



November 30, 2012

Submitted via email: WRNFoilandgascomments@fscomments.org

David Francomb
U.S. Forest Service
PO Box 1919
Sacramento, California 95812

RE: Joint Trade Association Comments on the White River National Forest Oil and Gas Leasing Draft Environmental Impact Statement

Dear Mr. Francomb:

Western Energy Alliance, Public Lands Advocacy (PLA), and the West Slope Colorado Oil and Gas Association (WSCOGA) submit the following comments on the White River National Forest (WRNF) Oil and Gas Leasing Draft Environmental Impact Statement (DEIS) to the U.S. Forest Service (USFS).

Western Energy Alliance represents 400 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. An affiliated chapter of the Colorado Oil and Gas Association (COGA), WSCOGA is a member based organization focused on promoting the development of natural gas and oil resources in Northwest Colorado. We request that each aforementioned trade association be recognized as a commenter in this public review process.

Several member companies of our associations are actively exploring and developing oil and natural gas resources in the WRNF and constructing and operating pipelines to transport such resources to satisfy market demand. These companies have a vested interest in decisions made by USFS that affect access to valid existing oil and gas lease rights, as well as future leasing, exploration, production, and other development activities within the WRNF planning area.

General Comments

In our view, the DEIS is clearly designed to make it more difficult or impossible to develop oil and natural gas resources in the energy-rich Piceance Basin and other basins that overlay the WRNF, which will decrease investment and prevent job creation. USFS' proposed action would severely limit oil and natural gas development throughout the planning area due to unjustified land use closures and restrictions on existing and future leases. Many of these restrictions are unnecessary because oil and natural gas producers already comply with existing state and federal laws that protect water, air, and other resources.

Moreover, the cumulative impact of the restrictions in the proposed action of the DEIS, combined with the withdrawal of thousands of acres from future leasing, could severely impair or even outright prevent current and future leaseholders from developing valid existing leases, expand producing fields to include prospective areas, and connect productive fields to markets by constructing new and improving infrastructure in the planning area. In addition, USFS fails to adequately consider the negative effects its proposed management strategy will have on local job creation and state, county, and local economies.

Finally, because the proposed action fails to strike a balance between protecting natural resources and enabling economic growth in rural communities on the West Slope, we find the proposed action fundamentally flawed. We, therefore, urge USFS to amend the EIS to ensure it strikes an appropriate balance among uses and fully considers the use and economic interests of affected counties before the Forest Plan is finalized and implemented.

Oil and Natural Gas Potential in the Planning Area

There are significant and attainable natural gas and oil resources in the Piceance Basin underlying the WRNF that could contribute to the nation's domestic energy production. According to ICF International, the Uinta-Piceance formation straddling eastern Utah and western Colorado holds 150.1 Tcf of unproved gas reserves. At a time when the American public is becoming increasingly concerned about the amount of energy it imports, further oil and natural gas development in Colorado could continue to help reduce our reliance on foreign imports, increase and diversify U.S. transportation fuel supplies, and help spur local, state, regional, and national economic growth.

The WRNF overlaps three U.S. Geological Survey (USGS) 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. High oil and gas occurrence potential lies in the western portion of the WRNF in the southern Piceance Basin, overlapping with the Glenwood Springs and a small portion of the Grand Junction Bureau of Land Management (BLM) Field Offices (FO). Additional high oil and gas occurrence potential areas are found on the extreme north end of the WRNF in the Greater Green River Basin, overlapping with the White River and Little Snake BLM FOs.

According to the Reasonably Foreseeable Development (RFD) scenario used in the DEIS, up to 228 wells from up to 49 pads are projected for the WRNF over the next 20 years under the proposed action. However, based upon the proposed management restrictions and closures contained in the proposed action of the DEIS, that level of projected development will be impossible.

Restrictions in the proposed action include, but are not limited to: reducing the acreage administratively available for oil and gas leasing from 417,264 acres to 260,308 acres, increasing areas designated as No Surface Occupancy (NSO) from 139,413 to 204,938 acres, increasing areas designated as Controlled Surface Use (CSU) from 27,816 to 260,291 acres, increasing areas closed to leasing through management direction from 1,119,820 to 1,215,777 acres, and increasing areas legally closed to drilling from 749,386 to 800,555 acres.

Discussion of these restrictions is presented below in terms of the Energy Policy Act of 2005, Energy Policy and Conservation Act of 2000, and the Federal Land Policy and Management Act of 1976. As explained in our comments below, the USFS has failed to justify changing its management of oil and gas resources on the WRNF. Therefore, we strongly recommend that the agency revise its proposed action to incorporate more reasonable management objectives for mineral resources.

Loss of Investment and Mineral Assets

The DEIS would seriously undermine previous investments made by operators and diminish 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 a reasonable assumption that land positions could be assembled once initial production proved the area's viability and that additional lands would be available for lease in the future. By closing vast areas to new leasing, either through outright closures or closures through management directives, the DEIS would compromise many of these investments and may force operators to let leases expire without the opportunity for reissuance unless they accept far more stringent operating restrictions on those leases. As a result, this management strategy could ultimately compromise or violate valid existing lease rights.

The aspects of the DEIS that significantly increase development costs, as well as the significant increases in acreage closed to leasing, would also render certain assets in the Piceance Basin uncompetitive, in an environment of ever-increasing resource competitiveness. As a result, affected counties and local communities in the planning area could see a decrease in important mineral development revenue, direct, indirect, and induced employment from development, and ancillary socio-economic benefits.

Failure to Analyze Impacts of Restrictions

USFS does not sufficiently analyze the socio-economic economic impact of closing vast portions of the WRNF to future leasing and imposing major constraints on the remaining areas, making the socio-economic analysis in the DEIS inadequate. Specifically, the analysis fails to provide a comprehensive analysis of the restrictive management decisions proposed for oil and gas development, and how these management decisions would constrain current and future development in the planning area. In addition, the socio-economic analysis does not provide a thorough analysis on how the proposed action will impact transportation of the product to end-users of oil and natural gas resources and the associated impacts on the users themselves.

Valid Existing Lease Rights

USFS does not adequately protect valid and existing rights and does not reference the protection of these rights as a management prescription common to all alternatives in the DEIS. Further, no explanation of what constitutes valid existing lease rights and how they relate to new land use decisions has been provided.

The DEIS and implementation of its management prescriptions cannot infringe upon or materially restrain valid and existing lease rights. Any attempt in the EIS to modify, restrict or impede these rights, or access to them, would constitute an unlawful taking under the Fifth Amendment of the U.S.

Constitution. Federal courts have interpreted the phrase “valid existing rights” to mean that federal agencies cannot impose stipulations or conditions of approval that make development on existing leases either uneconomic or unprofitable.

With respect to all valid existing leases that were issued before the revised Forest Plan goes into effect, the USFS cannot legally impose stipulations or COAs 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. For the same reasons, USFS cannot recommend COAs on applications for permit to drill (APD) that are inconsistent with existing, contractual lease rights.

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. In addition, USFS cannot impair, block access to, render uneconomic, valid existing leases through other measures, like closing adjacent connective areas to future leasing. USFS must ensure that valid existing lease rights are not restricted or unilaterally amended or modified and the final Forest Plan must explicitly recognize and preserve valid existing lease rights in the WRNF.

‘Timing Out’ Valid Existing Leases

The proposed restrictions in the WRNF DEIS appear designed to force operators to let valid, non-producing leases expire. In the DEIS, USFS suggests that existing but not yet producing leases would expire and only be further leased with more strenuous stipulations, which reflects a troubling potential bias against future development on valid existing leases. It is our concern that unreasonable constraints on existing leases and future leases adjacent to existing leases could be used to unreasonably force a leaseholder to “time out” leases before marketable production can be established. Additionally, USFS cannot apply COAs to attempt to modify or constrain valid existing rights that would have the same effect.

This management approach fails to take into account the myriad obstacles a lessee may encounter which may prevent timely development of a lease, particularly with respect to the lack of access provided to the lease or adjacent leases, and could be construed as an unlawful taking of valid existing lease rights. We strongly caution USFS from incorporating this type of management strategy into the final Forest Plan.

Air Quality

USFS proposes numerous restrictive and costly emission controls and other air standards in the DEIS and fails to justify that these controls are needed to maintain air quality within the planning area. These air quality restrictions also supersede USFS regulatory authority. Imposing emissions controls and other air restrictions would infringe on Colorado and Environmental Protection Agency (EPA) regulatory primacy on air quality. In the final EIS, USFS should recognize that it has limited authority over air quality, cannot impose emissions restrictions on oil and natural gas operations, and defer to the existing federal and state regulatory frameworks for air quality controls.

Closures and Withdrawal of Lands from Mineral Leasing

Under the proposed action, USFS would close over 800,000 acres to future oil and gas leasing and another 1.2 million acres through management direction, ostensibly to protect wildlife and plant habitats, inventoried roadless areas, Research National Areas (RNA), and other designated areas.

We remind the agency that the requirements of the Energy Policy Act of 2005 as well as the Energy Policy Conservation Act Amendments of 2000 require federal land management agencies to ensure that lease stipulations are applied consistently and to ensure that the least restrictive stipulations are utilized to protect many of the resource values to be addressed. It is evident from the DEIS that USFS ignored this directive because it has failed to demonstrate that less restrictive measures were considered but found insufficient to protect the resources identified. A statement that there are conflicting resource values or uses does not justify the application of restrictions. Discussion of the specific requirements of a resource to be safeguarded, along with a discussion of the perceived conflicts between it and oil and gas activities must be provided. Clearly, an examination of less restrictive measures must be a fundamental element of a balanced analysis and documented accordingly in the FEIS.

On top of closing vast areas to future leasing, USFS proposes a significant increase in restrictions and stipulations on future leases under Alternatives C and D that would impede or prevent development in unleased areas, which is tantamount to closing those areas to leasing. Alternatives C and D apply NSO restrictions on nearly all lands open to oil and gas leasing within the WRNF and would apply CSU or timing stipulations to 100 percent of the lands open to oil and gas leasing. This is a significant and unprecedented change from the current Forest Plan and should be reconsidered.

The closure of nearly 1 million acres appears arbitrary because USFS fails to provide any level of scientific justification for the closure in the DEIS. Moreover, the Federal Land Management Policy Act (FLPMA) requires the Secretaries of the Interior and Agriculture to provide notice of proposed withdrawals of 5,000 acres or more of federal land from minerals development in the Federal Register and conduct hearings regarding the withdrawal. 43 U.S.C. § 1714(b)(1) & (h). In accordance with congressional mandate and FLPMA, USFS must analyze any withdrawal of land greater than 5,000 acres from mineral leasing, including associated impacts and costs of the proposed withdrawal, so that Congress can properly decide whether to approve the withdrawal. Under FLPMA's Section 204 withdrawal procedure, a withdrawal also requires public notice and hearing, and consultation with state and local governments. USFS must pursue Congressional approval of the closures in the DEIS in accordance with this statute.

In sum, we object to these broad closures because they are designed to limit future oil and natural gas development activity primarily to existing leaseholds. In so doing, USFS 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. Such management would also prevent operators from executing long-term designs to expand fields, connect existing production, and improve existing infrastructure. The DEIS will also likely prevent this connectivity and expansion by obstructing the ability to nominate and lease connective parcels in the future either through NSO or other onerous lease stipulations, and outright withdrawals from future leasing.

Inadequacy of the Proposed Action and the Range of Alternatives

USFS does not fulfill its obligations under NEPA to develop and analyze a reasonable range of alternatives. There is no alternative that allows for reasonable oil and natural gas development to take place in the WRNF and the only difference among alternatives is the level of restrictions imposed upon development. Alternative B, 'No New Leasing,' would clearly have devastating impacts on future development in the planning area by making zero acres available for future leasing. Besides designating a portion of inventoried roadless areas as CSU rather than NSO, Alternative D, 'Mixed Roadless Stipulations,' is nearly just as restrictive as the proposed action. Consequently, Alternative C, 'Proposed Action,' does not present a reasonable balance between the alternatives, making the DEIS inadequate. We request that the final EIS include an adequate range of alternatives and a proposed action that provides for the proper balance between responsible oil and natural gas development and resource conservation in the WRNF.

Battlement Mesa Health Impact Assessment

The DEIS often references the Battlement Mesa Draft Health Impact Assessment (HIA) that was not completed, and more importantly, was harshly criticized by the Colorado Department of Public Health and Environment (CDPHE). We question the USFS' reliance on an assessment that has not been finalized and has been criticized by the State of Colorado and request that USFS remove all references to the HIA in the DEIS.

Conclusion

As presently drafted, the DEIS is not a viable document that will enable USFS to successfully balance energy development and resource protection and conservation in the planning area. The DEIS contains significant legal deficiencies regarding the most basic tenants of NEPA, including unfounded closures and surface use restrictions, an inadequate socio-economic analysis, and unjustified air quality restrictions.

We strongly urge the USFS to revise the DEIS to make it a legally sustainable, viable land use planning tool that will provide regulatory and investment certainty for the oil and natural gas industry in the WRNF. USFS must reconsider the proposed closures, leases stipulations, and surface use restrictions in the DEIS that would have a significant impact upon valid existing leases, as well as operators ability to explore and develop oil and gas resources throughout the planning area in the future. The final EIS must also fully consider the interests and recommendations of affected counties.

Western Energy Alliance, PLA, and WSCOGA appreciate the opportunity to submit written comments to USFS on the WRNF DEIS and request that these comments and concerns be given serious consideration. If you have any questions, please contact Spencer Kimball, Western Energy Alliance, at (720) 289-3478; Claire Moseley, PLA, at (303) 506-1153; or David Ludlam, WSCOGA, at (970) 433-2178.

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Sincerely,



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