



February 10, 2015

Reviewing Officer

c/o USDA Forest Service, Region 2, Rocky Mountain Region
Attn. Objection Reviewing Officer-Planning Department
740 Simms Street
Golden, Colorado 80401-4720

Submitted via Hand Delivery

Re. Objection to White River National Forest Oil and Gas Leasing Draft Decision

Responsible Officer: Scott Fitzwilliams, White River National Forest Supervisor

Dear Reviewing Official:

Pursuant to 36 CFR § 219, Subpart B, West Slope Colorado Oil and Gas Association (“WSCOGA”), Western Energy Alliance (“Alliance”) and Public Lands Advocacy (“PLA”) (collectively, “Objectors”) file this Objection to the Draft Record of Decision (“DROD”), issued by Forest Supervisor Scott Fitzwilliams, for “Oil and Gas Leasing on Lands Administered by the White River National Forest,” dated December 9, 2014, and the “White River National Forest Oil and Gas Leasing Final Environmental Impact Statement” (“FEIS”) upon which the DROD is based (the DROD and FEIS are collectively referred to herein as “WRNF Oil and Gas Plan,” “Oil and Gas Plan” or “Plan”).

Objectors’ Legal Standing to file Objection

WSCOGA is an affiliated chapter of the Colorado Oil and Gas Association (COGA) and a member-based organization focused on promoting the development of natural gas and oil resources in Northwest Colorado. The Alliance represents 450 companies engaged in all aspects of environmentally responsible exploration and production of natural gas and oil in Colorado and across the West. PLA is a non-profit trade association whose members include independent and

major oil and gas producers as well as non-profit trade and professional organizations that have joined together to foster environmentally sound exploration and production on public lands.

The Objectors filed joint comments on the Draft EIS and proposed actions on November 30, 2012, and have fully participated in the United States Forest Service (“USFS” or “Forest Service”) development, planning, and review of the WRNF Plan. **Ex. A.** As such, Objectors are entitled to file this Objection under 36 CFR § 219.53(a).

Pursuant to 36 CFR § 219.53, the content of this Objection is connected and related to Objectors’ November 30, 2012 comments for all issues raised herein, unless the issue or statement discussed in this letter arose after the opportunity for comment on the DEIS closed on December 1, 2012, as detailed herein. *See* 36 CFR § 219.53(a). For purposes of 36 CFR § 219.54(c)(3), WSCOGA is the lead objector.

Introduction

The policies and decisions contained in the WRNF Oil and Gas Plan are a dramatic change from current WRNF management policies and are clearly aimed at curtailing future oil and natural gas development in the Forest, for at least the life of the Plan if not longer. The Plan closes to oil and gas leasing 1,281,726 acres by “management direction.”¹ These changes are in contrast to the federal government’s longstanding policy of encouraging responsible energy development on federal lands under multiple-use principles. The changes are premised on the flawed assumption that oil and natural gas extraction activities cannot coexist with other resource values, such as recreation, wildlife habitat, ranching, and grazing: “My draft decision places an emphasis on conserving the roadless character, wildlife habitat and recreation opportunities of the White River National Forest while providing oil and gas development opportunities with a focus on lands that have proven productive in the past 10-15 years.” DROD at 4.

The hostile view of mineral resource development embraced by the Plan discounts the small and temporary impact of oil and natural gas development, dismisses the successful reclamation record of the oil and natural gas industry, does not comport with the legal requirements of federal legislation and policy, and, most importantly, ignores the numerous collaborative options available to the Forest Service for mitigation of impacts to other resource values while still allowing responsible mineral resource development. This biased viewpoint against oil and natural gas development, which is a product of political interference, has infected the planning process and the Plan fails to comply with applicable federal laws and policies. Specifically, and as discussed in detail below:

- The analysis of oil and natural gas potential in the planning area is flawed;

¹ 800,555 acres are closed for leasing under the current Forest Plan.

- The discussion of the impact of the proposed DROD on existing leases is lacking critical information and analysis;
- The socio-economic analysis is inadequate and not in compliance with agency guidance or the requirements of the National Environmental Policy Act (“NEPA);
- The proposed DROD does not meet the required multiple-use mandate of federal laws and policy;
- The FEIS lease stipulations are not quantified and the agency has failed to adequately consider the impact of the size and location of these restrictive stipulations on the ability to develop federal minerals;
- The FEIS selection of alternatives and analysis of impacts fails to comply with the National Environmental Policy Act;
- The DROD’s “consistency” and “significance” determinations are not supported by the facts; and
- The DROD was politically driven by special interests and elected and appointed officials in Washington, D.C.

1. The Oil and Gas Plan Contains a Flawed Analysis of Oil and Gas Potential in the Planning Area

A. Future Oil and Natural Gas Potential in the Planning Area

Throughout the DROD, Forest Supervisor Fitzwilliams makes reference to and justifies his decision to close large portions of the WRNF to oil and gas development based upon a delineation of WRNF lands by “high,” “moderate,” and “low” potential for oil and gas development. *See, e.g.*, DROD at 6, 12. However nowhere in either the FEIS, DEIS or the DROD are these areas identified or quantified. The only place that the areas with “high,” “moderate,” and “low” potential for oil and gas are discussed in detail is in the DROD, where Supervisor Fitzwilliams bases his determination about an area’s potential for oil and gas development solely on past production in the area. However, these conclusions are not supported by any data in the FEIS and are mentioned only briefly in the DEIS.

This is particularly troubling because, in explaining his decision to close 1,281,726 acres of the WRNF to oil and gas leasing, Supervisor Fitzwilliams states that “it is very important to understand the context” of the decision, as “approximately 1,067,000 of these acres are closed because there is little or no potential for oil and gas production due to the geology of the area.” DROD at 6. But, it is impossible to evaluate this claim because the Plan does not contain any information quantifying this statement. Further, in the DROD, Supervisor Fitzwilliams states “[t]here are a total of 198,513 acres of ‘high oil and gas potential’ on the [WRNF]. My decision makes approximately 70% of these high potential areas available for leasing in the future.” DROD at 6. Neither the FEIS nor the DEIS support this statement, and no indication is given as

to where these “high” potential lands are located. Similarly, the claim that “approximately 1,067,000” acres of the WRNF “have little or no potential for oil and gas production” lacks any support or analysis in the FEIS or DEIS.

Assuming that the delineation of lands by their “potential” for oil and gas development is supported by some evidence in the planning documents, the DROD’s mechanism for identifying areas with “high,” “moderate,” and “low” potential for oil and gas development is fundamentally flawed because it is based entirely on historic production in the Forest. This backward-looking approach to planning ignores the globally significant changes that have occurred in oil and gas development in the last ten years.

The Plan identifies those areas with “high” potential for oil and gas development by looking only to “past activities including where oil and gas development has proven productive.” *see* DROD at 4.² Similarly, the Plan determines that other lands have “low” potential for oil and gas development by looking at whether these areas have had any oil or gas production in the last 10-15 years. *Id.* Significantly, the DROD justifies closing through management direction 1,067,000 acres because “there is little or no potential for oil and gas production . . . These lands have had no past drilling or natural gas production to speak of.” DROD at 6. Included in this closed acreage are 61,000³ acres that the Forest Service acknowledges have “high” potential for oil and gas development, but will be closed “to maintain the natural character. . . these areas [] are on the edge of the Piceance formation and up to this point no producing wells have been developed on these lands.” DROD at 6. Thus, the Plan arbitrarily limits oil and gas development activities to “lands that have proven to be productive in the past 10-15 years.” *Id.*

However, the past is not prologue when predicting future oil and gas development. The last ten years have proven revolutionary for the production of oil and natural gas in new areas formerly thought to hold limited potential for development. The huge increase in economically-viable reserve estimates and the opening of new oil and gas fields is the product of advances in production technology, notably, a new combination of horizontal drilling and hydraulic fracturing. These technological advances have all been developed and proven within the last ten years. Commercially viable production of shale gas was only proven in 2007 and shale oil extraction was proven in 2010.⁴ Areas that were thought to contain no oil and natural gas a mere

² As stated above, we do not know where Supervisor Fitzwilliams acquired this data or what information it is based upon.

³ As with all references in the DROD to areas by their potential for oil and gas development, we do not know where these 61,000 acres are located because they are not identified in the DROD, FEIS, or DEIS.

⁴ *See, e.g.,* Leonardo Maugeri, *The Shale Oil Boom: A U.S. Phenomenon*, Harvard Kennedy School, Belfer Center for Science and International Affairs, Paper # 2013-05 (June 2013):

The nascent state of U.S. shale oil production contrasts sharply with its rapid pace of growth. When significant shale oil drilling activity first began in 2007 across the U.S. portion of the Bakken formation (North Dakota and Montana), the resource potential of tight and shale oil was virtually absent from the United States and the international oil map. It remained so until 2011, when Bakken shale oil production started to surprise most experts and the Eagle Ford and Permian

ten years ago have since been shown to contain millions of barrels of oil and trillions of cubic feet (“Tcf”) of natural gas.

Throughout the DROD, Supervisor Fitzwilliams justifies the withdrawal through administrative fiat of 1,067,000 acres by stating that these lands have “low” potential for oil and gas development. DROD at 4-7. However, this assumption is based on the flawed premise that future development is likely to occur only in the same locations that have proven productive in the past and only using outdated exploration techniques:

In making my decision, I examined past development on the [WRNF] and looked at where development is likely to occur over the life of this decision, given natural gas prices, exploration costs, and known reserves. I attempted to make available for leasing lands with high oil and gas potential and where development has occurred in the last decade or so. I believe this is a good indicator of what may occur in the future given the high natural gas prices in 2007-2008.

DROD at 7.

The Oil and Gas Plan is expected to be in place for the next 15-20 years. DROD at 7. However, the limited and restricted way that potential future production is analyzed in the Plan severely limits the Plan’s ongoing utility. Exploration costs of today are likely to be vastly different than ten years from now, as are extractive techniques and procedure. Similarly, making long-term planning decisions based on temporary commodity prices is short sighted. Prices for oil and natural gas can fluctuate significantly, even within relatively short periods of time. It is impossible to make accurate predictions on which oil and gas reserves will be economic in the next 15-20 years. The price of oil is predicated on global events that are difficult to anticipate. Demand for, and prices of, natural gas could rise with LNG exports, increased electricity demand, or other new uses.

The DROD’s reliance on these limited factors, combined with looking solely to areas that have previously proven productive is a flawed approach to making the far-reaching decisions embraced by the DROD. This is particularly true when factoring in the extremely long lead time necessary to develop exploration and production projects in the area. Use of these flawed criteria in the decision-making process wholly ignores the sea change in oil and gas production brought about by the shale revolution and the potential of the Mancos and Niobrara shales, and unnecessarily hamstring the Forest, oil and gas producers, and the thousands of citizens of Western Colorado whose economic well-being is tied to the oil and gas industry.

Basin shale formations began to emerge as additional contributors to the unexpected shale oil boom. By the end of 2012, that boom released an overall production of more than 1.5 mbd of crude oil, starting from virtually zero in 2006. **Ex. B.**

B. The Long History of Oil and Gas Development in the WRNF

The WRNF has long been home to significant oil and gas development. Indeed, the DROD confirms that “[n]atural gas development has occurred for decades on the [WRNF] and it is expected to continue into the future.” DROD at 7. This history of oil and gas development is particularly true in the case of the so-called Thompson Divide, an area that the DROD focuses on in some detail and ultimately closes to oil and gas leasing.

According to the DROD, oil and gas development in the Thompson Divide would imperil the “natural character” of these lands, and numerous commenters expressed concerns about potential impacts of oil and gas development on recreation, ranching, outfitting, air quality and wildlife. DROD at 5-6. However, nowhere does either the DROD or the FEIS discuss the long history of oil or gas development and the continued operation of a 9,524 acre natural gas storage facility complete with roads, well pads and related pipelines and industrial facilities in the Thompson Divide.⁵ According to BLM:

[T]here has been some oil and gas drilling in the Thompson Divide every decade since the first well was drilled there in 1947. (A well less than 10 miles from the Thompson Divide in Mesa County dates to the 1930’s and is still producing). BLM and Forest Service records show that starting with the first well in 1947, 34 oil and gas wells have been drilled in the Thompson Divide. . . Source Gas, LLC operates a 9,524 acre natural gas storage area on the [White River National Forest] southwest of Carbondale, Colorado called the Wolf Creek Storage Area. The gas storage field is critical to reliably supplying natural gas to communities from Glenwood Springs to Aspen.

See BLM Thompson Divide Drilling Proposal Information, “History of Drilling in the Thompson Divide,” www.blm.gov/co/st/st/fo/crvfo/thompson_divide_gas.html. **Ex. C.** Thus, the Thompson Divide is an area with a significant history of oil and gas production, and an area that remains essential to providing surrounding communities with necessary energy resources and jobs. Moreover, even the DROD recognizes, “[a]s past natural gas development has shown, natural resource values can be maintained in areas where development has occurred.” DROD at 7.

Because of prior and continuing oil and gas development and storage in this area, as well as its close proximity to other producing oil and gas fields, much of the infrastructure necessary for oil and gas development already exists in the area. For example, two pipelines, the Bull Mountain

⁵ Neither does the DROD recognize the impact on the “natural character” of the Thompson Divide of the Sunlight Mountain Ski Area or on-going timber harvests in the area that supply the Montrose Mill. Each of these commercial activities includes the use of roads and, in the case of the ski area, permanent man-made infrastructure.

Pipeline and the Ragged Mountain Pipeline each run through the Thompson Divide area. **Ex. F.** The terminus of the Bull Mountain Pipeline is the Divide Creek Treatment station, where natural gas produced in the region can be processed and sold to local and national markets. Similarly, a network of roads exist to service the Wolf Creek Storage area, which itself contains over ten injection points and related infrastructure necessary to operate the facility. The federal leases under the Wolf Creek storage area are held by production and will continue to operate into the future. Numerous other USFS motorized routes exist on the eastern and northern sides of the Thompson Divide, which can easily be used to facilitate leasehold development in these areas. **Ex. F.**

Accordingly, any decision in the DROD premised on the assumption that responsible oil and gas development in the Thompson Divide is inconsistent with the surrounding environment and the area's "sense of place" is simply not supported by the facts. Inherent in the area's "sense of place"—a term that, according to Supervisor Fitzwilliams, "involves the human experience in a landscape, the local knowledge, culture, and folklore"—*is* this history of oil and gas production. If anything, the fact that oil and gas development in the area has coexisted with significant recreational, ranching, and outfitting activities for over 50 years supports the conclusion that these activities *are* compatible with oil and gas development and should continue in the future.

C. The Significant Potential for Future Oil and Natural Gas Development in the WRNF

There are significant and attainable natural gas and oil resources in the Piceance Basin underlying the WRNF. The WRNF overlaps with three U.S. Geological Survey Assessment Provinces: the Uinta-Piceance Province, the Southwestern Wyoming Province and the Park Basins Province. The WRNF lies within the Piceance Basin portion of the Uinta-Piceance Province, the Greater Green River Basin portion of the Southwestern Wyoming Province, and the Middle Park Basin portions of the Park Basins Province.

These basins are estimated to contain huge volumes of proven natural gas and un-proven oil reserves. According to ICF International, the Uinta-Piceance formation straddling eastern Utah and western Colorado holds 150.1 Tcf of unproved gas reserves. **Ex. D.** Other formations in the Piceance Basin, such as the Mancos shale, hold substantial potential for oil development and a number of operators in western Colorado have expressed interest in conducting exploration activities in the Mancos shale. Recent interest has similarly been expressed in conducting exploration activities in the Niobrara shale, a gassier, but still oil rich play, portions of which underlie the WRNF.

As discussed above, the DROD ignores the potential for oil and gas development in the region, and instead comes to the unsupported conclusion that the geology underlying the Forest does not support economically viable oil or gas bearing formations. A number of operators in western

Colorado have drilled successful Mancos shale test wells that they believe will lead to commercial development. For example, WPX has drilled test wells in both the Mancos and Niobrara shales. Axia has drilled a Mancos test well in Moffat County, Encana in its Orchard Unit in the Parachute area and Blackhills Energy in the western Piceance. The same is true for Oxy, Chevron and Piceance Energy. SG Interests and Gunnison Energy have similarly tested the Mancos shale in the southern Piceance in Gunnison County.

Moreover, the substantial potential for development of the resources underlying portions of the Forest that are proposed to be closed to leasing or subject to draconian surface use restrictions under the DROD has been known to both USFS and BLM for some time. For example, in an internal BLM Briefing Memorandum from Acting Deputy State Director for Lands and Minerals, Steven Bennett, Mr. Bennett states “The leases in the Lake Ridge Unit area [located in the so-called Thompson Divide] have been identified as having high potential for oil and gas development.” **Ex. E.** Similarly, the then BLM Colorado State Director, Helen Hankins, told the then BLM Director Robert Abbey on February 7, 2012 in describing a proposed federal unit in the Thompson Divide, “[t]he proposed unit lies on the eastern flank of the Piceance Basin structure and the area is considered to have a high potential for O&G development . . .”. **Ex. O** (“Chronology of WRNF/Thompson Divide Political Interactions” (“Chronology”), 10.

In the 2002 Documentation of Land Use Plan Conformance and NEPA Adequacy for the November 2003 Oil and Gas Lease Sale, which contained a number of parcels located in the WRNF, BLM stated that over 300 wells were expected in the area in the next twenty years. **Ex.G.** In comments to the WRNF DEIS, Pitkin County’s own air quality expert acknowledged the high potential for oil and gas development in the Thompson Divide area, stating that the Forest Service had underestimated the potential for new wells in the area. Megan M. Williams, under contract with Pitkin County, Wilderness Workshop, and Natural Resources Defense Council, November 29, 2012, “*Comments on the Air Quality Analysis for the August 2012 White River National Forest Oil and Gas Leasing Draft Environmental Impact Statement (DEIS)*,” Attachment pp. 40-41. **Ex. H.**

According to the Reasonably Foreseeable Development Scenario used in the FEIS, based on minimal constraints (baseline) oil and gas development, up to 1,014 wells from up to 179 pads could be developed in the WRNF over the next 20 years. FEIS at 44. However, based upon the proposed management restrictions and closures contained in the FEIS, nothing close to that level of development will be possible. These restrictions include the huge reduction in acreage available for leasing from 411,475 acres under the current plan to 198,513 acres under the DROD and also very large increases in areas designated as No Surface Occupancy (“NSO”) and Controlled Surface Use (“CSU”). *See* FEIS Tables 7, at 53, 8, at 55, 9, at 57 and 10, at 58.

The Plan, as written, would preclude the discovery and development of new, potentially prolific oil and natural gas resources in the planning area by providing little to no opportunity for new

leasing and exploration for the next 15-20 years. In addition, such management would also prevent operators from executing long-term designs to expand existing fields and leaseholds, connect existing production, and improve existing infrastructure. The Plan's NSO and other onerous lease stipulations, coupled with outright closure of lands to future leasing, will serve to prevent connectivity and expansion of existing development by obstructing the ability to nominate and lease connective parcels.

2. The Plan Fails to Adequately Consider the Affect the Decision will have on Existing Leases in the WRNF

The Oil and Gas Plan is careful to state that it will have no effect on existing oil and gas leases in the planning area. *See e.g.* DROD at 4, 8. Indeed, member companies relied on the reassurances of Supervisor Fitzwilliams that this Plan would impact only *future* leasing and not existing leases in the Forest when weighing their participation in the planning process. This statement of “no effect” is inaccurate for several reasons. First, BLM recently stated that it will rely on the WRNF's Oil and Gas Plan when it performs a retroactive and remedial NEPA analysis on 65 existing oil and gas leases in the WRNF (“BLM Remedial NEPA”) to determine whether the leases should be “voided, reaffirmed, modified with different or additional terms, or subject to additional mitigation measures for site-specific development proposals.” *Notice of Intent to Prepare an Environmental Impact Statement for the Previously Issued Oil and Gas Leases in the White River National Forest,* 79 Fed. Reg. 18576, 18577 (Apr. 2, 2014) (“The BLM will incorporate as much of the U.S. Forest Service's new NEPA analysis of future oil and gas leasing on the WRNF as possible into its analysis of existing leases.”). **Ex. I.**

This impact is most clearly seen in the WRNF Plan discussion of the two new sub-alternatives – Alternatives B-1, B-2 and C-1 and C-2, developed to address the 65 leases to be analyzed by BLM. FEIS at 155, 157. *See also* DROD at 8-9. Of the 65 leases to be addressed by BLM, the Forest Service proposes to close to future oil and gas leasing the lands in the Thompson Divide area. If the leases are voided or proposed for reissuance by BLM, the Plan would appear to foreclose any new leasing in this area. As such, the outcome of the Oil and Gas Plan will have a very real and very direct effect on management decisions on these 65 leases in the very near future.

Secondly, the Plan significantly curtails the ability of these 65 existing lessees to develop producing fields, federal units, and the related infrastructure necessary to drill for and bring oil and gas to market. While the DROD assures the public that the Plan does not impact these “valid leases,” DROD at 8-9, the new restrictions in the Plan could force operators to let valid, non-producing leases expire because of additional surface restrictions placed on the leasehold or inability to obtain connecting leaseholds. Indeed, as to the 65 leases identified by BLM, the

FEIS contemplates that a certain number of these leases may expire or be voided by the BLM Remedial NEPA. FEIS Figure 9; FEIS § 3.2.11.2.1.1.

We are concerned that the combined result of the Forest Service Oil and Gas Plan and the BLM Remedial NEPA will lead to the expiration or voiding of many of the existing leases. Certainly, the Thompson Divide Coalition, Pitkin County and the Wilderness Workshop among others are already publically and privately arguing to BLM that the Plan decision closing the Thompson Divide to future leasing requires BLM to void the leases in the area. *See, e.g.*, Wilderness Workshop webpage on Thompson Divide, <http://www.wildernessworkshop.org/our-work/oil-and-gas/thompson-divide/> (“The final [WRNF Oil and Gas] plan just announced (Dec. 9) isn’t perfect, but it’s a big improvement over the old one. Please send an email to thank the Forest Service for this decision, and to ask the BLM to protect these same important public lands by voiding the leases.”). **Ex. J.** *See also*, N. Simmons, Letter to Editor, December 21, 2014 (“I urge the BLM to respect the USFS finding and cancel existing leases in the [Thompson] Divide.”) **Ex. K.**

In addition, the Plan decisions to close over a million acres to future leasing and to apply stringent NSO and CSU stipulations over other large swaths of the Forest will frustrate the reasonable investment-backed expectations of current Forest lessees. The Plan would close acreage adjacent to the existing leaseholds that is available for leasing under the current Plan, seriously undermining previous investments made by operators and diminishing current mineral assets in the WRNF. Previous investments in leases, infrastructure, production equipment, environmental analyses, wildlife surveys, and other expenses necessary for commercially-viable oil and natural gas production were made by companies under the reasonable assumption that land positions could be assembled and maintained once initial exploration and development proved the area’s viability for oil and gas development.

By closing vast areas to new leasing (either through outright closures or closures through management directives) and imposing drastic and un-supported lease restrictions, the Plan clearly compromises many, if not most, of these investments. Current lessees may not be able to put together the federal leases or site the infrastructure (roads/pipelines) necessary to efficiently develop the existing leases they hold either because those leases are off the table, subject to stringent stipulations or the federal surface is closed. This situation may force operators to let leases expire without the opportunity for reissuance unless they accept the far more stringent operating restrictions on any reissued leases under the new Plan. As a result, this management strategy could ultimately compromise or violate valid existing lease rights. These restrictions would also significantly increase development costs, which could render certain assets in the Piceance Basin uncompetitive.

With respect to all valid existing leases that were issued before the Oil and Gas Plan goes into effect, USFS cannot legally impose stipulations or conditions of approval that are inconsistent with existing, contractual lease rights. Altering the original stipulations of a valid existing lease—including the designation of certain areas as NSO or CSU—is unlawful and could result in contentious litigation. USFS must recognize and honor valid existing rights and ensure that management prescriptions do not limit access to, amend, or otherwise restrict existing oil and gas lease rights. USFS cannot impair, block access to, or render uneconomic, valid existing leases through other measures, like closing adjacent connective areas to future leasing or restricting the ability of operators to construct the infrastructure necessary to bring their products to market. The Oil and Gas Plan must be amended to ensure that valid existing lease rights are not restricted or unilaterally amended or modified.

3. The Plan Fails to Adequately Consider Socio-Economic Impacts

The WRNF Plan fails to adequately consider the socio-economic impact of its decision to close large portions of the Forest to future leasing and to impose major development constraints on the remaining areas, thus rendering the socio-economic analysis in the FEIS defective. NEPA requires that a “hard look” be taken at a variety of factors that will be affected by federal action, including the socio-economic impact of the action. 42 U.S.C. § 4332. This obligation is carried through and expanded upon in USFS Handbook 1909.17—*Economic and Social Analysis Handbook*. Handbook 1909.17 requires that, at a minimum, the NEPA document contain the following information and analyses: the categories of people the activity is likely to affect (40 CFR 1501.7(a)(1)); how the action compares with historical trends; and the socioeconomic effects of the proposed action, including changes due to the action in income, employment, population, local revenues, and business activity. Handbook 1909.17 § 31.2. Here, the FEIS fails to provide a comprehensive analysis of these factors or a discussion of how the restrictive management decisions in the Oil and Gas Plan would constrain current and future development in the planning area.

For example, in the Third Congressional District, which covers the majority of the WRNF, over 5,000 individuals are directly employed in development of oil and natural gas. These jobs provide almost \$650,000,000 in direct wages, with a total economic output of over \$2,000,000,000. When factoring in supply-chain economic impacts and induced economic impacts (such as construction, manufacturing, retail, *etc.*), oil and natural gas production accounts for almost 10,500 jobs, \$965,000,000 in wages, and a total economic output of almost \$2,850,000,000 for the region.⁶

⁶ See <http://westernenergyalliance.guerrillaeconomics.net/>, containing an analysis of employment and economic impacts of oil and gas production in Colorado’s Third Congressional District, prepared by independent economist John Dunham and Associates. **Ex. L.**

In spite of the staggering economic benefits that oil and natural gas production has on the economies of the communities surrounding the WRNF, and *the DROD's* recognition that “natural gas development is a major contributor to the economic well-being of the local area and the State of Colorado,” (DROD at 7), the DROD minimizes the socio-economic impacts from its lease stipulations, NSO requirements and closures by simply concluding that the WRNF Plan may “limit these types of economic opportunities to some extent.” DROD at 8. Similarly, the FEIS does not adequately analyze whether the proposed actions would negatively affect other economic development. *See* discussion FEIS at 262-283. Instead, the FEIS makes the unsupported assumption that outdoor recreation and oil and gas development cannot coexist, and sets up a false choice between protection of the recreation-based economy and oil and gas development in the region.

For example, FEIS Table 3, “*Relevant Resource Issue Statements for Category #3 Impacts on Social Economic Resources*,” addresses only the negative impacts that oil and gas development could have on other segments of the economy. FEIS at 37. Similarly, in the “local economies” issue statement, the FEIS only analyzes whether “potential future development of oil and gas leases could result in impacts to local economies” and whether these impacts would have a negative effect on tourism, grazing, and forest product availability. *Id.*; FEIS at 263. While the FEIS does acknowledge the significant number of jobs and labor income generated by oil and gas development in the analysis area, *nowhere* does the FEIS address the jobs and economic benefits that will be *lost* under the overly-restrictive leasing decisions contained in the Plan.

This is one more example of the Oil and Gas Plan’s unsupported assumption that oil and natural gas development will harm other areas of the economy and the Plan’s overall bias in favor of conservation, recreation, and the interests of those living in the region’s resort communities. Handbook 1909.17 § 34.41-.42 specifically instructs decision makers to “consider all affected people” and “minimize bias.” “The social science analyst must make a deliberate effort to be impartial in the analysis. What is a positive effect to one group may be negative or unimportant to another, and the analyst must clearly indicate this when presenting the results of the analysis.” *Id.* § 34.41. Similarly, the Handbook requires consideration of “the social effects of an action and its alternatives on each potentially affected group or category of people. Do not limit social analysis to the concerns of organized interest groups.” *Id.* § 34.42.

These requirements were not satisfied in the FEIS. As set out in the DROD, Supervisor Fitzwilliams gave significant weight to comments submitted by parties and “organized interest groups” like the Thompson Divide Coalition and Wilderness Workshop concerned about the negative impacts of oil and gas development:

One of the major factors in my decision was the public input and comments received over the past four years Throughout the process of arriving at this

decision, public comment from scoping, meetings, conversations and workshops held over a four-year period confirmed to me that the White River National Forest is strongly valued local, regionally, and nationally for the existing natural character including wildlife, fish, ranching, recreation, air quality and sense of place.

DROD at 5. Clearly missing from Supervisor Fitzwilliams' decision rationale is any discussion or consideration of the impacts his decision will have on existing lessees within the WRNF and the numerous individuals whose jobs and future economic welfare are reliant on continued oil and natural gas operations in this region. In fact, by the Supervisor's own admission, while significant weight was given to public comments by those opposed to oil and gas development (*id.*), existing oil and gas lessees and others with oil and gas interests in the region were not heard during the planning process. The Supervisor admits, "I gave strong consideration to insuring these [recreation] values, that millions of people enjoy each year, are maintained. The combination of timing, controlled use, no surface occupancy stipulations and 'no leasing through management direction' in my decision, reflects *my desire* to maintain these values over the long term." DROD at 7 (emphasis added). This failure to conduct an unbiased socio-economic analysis is particularly egregious given that the existing lessees face the very real possibility that the Oil and Gas Plan will effectively invalidate their leases, or impose additional onerous surface restrictions, and eliminate their ability to develop connected lease parcels and bring their product to market. Thus, the "concerns of organized interest groups" focused on preventing oil and gas development on the WRNF were clearly elevated above the interests of other individuals and groups, in violation of Handbook 1909.17's admonition that the interests of all affected parties must be considered.

Further, the FEIS and DROD contain *no* analysis of the impact the Plan's management decisions will have on the pecuniary interests of counties and local governments in and around the planning area. The FEIS states that "[p]ayments to counties and local governments from oil and gas related activity would remain a small portion of general government revenue." This statement betrays a considerable lack of understanding of how counties without the sales and property tax revenue enjoyed by Pitkin County struggle to meet the demands of their citizens for schools, roads and social services—every source of revenue is significant to those counties. Moreover, this statement is dismissive of the significant revenues the counties of Garfield, Mesa and Rio Blanco (the three counties that, according to the FEIS, contain the most potential for oil and gas development) receive from tax and royalty revenues from oil and gas development.

In 2012 (the most recent year for which data is available), Mesa County received a total of \$10.5 million in property taxes from oil and gas; Garfield County received \$85.8 million; and Rio

Blanco County received \$17.1 million.⁷ Similarly, redistribution of severance tax and federal lease bonus payments to Mesa County in 2014 was \$2.7 million; \$4.3 million in Garfield County; and \$1.7 million to Rio Blanco County.⁸ While these figures obviously include production from lands outside of the WRNF, they nonetheless demonstrate the importance of oil and natural gas production to the citizens and communities surrounding the Forest.

The Oil and Gas Plan's failure to include any substantive discussion or analysis of the jobs and economic benefits that will be lost under the Plan's selected alternative renders the FEIS and, concomitantly, the DROD, defective. These factors, which are of vital importance to thousands of families in Western Colorado, deserve more analysis and attention than the passing mentions they receive in the FEIS and DROD.

4. The Proposed Decision does not comport with Federal Law or USFS Mineral Policy

A. The Statutory and Policy Framework

Public land managers are charged with implementing a broad multiple-use mandate for public lands. *See, e.g.*, Multiple Use Sustained Yield Act, 16 U.S.C. §§ 528-531 (requiring USFS to manage lands for a broad range of multiple uses, although silent as to minerals); National Forest Management Act, 16 U.S.C. §§ 472a, 1600-1614 (requiring the Secretary of Agriculture to assess forest lands, develop a management program based on multiple-use, sustained-yield principles, and implement a resource management plan for each unit of the National Forest System); Federal Land Policy Management Act ("FLPMA"), Pub. L. No. 94-579, 90 Stat. 2743 (codified as amended in scattered sections of 43 U.S.C.) (requiring that federal mineral management decisions be made in the multiple-use context). Under these statutes, land managers may not elevate one resource value over another, and are instead instructed to manage federal public lands in a way that balances competing resource values and harmonizes multiple uses. The federal government's policy of multiple-use, which identifies the development of American oil and gas resources as a matter of critical importance to the country, should provide a starting point for federal oil and gas leasing decisions.

As outlined by FLPMA, oil and gas leasing is a principal use of public lands.⁹ 43 U.S.C. § 1701(a)(12). Indeed, FLPMA's policy statement clearly sets out that it is the policy of the

⁷ <http://www.api.org/globalitems/~media/Files/News/2014/14-October/Colorado-API-Economic-Impact-Study.PDF> **Ex. M.**

⁸ <https://dola.colorado.gov/sdd/ddSDDTier1.jsf?fy=2014&jfwid=66d7cb31b46ce03e650f4a79e851:3> **Ex. N**

⁹ Under the Mineral Leasing Act, 30 U.S.C. § 181 *et seq.*, Congress gave BLM the leasing authority over all federal minerals, subject to the consent to lease of a federal surface management agency like the USFS. 30 U.S.C. § 226(a). FLPMA is BLM's governing statute and although many of its provisions are not binding on the USFS, FLPMA governs rights-of-ways on USFS lands and the management of federal minerals underlying these lands. The FEIS states that it is in compliance with FLPMA. FEIS at 19-20. Further, under the Energy Policy Act of 2005 ("EPAAct"), the Secretary of Agriculture was directed to improve the administration of federal onshore oil and gas

United States that “the public lands be managed in a manner which recognizes the Nation’s need for domestic sources of minerals . . . including implementation of the Mining and Minerals Policy Act of 1970.” *Id.* As to public lands, the Mining and Minerals Policy Act of 1970 (“MPA”) calls on the federal government, including the Secretary of Agriculture, to “foster and encourage private enterprise in . . . the development of domestic mineral resources to help assure satisfaction of industrial, security, and environmental needs.” 30 U.S.C. § 21a.

The directives contained in the MPA are carried through to the USFS’s Minerals Program Policy (“Minerals Policy”), which recognizes the MPA’s instruction that federal land managers must “foster and encourage” development of federal mineral resources located on public lands.¹⁰ The Minerals Policy clearly states that National Forests play an “essential role in contributing to an adequate and stable supply of mineral and energy resources,” and, as such, “exploration, development, and production of mineral and energy resources and reclamation activities are part of the Forest Service ecosystem management responsibility.” To this end, USFS “*will* administer its minerals program to provide commodities for current and future generations . . .” and will “[m]aintain opportunities to access mineral and energy resources which are important to sustain viable rural economies and to contribute to the national defense and economic growth.” (Emphasis added).

The Minerals Policy sets out that, during the land use planning process, USFS “*will*” “ensure the integration of mineral resource programs and activities with the planning and management of renewable resources through the land and resource management planning process, recognizing that mineral development may occur concurrently or sequentially with other resource uses.” In making these resource management planning decisions and determining which areas will be administratively closed to leasing, the Minerals Policy makes clear that:

Prior to initiating the administrative withdrawal of National Forest System lands from mineral entry, [USFS will] ensure the full consideration of (a) the national interest in rural community development, (b) the value of the mineral resource foregone, (c) the value of the resource or improvement being protected, and (d) the risk that the renewable resources cannot be adequately protected pursuant to application of the Minerals Surface Use Regulations.

leasing programs through, among other things, entering into a Memorandum of Understanding with the Secretary of the Interior outlining coordination and consultation on oil and gas leasing activities. A key provision of this statutory direction is that the MOU include consistent lease stipulations and lease stipulations that are “only as restrictive as necessary to protect the resources . . .” EPLA § 363; 42 U.S.C. § 15922. In April of 2006, BLM and USFS entered into BLM MOU WO300-2006-07, establishing joint BLM and USFS policies and procedures for managing oil and gas leasing and operational activities on National Forest system lands. Under the MOU, BLM and the Forest Service will coordinate leasing and resource management decisions to “be consistent across administrative boundaries” and, as to lease stipulations, shall be “only as restrictive as necessary to protect the resources(s) for which they are applied.” MOU at 1-2. Thus, the provisions of FLPMA have bearing on the Plan.

¹⁰ Minerals Policy available at:

<http://www.fs.fed.us/geology/FOREST%20SERVICE%20MINERALS%20PROGRAM%20POLICY.pdf>

Thus, USFS land use planning decisions must, in the first instance, seek to encourage multiple uses of public lands, including mineral development. USFS decisions to close or substantially limit access to minerals may only be made following thorough evaluation of the ramifications of the decision and after it is determined that development of the minerals cannot coexist with protection of other resource values. Moreover, pursuant to the 2006 MOU executed between the Forest Service and BLM and EPOA (*see supra* n. 9) stipulations shall be “only as restrictive as necessary to protect the resources(s) for which they are applied.” MOU at 1-2; 42 U.S.C. § 15922. The Forest Service has not complied with governing law, its own policy guidance and its 2006 MOU agreement with BLM.

B. The WRNF Plan is Inconsistent with the Statutory and Regulatory Framework

In the DROD, Supervisor Fitzwilliams acknowledges the USFS’s multiple-use mandate and states that “the very nature of multiple-use management requires that I look at trade-offs and not regard uses or values as intrinsically good or bad.” DROD at 5. However, resource values were clearly ranked by priority in the DROD, with Supervisor Fitzwilliams “tak[ing] a more conservation-minded approach to future leasing” in the Forest. DROD at 7. Supervisor Fitzwilliams’ decision elevates concerns related to potential negative impacts of oil and gas leasing over the Forest Service’s required objective of “foster[ing] and encourag[ing] private enterprise” in the development of domestic oil and gas resources.

Inherent in the DROD is the false assumption that oil and gas development cannot coexist with conservation and protection of other resource values, such as recreation, wildlife habitat, and conservation. The DROD elevates these other resource values above environmentally responsible oil and gas development. *See, e.g.*, DROD at 4 (“My draft decision places an emphasis on conserving the roadless character, wildlife habitat and recreation opportunities of the [WRNF] while providing oil and gas development opportunities in areas that have proved to be productive in the past 10-15 years.”). This assumption and misplaced ranking of resource values is contrary to binding federal law and USFS policy, and, most importantly, misses the numerous collaborative opportunities available to the Forest Service for mitigation of impacts to other resource values while still allowing responsible mineral resource development.

Rather than look for opportunities to “foster and encourage private enterprise” in the development of oil and gas resources in the WRNF through concurrent resource use, the Oil and Gas Plan simply withdraws huge swaths of the Forest from leasing and applies heavy-handed NSO and other surface restrictions on the few lands that are available for leasing. The result is the creation of a small number of zones where oil and gas leasing is permissible, surrounded by large areas that are off-limits to development. This is contrary to the federal government’s multiple-use mandate and the Minerals Policy’s statement that the Forest Service will “ensure

the integration of mineral resource programs and activities with the planning and management of renewable resources through the land and resource management planning process” while “recognizing that mineral development may occur concurrently or sequentially with other resource uses.”

Further, the DROD’s “Decision Rationale” justifies the elimination of large portions of the Forest for oil and gas leasing by stating throughout that “opportunities” for oil and gas leasing still exist in many of the lands with “high” potential for oil and gas development. However, this is merely *post-hoc* rationalization and lip service to the USFS’s multiple-use mandate that is not borne out by the facts: *almost half of the lands available for oil and gas leasing under the current Forest Plan are eliminated under the new Oil and Gas Plan*; the FEIS contains inaccurate and outdated analyses of oil and gas development potential in the Forest; and the lands that are available for leasing are subject to onerous surface restrictions, including a huge expansion in the use of NSO stipulations. This is in violation of EPA Act and the 2006 MOU with BLM that requires the least restrictive stipulations to protect competing resources. Finally, in spite of the fact that the Minerals Policy clearly requires an analysis of the effect that withdrawal of oil and gas resources will have on the economies of the communities surrounding the planning area, and consideration of the national interest in rural community development, these issues were never evaluated in detail in the FEIS.

5. The Size and Location of NSO and CSU areas

While the DROD states that 70% of the acreage with “high oil and gas potential” within the WRNF is available for leasing under the Plan, much of this acreage has NSO or CSU restrictions, making development of these resources extremely difficult and, in many cases, impossible. This amounts to a *de facto* withdrawal of additional acreage with high potential for oil and gas development.

One of the benefits of the technological innovations in oil and gas development of the last ten years is the fact that, utilizing modern drilling practices, it is often possible to develop leaseholds with far less surface disturbing activity than was previously required. With today’s technologies, it is sometimes possible to develop the federal minerals from adjacent parcels on one, larger well pad if there is favorable topography, the geology permits the use of horizontal drilling and there is a degree of proximity. However, the reach of lateral wells is limited, with currently feasible lateral wellbores being limited to two or three miles or less, depending on the formation and the specific geologic conditions.

Here, although troublingly not quantified in the DROD,¹¹ almost 50% of the limited lands available for leasing are subject to NSO restrictions. This is particularly true in the case of areas in the eastern and southern portions of the lands available for leasing (Township 10 South, Range 88 and 89 West; 9 South, 89 West; 8 South, 89 and 90 West; and 8 South, 94 and 95 West), and virtually all of the available lands in Rio Blanco County.

In these areas, NSO stipulations cover huge portions of the acreage, in many cases far exceeding the amount of land that can be developed via horizontal drilling from adjacent leaseholds or drained by adjacent wells. Accordingly, while these lands may technically be available for leasing, development of these leaseholds will be impossible and the federal minerals will remain undeveloped. The size and location of many of the NSO areas will effectively prevent development of the oil and gas resources underlying these areas, amounting to further *de facto* land withdrawals.

6. The Plan Fails to Consider an Adequate Range of Alternatives

Under NEPA, federal agencies are required to consider an adequate range of alternatives when evaluating the proposed action. 40 C.F.R. § 1505.1(e). Council on Environmental Quality regulations state that the section of the EIS discussing alternatives is “the heart of the environmental impact statement,” and must “rigorously explore and objectively evaluate all reasonable alternatives.” 40 C.F.R. § 1502.14.

Here, the FEIS considered only three alternatives: Alternative A—the no action alternative (*i.e.*, continuing under the 1993 WRNF Oil and Gas Plan); Alternative B—no new leasing; and Alternative C—new proposed land availability decisions and lease stipulations. Under Alternatives B and C, an enormous percentage of the Forest was closed to leasing or subject to stringent stipulations, largely without analysis or justification as to why these restrictions are required. *None* of the alternatives analyzed whether the maintenance of other resource values—such as recreation, scenery, and wildlife—could be achieved through less restrictive means.

Under the Minerals Policy, EPO Act and the BLM-USFS MOU discussed above, Forest Plans must “recognize[] that mineral development may occur concurrently or sequentially with other resource uses” and stipulations shall be “only as restrictive as necessary to protect the resources(s) for which they are applied.” EPO Act § 363; MOU at 1-2. However, Supervisor Fitzwilliams completely ignored these requirements and instead elected to move forward with the “Selected Alternative” (a combination of Alternative B and Alternative C) because it “will

¹¹ The DROD is a combination of FEIS Alternative B and C, and the DROD does not contain a map or acreage calculation for lands subject to NSO or CSU restrictions. Thus, without performing a GIS study comparing the parcels open for leasing under the DROD with the stipulations contained in FEIS Attachment A, it is impossible to know the actual acreage encumbered with NSO or CSU restrictions. The USFS should calculate that impact and provide it to the public.

provide almost as much protection for the White River National Forest System lands and resources as Alternative B [no new leasing] as it adopts all practical means to avoid or minimize environmental effects to Nation Forest System lands.” DROD at 11. The selection of the most environmentally protective alternative is not a requirement of NEPA. The U.S. Supreme Court has emphasized that NEPA merely requires identification and evaluation of the environmental consequences of a proposed action and “the agency is not constrained by NEPA from deciding that other values outweigh environmental costs.” *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332 (2011). Not only did Supervisor Fitzwilliams completely ignore the requirements of the Minerals Policy, EPAAct and the BLM-USFS MOU, he failed to even *consider* an alternative that would meet the goals set out in these documents.

Alternative C was the only alternative that considered new determinations about land availability for oil and gas leasing and development of new lease stipulations. However, rather than carefully craft stipulations that are “only as restrictive as necessary to protect the resources for which they are applied,” the DROD paints with a broad brush—simply designating huge areas of the Forest as NSO without any analysis as to why such a restrictive stipulation is required. Numerous options are available to the Forest Service to protect resource values while also allowing for responsible mineral development. Instead of simply decreeing that no surface disturbance may occur in certain areas, the Forest Service should have identified the precise resource values it is attempting to protect, and then crafted stipulations specific to these concerns.

For example, an NSO stipulation is applied to numerous areas for “raptor species breeding territories.” FEIS Appx. A at 469. However, nowhere does the FEIS even discuss why an NSO stipulation is needed to protect raptor breeding, or analyze alternative stipulations that could adequately protect raptor breeding territories, such as breeding season timing limitations, setbacks, or noise control stipulations. Similarly, an NSO stipulation is applied to “all occupied and potential habitats necessary for the maintenance or recovery of species listed under the Endangered Species Act (including proposed and candidate species) or by the State of Colorado as threatened or endangered.” FEIS at 465. But, the FEIS fails to discuss any alternative to this NSO stipulation, such as setbacks from existing occupied areas, timing limitations, and/or mandatory mitigation measures such as habitat restoration.

Further, as to the decision to close the Thompson Divide to new leasing, *no* alternative analyzed whether less restrictive means could adequately protect against “potential impacts to recreation, ranching, outfitting, air quality, and wildlife,” the purported resources whose protection required the closing of the area from future leasing. DROD at 5-6. Just a few of the possible stipulations that should have been analyzed include requiring fencing and/or cattle guards around well pads and access roads; placing seasonal limitations on surface activities to coincide with breeding

seasons, and judiciously applying NSO stipulations to those areas shown to be used recreationally, such as campsites and non-motorized trails.

Rather than engage in the in-depth analysis of alternatives required by NEPA, the FEIS simply closes significant portions of the Forest to future leasing and applies stringent stipulations to much of the remaining areas. This kind of limited and conclusory analysis is prohibited by the NEPA requirement that the action agency consider an “adequate range of alternatives,” and renders the NEPA analysis inadequate. *See, e.g., Diné Citizens Against Ruining Our Env' v. Klein*, 747 F.Supp.2d 1234, 1256 (D. Colo. 2010) (“The existence of a viable but unexamined alternative renders an alternatives analysis, and the EA which relies upon it, inadequate.”); *Muckleshoot Indian Tribe v. U.S. Forest Serv.*, 177 F.3d 800, 813 (9th Cir. 1999) (“Although NEPA does not require the Forest Service to ‘consider every possible alternative to a proposed action, nor must it consider alternatives that are unlikely to be implemented or those inconsistent with its basic policy objectives,’ we are troubled that in this case, the Forest Service failed to consider an alternative that was more consistent with its basic policy objectives than the alternatives that were the subject of final consideration.”) (internal citations omitted).

7. The Plan’s Consistency and Significance Determinations are Flawed

Forest Service policy requires that amendments to Forest Plans contain a “significance decision.” *See* Forest Service Manual 1920—Land Use Planning, 1926.51-52. Under the Manual, the Responsible Officer may find that a change to a forest plan is not significant if:

- The proposed actions “do not significantly alter the multiple-use goals and objectives for long-term land and resource management”;
- The proposed changes are “adjustments of management area boundaries or management prescriptions resulting from further on-site analysis when the adjustments do not cause significant changes in the multiple-use goals and objectives for long-term land and resource management”; and
- The proposed changes result only in “minor changes in standards and guidelines.”

In contrast, under the Manual, the Responsible Officer must find that a change is significant if:

- The proposed changes “would significantly alter the long-term relationship between levels of multiple-use goods and services originally projected”; or
- The proposed changes “may have an important effect on the entire land management plan or affect land and resources throughout a large portion of the planning area during the planning period”

Id. If an amendment is “significant,” “documentation of a significant change, including the necessary analysis and evaluation[,] should focus on the issues that have triggered the need for the change.” *Id.* at 1926.52.

Here, Supervisor Fitzwilliams concludes that “changes to the Forest Plan made through the White River National Forest Oil and Gas Leasing FEIS and ROD are not significant.” DROD at 12-13. This conclusion is patently incorrect and an example of the *post-hoc* rationalization that permeates the Plan. The changes to the Oil and Gas Plan include reducing the size of lands available for leasing by almost one half, removing from future leasing 30% of the acreage with “high” potential for oil and gas development, and imposing new NSO and CSU restrictions on most of the remaining available acreage. Further, by the Supervisor’s own admission, the Oil and Gas Plan emphasizes recreation and preservation over mineral development, DROD at 4,—a considerable change from the current plan that “significantly alter[s] the multiple-use goals and objectives for long-term land and resource management.”

Furthermore, the tremendous amount of public participation, media attention, and interest in the decision from the USDA’s Washington Office, White House and local, state, and federal politicians clearly demonstrates that the changes to the WRNF Plan *are* significant. *See e.g.* **Ex. O** (Chronology). Indeed, in the second paragraph of Supervisor Fitzwilliams’ decision rationale, he states, “I recognize that this decision is significant in respect to the long-term management of the White River National Forest.” DROD at 5. As such, the DROD’s significance decision must be altered to reflect the scope of the change in policy reflected in the Oil and Gas Plan and to contain an analysis and evaluation of “the issues that have triggered the need for the change.”¹²

In a similar vein, the DROD concludes that the Oil and Gas Plan is consistent with the existing 2002 WRNF Forest Plan, and uses this claimed “consistency” as a factor in the decision-making process. DROD at 4 (identifying “consistency with the White River National Forest Plan and its intent” as a factor considered in decision making). A simple review of FEIS Appendix D and the numerous changes being made to the existing 2002 Forest Plan so that *it* is consistent with the 2014 Oil and Gas Plan illustrates that these far-reaching changes were not contemplated in the 2002 WRNF Forest Plan. As discussed in detail above, the proposed Oil and Gas Plan includes greatly increasing NSO and CSU stipulations and closes significant new acreage to leasing. Thus it is clearly inconsistent with the 2002 Forest Plan, and the Forest Service cannot use the bald, un-supportable statement that Oil and Gas Plan is consistent with the Forest Plan as justification for the radical changes proposed.

¹² One is hard-pressed to understand how changed circumstances in the last twenty years could justify a Forest Plan alteration resulting in closure of *additional* acreage to oil and gas leasing and imposition of *further* surface restrictions. The last twenty years have shown a large *increase* in oil and gas production in the Piceance Basin, coupled with an increase in a regional population that relies on oil and gas resources to, among other things, heat their homes and provide reliable transportation. In fact, Source Gas, which operates the 9,000 acre natural gas storage facility in the Thompson Divide is the primary provider of natural gas to the towns of Glenwood Springs, Carbondale, Basalt, and Aspen. *See* www.blm.gov/co/st/st/fo/crvfo/thompson_divide_gas.html. **Ex. C.**

8. The Proposed Decision was Politically Driven and led to a Biased Analysis and DROD

The decisions made in the Oil and Gas Plan were reached in a politically-charged environment, which led to a biased review of impacts and the conservation and recreation-oriented DROD sought by special interest groups. Supervisor Fitzwilliams has publicly stated that politics did not influence his decisions,¹³ but a review of documents obtained via Freedom of Information Act requests and other available documents reveal that numerous special interests, politicians, and federal political appointees were all heavily involved in development of the Plan and, in particular, issues related to leases in the Thompson Divide—the area closed to future leasing.¹⁴

The so-called Thompson Divide has long been a focus of wilderness campaigns for the last decade or longer. The most recent iteration is the legislation introduced by Colorado U.S. Senator Michael Bennet in 2013, S. 651, “Thompson Divide Withdrawal and Protection Act of 2013.” Indeed, Senator Bennet met with a senior official of the Department of Agriculture with authority over the Forest Service to ask him to make sure the WRNF considers the impact of this pending legislation in the Forest’s Oil and Gas Plan. **Ex. O, 32.** This effort to influence the outcome of the WRNF planning process in order to “protect” the Thompson Divide came to a head in 2011, when two lessees in the Thompson Divide area sought to develop their leases with federal unit designations. That action resulted in numerous behind-closed-door meetings with elected officials and the highest levels of political appointees at the Departments of Interior and Agriculture.

Beginning in 2011, Pitkin County, Wilderness Workshop and the Thompson Divide Coalition (“TDC”) met numerous times with Colorado Senators Michael Bennet and Mark Udall, and Senators Bennet and Udall engaged in direct communications with USFS political appointees on the issue of the Thompson Divide leases numerous times. For example, following an August 15, 2011 meeting between the TDC and Senator Bennet, on October 12, 2011, Senators Bennet and Udall sent a letter to then-Secretary of the Interior Ken Salazar and Secretary of the Department of Agriculture Tom Vilsack urging their Departments not to make any decisions concerning leases in the Thompson Divide “until the communities affected by this proposal have been given adequate time to complete their final discussions on the long-term management of the area.” **Ex. O.** E-mail messages disclose numerous conversations between BLM and USFS officials and

¹³ See <http://www.aspendailynews.com/section/home/165013> **Ex. P.**

¹⁴ Objectors’ November 30, 2012 DEIS comments did not discuss the political nature of the plan, nor the impact on the 65 leases identified by BLM in its BLM Remedial NEPA. However, many of the documents disclosing political and Secretarial-level influence in the decision-making process and BLM’s 2014 Scoping Notice for the Remedial NEPA did not come to light until after submission of Objectors’ comments. Thus, objection on this basis is proper under 36 CFR § 219.53(a).

Senator Bennet and his staff, each relating to oil and gas leasing in the Thompson Divide and the status of S. 651. **Ex. O.**

Harris Sherman, former Under Secretary for Natural Resources and Environment at the USDA and a former Colorado state official, was also heavily involved in the discussions and planning that led up to both the development of the Oil and Gas Plan and interim decisions regarding the existing 65 leases in the Thompson Divide area. For example, between June 2011 and Mr. Sherman's 2013 resignation, Mr. Sherman met with representatives from Pitkin County, TDC and the BLM Washington Office on this topic no less than six times. **Ex. O.**

Similarly, Robert Bonnie, Senior Advisor to Secretary Vilsack and current Under Secretary for Natural Resources and Environment, was deeply involved in discussions between BLM Washington Office personnel, Pitkin County, TDC and Colorado's congressional delegation on the topic of the Thompson Divide. For example, on July 11, 2013, Mr. Bonnie met with Senator Bennet. **Ex. O, 32.** Prior to this meeting, Senator Bennet indicated that he wanted to discuss the Forest Service's Oil and Gas Plan EIS and his desire that the Forest Service "consider the impacts of pending legislation [S. 651] as it works through the EIS." *Id.* Mr. Bonnie also met in person with and had telephone conversations with representatives of Pitkin County, the TDC, and other environmental groups numerous times between June 2011 and the present to discuss the Forest Service's ongoing planning efforts and the existing oil and gas leases. **Ex. O.**

This high level of political interest in the Forest Service's preparation of the Oil and Gas Plan EIS was discussed at an August 16, 2013 planning meeting between Colorado USFS personnel and BLM, where Helen Hankins, then BLM Colorado State Director, stated that the USFS's Oil and Gas Plan and BLM's Remedial NEPA have attracted a "high level of interest" from the White House, the Department of the Interior, and industry groups. **Ex. O, 36.**

This high-pressure lobbying campaign achieved the result sought—a decision to focus the WRNF Oil and Gas Plan on conservation and recreation—an odd result for an *oil and gas* plan. The planning effort only appears to be a public process. The real direction of this Plan was decided in Washington, D.C. between highly placed elected and appointed officials, many with connections to Colorado, and certain members of the "public." This type of decision-making is fundamentally at odds with the NFMA planning process and the NEPA public participation requirement. The result is not multiple-use management but rather the dominance of a single use—conservation.

Conclusion

The Oil and Gas plan fails to meet the USFS's obligation to successfully balance energy development with other resource values in the planning area. The Plan is based on a flawed

analysis of oil and gas potential; it fails to adequately analyze impacts on valid existing leases; the socio-economic analysis is flawed; the Plan does not comply with applicable federal laws and Forest Service policy guidance on the role of minerals in the National Forests; the alternatives analysis is inadequate and thus fails to meet the requirements of NEPA; the significance and Plan conformity analyses are *post hoc* rationalizations; and the Plan is the result of a politicized biased process. The Forest Service must remedy these significant flaws and conduct a new planning process that is in compliance with the law and its own policies.

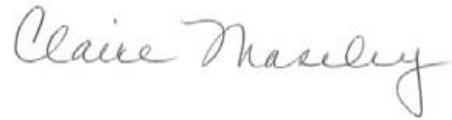
Sincerely,



David Ludlum
West Slope COGA
PO Box 89
Grand Junction, CO 81502
(970) 773-2198
d.ludlum@wscoga.org



Kathleen Sgamma
Western Energy Alliance
1775 Sherman St., 2700
Denver, CO 80203
(303) 623-0987
ksgamma@westernenergy
alliance.org



Claire Moseley
Public Lands Advocacy
1155 S. Havana St, #11-327
Denver, CO 80012
(303) 506-1153
Claire@publiclandsadvocacy.org