *See FCC v. Fox Television Stations*, 556 U.S. 502, 515 (2009) (agency must offer a reasoned explanation for disregarding facts and circumstances that underlay agency’s prior policy). BLM can’t simply designate these as ACECs in an arbitrary and capricious manner. BLM must provide detailed, transparent evidence and justification, supported by technical documentation, should BLM now determine that any ACEC not designated in 2020 be designated in 2024. BLM should also consider and document in this analysis the extent that the resource values in these proposed ACECs can be protected using NSO and controlled surface use (“CSU”) stipulations on future leases. BLM has done so in the past,¹⁰ and it would be irrational and contrary to Federal Land Policy Management Act’s (“FLPMA”) multiple-use mandate to do otherwise.

BLM must also take into consideration the technological advancements in drilling and completions that enable the oil and natural gas under these ACECs to be developed without disturbing the surface. If operators can access the minerals under these ACECs without disturbing surface land, they should be allowed to do so. Failing to allow such development would be arbitrary and capricious and contrary to FLPMA, as such restrictions would impact mineral development while ignoring BLM’s obligation to use the least restrictive means possible to protect other resource values. As FLPMA requires, BLM would have to provide justification for why using NSO and CSU would not meet the natural resource objectives and an ACEC is necessary.

⁹ *Id.* at 3-4 (*emphasis added*).

¹⁰ Price Field Office Record of Decision and Approved Resource Management Plan, at 43 (Oct. 2008) (“Special management for the above ACECs is identified in the Approved RMP to protect the relevant and important (relevant and important) values. For example, Muddy Creek and Segers Hole are managed to protect the relevant and important scenic values. *Management actions include a NSO stipulation for oil and gas leasing and other surface disturbing activities*” (*emphasis added*)),

https://eplanning.blm.gov/public_projects/lup/67041/83197/99802/Price_Final_Plan.pdf.

Finally, the rigidity of ACEC designations make them hard to reverse.¹¹ The fact that once designated, ACECs have a history of staying ACECs should give BLM additional pause and caution from changing the direction taken in 2020.

II. Lands with Wilderness Characteristics Should Not Be Closed to Leasing.

As part of the approved 2020 RMP, BLM performed significant analysis throughout the entire planning area and determined seven areas of 42,150 acres were lands with wilderness characteristics. The approved 2020 RMP required BLM to manage three of these areas making up 18,320 acres with CSU protections, while allowing other uses on the land.

As with ACECs above, BLM performed detailed analysis on each of these seven areas for the approved 2020 RMP. BLM created a 51-page update of the wilderness characteristics inventory.¹² After this detailed analysis was conducted, BLM did not recommend any of these acres be closed to mineral leasing and development.

According to the Wilderness 2015 analysis, “Land use plans identify broad-scale decisions to guide future land management actions and subsequent site-specific implementation decisions.... Specific guidance for inventorying wilderness characteristics is provided through BLM Manual Section 6310, “Conducting Wilderness Characteristics Inventory on BLM Lands.” Guidance for “considering wilderness characteristics in the BLM land use planning process” is provided through BLM Manual Section 6320. While BLM authority to conduct wilderness reviews and establish new wilderness study areas under FLPMA Section 603 expired in 1993, the BLM has authority under FLPMA sections 102 and 201 to maintain a current inventory of all public lands and their resources, including wilderness characteristics.”¹³

Importantly, BLM further states “Through the land use planning process, the BLM must consider all available information **to determine the mix of resource use and protection that best serves the FLPMA multiple-use mandate.**”¹⁴ BLM has effective management tools such as CSUs, Timing Limitations (“TL”), and targeted NSO to protect these areas.

BLM did just that in the approved 2020 RMP and should further consider these tools and actions when analyzing these areas during this amendment. As with ACECs, the two settlement

¹¹ Karin P. Sheldon & Pamela Baldwin, Areas of Critical Environment Concern: FLPMA’s Unfilled Conservation mandate, 28:1 Colo. Nat. Resources, Energy & Env’tl. L. Rev. 1, 32 (2017).

¹² BLM Uncompahgre Field Office, [Wilderness Characteristics Inventory: 2015 Update](#) (Wilderness 2015).

¹³ *Id.* at 1-2.

¹⁴ *Id.* at 2 (*emphasis added*).

agreements do not in any way mandate that BLM formally close off these seven areas to oil and natural gas leasing. The agreements simply state BLM must reconsider and analyze them further.

Importantly, these settlement agreements do not alleviate BLM from the obligation to provide compelling reasons as to why, after such a brief period of time, these lands with wilderness characteristics that were fully considered and analyzed and not closed to leasing in 2020, would now become closed to leasing. *See FCC v. Fox Television Stations*, 556 U.S. 502, 515 (2009) (agency must offer a reasoned explanation for disregarding facts and circumstances that underlay agency's prior policy). BLM can't simply close these lands off in an arbitrary and capricious manner. BLM must provide detailed, transparent evidence and justification, supported by technical documentation, should BLM now determine that any of these seven areas be closed to leasing.

III. Additional NSO Stipulations Must be Compliant with FLPMA

The settlement agreements and notice of intent ("NOI") state that BLM will analyze an alternative that will apply "NSO stipulations to at least 350,000 acres that were analyzed for protection with CSU stipulations in Alternative B/B.1 of the FEIS for the RMP."

Appendix T in the approved RMP summarizes the CSU stipulations originally analyzed under alternatives B and B.1.¹⁵ These include several areas related to potential wetlands, wildlife, streams, and additional areas in the North Fork.

Under the current RMP, roughly 238,140 acres of land are subject to NSOs.¹⁶ The Trades have huge concerns about doubling the lands subject to NSOs in the planning area, especially since BLM analyzed these lands just a few years ago and decided CSUs were appropriate in managing and protecting these lands.

BLM must provide detailed, transparent evidence and justification, supported by technical documentation, should BLM determine that lands with CSUs in the approved 2020 RMP now must be managed through NSOs. This analysis must include reasons why CSUs are not adequately protective of the lands in order to demonstrate that BLM is adhering to FLPMA.

BLM's more tailored approach of applying targeted CSUs implemented within the 2020 approved RMP continues to be a better fit with FLPMA's multiple-use mandate as it allows mineral development in more areas while still providing heightened protections in others. *See Biodiversity Conservation All. V. BLM*, 2010 WL 3209444 at *13 (D. Wyo. 2010) (noting BLM's

¹⁵ BLM, [Appendix T Description of Alternatives](#) at T-253 – T257.

¹⁶ (Approved RMP) at 2-9.

balance of considering cultural resources, among others, “while still enabling recovery of . . . much needed oil and gas resources” under the FLPMA multiple-use mandate).

IV. Closing Areas to Oil and Natural Gas Leasing is an Extreme Constraint and Should Not Be an Explored Alternative.

The NOI states BLM “will consider closing to new oil and gas leasing all areas within the Federal mineral estate that were analyzed under Alternative B/B.1 of the 2019 proposed RMP/final EIS as either closed to leasing or open to leasing subject to no surface occupancy....” The Trades urge BLM not to explore any alternative that would close vast areas to future leasing. Such an alternative is not required by the settlement agreements, which simply states the “BLM will reconsider the eligibility of lands open to oil and gas leasing.” Furthermore, closing these lands to leasing is not required by any of the implementing Secretarial or Executive Orders, or any other source of law.

In 2020, BLM evaluated six alternatives, including alternatives B and B.1. BLM chose alternative E which closed off 44,220 acres to oil and natural gas leasing and development. To close off an additional 350,000 acres (an almost 800% increase) previously analyzed four years ago would be a complete overhaul and replacement of the current and workable balanced approach to multiple uses in the planning area.

Instead, leases should be evaluated on a site-specific basis, placing stipulations on leases as appropriate, rather than imposing strict removal of minerals from leasing. Removal is often “more restrictive than necessary,” see 42 U.S.C. § 15992(b)(3)(C).

V. BLM Should Not Expand the Scope of the Amendment Process and Settlement Agreements.

The settlement agreements and the NOI clearly set the scope of this amendment. The West Slope Conservation Center settlement agreement states: “As part of that RMP amendment process, BLM will reconsider the eligibility of lands open to oil and gas leasing, the designation and management of Areas of Critical Environmental Concern (“ACEC”), and management of lands with wilderness characteristics.”¹⁷ BLM’s NOI lists the same scope.

BLM must stay within the bounds of this scope and ignore comments from other parties that wish for BLM to go further than the scope listed in the settlement agreements and NOI.

¹⁷ West Slope Conservation Center Settlement Agreement.

Additionally, the Trades caution BLM from expanding the scope by closing lands from leasing with no-known, low, and medium potential areas as BLM has proposed in the Grand Junction Field Office and Colorado River Valley Field Office RMP amendment, and the statewide Big Game RMP amendment. The Trades provided detailed technical analysis related to outdated resource assessments and technological innovation within the oil and natural gas industry demonstrating why these proposals are not good public policy. We incorporate by reference our analysis in our comments to those two RMPAs.

VI. Conclusion

The Trades appreciate the opportunity to provide comment on the NOI for the Uncompahgre Field Office, and we look forward to continuing to cooperatively engage on the recommendations provided herein.

Sincerely,



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President
WESTERN ENERGY ALLIANCE



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