

Director's Protest Resolution Report

**White River (Colorado) Oil
and Gas Proposed Resource
Management Plan
Amendment and Final
Environmental Impact
Statement**

August 17, 2015



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Reader's Guide

How do I read the Report?

The Director's Protest Resolution Report is divided up into sections, each with a topic heading, excerpts from individual protest letters, a summary statement (as necessary), and the BLM's response to the summary statement.

Report Snapshot

Issue Topics and Responses
NEPA

Topic heading

Submission number

Issue Number: PP-CO-WHITERIVER-15-20-10

Protest issue number

Organization: The Forest Initiative

Protesting organization

Protester: John Smith

Protester's name

Issue Excerpt Text:

Direct quote taken from the submission

Rather than analyze these potential impacts, as required by NEPA, BLM postpones analysis of renewable energy development projects to a future case-by-case analysis.

Summary

General statement summarizing the issue excerpts (optional).

There is inadequate NEPA analysis in the PRMP/FEIS for renewable energy projects.

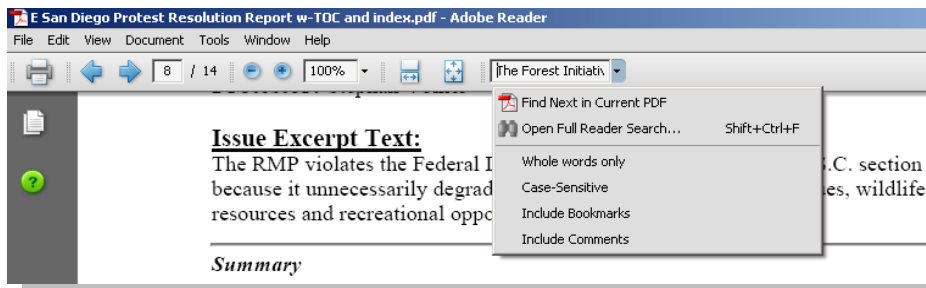
Response

BLM's response to the summary statement or issue excerpt if there is no summary.

Specific renewable energy projects are implementation-level decisions rather than RMP-level decisions. Upon receipt of an application for a renewable energy project, the BLM would require a site-specific NEPA analysis of the proposal before actions could be approved (FEIS Section 2.5.2, p. 2-137). Project specific impacts would be analyzed at that time (including impacts to surrounding properties), along with the identification of possible alternatives and mitigation measures.

How do I find my Protest Issues and Responses?

1. Find your submission number on the protesting party index which is organized alphabetically by protester's last name.
2. In Adobe Reader search the report for your name, organization or submission number (do not include the protest issue number). Key word or topic searches may also be useful.



List of Commonly Used Acronyms

ACEC	Area of Critical Environmental Concern	GIS	Geographic Information Systems
APD	Application for Permit to Drill	IB	Information Bulletin
BA	Biological Assessment	IM	Instruction Memorandum
BLM	Bureau of Land Management	MOU	Memorandum of Understanding
BMP	Best Management Practice	NEPA	National Environmental Policy Act of 1969
BO	Biological Opinion	NHPA	National Historic Preservation Act of 1966, as amended
CAA	Clean Air Act	NOA	Notice of Availability
CARPP	Comprehensive Air Resources Protection Protocol	NOI	Notice of Intent
CEQ	Council on Environmental Quality	NRHP	National Register of Historic Places
CFR	Code of Federal Regulations	NSO	No Surface Occupancy
COA	Condition of Approval	OHV	Off-Highway Vehicle (has also been referred to as ORV, Off Road Vehicles)
CSU	Controlled Surface Use	RFDS	Reasonably Foreseeable Development Scenario
CWA	Clean Water Act	RMP	Resource Management Plan
DM	Departmental Manual (Department of the Interior)	ROD	Record of Decision
DOI	Department of the Interior	ROW	Right-of-Way
EA	Environmental Assessment	SHPO	State Historic Preservation Officer
EIS	Environmental Impact Statement	SO	State Office
EO	Executive Order	T&E	Threatened and Endangered
EPA	Environmental Protection Agency	USC	United States Code
ESA	Endangered Species Act	USGS	U.S. Geological Survey
FEIS	Final Environmental Impact Statement	VRM	Visual Resource Management
FLPMA	Federal Land Policy and Management Act of 1976	WA	Wilderness Area
FO	Field Office (BLM)	WSA	Wilderness Study Area
FWS	U.S. Fish and Wildlife Service	WSR	Wild and Scenic River(s)

Protesting Party Index

Protester	Organization	Submission Number	Determination
Glen A. Miller	Private Party	PP-CO-Whiteriver-15-01	Dismissed – Comments Only
Kathy Donnelly	XTO Energy	PP-CO-Whiteriver-15-02	Denied – Issues and Comments
Jason Oates	Encana Oil & Gas	PP-CO-Whiteriver-15-03	Denied – Issues and Comments
Chad Odegard	WPX Energy	PP-CO-Whiteriver-15-04	Denied – Issues and Comments
John Kinkaid/Chuck Grobe/Frank Moe	Moffat County Board of Commissioners	PP-CO-Whiteriver-15-05	Denied – Issues and Comments
Wendy Park et al	Center for Biological Diversity	PP-CO-Whiteriver-15-06	Denied – Issues and Comments
Spencer Kimball et al	Western Energy Alliance	PP-CO-Whiteriver-15-07	Denied – Issues and Comments
Vanessa Mazal	National Parks Conservation Association	PP-CO-Whiteriver-15-08	Denied – Issues and Comments
Megan Mueller	Rocky Mountain Wild	PP-CO-Whiteriver-15-09	Granted in Part / Denied – Issues and Comments
Jeremy Nichols	WildEarth Guardians	PP-CO-Whiteriver-15-10	Denied – Issues and Comments
Tom Jankovsky	Garfield County	PP-CO-Whiteriver-15-11	Denied – Issues and Comments

Issue Topics and Responses

Onshore Orders/Timing Restrictions

Issue Number: PP-CO-WhiteRiver-15-02-52

Organization: XTO Energy

Protestor: Kathy Donnelly

Issue Excerpt Text: Further, timing restrictions on routine maintenance could interfere with XTO's ability to comply with its regulatory obligations, including BLM's own Onshore Orders, the EPA's Spill Prevention, Control, and Countermeasure rules, and regulations issued by the CDPHE, CPW and COGCC. BLM's Onshore Order No. 3 requires periodic inspections to measure production volumes and ensure compliance with site security requirements.

Issue Number: PP-CO-WhiteRiver-15-02-54

Organization: XTO Energy

Protestor: Kathy Donnelly

Issue Excerpt Text: As an example, the Proposed White River RMPA makes certain areas subject to timing limitations that prohibit routine maintenance and inspections more than six months out of the year. See, e.g., Proposed White River RMPA, app. A, Table A-3, TL-14-E, pg. A-104; TL-15-E, pg. A-106. In these areas, XTO will not be able to comply with Onshore Order No. 5 and CDPHE's ozone rule, both of which require that certain equipment be inspected at least semi-annually.

Issue Number: PP-CO-WhiteRiver-15-03-34

Organization: Encana Oil & Gas

Protestor: Jason Oates

Issue Excerpt Text: The addition of timing restrictions to operations and maintenance activities could have a profound adverse impact on Encana's operations in the White

River Field Office. Timing restrictions on routine maintenance could also interfere with Encana's ability to comply with its regulatory obligations, including the BLM's own Onshore Orders, the Environmental Protection Agency's (EPA) Spill Prevention, Control, and Countermeasure rules, and regulations issued by the Colorado Department of Public Health and Environment (CDPHE) and COGCC. This change is a dramatic departure from the existing White River RMP, which specifically does not impose timing limitations on operations and maintenance activities. The BLM's proposal to impose seasonal restrictions on "operation and maintenance" activities is particularly troubling because the agency has not clearly defined the phrase "operation and maintenance" activities or specified the types of activities that will now be subject to seasonal limitations.

Issue Number: PP-CO-WhiteRiver-15-03-36

Organization: Encana Oil & Gas

Protestor: Jason Oates

Issue Excerpt Text: Further, timing restrictions on routine maintenance could interfere with Encana's ability to comply with its regulatory obligations, including the ELM's own Onshore Orders, the EPA's Spill Prevention, Control, and Countermeasure rules, and regulations issued by the CDPHE and COGCC. ELM's Onshore Order No. 3 requires periodic inspections to measure production volumes and ensure compliance with site security requirements. Onshore Order 3, III.F.1, 54 Fed. Reg. 39,529 (Sept. 27, 1989). Onshore Order 5 requires operators to inspect, "at least semi-annually," orifice plates at gas well heads. Onshore Order 5, III.D.IO, 54 Fed. Reg. 8100 (Feb.24, 1989). Further, the EPA requires operators to

periodically inspect their facilities under the Spill Prevention, Control, and Countermeasure (SPCC) rule. 40 CFR §§ 112.3, 112.6, 112.7. In addition, both CDPHE and COGCC require routine inspections for various purposes. See, e.g., COGCC, 2 CCR 404-1:605(a)(4); CDPHE, Air Quality Control Division, Regulation 7, 5 CCR 1001-9 §§ VI(E)(2)(a)(iii), (b)(2)(c)(ii)(E). CDPHE's ozone precursor control program for oil and gas, in particular, requires semi-annual inspections for several types of tanks. Regulation 7, 5 CCR 1001-9 §§ VI(E)(2)(a)(iii), (b)(2)(c)(ii)(E). Encana could have difficulty complying with many of these inspection requirements in the White River Planning Area. As an example, the Proposed White River RMPA makes certain areas subject to timing limitations that prohibit routine maintenance and inspections more than six months out of the year. See, e.g., Proposed White River RMPA app. A, Table A-3, TL-14-E, pg. A-104; TL-15-E, pg. A-106. In these areas, Encana will not be able to comply with Onshore Order No. 5 and CDPHE's ozone rule, both of which require that certain equipment be inspected at least semi-annually.

Issue Number: PP-CO-WhiteRiver-15-04-27
Organization: WPX Energy
Protestor: Chad Odegard

Issue Excerpt Text: The addition of timing restrictions to operations and maintenance activities could have a profound adverse impact on WPX's operations in the White River Field Office. Timing restrictions on routine maintenance could also interfere with WPX's ability to comply with its regulatory obligations, including the BLM's own Onshore Orders, the Environmental Protection Agency's (EPA) Spill Prevention, Control, and Countermeasure rules, and regulations issued

by the Colorado Department of Public Health and Environment (CDPHE) and the Colorado Oil and Gas Commission (COGCC). This change is a dramatic departure from the existing White River RMP, which specifically does not impose timing limitations on operations and maintenance activities. The BLM's proposal to impose seasonal restrictions on "operation and maintenance" activities is particularly troubling because the agency has not clearly defined the phrase "operation and maintenance" activities or specified the types of activities that will now be subject to seasonal limitations.

Issue Number: PP-CO-WhiteRiver-15-04-29
Organization: WPX Energy
Protestor: Chad Odegard

Issue Excerpt Text Further, timing restrictions on routine maintenance could interfere with WPX's ability to comply with its regulatory obligations, including the BLM's own Onshore Orders, the EPA's Spill Prevention, Control, and Countermeasure (SPCC) rules, and regulations issued by the CDPI-IE and COGCC. BLM's Onshore Order No. 3 requires periodic inspections to measure production volumes and ensure compliance with site security requirements. Onshore Order 3, III.F.I, 54 Fed. Reg. 39,529 (Sept. 27, 1989). Onshore Order 5 requires operators to inspect, "at least semi- annually," orifice plates at gas well heads. Onshore Order 5, III.D.10, 54 Fed. Reg. 8100 (Feb. 24,1989). Further, the EPA requires operators to periodically inspect their facilities under the SPCC rule. 40 CFR §§ 112.3, 112.6, 112.7. In addition, both CDPHE and COGCC require routine inspections for various purposes. See, e.g., COGCC, 2 CCR404-1 :605(a)(4); CDPHE, Air Quality Control Division, Regulation 7, 5 CCR 1001-9 §§ VI(B)(2)(a)(iii), (b)(2)(c)(ii)(B). CDPHE's

ozone precursor control program for oil and gas, in particular, requires semi-annual inspections for several types of tanks. Regulation 7, 5 CCR 1001-9 §§ VI(B)(2)(a)(iii), (b)(2)(c)(ii)(B). WPX could have difficulty complying with many of these inspection requirements in the White River Planning Area. As an example, the Proposed White River RMPA makes certain areas subject to timing limitations that prohibit

routine maintenance and inspections more than six months out of the year. See, e.g., Proposed White River RMPA app. A, Table A-3, TL-14-E, pg. A-104; TL-15-E, pg. A-106. In these areas, WPX will not be able to comply with Onshore Order No.5 and CDPHE's ozone rule, both of which require that certain equipment be inspected at least semi-annually.

Summary:

The PRMP/FEIS includes new timing restrictions to oil and gas operations and maintenance activities. These restrictions could interfere with the industry's ability to comply with its regulatory obligations, including the BLM's Onshore Orders, the Environmental Protection Agency's (EPA) Spill Prevention, Control, and Countermeasure rules, and regulations issued by the State of Colorado.

Response:

It is BLM policy for RMPs to identify areas subject to constraints for oil and gas leasing, and identify specific lease stipulations that will be employed to accomplish resource condition objectives (BLM Handbook H-1601-1, p. C-23 to C-24). Lessees are required to conduct operations in a manner that not only “results in maximum ultimate economic recovery of oil and gas with minimum waste” but also “protects other natural resources and environmental quality” (43 CFR 3162.1). The Mineral Leasing Act requires that the “the Secretary of the Interior...shall regulate all surface-disturbing activities conducted pursuant to any lease issued under this chapter, and shall determine reclamation and other actions as required in the interest of conservation of the surface resources.” Thus, the BLM has the statutory authority to take reasonable measures to avoid or minimize adverse environmental impacts (e.g. applying a lease stipulation) that may result from federally authorized mineral lease activity.

The White River Field Office (WRFO) rationale for expanding the use of timing limitations is provided in Section 4.3.2.3.1. Timing restrictions are used to meet federal laws which obligate federal land managers to protect various resources. As described in the PRMP/FEIS Sections 1.1.1 and 2.4, the BLM could not apply additional mitigation or Conditions of Approval (COA) consistent with lease terms until a project has been proposed and site specific environmental analyses has been completed..

As stated in in the White River Oil and Gas Development Proposed Resource Management Plan Amendment and Final Environmental Impact Statement (PRMPA/FEIS), “[m]anagement goals are typically focused on maintaining, improving, and enhancing existing resource conditions, avoiding adverse impacts, and complying with applicable state and federal standards and regulations. Establishing management goals aids the BLM in developing management objectives, and allowable uses and management actions.” (Oil and Gas Development PRMPA/FEIS, p. 2-

10). “Allowable uses could result from lease stipulations (e.g., lands open to leasing with an NSO stipulation), COAs from the surface management agency’s review and environmental analysis of the proposed operations, Notices to Lessees, Onshore Orders, or regulations.” (Oil and Gas Development PRMPA /FEIS, p. 2-6). Thus, any lease stipulations or timing restrictions would will be defined in a way to ensure that the lessee can comply with applicable state and federal regulations.

The Oil and Gas Development PRMPA/FEIS establishes lease stipulations in compliance with statute, regulation, and BLM policy.

Energy Policy Act

Issue Number: PP-CO-WhiteRiver-15-02-70
Organization: XTO Energy
Protestor: Kathy Donnelly

Issue Excerpt Text: The BLM Fails to Adequately Substantiate Proposed Lease Restrictions and COAs, and Utilize Least Restrictive Measures. The BLM is required to utilize the least-restrictive management practices with respect to oil and gas development. Pursuant to Section 363 of the Energy Policy Act of 2005, lease restrictions are “only as restrictive as necessary to protect the resource for which the stipulations are provided”. 42 USC § 15922(b)(3)(C). With respect to oil and gas resources, BLM Manual 1601 on Land Use Planning, and Manual 1624 on Planning for Fluid Minerals, specifically direct the BLM not only to identify which areas would be subject to different categories of restrictions as included in the Proposed White River RMPA, but also to show that “the least restrictive constraint to meet the resource protection objection [is] used”. See BLM Handbook H-1601-1, App. C.II.H. at 24. The Proposed White River RMPA must be revised to include least restrictive protective measures for the Greater Sage-Grouse (GRSG) pursuant to the BLM Land Use Planning Handbook and the statutory requirement of Section 363 of the Energy Policy Act of 2005. In the alternative, the Record of Decision should reject unduly

restrictive and unsupportable measures in the Proposed White River RMPA and adopt more measured and consistent GRSG lease stipulations, COAs, and management prescriptions similar to those adopted in the 2014 Lander RMP.

Issue Number: PP-CO-WhiteRiver-15-02-79
Organization: XTO Energy
Protestor: Kathy Donnelly

Issue Excerpt Text: In almost every circumstance, the BLM proposes to adopt stipulations that are far more restrictive when compared to existing management. The BLM makes no acreage available for leasing with standard stipulations, instead imposing, at the very least, onerous timing limitation stipulations (TLS) on all 1,696,000 acres available for leasing. (Proposed White River RMPA, pg. 2-29.) The BLM further makes nearly a quarter (405,600 acres) of the acreage available for leasing subject to NSO stipulations, and even more acreage (461,800 acres) subject to various CSU stipulations. (Proposed White River RMPA, pg. 2-29.) In comparison to the 1997 White River RMP, the Proposed White River RMPA would almost double the amount of acreage subject to TLS’s and nearly triple the amount of acreage subject to NSO stipulations. Compare White River Record of Decision and Approved Resource Management Plan, pg. 2-5 (1997), with Proposed White River RMPA, pg. 2-29. The

BLM does not explain how this enormous increase in acreage subject to special stipulations is “only as restrictive as necessary to protect the resources for which the stipulations are applied.” Energy Policy Act of 2005, pub. I. no. 109-58, § 363(b)(3), 119 Stat. 594, 722 (2005). The BLM's proposal to impose burdensome special stipulations on every acre available for leasing is a stark example of its failure to comply with the Energy Policy Act. (Proposed White River RMPA, Table 2-1, Record No. 13.)

Issue Number: PP-CO-WhiteRiver-15-03-46
Organization: Encana Oil & Gas
Protestor: Jason Oates

Issue Excerpt Text: In almost every circumstance, the BLM proposes to adopt stipulations that are far more restrictive when compared to existing management. The BLM makes no acreage available for leasing with standard stipulations, instead imposing, at the very least, onerous TLS's on all 1,696,000 acres available for leasing. (Proposed White River RMPA, pg. 2-29.) The BLM further makes nearly a quarter (405,600 acres) of the acreage available for leasing subject to NSO stipulations, and even more acreage (461,800 acres) subject to various CSU stipulations. (Proposed White River RMPA, pg. 2-29.) In comparison to the 1997 White River RMP, the Proposed White River RMPA would almost double the amount of acreage subject to TLS and nearly triple the amount of acreage subject to NSO stipulations. Compare White River Record of Decision and Approved Resource Management Plan, pg. 2-5 (1997), with Proposed White River RMPA, pg. 2-29. The BLM does not explain how this enormous increase in acreage subject to special stipulations is “only as restrictive as necessary to protect the resources for which the stipulations are applied.” Energy Policy

Act of 2005, pub. I. no. 109-58, § 363(b)(3), 119 Stat. 594, 722 (2005). The BLM's proposal to impose burdensome special stipulations on every acre available for leasing is a stark example of the BLM's failure to comply with the Energy Policy Act. (Proposed White River RMPA, Table 2-1, Record No. 13.)

Issue Number: PP-CO-WhiteRiver-15-04-38
Organization: WPX Energy
Protestor: Chad Odegard

Issue Excerpt Text: In almost every circumstance, the BLM proposes to adopt stipulations that are far more restrictive when compared to existing management. The BLM makes no acreage available for leasing with standard stipulations, instead imposing, at the very least, onerous TLS's on all 1,696,000 acres available for leasing. (Proposed White River RMPA, pg. 2-29.) The BLM further makes nearly a quarter (405,600 acres) of the acreage available for leasing subject to NSO stipulations, and even more acreage (461,800 acres) subject to various CSU stipulations. Proposed White River RMPA, pg. 2-29. In comparison to the 1997 White River RMP, the Proposed White River RMPA would almost double the amount of acreage subject to TLS's and nearly triple the amount of acreage subject to NSO stipulations. Compare White River Record of Decision and Approved Resource Management Plan, pg. 2-5 (1997), with Proposed White River RMPA, pg. 2-29. The BLM does not explain how this enormous increase in acreage subject to special stipulations is “only as restrictive as necessary to protect the resources for which the stipulations are applied.” Energy Policy Act of 2005, pub. I. no. 109-58, § 363(b)(3), 119 Stat. 594, 722 (2005). The BLM's proposal to impose burdensome special stipulations on every acre available for leasing is a stark

example of the BLM's failure to comply with the Energy Policy Act. (Proposed White River RMPA, Table 2-1, Record No. 13.)

Issue Number: PP-CO-WhiteRiver-15-07-5

Organization: Western Energy Alliance

Protestor: Spencer Kimball et al

Issue Excerpt Text: Pursuant to EPAct 2005 and the MOU, the stipulations for oil and natural gas leases within the White River

RMP, as amended, should not be onerous or more restrictive than necessary. In almost every circumstance, however, BLM proposes to adopt stipulations that are far more restrictive when compared to existing management. BLM makes no acreage available for leasing with standard stipulations, instead imposing at the very least onerous timing limitation stipulations (TLS) on all 1,696,000 acres available for leasing.

Summary:

The PRMP/FEIS violates the Energy Policy Act of 2005 by failing to apply the least restrictive stipulations for oil and gas leasing.

Response:

Section 363 of the Energy Policy Act of 2005 and its implementing memorandum of understanding requires that the Secretaries of the Interior and Agriculture ensure that oil and gas lease stipulations be “only as restrictive as necessary to protect the resource for which the stipulations are applied” (42 USC section 15801 et. seq.; BLM MOU WO300-2006-07).

In order to mitigate impacts to other resources, the BLM appropriately proposes and analyzes restrictions on potential oil and gas leasing through oil and gas lease stipulations. The BLM policy requires RMPs to identify and consider areas subject to both moderate and major constraints for oil and gas leasing and identify specific lease stipulations that will be employed to accomplish resource condition objectives (BLM Handbook H-1601-1, p. C-23 to C-24). Accordingly, each alternative analyzed in the Oil and Gas Development PRMPA/FEIS presents a set of oil and gas lease stipulations necessary to meet the goals and objectives for each resource and resource use in the planning area.

The Oil and Gas Development PRMPA/FEIS fully analyzed impacts of the lease stipulations for each alternative (See Chapter 4 of the Oil and Gas Development PRMPA/FEIS). By comparing impacts across the alternatives, the BLM determined which stipulations in the Proposed Alternative were necessary, without being overly restrictive, to meet the goals and objectives of the Oil and Gas Development PRMPA/FEIS.

The BLM acknowledges that the number of acres subject to major or moderate lease stipulations is proposed to increase when compared to current management; however, this increase is justified in the Oil and Gas Development PRMPA/FEIS. For example, one reason is an increase in acreage subject to major or moderate lease stipulations for the protection of Special Status Species, such as the Greater Sage-Grouse (GRSG), as well as sensitive vegetation. An increase in protection is necessary and differed levels of protection were analyzed among alternatives (Oil and Gas Development PRMPA/FEIS, Table 2-5).

The PRMPA/FEIS fully analyzed the impacts of the lease stipulations (see Chapter 4 of the Oil and Gas Development PRMPA/FEIS) for each alternative. Based on the impacts analysis performed, the BLM determined that the stipulations considered are not overly restrictive, are necessary to meet the goals and objectives of the PRMPA/FEIS, and do not violate the Energy Policy Act.

NEPA: Supplemental Analysis

Issue Number: PP-CO-WhiteRiver-15-02-12
Organization: XTO Energy
Protestor: Kathy Donnelly

Issue Excerpt Text: In the Draft White River RMPA the BLM did not suggest, indicate, or include any of the proposed changes to its management objectives or provisions of CARPP. See Draft White River RMPA, Table 2-1 & app. J. This illegal, unwarranted, and expansive interpretation of BLM's role and CARPP's provisions were not reasonably included within the range of alternatives presented in the Draft White River RMPA. Therefore the BLM violated FLPMA and NEPA by not preparing a supplemental draft EIS.

Issue Number: PP-CO-WhiteRiver-15-02-14
Organization: XTO Energy
Protestor: Kathy Donnelly

Issue Excerpt Text: Finally, the BLM's inclusion of CARPP in the Proposed White River RMPA and the new management goals and measures included under the Preferred Alternative to Table 2-1 violate FLPMA because the public was not provided a meaningful opportunity to comment upon these proposals. The BLM's planning regulations specifically require the public to be provided an opportunity to meaningfully participate in and comment upon the preparation of land use plans. 43 CFR §

1610.2.

Issue Number: PP-CO-WhiteRiver-15-02-16
Organization: XTO Energy
Protestor: Kathy Donnelly

Issue Excerpt Text: The addition of new Lands with Wilderness Characteristics and significant increases in size of other Lands with Wilderness Characteristics is a significant change upon which XTO had no opportunity to comment. The BLM's expansion of Lands with Wilderness Characteristics in the White River Planning Area therefore required a supplemental draft EIS and an opportunity for comment. The BLM's failure to provide this opportunity violated NEPA and FLPMA, and the BLM must supplement the Draft White River RMPA and provide an opportunity for comment prior to issuing its ROD and final approved RMPA. 40 CFR § 1502.9(c); BLM Land Use Planning Handbook H-1610-1, III.A.11, pg. 24 (Rel. 1-1693 03/11/05).

Issue Number: PP-CO-WhiteRiver-15-02-4
Organization: XTO Energy
Protestor: Kathy Donnelly

Issue Excerpt Text: XTO protests substantial changes made between the draft and Proposed White River RMPA without notice and an opportunity for public comment. In particular, XTO protests the unexpected inclusion and adoption of the Comprehensive Air Resources Protection Protocol ("CARPP"), (Proposed White River RMPA, Table 2-1, Record 1, pg.2-1-1); and the significant increase in areas

designated as Lands with Wilderness Characteristics. (Proposed White River RMPA, Table 2-22, pg. 2-22-1.) XTO did not previously comment on these proposals because they were newly introduced with the Proposed White River RMPA.

Issue Number: PP-CO-WhiteRiver-15-02-6
Organization: XTO Energy
Protestor: Kathy Donnelly

Issue Excerpt Text: Lands with Wilderness Characteristics, CARPP, and other changes discussed herein, were not reasonably included within the range of alternatives presented in the Draft White River RMPA. BLM should have issued a supplemental draft EIS evaluating these changes pursuant to the procedural strictures of NEPA. 40 C.F.R. §1502.9(c); BLM Land Use Planning Handbook H-1610-1, III.A.11, pg. 24 (Rei. 1-1693 03/11/05).

Issue Number: PP-CO-WhiteRiver-15-02-9
Organization: XTO Energy
Protestor: Kathy Donnelly

Issue Excerpt Text: The BLM's inclusion of CARPP in the Proposed White River RMPA and the new management goals and measures included under the Preferred Alternative to Table 2-1 violate both NEPA and FLPMA because these significant changes were not included in the Draft White River RMPA and because BLM did not allow the public an opportunity to meaningfully comment on them. These monitoring protocols and measures are entirely new to the Proposed White River RMPA and allow BLM to impose on operators a number of significant burdens that will adversely impact oil and gas development in the White River Planning Area.

Issue Number: PP-CO-WhiteRiver-15-03-16
Organization: Encana Oil & Gas
Protestor: Jason Oates

Issue Excerpt Text: The BLM's proposed noise limitation is a significant departure from the Draft White River RMPA, which contained a best management practice/COA prohibiting noise above 49 dB at 30 feet from the source within occupied Greater Sage-Grouse range. Nevertheless, the BLM provided no notice or opportunity for the public to comment on this change. Failure to provide notice and opportunity for comment on this new requirement violated both NEPA and FLPMA, and the BLM Director should remove it prior to issuing the ROD and final approved RMPA.

Issue Number: PP-CO-WhiteRiver-15-03-4
Organization: Encana Oil & Gas
Protestor: Jason Oates

Issue Excerpt Text: Encana protests substantial changes made between the draft and Proposed White River RMPA without notice and an opportunity for public comment. In particular, Encana protests the unexpected inclusion and adoption of the Dinosaur Trail Master Leasing Plan, Proposed White River RMPA, Table 2-17a, pg. 2-17a-1; the CARPP, Proposed White River RMPA, Table 2-1, Record 1, pg. 2-1-1; the significant increase in areas designated as Lands with Wilderness Characteristics, Proposed White River RMPA, Table 2-22, pg. 2-22-1; the addition of a requirement for operators to develop water management plans, Proposed White River RMPA, Table 2-2, Record 19, pg. 2-2-9; and the increase in noise restrictions within Greater Sage-Grouse habitat listed in Appendix B, Proposed White River RMPA app. B, pg. B-27. Encana did not previously comment on these proposals because they

were newly introduced with the Proposed White River RMPA. In fact, Draft White River RMPA the BLM specifically indicated it would not consider in detail an alternative that would propose a new MLP. Draft White River RMPA, pg. 1-15; app. I, pg. I-13.

Issue Number: PP-CO-WhiteRiver-15-03-7
Organization: Encana Oil & Gas
Protestor: Jason Oates

Issue Excerpt Text: The BLM's inclusion of the Dinosaur Master Leasing Plan (Dinosaur MLP) in the Proposed White River RMP violates both NEPA and FLPMA because it was not included in the Draft White River RMPA and because BLM did not allow the public an opportunity to meaningfully comment on said Master Leasing Plan. Encana did not previously comment on the Dinosaur MLP because it was not in the Draft White River RMPA. The application of the Dinosaur MLP to such a large amount of acreage is too substantial a change for the BLM to add to the Proposed White River RMPA without notice and a supplemental draft EIS.

Issue Number: PP-CO-WhiteRiver-15-03-9
Organization: Encana Oil & Gas
Protestor: Jason Oates

Issue Excerpt Text: The BLM's promulgation of the CARPP Violates the National Environmental Policy Act of 1969 and the Federal Land Policy and Management Act of 1976. The BLM's inclusion of the CARPP in the Proposed White River RMPA violates both NEPA and FLPMA because it was not included in the Draft White River RMPA and because BLM did not allow the public an opportunity to meaningfully comment on the CARPP. The CARPP's monitoring protocols and measures are

entirely new to the Proposed White River RMPA, and allow the BLM to impose on project proponents a number of significant burdens that will adversely impact oil and gas development in the White River Planning Area.

Issue Number: PP-CO-WhiteRiver-15-04-10
Organization: WPX Energy
Protestor: Chad Odegard

Issue Excerpt Text: The addition of new Lands with Wilderness Characteristics and significant increases in size of other Lands with Wilderness Characteristics is a significant change upon which WPX had no opportunity to comment. The BLM's expansion of Lands with Wilderness Characteristics in the White River Planning Area therefore required a supplemental draft EIS and an opportunity for comment. BLM's failure to provide this opportunity violated NEPA and FLPMA, and BLM must supplement the Draft White River RMPA and provide an opportunity for comment prior to issuing its ROD and final approved RMPA. 40 C.P.R. § 1502.9(c); BLM Land Use Planning Handbook H-1610-1, III.A.II, pg. 24 (Rei. 1-1693 03/11/05).

Issue Number: PP-CO-WhiteRiver-15-04-4
Organization: WPX Energy
Protestor: Chad Odegard

Issue Excerpt Text: WPX protests substantial changes made between the draft and Proposed White River RMPA without notice and an opportunity for public comment. In particular, WPX protests the unexpected inclusion and adoption of the Dinosaur Trail Master Leasing Plan, Proposed White River RMPA, Table 2-17a, pg. 2-17a-1; the CARPP, Proposed White River RMPA, Table 2-1, Record 1, pg. 2-1-1; and the significant increase in areas

designated as Lands with Wilderness Characteristics, Proposed White River RMPA, Table 2-22, pg. 2-22-1.

Issue Number: PP-CO-WhiteRiver-15-04-6

Organization: WPX Energy

Protestor: Chad Odegard

Issue Excerpt Text: The Dinosaur MLP makes 422,700 acres in the Dinosaur Trail area subject to additional stipulations and restrictions not required elsewhere in the White River Planning Area. See Proposed White River RMPA, Table 2-17a, pg. 2-17a-1. The application of the Dinosaur MLP to such a large amount of acreage is too substantial a change for the BLM to add to the Proposed White River RMPA without notice and a supplemental draft EIS.

Issue Number: PP-CO-WhiteRiver-15-04-8

Organization: WPX Energy

Protestor: Chad Odegard

Issue Excerpt Text: The BLM's inclusion of the CARPP in the Proposed White River RMPA violates both NEPA and FLPMA because it was not included in the Draft White River RMPA and because BLM did not allow the public an opportunity to meaningfully comment on the CARPP. The CARPP's monitoring protocols and measures are entirely new to the Proposed White River RMPA, and allow the BLM to impose on project proponents a number of significant burdens that will adversely impact oil and gas development in the White River Planning Area.

Issue Number: PP-CO-WhiteRiver-15-05-2

Organization: Moffat County Board of Commissioners

Protestor: John Kinkaid, Chuck Grobe, and Frank Moe

Issue Excerpt Text: The BLM developed Alternative E without notifying the public and without allowing adequate time for public comment on the new resource management actions for the planning area. See Int'l Snowmobile Mfrs. Assoc., 340 F. Supp. 2d at 1263-65. The BLM must supplement the DEIS and/or FEIS, and provide the public an opportunity to comment on Alternative E as it impacts the resource management direction for the planning area and impacts where and when oil and gas development will occur.

Issue Number: PP-CO-WhiteRiver-15-05-4

Organization: Moffat County Board of Commissioners

Protestor: John Kinkaid, Chuck Grobe, and Frank Moe

Issue Excerpt Text: The BLM also designated a MLP area without providing the public an opportunity to comment on it. The DEIS provided an analysis of two proposed MLP areas, Eastern Book Cliffs/Piceance Basin MLP and Dinosaur Lowlands MLP, but concluded that neither area warranted designation because substantial portions of the areas were currently leased. *Id.* at Ch.2, p.39. See DEIS at Appendix I. It was not until it received comments from environmental groups on the need to further protect the Dinosaur National Monument and designated the Dinosaur Lowlands MLP did the BLM reconsider its conclusions. (PRMPA at Appendix K, pp.32, 60, 384-391.) BLM revised the boundaries of the Dinosaur Lowlands MLP to develop the Dinosaur Trail MLP area, which is now only about 30 percent leased and meets the MLP criteria. *Id.* at Appendix K, pp.32, 386; Ch.2, p.39. The decision to designate the Dinosaur Trail MLP was completed after the DEIS was published and without providing the public the

opportunity to comment.

Issue Number: PP-CO-WhiteRiver-15-07-19

Organization: Western Energy Alliance

Protestor: Spencer Kimball et al

Issue Excerpt Text: The BLM made substantial changes to designated Lands with Wilderness Characteristics in the planning area, including the addition of several areas not discussed in the DRMPA and the significant expansion of a number of other Lands with Wilderness Characteristics. The BLM substantially increased the acres of Lands with Wilderness Characteristics from the DRMPA to the PRMPA, adding new areas not identified until a 2013 inventory, and overall increased the acreage of Lands with Wilderness Characteristics to 301,900 acres. The BLM increased the size of Unit 3-Brushy Point from 5,400 to 11,500 acres, Unit 4-Texas Mountain from 6,800 to 15,600 acres, and Unit 10-Shavetail Wash from 7,600 to 15,200 acres. The BLM further added five new Lands with Wilderness Characteristics encompassing 27,800 total acres, none of which were included in the DRMPA because the BLM did not identify them until a 2013 survey. The addition of new Lands with Wilderness Characteristics and significant increases in size of other Lands with Wilderness Characteristics is a significant change upon which the associations had no opportunity to comment. The BLM's expansion of Lands with Wilderness Characteristics in the planning area therefore requires a supplemental draft EIS and an opportunity for comment. The BLM's failure to provide this opportunity violated NEPA and FLPMA; the BLM must supplement the

DRMPA and provide an opportunity for comment prior to issuing its ROD and final approved RMPA.

Issue Number: PP-CO-WhiteRiver-15-07-7

Organization: Western Energy Alliance

Protestor: Spencer Kimball et al

Issue Excerpt Text: The BLM proposes a MLP for the Dinosaur Trail area that is 850,000 acres in size. This plan would preclude leasing of significant acreage in the area and would further restrict development throughout the Dinosaur Trail by implementing phased leasing, NSO stipulations, and timing limitations. The BLM's inclusion of the Dinosaur MLP in the PRMPA violates both NEPA and FLPMA because it was not included in the Draft RMPA and because BLM did not allow the public an opportunity to meaningfully comment on it. The Dinosaur MLP imposes additional stipulations and restrictions to 422,700 acres in the Dinosaur Trail area not required elsewhere in the planning area, and would leave zero acres of federal mineral estate open to leasing under standard lease terms in the area, according to Table 2-17a, Record Number 33. Although the MLP will apply extensive new restrictions to a quarter of the acreage open for leasing, it was not included in the range of alternatives discussed in the Draft RMPA. The application of the Dinosaur MLP to such a large amount of acreage is too substantial a change for the BLM to add to the Proposed White River RMPA without notice and a supplemental draft EIS. The associations protest its inclusion in the final RMPA/EIS.

Summary:

The PRMP/FEIS violates FLPMA and NEPA because it added the following significant new information that was not subject to public review and comment:

- inclusion of the Comprehensive Air Resources Protection Protocol (CARPP)
- increase in areas to be managed to protect Lands with Wilderness Characteristics
- new proposed noise limitation
- inclusion and adoption of the Dinosaur Trail Master Leasing Plan (MLP)

Response:

NEPA requires agencies to prepare supplements to either a Draft or Final EIS if the agency makes substantial changes to the proposed action that are relevant to environmental concerns, or if there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts (40 CFR 1502.9(c)). “Substantial changes” in the proposed action relevant to environmental concerns are changes that would result in significant effects outside the range of effects analyzed in the draft or final EIS (BLM Handbook H-1790-1, p. 29).

The BLM has made no substantial changes to the proposed plan that is relevant to environmental concerns in the White River planning effort. The BLM has determined that there are no new significant circumstances or information relevant to environmental concerns bearing on the proposed plan or its impacts. The BLM documented its reason for this determination in the Oil and Gas Development PRMPA/FEIS for the following:

- General rationale for why supplementation is not needed for all changes noted in protests (PRMPA/FEIS, page 2-2)
- Inclusion of the CARPP (PRMPA/FEIS, page 2-2)
- Increase in areas to be managed to protect Lands with Wilderness Characteristics (PRMPA/FEIS, page 2-4 with additional explanation of the protocol for considering Lands with Wilderness Characteristics described at 2-34)
- Inclusion and adoption of the Dinosaur Trail Master Leasing Plan (PRMPA/FEIS, page 2-3)

The new proposed noise limitation was not discussed expressly in the section that addresses changes between the Draft and Final plan but is discussed below.

New proposed noise limitation

BLM Planning Policy defines Best Management Practices as the following: Best management practices (BMPs) [are] a suite of techniques that guide, or may be applied to, management actions to aid in achieving desired outcomes. BMPs are often developed in conjunction with land use plans, but they are not considered a land use plan decision unless the land use plan specifies that they are mandatory. They may be updated or modified without a plan amendment if they are not mandatory (H-1610-1 Land Use Planning Handbook). Accordingly, the Best Management Practices do not meet the significant new information criteria defined at 43 CFR 1502.9(c)(1)(i), for the following reasons:

- Best Management Practices are designed for consideration at the project level, as clearly articulated in BLM policy.
- The Oil and Gas Development PRMPA/FEIS conforms to BLM Planning Policy by clearly articulating that the BMPs are not mandatory and are meant to inform implementation-level decision.

At such time that a specific project would be proposed and considered, appropriate BMPs would be analyzed under NEPA. The increase in noise restrictions within Greater Sage-Grouse habitat listed in Appendix B, Oil and Gas Development PRMPA/FEIS, is not considered significant new information. Appendix B reiterates the implementation-level intent of the BMPs, stating that “[b]est management practices are not ‘one size fits all’ and that this BMP is not mandatory for each project. (PRMPA/FEIS, Appendix B, page B-1).

The proposed new noise restrictions in the Oil and Gas Development PRMPA/FEIS do not constitute new significant circumstances or information relevant to environmental concerns bearing on the proposed plan or its impacts.

Dinosaur Trail Master Leasing Plan

The protester is correct that the public was not provided with the opportunity to review and comment on the BLM's application of the specific Dinosaur Trail Master Leasing Plan (“MLP”) criteria. In August 2010, the Wilderness Society, the Southern Utah Wilderness Alliance, the Center for Native Ecosystems, and the Colorado Environmental Coalition submitted recommendations that the BLM prepare an Eastern Book Cliffs/Piceance Basin MLP and a Dinosaur Lowlands MLP. In the Oil and Gas Development Draft RMPA/EIS Appendix I, the BLM provided an extensive discussion of these two MLP proposals. The MLP boundary simply highlights an area of the field office that may require additional resource protection measures to reduce environmental impacts. Many of the management decisions that are found within the boundary of the MLP were analyzed in the Draft RMPA/EIS range of alternatives. New concepts in the Oil and Gas Development PRMPA/FEIS include phased leasing, and management of night skies and soundscape; however, these areas were subject to deferrals in the Draft RMPA/EIS based on Greater Sage-Grouse habitat or requirements as VRM Class II areas. The MLP boundary helps to identify to operators that this is a sensitive portion of the resource area. The public was given an opportunity to review and comment on the analysis and protective measures for the area included in the MLP, during the public comment period on the Draft RMPA/EIS since the majority of the management direction for the area within the MLP was already presented in the Draft RMPA/EIS under other resource headings (see references to other resource sections in Table 2-17a).

The inclusion of the Dinosaur Trail MLP is not a substantial change in the proposed action, nor does it constitute significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.

Lands with Wilderness Characteristics

Regarding the protesters claims that the public did not have a formal opportunity to comment on

the increase in areas to be managed to protect wilderness characteristics, it must be noted that Lands with Wilderness Characteristics are a type of resource to be managed and is not a special designation. Based upon public comment on the Draft RMPA/EIS (Table 2-22, Record 2), the BLM developed specific management objectives for Lands with Wilderness Characteristics units based upon field-office specific manageability criteria that considered not only wilderness character, but also existing lease rights and other resource values and uses. The management decisions being protested were already applied for other resource issues within the range of alternatives in the Draft RMPA/EIS for other resource concerns.

Therefore, the increase in areas to be managed to protect wilderness characteristics does not rise to the level of “significance” under NEPA requiring the BLM to issue a Supplemental EIS.

NEPA: Public Participation

Issue Number: PP-CO-WhiteRiver-15-06-21

Organization: Center for Biological Diversity

Protestor: Wendy Park et al

Issue Excerpt Text: Public comment on the DEIS raised the EIS’s failure to consider the environmental, social and economic effects carbon emissions that would result from more oil and gas development under the RMPA, while the BLM explicitly considers the economic benefits of the production and sale of oil and gas. See FEIS, Appendix K, PDF 459 (“Our atmosphere cannot safely absorb any more carbon dioxide, and this liability to human welfare and survival must be incorporated into the BLM’s assessment of the net economic value of the oil and gas to be extracted, which would likely become a number less than zero.”). The FEIS’s response to the comment is entirely non-responsive, simply indicating the BLM’s “commitment to work on curbing global warming as well as a mission for multiple use on our public lands.” *Id.* This failure to respond violates 40 CFR § 1502.9(b), which requires the FEIS to “discuss at appropriate points in the final statement any responsible opposing view which was not adequately discussed in the draft statement and shall indicate the agency’s response to the

issues raised.” If comments “do not warrant further agency response,” the FEIS must “explain why..., citing the sources, authorities, or reasons which support the agency’s position and, if appropriate, indicate those circumstances which would trigger agency reappraisal or further response.” 40 CFR § 1503.4(a)(5). The FEIS fails to provide any rationale as to why it need not account for the social cost of carbon in the EIS.

Issue Number: PP-CO-WhiteRiver-15-08-10

Organization: National Parks Conservation Association

Protestor: Vanessa Mazal

Issue Excerpt Text: The National Park Service (NPS) raised several issues with the way in which the BLM conducted the modeling for the DEIS. Specifically, the NPS provided detailed comments on specific model limitations, including concerns with the modeling domain and seasonal issues. The NPS concluded that the most representative potential impacts could only be considered from the modeled July episodes (not from April). In addition, the NPS inquired about source apportionment data from the modeling runs. The Response to Comments for the RMPA/FEIS did not address any of the NPS’s specific comments on the CAMx ozone

modeling analysis. The BLM did not include any additional information (e.g., source apportionment data) in the RMPA/FEIS. The BLM also failed to respond to the following comments by public lands advocacy groups regarding the ozone impact analysis: The Draft White River RMPA models air quality impacts from increased oil and gas development for April and July, not taking into account that the highest ozone levels in Dinosaur and the surrounding region are in the winter months. Therefore, the modeling results do not reflect the greatest potential impact to ozone levels in Dinosaur and the surrounding region or account for how BLM's preferred alternative could hinder the ability of both Utah and Colorado to meet ozone NAAQs in the future.

Issue Number: PP-CO-WhiteRiver-15-08-14

Organization: National Parks Conservation Association

Protestor: Vanessa Mazal

Issue Excerpt Text: The NPS further concluded that “the current cumulative nitrogen deposition impacts are a substantial concern in Dinosaur National Monument, and that the WRFO contribution to those impacts is significant given the magnitude of the DAT exceedance under all alternatives.” The NPS requested the most stringent combination of

Summary:

The RMPA/FEIS violates NEPA's requirements for public participation by failing to address substantive comments on air quality issues raised by the National Park Service, and failing to make environmental information on wildlife impacts available to the public.

Response:

The BLM is required to assess, consider, and respond to all substantive comments received (40 CFR 1503.4). Substantive comments are those that reveal new information, missing information, or flawed analysis that would substantially change conclusions (BLM Handbook H-1601-1, p. 23-24). 40 C.F.R. § 1500.1(b) requires that “environmental information is available to public

mitigation requirements be implemented for all alternatives. Other than referring to the CARMMS the BLM does not directly address any of the NPS concerns with ecosystem and visibility impacts and the need for stringent mitigation measures to address these impacts and impacts from proposed future development in the plan.

Issue Number: PP-CO-WhiteRiver-15-09-15

Organization: Rocky Mountain Wild

Protestor: Megan Mueller

Issue Excerpt Text: NEPA requires that “environmental information is available to public officials and citizens before decisions are made and before actions are taken” in order to fulfill the “public scrutiny” that is “essential to implementing NEPA.” 40 CFR § 1500.1(b). Rocky Mountain Wild requested that the BLM share the GIS results of the modeling they conducted as part of their threshold analysis of the development under each of the alternatives, especially Alternative E. Making this information available was essential to allowing us to adequately scrutinize, understand, and provide input on the BLM's analysis of the impacts of oil and gas development on wildlife. Unfortunately, the BLM refused to share this information with the public, in violation of NEPA.

officials and citizens before decisions are made and before actions are taken...Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA.”

In compliance with NEPA, the BLM considered all public comments submitted on the White River Draft Oil and Gas Development RMPA/EIS. The BLM complied with 40 CFR 1503.4 by performing a detailed comment analysis that assessed and considered all substantive comments received. Appendix K of the Oil and Gas Development PRMPA/FEIS presents the BLM’s responses to all substantive comments.

The BLM summarized the issues raised by each comment letter and provided a meaningful response. The BLM’s response identifies any modifications to the alternatives, improvements to the impacts analysis, or factual corrections made as a result of public comment. The BLM’s response also explains why certain public comments did not warrant further agency response.

The DEIS contained an analysis of potential air quality impacts at Dinosaur National Monument and the BLM expanded that discussion in response to comments, to include other in an analysis of the Dinosaur Trail MLP area which includes the areas surrounding Dinosaur National Monument (see PRMPA/FEIS Section 3.7.3.4)..

The BLM Colorado State Office also developed a Comprehensive Air Resources Protection Protocol (CARPP, Appendix J, PRMPA/FEIS). The CARPP was reviewed by the NPS and EPA and stresses interagency collaboration in order to address complex and cross-jurisdictional air quality issues.

Regarding the protesters claims that the BLM failed to share the GIS results of the modeling conducted with the public in violation of NEPA, the protestor incorrectly assumes that that the BLM generated spatial build-outs in order to accomplish the analysis in Appendix E. However, the BLM used mathematical models as the basis for the analysis, and detailed information about the assumptions and equations used to generate this analysis is contained in Appendix E of the PRMPA/FEIS. The GIS datasets used for the starting point of this analysis were provided by the WRFO to organizations and individuals that requested them.

The BLM adequately responded to public comments on the White River Draft Oil and Gas Development RMPA/EIS, and made information publicly available.

NEPA: Purpose and Need

Issue Number: PP-CO-WhiteRiver-15-06-24

Organization: Center for Biological Diversity

Protestor: Wendy Park et al

Issue Excerpt Text: The underlying assumption driving the RMP amendment is that oil and gas development will increase in the

RMP, in excess of levels projected in 1997.

This sole focus on the “need” to accommodate more oil and gas development to the exclusion of observing the BLM’s multiple use mandate under FLPMA is improper. BLM must develop and revise land use plans so as to “observe the principle[] of multiple use.” 43 U.S.C. § 1712(c)(1).

Issue Number: PP-CO-WhiteRiver-15-06-26
Organization: Center for Biological Diversity
Protestor: Wendy Park et al

Issue Excerpt Text: This exclusive focus on managing an expected increase in oil and gas development foreclosed consideration of any alternatives that limited development below the current management direction, although such an alternative would have fit within the BLM’s mandate to “take any action necessary to prevent unnecessary or undue degradation of the lands.” 43 U.S.C. § 1732(b). This included an alternative that would have restricted development to 5,000 wells to match the pace of existing development rates and defer further leasing above that level, so as to limit the overall footprint of development and impact on wildlife and wilderness-quality lands.

Issue Number: PP-CO-WhiteRiver-15-06-28
Organization: Center for Biological Diversity
Protestor: Wendy Park et al

Issue Excerpt Text: In addition to the explicit reservation of authority under this general special status species stipulation, 43 CFR § 3101.1-2 acknowledges the BLM’s retained rights under the MLA, FOOGLRA, and FLPMA to impose “reasonable measures as may be required . . . to minimize adverse impacts to other resource values.” In the Yates Petroleum case, the IBLA affirmed that these “reasonable measures” extend to species conservation measures such as establishing a three-mile buffer zone around sage-grouse leks. Similarly, just to the north of the WRFO, the BLM Little Snake Field Office recently adopted a Resource Management Plan that imposes significant limitations on the density, siting, timing, and distribution of oil and gas development activities, for both new and existing mineral leases. The BLM, thus, has ample statutory and regulatory authority to impose reasonable conditions on lessee’s use of existing mineral leases, and improperly narrowed its purpose and need to consider only small variations on unfettered oil and gas development within the resource area.

Summary:

The BLM violates NEPA and FLPMA in PRMPA/FEIS by improperly narrowing its purpose and need to focus only on expanding oil and gas development in the planning area.

Response:

In accordance with NEPA, the BLM has discretion to establish the purpose and need for a proposed action (40 CFR 1502.13). The BLM must construct its purpose and need to conform to existing decisions, policies, regulation, or law (BLM Handbook H-1790-1, Section 6.2). The purpose and need may not be so narrow that only one alternative becomes a foreordained outcome, and may not be so broad that an infinite number of possibilities could accomplish the goals of the project.

The BLM established the purpose and need for the Oil and Gas Development PRMPA/FEIS, which is described at page 1-3, to meet its land use planning mandate under FLPMA. The BLM initiated additional land use planning through the Oil and Gas Development PRMPA/FEIS because there were substantial changes in the level, location, and type of development compared to what was considered in the 1997 White River ROD/RMP.

The BLM considered a broad range of management actions and alternatives in the PRMPA/FEIS to consider resource protection in the context of expanded oil and gas development. For example, additional discussion of management actions designed for the Dinosaur Trail MLP can be found in the PRMPA/FEIS at Table 2-17(a). The BLM also considered deferring leasing in this area with a 91,900 acre proposed deferral for the Blue Mountain sage-grouse area (Table 2-6 Record 12, Alternatives B and C). Sage-grouse management objectives were integrated with MLP phased leasing strategies in Alternative E. The BLM also adopted a new CSU to highlight VRM Class II, night skies and soundscapes in proximity to DNM and created a Lease Notice to inform potential lessees of concerns regarding commercial vehicle use of Harpers Corner Road based on comments received from the National Park Service. (PRMPA/FEIS Appendix K Response to Public Comments on the Draft RMPA/EIS, p. K-33).

The purpose and need provided the appropriate scope to allow the BLM to analyze a reasonable number of alternatives that represent alternative approaches for managing the public lands in the planning area. The BLM properly established the purpose and need for the Oil and Gas Development PRMPA/FEIS.

NEPA: Range of Alternatives

Issue Number: PP-CO-WhiteRiver-15-06-29

Organization: Center for Biological Diversity

Protestor: Wendy Park et al

Issue Excerpt Text: The BLM also unreasonably ruled out alternatives that limit oil and gas development in specific areas, even if they would have met the “need” for allowing and managing an overall expected increase in development. As the EIS notes: Consistent with the purpose of this action, issues addressed in this RMPA/EIS are those that deal specifically with an increase in oil and gas exploration, development and production, and the potential effects of that increase on other resource uses and values within the WRFO Planning Area. Resource outcomes and management actions were evaluated for all resources in the context of an increase in oil and gas development. Other topics that could be relevant to other planning issues within the WRFO Planning Area are not addressed in this

RMPA/EIS. FEIS, Ch. 1, PDF 16 (emphasis added). For example, at the outset, in section 1.4.4 of the EIS (“Issues that were Considered but Not Further Analyzed”), the BLM summarily rejected analysis of the following issues:

- Revisions to decisions on the acreage of lands available for oil and gas leasing.
- Designation of new Wilderness or Wilderness Study Area (WSA) designations.
- Designation of new Areas of Critical Environmental Concern (ACECs) or other special designations.
- Considering alternative energy sources (wind and solar energy) as substitutes for activities related to mineral development.

Issue Number: PP-CO-WhiteRiver-15-06-30

Organization: Center for Biological Diversity

Protestor: Wendy Park et al

Issue Excerpt Text: Alternatives introducing new protections in sensitive areas are reasonable and would have been “significantly distinguishable from those [alternatives] already analyzed.” See *New Mexico*, 565 F. 3d at 711 (finding closure of area from all fluid development to be reasonable option that the BLM arbitrarily excluded from consideration). Moreover, none of these proposals would necessarily reduce overall development; increased development compared to existing levels could still be compatible with each. See,

e.g., Attachment A, *The Wilderness Society, et al. DEIS Comment*, p. 6 (“BLM needs to designate large areas for protection, using administrative tools such as areas of critical environmental concern and recreation management areas, to balance the increase in drilling.”) BLM thus arbitrarily rejected alternatives that would provide special protections to certain sensitive areas on the basis that they would not fulfill the BLM’s purpose and need, when in fact those alternatives could fulfill that purpose.

Summary:

The BLM unreasonably ruled out alternatives that would limit oil and gas development in specific areas and would provide special protections in certain sensitive areas.

Response:

When preparing an EIS, NEPA requires an agency to rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, to briefly discuss the reasons for their having been eliminated (40 CFR 1502.14(a)). When there are potentially a very large number of alternatives, the BLM may only analyze a reasonable number to cover the full spectrum of alternatives (BLM Handbook H-1790-1, Section 6.6.1 quoting Question 1b, CEQ, *Forty Most Asked Questions Concerning CEQ's NEPA Regulations*, March 23, 1981).

The BLM developed a reasonable range of alternatives that meet the purpose and need of the Oil and Gas Development PRMPA/FEIS and that address resource issues identified during the scoping period. The Oil and Gas Development PRMPA/FEIS analyzed five alternatives, which are described in Chapter 2. Tables 2-1 through 2-21 present a comparison of the alternatives and associated management actions. They cover the full spectrum by varying in: (1) degrees of protection for each resource and use; (2) approaches to management for each resource and use; (3) mixes of allowable, conditional, and prohibited uses in various geographic areas; and (4) levels and methods for restoration.

These alternatives include a broad range of management actions and allowable uses that are anticipated to achieve the goals and objectives. For example, Alternative B features a managed development approach, limiting the spatial extent of surface disturbance and establishing big game and sage-grouse thresholds to manage big game habitat utility and suitability to sustain at least 90 percent of Colorado Parks and Wildlife (CPW) long-term population objectives throughout active development. Other topics, such as designation of new Wilderness or Wilderness Study Areas (WSA), Areas of Critical Environmental Concern (ACECs) or considering alternative energy sources could be relevant to other planning issues within the

WRFO Planning Area, but are outside the scope of issues addressed in the Oil and Gas Development PRMPA/FEIS.

FLPMA mandates the BLM to manage the public lands on the basis of multiple use and sustained yield. In addition, resource conditions did not warrant planning area-wide prohibition of any particular use. Alternatives eliminating existing uses, where resource conditions did not justify such measures, are not reasonable. Each alternative considered allowed for some level of support, protection, or use of all resources in the planning area. In some instances, the alternatives analyzed in detail did include various considerations for eliminating or maximizing individual resource values or uses in specific areas where conflicts existed.

In addition to analyzing a range of alternatives in terms of lands available for oil and gas leasing, the BLM also analyzed different lease stipulations associated with the range of alternatives as a way to address impacts to resources. For example, the BLM proposes No Surface Occupancy (NSO), CSU and Limitations lease stipulations to sensitive areas available for oil and gas leasing in the planning area.

The Oil and Gas Development PRMPA/FEIS considered a full range of alternatives consistent with the requirements of FLPMA and NEPA.

NEPA: Best Available Science

Issue Number: PP-CO-WhiteRiver-15-02-68

Organization: XTO Energy

Protestor: Kathy Donnelly

Issue Excerpt Text: BLM's reliance on the Patricelli reports in support of its proposed noise level management is inappropriate

because those reports are unpublished, not peer reviewed, and merely anecdotal. CEQ regulations require BLM to insure the "professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements." 40 C.P.R. § 1502.24. The Proposed White River RMPA and the Patricelli reports fail to meet those standards.

Summary:

The BLM did not use the best available science in support of its NEPA analyses for noise-level management.

Response:

The Council on Environmental Quality's (CEQ) regulations implementing NEPA require that agencies use "high quality information" (40 CFR 1500.1(b)). NEPA regulations require the BLM to "insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements" (40 CFR 1502.24).

The BLM NEPA Handbook also directs the BLM to "use the best available science to support NEPA analyses, and give greater consideration to peer-reviewed science and methodology over that which is not peer-reviewed" (BLM Handbook H-1790-1, p. 55). Under the BLM's guidelines for implementing the Information Quality Act, the BLM applies the principle of using

the “best available” data in making its decisions (BLM Information Quality Act Guidelines, February 9, 2012).

The unpublished report by Patricelli, G.L., J.L.Blickley, and S.L.Hooper (2012) titled “The impacts of noise on greater sage-grouse: a discussion of current management strategies in Wyoming with recommendations for further research and interim protections,” was prepared for the BLM Lander Field Office, the BLM Wyoming State Office in Cheyenne, and the Wyoming Game and Fish Department. The Colorado Parks and Wildlife agency cited this report in the recommendations they provided in response to the Draft Oil and Gas Development RMPA/EIS, stating that “the Patricelli report reviews the latest quantitative science on noise impacts to GRSG and recommends interim management strategies until further research can be conducted” (PRMPA/FEIS, p. K-247). This unpublished report is not the only scientific data related to noise impacts that the Oil and Gas Development PRMPA/FEIS relied upon. The Oil and Gas Development PRMPA/FEIS cited other scientific sources, including the report titled “Experimental evidence for the effects of chronic anthropogenic noise on abundance of greater Sage-Grouse at leks,” published in Conservation Biology, volume 26 issue 3 on May 17, 2012, and written by several of the same authors who contributed to the unpublished report.

The BLM relied on high quality information and the best available data in preparation of the Oil and Gas Development PRMPA/FEIS.

NEPA: Best Available Science – Thresholds

Issue Number: PP-CO-WhiteRiver-15-02-48
Organization: XTO Energy
Protestor: Kathy Donnelly

Issue Excerpt Text: The BLM has not provided a scientifically defensible basis or justification, analysis, or information to support its threshold values.

Issue Number: PP-CO-WhiteRiver-15-02-50
Organization: XTO Energy
Protestor: Kathy Donnelly

Issue Excerpt Text: BLM is obligated to sufficiently describe its analytical methodology so that XTO can understand how the analysis was conducted and why the particular methodology was used. (40 CFR § 1502.24). In establishing the threshold values, the BLM's

Appendix E does not describe its analytical assumptions, its baseline, whether it had any data and if so where that data can be found, or the range of viewpoints or whether there were any opposing viewpoints.

Issue Number: PP-CO-WhiteRiver-15-03-29
Organization: Encana Oil & Gas
Protestor: Jason Oates

Issue Excerpt Text: The BLM's proposed disturbance thresholds limiting the availability of waivers, exceptions, and modifications (WEMs) of timing limitations are highly impracticable, are not technically or scientifically justified in the Proposed White River RMPA, and should be removed. In other words, the BLM assumes that every component of oil and gas development will have the same impact on big game habitat, but the BLM provides no scientific justification whatsoever for this buffer. The BLM must provide a

technical and scientific basis for these thresholds and the assumptions used to calculate them, or must apply timing restrictions, including waivers, modifications, and exceptions, according to current management prescriptions.

Issue Number: PP-CO-WhiteRiver-15-07-8
Organization: Western Energy Alliance
Protestor: Spencer Kimball et al

Issue Excerpt Text: The BLM’s proposed disturbance thresholds limiting the availability of waivers, exceptions, and modifications (WEMs) of timing limitations are highly impracticable, and not technically or

scientifically justified in the PRMPA. The BLM proposes to limit the availability of WEMs in big game habitat, for example, based on the percentage of animal range (winter, severe winter, summer, and winter concentration) impacted by “acute” and “collective” effects on a leasehold basis. In calculating these impacts, the BLM assumes that all impacts—access routes, well pads, utility lines, etc.—will have the same buffer of 660 feet on all seasonal ranges. In other words, BLM assumes that every component of oil and natural gas development will have the same impact on big game habitat, but provides no scientific justification for this buffer.

Summary:

The BLM failed to sufficiently describe the analytical methodology and scientific justification it used to derive the proposed disturbance threshold values.

Response:

43 CFR 1502.24 states that agencies “shall identify any methodologies used and shall make explicit reference by footnote to the scientific and other sources relied upon for conclusions in the statement. An agency may place discussion of methodology in an appendix.”

Appendix E: *Threshold and Temporal Analysis*, was an analysis tool used to initially assess the feasibility of applying the threshold strategy under the various alternative development scenarios (PRMPA/FEIS, p. K-184). Appendix E documents the assumptions and methodology used in the threshold and temporal analysis, and discusses in detail the steps used to develop the analysis. The introduction to Appendix E explains that the “analysis is hypothetical; used to evaluate impacts and does not establish disturbance limits. The analysis is an estimate and does not define actual thresholds on development” (PRMPA/FEIS, p. E-1). For its analysis of potential impacts on resources such as wildlife habitat, the Oil and Gas Development PRMPA/FEIS relied on scientific sources, including peer-reviewed research, the Colorado Parks and Wildlife agency, and other cooperating agencies, as indicated in the relevant sections of the document. Furthermore, the final environmental impact statement associated with the Oil and Gas Development PRMPA/FEIS responded to comments on the draft, including responding to responsible opposing views, and reflected updates in the final environmental impact statement as appropriate (PRMPA/FEIS Appendix K, Response to Public Comments on the Draft RMPA/EIS).

The Oil and Gas Development PRMPA/FEIS sufficiently described the analytical methodology and scientific justification it used to derive the proposed disturbance threshold values.

NEPA: Cumulative Impacts Analysis

Issue Number: PP-CO-WhiteRiver-15-02-62

Organization: XTO Energy

Protestor: Kathy Donnelly

Issue Excerpt Text: NEPA requires the BLM to take a “hard look” at the environmental consequences of a proposed action, including consequences to the human environment and economic impacts. (42 USC § 4332; 40 CFR § 1508.14; Robertson, 490 U.S. at 348). In order to take the “hard look” required by NEPA, the BLM is required to assess direct, indirect, and cumulative impacts. 40 CFR § 1508.8. Despite these statutory requirements under FLPMA and NEPA, the Proposed White River RMPA fails to analyze the cumulative impacts on oil and gas development from these overlapping wildlife seasonal restrictions in terms of decreased operational windows for oil and gas drilling and development. For example, Greater Sage-Grouse winter habitat restrictions go from December 1 to March 15; Greater Sage-

Grouse lek seasonal restrictions extend from April 1 to July 15; big game winter habitat seasonal restrictions extend from December 1 to April 30; and big game summer range seasonal restrictions apply from May 15 to August 15. Just for Greater Sage-Grouse and big game, for lands where these stipulations overlap, and assuming no other species are present that would trigger other seasonal limits, the operational window for exploration and development activities is narrowed significantly to approximately 3.5 months in the fall. This significantly reduced window for exploration and development activities concentrates environmental impacts to a short period of time, which could result in more, and not less, impacts upon wildlife. Moreover, from an economic impact standpoint, this reduced operational window would result in less development, less investment, and less full-time annual jobs and economic benefits for the local communities. The Proposed White River RMPA does not analyze or address any of the potential economic impacts, or the environmental impacts of these restrictive and narrow development time-frames.

Summary:

The BLM failed to analyze the cumulative environmental and economic impacts of overlapping wildlife seasonal restrictions.

Response:

The BLM must discuss the cumulative effects of the proposed action and the alternatives when preparing an EIS (BLM Handbook H-1790-1, Section 6.8.3). The CEQ regulations define cumulative effects as “...the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such actions” (40 CFR 1508.7).

The BLM has complied fully with the requirements of 40 CFR 1508.7 and prepared a cumulative impact analysis based on the broad nature and scope of the proposed management options under

consideration at the land use planning level. The cumulative impact analysis considered the effects of the planning effort when added to other past present and reasonably foreseeable (not highly speculative) Federal and non-Federal actions. The cumulative impacts section (PRMPA/FEIS, Section 4.11.3) identifies all actions that were considered in the cumulative impacts analysis, and provides a basis for the cumulative impacts analysis for each affected resource, including the cumulative impacts to minerals (including oil and gas) and socioeconomic resources from the Oil and Gas Development PRMPA/FEIS's actions associated with overlapping wildlife seasonal restrictions on oil and gas development.

The analysis took into account the relationship between the proposed action and these reasonably foreseeable actions. This served as the determining factor as to the level of analysis performed and presented. The information presented in the Oil and Gas Development PRMPA/FEIS enables the decision-maker to make a reasoned choice among alternatives.

The BLM adequately analyzed cumulative effects in the Oil and Gas Development PRMPA/FEIS.

NEPA: Greater Sage-Grouse

Issue Number: PP-CO-WhiteRiver-15-03-51

Organization: Encana Oil & Gas

Protestor: Jason Oates

Issue Excerpt Text: A two percent disturbance cap will severely curtail oil and gas development in the White River Planning Area. Further, this disturbance cap exceeds the recommendations of the BLM's own National Technical Team (NTT), which suggested three percent disturbance caps. Greater Sage-grouse National Technical Team, Report on National Greater Sage-Grouse Conservation Measures, pgs. 23 - 24 (Dec. 21, 2011).

Issue Number: PP-CO-WhiteRiver-15-06-8

Organization: Center for Biological Diversity

Protestor: Wendy Park et al

Issue Excerpt Text: The BLM claims that it did not consider the NTT standard because the DEIS did not consider managing lands within 4 miles of a sage-grouse lek and they did not add it to the FEIS because it would

have been a substantial change from the DEIS and because decisions on how to manage Greater Sage-Grouse will ultimately be made in the Northwest Colorado Greater Sage-Grouse EIS (Section 1.3.3), which does consider the use of NSO stipulations within 4 miles of a lek. The fact that management of sage-grouse habitat within the WRFO may ultimately be further amended by the range-wide grouse planning decision does not provide a reasonable justification to eliminate from consideration in this plan revision measures that could prevent the species' local extirpation that the BLM concedes as inevitable under all the alternatives it considered in detail. Even if subsequent decisions may change grouse management practices, in the interim, under the proposed White River amendment, the BLM will likely continue to approve drilling locations on existing leases wholly inconsistent with the recommendations of the NTT and its obligations under FLPMA, the ESA, and its sensitive species policy to avoid actions impairing the viability of species warranted for listing under the ESA.

Issue Number: PP-CO-WhiteRiver-15-07-10
Organization: Center for Biological Diversity
Protestor: Wendy Park et al

Issue Excerpt Text: Pursuant to statute and regulation BLM is required to use high quality, “accurate scientific information” in its planning process, and present the data in a way that “the

public can readily understand”, the BLM has an obligation to ensure the integrity of information used in its land use planning decisions. Here, however, the BLM failed to show whether it utilized any science at all to draft its Greater Sage-Grouse protective measures. The BLM must be transparent and provide clarity on the basis of its Greater Sage-Grouse restrictions.

Summary:

The BLM failed to use accurate scientific information, including its own National Technical Team Report on National Greater Sage-Grouse Conservation Measures when drafting sage grouse protective measures in the Oil and Gas Development PRMPA/FEIS.

Response:

The Council on Environmental Quality’s (CEQ) regulations implementing NEPA require that agencies use “high quality information” (40 CFR 1500.1(b)). NEPA regulations require the BLM to “insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements” (40 CFR 1502.24).

The BLM NEPA Handbook also directs the BLM to “use the best available science to support NEPA analyses, and give greater consideration to peer-reviewed science and methodology over that which is not peer-reviewed” (BLM Handbook H-1790-1, p. 55). Under the BLM’s guidelines for implementing the Information Quality Act, the BLM applies the principle of using the “best available” data in making its decisions (BLM Information Quality Act Guidelines, February 9, 2012).

The sage grouse conservation measures being proposed in the Oil and Gas Development PRMPA/FEIS were derived from a variety of academic articles and reports (from authors such as Bickley, Carpenter, Aldridge, Boyce, the Colorado Greater Sage-Grouse Steering Committee, Doherty, Hagen, Harju, Holloran, Lyons and Anderson, Patricelli, and Walker). Each of these sources is cited in the references section (PRMPA/FEIS, Section 6.3), which lists information considered by the BLM in preparation of the Oil and Gas Development PRMPA/FEIS.

The protester is correct that the Oil and Gas Development PRMPA/FEIS did not reference the BLM’s National Technical Team Report (NTT): A Report on National Greater Sage-Grouse Conservation Measures during the preparation of the Oil and Gas Development PRMPA/FEIS. However, the Northwest Colorado Greater Sage-Grouse (GRSG) RMP Amendment is expected to amend the Oil and Gas Development PRMPA/FEIS decisions associated with Greater Sage-Grouse habitat management in the White River planning area. The Northwest Colorado GRSG effort analyzed the NTT Report in its entirety for the BLM Northwest District Office, which includes the White River planning area. Regardless of when the Oil and Gas Development

PRMPA/FEIS is approved and implemented, all activities within GRSG habitat would be managed consistent with Instruction Memorandum No. 2012-043 *prior* to completion of the Northwest Colorado Greater Sage-Grouse RMP Amendment. The BLM expects that once the GRSG amendment is complete, GRSG habitat in the White River planning area will be managed consistent with the GRSG amendment.

NEPA: Socioeconomic Impacts

Issue Number: PP-CO-WhiteRiver-15-02-55

Organization: XTO Energy

Protestor: Kathy Donnelly

Issue Excerpt Text: It also appears that the BLM failed to consider the significant detrimental impact seasonal prohibition on oil and gas operations could have upon the local economy. By precluding production during several months of the year, the BLM would force operators to significantly reduce their workforces on an annual basis, creating a seasonal boom and bust cycle with routine maintenance workers and pumpers being laid off annually. The inconsistent nature of the work would almost certainly reduce the number of local employees operators are able to hire, which would restrict or eliminate the long-term beneficial impacts of the oil and gas development to the local economy. The BLM's current socio- economic analysis does not account for this cycle. The BLM must eliminate this proposed management action in the Proposed White River RMPA.

Issue Number: PP-CO-WhiteRiver-15-03-37

Organization: Encana Oil and Gas

Protestor: Jason Oates

Issue Excerpt Text: It also appears the BLM failed to consider the significant detrimental impact seasonal prohibition on oil and gas operations could have upon the local economy. By precluding production during several months of the year, the BLM would force operators to significantly reduce their

workforces on an annual basis. The management action would create a seasonal boom and bust cycle with routine maintenance workers and pumpers being laid off annually. The inconsistent nature of the work would almost certainly reduce the number of local employees operators are able to hire, which would restrict or eliminate the long-term beneficial impacts of the oil and gas development to the local economy. The BLM's current socio- economic analysis does not account for this cycle.

Issue Number: PP-CO-WhiteRiver-15-04-30

Organization: WPX Energy

Protestor: Chad Odegard

Issue Excerpt Text: It also appears the BLM failed to consider the significant detrimental impact seasonal prohibition on oil and gas operations could have upon the local economy. By precluding production during several months of the year, the BLM would force operators to significantly reduce their workforces on an annual basis. The management action would create a seasonal boom and bust cycle with routine maintenance workers and pumpers being laid off annually. The inconsistent nature of the work would almost certainly reduce the number of local employees operators are able to hire, which would restrict or eliminate the long-term beneficial impacts of the oil and gas development to the local economy. The BLM's current socio-economic analysis does not account for this cycle.

Issue Number: PP-CO-WhiteRiver-15-07-21

Organization: Western Energy Alliance
Protestor: Spencer Kimball et al

Issue Excerpt Text: The BLM has not adequately quantified the socio-economic impact to local communities, the state, and the nation resulting from the restrictions on oil

and natural gas activities imposed in the PRMPA. The BLM has also underestimated the current and potential positive socio-economic impacts of oil and natural gas activities, and therefore has failed in its NEPA obligations to adequately analyze the socio-economic impacts of its actions.

Summary:

The BLM failed to adequately consider the socio-economic impacts resulting from the restrictions on oil and natural gas activities (specifically due to oil and gas seasonal restrictions) and underestimated the current and potential positive socio-economic impacts of oil and natural gas activities.

Response:

NEPA directs that data and analyses in an EIS must be commensurate with the importance of the impact (40 CFR 1502.15), and that NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail (40 CFR 1500.1(b)). The BLM is required to take a “hard look” at potential environmental impacts of adopting the Oil and Gas Development PRMPA/FEIS.

The level of detail of the NEPA analysis must be sufficient to support reasoned conclusions by comparing the amount and the degree of change (impact) caused by the proposed action and alternatives (BLM Handbook H-1790-1, Section 6.8.1.2). The BLM need not speculate about all conceivable impacts, but it must evaluate the reasonably foreseeable significant effects of the proposed action.

A land use planning-level decision is broad in scope. For this reason, analysis of land use plan alternatives is typically broad and qualitative rather than quantitative or focused on site-specific actions. The baseline data provides the necessary basis to make informed land use plan-level decisions.

As the decisions under consideration by the BLM are programmatic in nature and would not result in on-the-ground decision or actions (e.g., the BLM is not approving an Application for Permit to Drill to start drilling), the scope of the analysis was conducted at a regional, programmatic level. The analysis focuses on the direct, indirect, and cumulative impacts that could potentially result from on-the-ground changes. This analysis identifies impacts that may result in some level of change to the resources, regardless of whether that change is beneficial or adverse.

The BLM adequately considered the socio-economic impacts from oil and natural gas activity (including the proposed restrictions on oil and natural gas activities) across the range of alternatives in the Oil and Gas Development PRMPA/FEIS. The various stipulations (specifically seasonal restrictions), conditions of approval, and best management practices exist

in order to fulfill the BLM's multiple use mission of sustaining the health, diversity, and productivity of America's public lands for the use and enjoyment of present and future generations. The social and economic impacts from these different levels of restrictions are fully identified and explained by alternative in Section 4.10 of the Oil and Gas Development PRMPA/FEIS. The varying levels of stipulations between alternatives are expected to result in the varying levels of development found in each alternative.

Section 4.10.1.6 of the Oil and Gas Development PRMPA/FEIS outlined the impacts from the proposed plan on oil and gas development, including the positive socio-economic from oil and natural gas activities, specifically the net increase in employment in the oil and gas sector..

NEPA: Air Quality Impacts

Issue Number: PP-CO-WhiteRiver-15-08-12

Organization: National Parks Conservation Association

Protestor: Vanessa Mazal

Issue Excerpt Text: Probably most significant, the ozone modeling does not account for wintertime ozone formation (modeling episodes only include April and July). The absence of a wintertime ozone analysis is a major limitation of the impact analysis for the RMPA/DEIS.

Issue Number: PP-CO-WhiteRiver-15-08-16

Organization: National Parks Conservation Association

Protestor: Vanessa Mazal

Issue Excerpt Text: In addition to the impacts at the Class I and sensitive Class II areas assessed for the DEIS, the BLM fails to include an analysis of impacts at Black Canyon of the Gunnison National Park, a Class I area administered by the NPS, as requested by the NPS.

Issue Number: PP-CO-WhiteRiver-15-10-2

Organization: WildEarth Guardians

Protestor: Jeremy Nichols

Issue Excerpt Text: The FEIS notes that impacts under Alternative E will be "similar" to impacts under Alternatives A and B. (FEIS at 4-53). For both Alternatives A and B, the BLM asserts that oil and gas development will not cause or contribute to violations of the ozone NAAQS. In support of this assertion, the FEIS relies on an Air Resources Technical Support Document prepared by URS in 2011, namely "Section 5.0" of the Air Resources Technical Support Document. FEIS at 4-31. This Technical Support Document, however, is inaccurate and fails to adequately analyze and assess impacts to the ozone NAAQS. WildEarth Guardians submitted information in 2013 informing the BLM that the analysis in the Air Resources Technical Support Document failed to account for recent violations of the ozone NAAQS at a monitor in Rangely, Colorado, as well as generally relied on outdated and unsupported assumptions to conclude that emissions from 15,040 new oil and gas wells would not cause or contribute to violations of the ozone NAAQS. In a petition to the BLM requesting that the draft EIS for the RMPA be revised due to its severe inadequacies, WildEarth Guardians pointed out, among other things, that:

- The BLM's conclusions were erroneously premised on the assumption that all air quality monitors within the White River Field Office

were complying with the ozone NAAQS.

- The analysis only utilized ozone monitoring data from one site in the Uinta Basin, both as an input and as a reference. As the report discloses, this was the site at Dinosaur National Monument, located in Utah and outside of the White River Field Office.
- The report relied on data up to only 2008, and that was gathered only during March- September, not during the winter months.
- The report projected that this monitoring site is not violating and will not violate the ozone ambient air quality standards. Yet as WildEarth Guardians' petition demonstrated, the monitoring site at Dinosaur National Monument was in violation of the ozone NAAQS (and has violated since the three year period of 2012-2014), indicating the modeling is not accurate in terms of analyzing or assessing ozone impacts within the Uinta Basin.

Issue Number: PP-CO-WhiteRiver-15-10-4
Organization: WildEarth Guardians
Protestor: Jeremy Nichols

Issue Excerpt Text: Although the Technical Support Document acknowledged high ozone levels at the Rangely monitor, it did not acknowledge recent violations and the BLM made no effort to analyze how future oil and gas development will affect ozone concentrations at this site. See Air Resources Technical Support Document at 5-76—5-77. Most troublesome is that the report did not analyze or assess the impacts of oil and gas

Summary:

The Oil and Gas Development PRMPA/FEIS failed to adequately analyze impacts related to air quality because the analysis:

development to wintertime ozone concentrations, which are the key air quality problem in the White River Field Office. As the report fully acknowledges, ozone modeling was only conducted for the months of April and July. (See *id.* At 5-77.)

Issue Number: PP-CO-WhiteRiver-15-10-6
Organization: WildEarth Guardians
Protestor: Jeremy Nichols

Issue Excerpt Text: The results of the CARMMS report underscores that the BLM failed to adequately analyze and assess ozone impacts under NEPA in the FEIS at hand. Rather than incorporate the findings of the CARMMS report into its analysis and assess impacts accordingly, the BLM deferred such analysis until some later, project-level decision-making. This is fundamentally counter to NEPA's requirement that agencies analyze and assess the reasonably foreseeable impacts of their actions.

Issue Number: PP-CO-WhiteRiver-15-10-8
Organization: WildEarth Guardians
Protestor: Jeremy Nichols

Issue Excerpt Text: Even if the ozone NAAQS are exceeded, the CARPP only says that BLM "may" implement measures to reduce emissions. (FEIS at J-9.) There is no plan to ensure that emissions are limited such that ozone NAAQS will not be violated and therefore no basis for the agency's conclusions in the FEIS that the ozone NAAQS will not be violated or that impacts to the NAAQS will not be significant under NEPA.

- did not include an analyses of impacts at Black Canyon of the Gunnison National Park, a Class I area,
- did not include modeling that accounted for wintertime ozone formation (modeling episodes only include April and July),
- only utilized one ozone monitoring data site in the Uinta Basin, which is outside of the planning area and was in violation of the ozone NAAQS from 2012-2014,
- failed to incorporate the findings of the CARMMS report into the analysis, and
- failed to account for the potential exceedances of ozone NAAQS based on CARPP implementation measures.

Response:

NEPA directs that data and analyses in an EIS must be commensurate with the importance of the impact (40 CFR 1502.15), and that NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail (40 CFR 1500.1(b)). The BLM is required to take a “hard look” at potential environmental impacts of adopting the Oil and Gas Development PRMPA/FEIS.

The level of detail of the NEPA analysis must be sufficient to support reasoned conclusions by comparing the amount and the degree of change (impact) caused by the proposed action and alternatives (BLM Handbook H-1790-1, Section 6.8.1.2). The BLM need not speculate about all conceivable impacts, but it must evaluate the reasonably foreseeable significant effects of the proposed action.

A land use planning-level decision is broad in scope. For this reason, analysis of land use plan alternatives is typically broad and qualitative rather than quantitative or focused on site-specific actions. The baseline data provides the necessary basis to make informed land use plan-level decisions.

As the decisions under consideration by the BLM are programmatic in nature and would not result in on-the-ground decision or actions (e.g., the BLM is not approving an Application for Permit to Drill to start drilling), the scope of the analysis was conducted at a regional, programmatic level. The analysis focuses on the direct, indirect, and cumulative impacts that could potentially result from on-the-ground changes. This analysis identifies impacts that may result in some level of change to the resources, regardless of whether that change is beneficial or adverse.

The protester mentions that the BLM failed to include an analysis of impacts at Black Canyon of the Gunnison National Park, a Class I Sensitive Area administered by the National Park Service in its air resources impact analysis, which was built off of the Air Resources Technical Support Document (ARTSD) (P RMPA/FEIS, Appendix O). In response to public comments on the Draft RMPA (PRMPA/FEIS, Appendix K, page K-66), the BLM added the Black Canyon of the Gunnison to its Class I Sensitive Areas and made the determination that “since potential CALPUFF air quality impacts from the project activity were predicted to be not significant at Class I areas closer to the project activity, it was not necessary to include the farther Class I

areas” (PRMPA/FEIS, Appendix O, page 4-8).

Protesters claim that the ozone modeling used in the ARTSD is faulty due to the lack of exclusion of wintertime zone formations and only referencing one monitoring site outside of the planning area that has recently indicated that the site is violating ozone ambient air quality standards. Section 5.1 of the ARTSD (PRMPA/FEIS, Appendix O, page 5-1) provides rationale for why the episode timeframes were used (April and July were selected because they exhibit historically high ozone concentrations) and the use of multiple ozone monitoring sites, not just one (including Gothic, RMNP, MVNP, and Arvada). In-depth ozone impact assessment is relatively new to NEPA analysis and best practices for NEPA photochemical grid modeling (PGM) analysis are currently being developed by the modeling community. NEPA allows flexibility to determine technically defensible methods for conducting natural resource impact assessments. This modeling analysis was based on existing state implementation plan guidance, which has been adapted for NEPA purposes.

As stated before, the level of detail of the NEPA analysis must be sufficient to support reasoned conclusions by comparing the amount and the degree of change (impact) caused by the proposed action and alternatives. While the BLM did not incorporate the CARMMS results as part of the Oil and Gas Development PRMPA/FEIS analysis, the level of detail in the analysis is sufficient for land use planning purposes and incorporation of the CARMMS results will be done during site-specific NEPA analyses.

In regard to the adequacy and certainty of implementing the CARPP implementation measures, these measures will be analyzed through the appropriate level of NEPA analysis to determine effectiveness, and will be required or implemented as a permit Condition of Approval (COA). At a minimum, all projects and permitted uses will comply with all applicable National Ambient Air Quality Standards and ensure Air Quality Related Values are protected in nearby Class I or Sensitive Class II areas. The CARPP is the same for every RMP in Colorado and has been reviewed by the NPS and EPA. The CARPP stresses interagency collaboration in order to address complex and often cross-jurisdictional air quality issues while acknowledging the State of Colorado, specifically the Colorado Department of Public Health and Environment, has the primary responsibility and authority delegated by the EPA to regulate and maintain air quality standards within Colorado.

NEPA: Mitigation

Issue Number: PP-CO-WhiteRiver-15-06-17

Organization: Center for Biological Diversity

Protestor: Wendy Park et al

Issue Excerpt Text: The National Park Service recommended several mitigation measures to reduce the impacts of spills and leaks from pipelines, but the EIS fails to

discuss their effectiveness. These measures include a “no surface occupation of sites in critical habitat for the endangered species, including the 100-year floodplain that is part of designated critical habitat without exceptions,” and “emergency shut-off-valves for pipelines, including temporary lines from each well, or some other suitable preventative method to prevent contamination of water bodies, regardless of how far the site is from

permanent water.” FEIS, Appendix K, PDF 232 (emphases added). The EIS includes the NSO measure in Alternative B, and one with exceptions in Alternative E. See Appendix A, NSO 26 & 27. However, it fails to explain whether either of these measures would be feasible or effective or provide any comparison of the two measures. Likewise, the EIS adds to Alternative E “consideration” of an emergency valve requirement for pipelines crossing critical habitat, but fails to include or discuss the Park Service’s recommendation that all pipelines, “including temporary lines” be equipped with emergency shut-off valves

“regardless of how far the site is from permanent water,” or at least for sites within a certain distance of surface waters.

Issue Number: PP-CO-WhiteRiver-15-06-19

Organization: Center for Biological Diversity

Protestor: Wendy Park et al

Issue Excerpt Text: Emergency shut-off valves are feasible and have been required in large-scale projects. The EIS must discuss the effectiveness of these proposed mitigation measures to fulfill its “action-forcing” function under NEPA.

Summary:

The Oil and Gas Development PRMPA/FEIS failed to adequately analyze the effectiveness of proposed mitigation measures to reduce the risk of spills and leaks from oil and gas pipelines.

Response:

NEPA requires the BLM to include a discussion of measures that may mitigate adverse environmental impacts (40 CFR 1502.14(f), 40 CFR 1502.16(h)). Potential forms of mitigation include: (1) avoiding the impact altogether by not taking a certain action or parts of an action; (2) minimizing impacts by limiting the degree or magnitude of the action and its implementation; (3) rectifying the impact by repairing, rehabilitating, or restoring the affected environment; (4) reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action; or (5) compensating for the impact by replacing or providing substitute resources or environments (40 CFR 1508.20).

The Oil and Gas Development PRMPA/FEIS analyzes and adopts oil and gas stipulations and associated mitigation measures such as equipping pipelines with emergency shut-off valves (PRMPA/FEIS, Appendix O, page A-23) that avoid various potential future impacts by minimizing potential future impacts through the restrictions of certain oil and gas restrictions on public lands. At the RMP-level, it is typically not appropriate to analyze specific mitigation measures that rectify impacts, reduce impacts over time, or compensate impacts, since the approval of an RMP does not directly result in any on-the-ground impacts. The BLM will also look at all appropriate mitigation measures during the decision making process for future actions in the planning area

The specific measure identified by the protesters (equipping pipelines with emergency shut-off valves) was, in fact, discussed in the impacts analysis for Colorado Pikeminnow, Roundtail Chub and Bluehead Sucker (P RMPA/FEIS, Section 4.3.3.6) for the Oil and Gas Development PRMPA/FEIS and was adequately compared to the other alternatives that did not include this measure at an appropriate land use planning scale.

The Oil and Gas Development PRMPA/FEIS complied with NEPA by including a discussion of measures that may mitigate adverse environmental impacts to the extent appropriate for an RMP.

NEPA: Oil and Gas Impacts

Issue Number: PP-CO-WhiteRiver-15-02-27

Organization: XTO Energy

Protestor: Kathy Donnelly

Issue Excerpt Text: The BLM has not justified the increase in timing stipulations nor have they justified the significant increase in timing limitations. The BLM has increased the number of acres subject to timing limitations by approximately 600,000 acres. (Proposed White River RMPA, pg. 2-29) and the BLM has provided no justification, analysis, or information to support this substantial increase in the number of acres subject to timing limitations.

Issue Number: PP-CO-WhiteRiver-15-02-58

Organization: XTO Energy

Protestor: Kathy Donnelly

Issue Excerpt Text: The BLM has not justified limiting the use of waivers, exceptions, and modifications based on threshold disturbances of its proposed disturbance thresholds limiting the availability of waivers, exceptions, and modifications ("WEMs") of timing limitations that are highly impracticable, are not technically or scientifically justified in the Proposed White River RMPA, and should be removed. The BLM proposes to limit the availability of WEMs in big game habitat, for example, based on the percentage of animal range (winter, severe winter, summer, and winter concentration) impacted by "acute" and "collective" effects on a leasehold basis. Proposed White River RMPA, pgs. 2-29

through 2-30. In calculating the affected acreage, the BLM assumes that all impacts-access routes, well pads, utility lines, temporary storage areas, pigging stations, etc.-will extend out 660 feet on all seasonal ranges. In other words, the BLM assumes that every component of oil and gas development will have the same impact on big game habitat regardless of terrain, species or activity type or duration, but BLM provides no scientific justification whatsoever for this buffer. BLM must provide a technical and scientific basis for these thresholds and the assumptions used to calculate them, or must apply timing restrictions, including waivers, modifications, and exceptions, according to current management prescriptions.

Issue Number: PP-CO-WhiteRiver-15-02-60

Organization: XTO Energy

Protestor: Kathy Donnelly

Issue Excerpt Text: For grouse habitat, the thresholds are even more restrictive and yet similarly unjustified. The BLM proposes thresholds of 10 percent of suitable habitat within "mapped Priority Habitat" and 20 percent of suitable habitat within "mapped General Habitat". (Proposed White River RMPA, pg. 2-31). These thresholds would be calculated by dividing the acreage of acute or collective effects by the acreage within a "defined sage- grouse population area" as defined by the Western Association of Fish and Wildlife Agencies. (Proposed White River RMPA, pg. 2-18). Under these thresholds, the availability of WEMs to timing stipulations will be limited for XTO due to activities that

occur elsewhere in a defined population area, which are outside XTO's control.

Issue Number: PP-CO-WhiteRiver-15-02-72

Organization: XTO Energy

Protestor: Kathy Donnelly

Issue Excerpt Text: XTO continues to protest the BLM's proposal to increase the NSO and the surface disturbance restrictions around raptor nests. Proposed White River RMPA, Table 2-5. The BLM's current NSO restrictions are adequate and the BLM has failed to demonstrate otherwise, notwithstanding the BLM's comment response. See Proposed White River RMPA, app. K, pg. K-200, Response 1616. FLPMA does not contemplate as a goal "relatively risk free management of those nests" when balancing oil and gas operations against impacts upon raptor nesting. The BLM is instead required to manage public lands on the basis of multiple use and sustained yield. 43 USC § 1701(a)(7) (2015). "Multiple use management is a deceptively simple term that describes the enormously complicated task of striking a balance among the many competing uses to which land can be put, 'including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and [uses serving] natural scenic, scientific and historical values'." Norton v. Southern Utah Wilderness Alliance, 542 U.S. 55, 58 (2004) (quoting 43 U.S.C. § 1702(c)). XTO recognizes the difficulties the BLM faces in managing the public lands; however, XTO believes it is important for the BLM to honor its past commitments including existing leases; approved units, projects and ROWs; and to ensure future development is not unreasonably constrained by revisions to the Proposed White River RMPA. The BLM apparently bases these surface restrictions upon a "recent USFWS recommendation" and

the "exhort[ations]" of CPW, USFWS, cooperating agencies, and wildlife specialists. (Proposed White River RMPA, app. K, pg. K-200, Response 1616). The BLM has not identified the referenced FWS recommendation or any of the science or analysis ostensibly supporting that recommendation, or which ostensibly support the exhortations of non-industry stakeholders. There is no basis in the record to support these surface limitations.

Issue Number: PP-CO-WhiteRiver-15-03-26

Organization: Encana Oil and Gas

Protestor: Jason Oates

Issue Excerpt Text: The BLM has not justified the significant increase in timing limitations presented in the White River Proposed RMPA. As noted above, the BLM has increased the number of acres subject to timing limitations by approximately 600,000 acres. (Proposed White River RMPA). The BLM has provided no justification, analysis, or information to support this substantial increase in the number of acres subject to timing limitations.

Issue Number: PP-CO-WhiteRiver-15-03-31

Organization: Encana Oil and Gas

Protestor: Jason Oates

Issue Excerpt Text: For grouse habitat, the thresholds are even more restrictive and yet similarly unjustified. The BLM proposes thresholds of 10 percent of suitable habitat within "mapped Priority Habitat" and 20 percent of suitable habitat within "mapped General Habitat". (Proposed White River RMPA, pg. 2-31). These thresholds would be calculated by dividing the acreage of acute or collective effects by the acreage within a "defined sage-grouse population area" as defined by the Western Association of Fish

and Wildlife Agencies. (Proposed White River RMPA, pg. 2-18). Under these thresholds, the availability of WEMs to timing stipulations will be limited for any one operator by activities that occur elsewhere in a defined population area, which are outside that operator's control.

Issue Number: PP-CO-WhiteRiver-15-03-53

Organization: Encana Oil and Gas

Protestor: Jason Oates

Issue Excerpt Text: Current management prescriptions prohibit surface occupancy within one-quarter mile of functional nest sites of special status species and one-eighth mile of functional nest sites of all other species. See White River Record of Decision and Approved Resource Management Plan, pg. 2-30 (1997). The Proposed White River RMPA would significantly increase these no surface occupancy areas to within one-half mile of functional nest sites for special status species, golden eagles, and prairie falcons, and three-sixteenths (990 ft) of a mile for non-special status species. Proposed White River RMPA, Table 2-5, Record 11, pg. 2-5-5; Table 2-9, Record 28, pg. 2-9-15. Further, the BLM would impose a new 330 feet no surface occupancy setback for abandoned bald eagle nests. Proposed White River RMPA, Table 2-9, Record 28, pg. 2-9-15. These setback increases would significantly expand the amount of acreage subject to no surface occupancy restrictions from current management, and yet the BLM has not justified these increases or explained their necessity.

Issue Number: PP-CO-WhiteRiver-15-04-21

Organization: WPX Energy

Protestor: Chad Odegard

Issue Excerpt Text: The BLM has not justified the significant increase in timing limitations presented in the White River Proposed RMPA. According to the Proposed White River RMPA, the BLM has increased the number of acres subject to timing limitations by approximately 600,000 acres. The BLM has provided no justification, analysis, or information to support this substantial increase in the number of acres subject to timing limitations.

Issue Number: PP-CO-WhiteRiver-15-04-23

Organization: WPX Energy

Protestor: Chad Odegard

Issue Excerpt Text: The BLM's proposed disturbance thresholds limiting the availability of waivers, exceptions, and modifications (WEMs) of timing limitations are highly impracticable, are not technically or scientifically justified in the Proposed White River RMPA, and should be removed. The BLM proposes to limit the availability of WEMs in big game habitat, for example, based on the percentage of animal range (winter, severe winter, summer, and winter concentration) impacted by "acute" and "collective" effects on a leasehold basis. Proposed White River RMPA, pgs. 2-29-2-30. When calculating these impacts, the BLM assumes that all impacts-access routes, well pads, utility lines, etc.-will have the same buffer of 660 feet on all seasonal ranges. In other words, the BLM assumes that every component of oil and gas development will have the same impact on big game habitat, but the BLM provides no scientific justification whatsoever for this buffer. The BLM must provide a technical and scientific basis for these thresholds and the assumptions used to calculate them, or must apply timing restrictions, including waivers, modifications,

and exceptions, according to current management prescriptions.

Issue Number: PP-CO-WhiteRiver-15-04-25

Organization: WPX Energy

Protestor: Chad Odegard

Issue Excerpt Text: For grouse habitat, the thresholds are even more restrictive and yet similarly unjustified. The BLM proposes thresholds of 10 percent of suitable habitat within “mapped Priority Habitat” and 20 percent of suitable habitat within “mapped General Habitat”. Proposed White River RMPA, pg. 2-31. These thresholds would be calculated by dividing the acreage of acute or collective effects by the acreage within a “defined sage-grouse population area” as defined by the Western Association of Fish and Wildlife Agencies. Proposed White River RMPA, pg. 2-18. Under these thresholds, the availability of WEMs to timing stipulations will be limited for any one operator by activities that occur elsewhere in a defined population area, which are outside that operator's control. Further, the BLM proposes to limit WEMs for grouse timing limitations in instances “where fluid mineral development can be reasonably scheduled to avoid interfering with important seasonal use activities of sage-grouse”, including routine and non-emergency production and maintenance activities. Proposed White River RMPA, pg. 2-31. The BLM has provided no scientific basis for the assumption apparently underlying this requirement-namely, that routine maintenance activities at a well pad somehow disrupt grouse habitat.

Issue Number: PP-CO-WhiteRiver-15-06-11

Organization: Center for Biological Diversity

Protestor: Wendy Park et al

Issue Excerpt Text: As already alluded to above, the EIS fails to properly disclose the amount of freshwater that will be needed for new natural gas development, and as a result, fails to fully disclose the RMPA’s impacts on endangered fish and other freshwater-dependent species.

Issue Number: PP-CO-WhiteRiver-15-09-11

Organization: Rocky Mountain Wild

Protestor: Megan Muller

Issue Excerpt Text: The BLM has violated NEPA by failing to take a “hard look” at the direct, indirect and cumulative impacts of the PRMPA on wildlife. As a result, the BLM has failed to adequately minimize impacts of oil and gas development on wildlife. The BLM’s analysis of impacts of surface disturbance due to oil and gas development on wildlife (PRMPA and FEIS Appendix E) fails to account for existing surface disturbance. The BLM projects that oil and gas development will result in 13,200 acres of surface disturbance (including 11,664 acres in the MPA). However, these projections include only disturbance from new well pads. BLM fails to account for substantial existing disturbance from well pads and roads. Existing surface disturbance from roads and well pads has resulted in habitat loss and fragmentation that will be exacerbated by the additional surface disturbance projected to occur under the PRMPA.

Issue Number: PP-CO-WhiteRiver-15-09-13

Organization: Rocky Mountain Wild

Protestor: Megan Muller

Issue Excerpt Text: The BLM also underestimates impacts to wildlife due to acute and collective disturbance from new development (development that extends beyond a 200 meter buffer around well pads)

for more than five years. Substantial negative indirect and cumulative impacts to wildlife from oil and gas development can extend far beyond five years following initiation of development of a well pad as discussed in our comments on the PRMP (Attachment 4). BLM

has failed to consider potentially significant indirect and cumulative impacts of oil and gas development that are likely to continue to negatively impact wildlife for many years after 5 years from the initiation of development of a well pad.

Summary:

The Oil and Gas Development PRMPA/FEIS violates NEPA by failing to provide analysis or scientific information to support the following oil and gas decisions:

- increase in the number of acres subject to timing limitations, and limiting the availability of waivers, exceptions, and modifications (“WEMs”),
- thresholds/buffers for disturbance within raptors, big game and grouse habitat, and
- existing development and future impacts from development.

Response:

NEPA directs that data and analyses in an EIS must be commensurate with the importance of the impact (40 CFR 1502.15), and that NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail (40 CFR 1500.1(b)). The BLM is required to take a “hard look” at potential environmental impacts of adopting the Oil and Gas Development PRMPA/FEIS.

A land use planning-level decision is broad in scope. For this reason, analysis of land use plan alternatives is typically broad and qualitative rather than quantitative or focused on site-specific actions. The baseline data provides the necessary basis to make informed land use plan-level decisions (e.g., application of NSO and CSU stipulations). As the decisions under consideration by the BLM are programmatic in nature and would not result in on-the-ground decisions or actions (e.g., the BLM is not approving an Application for Permit to Drill to start drilling), the scope of the analysis was conducted at a regional, programmatic level. The analysis focuses on the direct, indirect, and cumulative impacts that could potentially result from on-the-ground changes. This analysis identifies impacts that may result in some level of change to the resources, regardless of whether that change is beneficial or adverse.

The level of detail of the NEPA analysis must be sufficient to support reasoned conclusions by comparing the amount and the degree of change (impact) caused by the proposed action and alternatives (BLM Handbook H-1790-1, Section 6.8.1.2). The BLM need not speculate about all conceivable impacts, but it must evaluate the reasonably foreseeable significant effects of the proposed action. For example, determining the amount of freshwater that will be needed for new natural gas developments, as well as the local, site-specific impacts of such water withdrawal would be speculative due to the variations associated from one project to another. However, this type of analysis would be conducted during site-specific NEPA for future projects.

As noted in the Appendix K, Response to Public Comments on the Draft RMPA/EIS, the increase of timing limitations and the threshold strategies in the Oil and Gas Development

PRMPA/FEIS are intended to provide a means to balance efficient development of the federal fluid mineral estate with the maintenance of objective levels of big game as an economic and cultural staple of northwest Colorado. Recent peer-reviewed research (see PRMPA/FEIS Section 4.3.2.1.2) clearly suggests that proposed development activities' influence on big game are likely to become pervasive, cumulatively persistent, and result in unacceptably severe and long-term demographic consequences. In a multiple use context, the threshold strategy outlined in the Oil and Gas Development PRMPA/FEIS recognizes and accepts that managed fluid mineral development will have a certain level of detrimental effect on big game populations from a behavioral, physiological, and energetic perspective, but alternately provides a process that, within prescribed allowances, promotes lessee-determined year-round lease or unit development consistent with development rights.

Similarly, the impacts of proposed fluid mineral development on sage-grouse in the planning area were disclosed in Section 4.3.2.1.3 (Impacts from Oil and Gas Development) of the PRMPA/FEIS. The results of the works cited in the Oil and Gas Development PRMPA/FEIS (PRMPA/FEIS, Section 6.3) and recommendations provided by CPW and the FWS as cooperating agencies were paramount in developing the proposed means (i.e., threshold strategies) to manage the distribution of oil and gas development consistent with existing lease rights and effecting clustered development which limits the duration and extent of adverse behavioral effects imposed on sage-grouse.

The protesters also claim that there is no justification for the increase in NSO areas to within one-half mile of functional nest sites for special status species, golden eagles, and prairie falcons, and three-sixteenths (990 ft.) of a mile for non-special status species. The effects of different raptor nest buffers were provided in Sections 4.3.2.2.2, 4.3.2.3.2, 4.3.2.4.2, and 4.3.2.5.2 of the Oil and Gas Development PRMPA/FEIS. As the protester highlights, the response to public comments on the Draft RMPA/EIS (PRMPA/FEIS, Appendix K, page K-200) states that the FWS provided the BLM with the recommendation for protective spatial buffers for bald and golden eagles in the western United States at 0.5 mile. Both the CPW and FWS as cooperating agencies and wildlife specialists requested that BLM adopt larger NSO stipulation buffers that would provide risk free management of those nests in close proximity to fluid mineral operations. These recommendations are provided in the record for the Oil and Gas Development PRMPA/FEIS.

Finally, protesters state that the BLM's analysis of impacts of surface disturbance due to oil and gas development on wildlife (PRMPA/FEIS Appendix E) fails to account for existing surface disturbance and underestimates impacts to wildlife due to acute and collective disturbance from new development in the Oil and Gas Development PRMPA/FEIS. Section 4.3.2.1.1 of the Oil and Gas Development PRMPA/FEIS discusses the direct and indirect impacts from oil and gas development on wildlife, while Section 4.11.3.6 of the Oil and Gas Development PRMPA/FEIS discusses the cumulative impacts on wildlife in the planning area from past, present, and reasonably foreseeable future actions. Baseline conditions that were used to formulate the impact analysis on wildlife reference the historic, present and reasonably foreseeable mineral development activities that are/will occur in the planning area (PRMPA/FEIS, Section 3.7.3). For

all alternatives analyzed in the Oil and Gas Development PRMPA/FEIS, baseline conditions are accounted for when discussing the impacts from a specific management alternative at an appropriate programmatic land use planning scale.

FLPMA – Areas of Critical Environmental Concern

Issue Number: PP-CO-WhiteRiver-15-06-32

Organization: Center for Biological Diversity

Protestor: Wendy Park et al

Issue Excerpt Text: The BLM’s refusal to consider Areas of Critical Environmental Concern (ACEC) designations in the context of the RMPA planning process is contrary to FLPMA’s mandate that the BLM “give priority to the designation and protection of areas of critical environmental concern [ACEC].” 43 U.S.C. § 1712(c)(3). ACECs are areas where special management attention is required “to protect and prevent irreparable damage.” 43 U.S.C. § 1702(a). Protestor Rocky Mountain Wild (formerly Center for Native Ecosystems) provided the BLM with a detailed list and maps of proposed ACECs throughout the planning process, beginning as early as 2007. While the EIS notes that new designations may be considered in a later RMP revision planning process, that process could be too late, as new development under the RMPA could prejudice the consideration of certain areas for this designation. The BLM arbitrarily determined that ACEC designations should be considered in a separate, later process, when nothing prevents the BLM from considering these issues jointly with the RMPA, and when “priority” for these designations is required.

Issue Number: PP-CO-WhiteRiver-15-09-4

Organization: Rocky Mountain Wild

Protestor: Megan Mueller

Issue Excerpt Text: BLM failed to consider designation of new Areas of Critical Environmental Concern (ACECs) as part of the White River RMPA planning process. The BLM’s decision to defer consideration of ACEC designations is contrary to FLPMA’s mandate that BLM “give priority to the designation and protection of areas of critical environmental concern.” 43 USC § 1712(c)(3) (emphasis added). ACECs are areas “where special management is required (when such areas are developed or used or where no development is required) to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources, or other natural systems or processes.” *Id.* § 1702(a). The BLM’s ACEC Manual (1613) provides additional detail on the criteria to be considered in ACEC designation, as discussed in the applicable regulations, as well. See Manual 1613, Section .1 (Characteristics of ACECs); 43 C.F.R. § 8200. An area must possess relevance (such that it has significant value(s) in historic, cultural or scenic values, fish & wildlife resources, other natural systems/processes, or natural hazards) and importance (such that it has special significance and distinctiveness by being more than locally significant or especially rare, fragile or vulnerable). In addition, the area must require special management attention to protect the relevant and important values (where current management is not sufficient to protect these values or where the needed management action is considered unusual or unique), which is addressed in special protective management prescriptions. 43 U.S.C. § 1702(a). An ACEC is to be as large as is necessary to protect the

important and relevant values. Manual 1613, Section 22.B.2 (Size of area to receive special management attention). Rocky Mountain Wild and other organizations nominated several areas for designation as Areas of Critical Environmental Concern as part of the RMPA planning process (See Attachments 1, 2, & 3). In addition, Rocky Mountain Wild nominated areas within the White River Field Office for designation as Areas of Critical Environmental Concern for white tailed prairie dogs in 2003. All of these areas meet the relevance and importance criteria, and require special management attention to protect the relevant and important values (See Attachments 1, 2, 3, 4, 5, and 6). The White River FEIS states that new ACEC designations may be considered in a later RMP revision planning process. Deferring analysis to an unspecified future planning process that may not occur for decades clearly violates FLPMA's requirement to "give priority" to designation of ACECs.

Issue Number: PP-CO-WhiteRiver-15-09-6
Organization: Rocky Mountain Wild
Protestor: Megan Mueller

Issue Excerpt Text: The BLM arbitrarily deferred Areas of Critical Environmental

Summary:

The BLM failed to evaluate ACEC nominations on a timely basis and refused to consider ACEC designations, contrary to FLPMA and BLM's ACEC Manual 1613.21E that require the BLM give priority to the designation and protection of areas of critical environmental concern.

Response:

Section 202(c)(3) of the FLPMA mandates that the BLM give priority to the designation and protection of ACEC's in the development and revision of land use plans. The BLM's planning regulations (43 CFR 1610.7-2) establish the process and procedural requirements for the designation of ACEC's in resource management plans and in plan amendments. The public has an opportunity to submit nominations or recommendations for areas to be considered for ACEC designation. Such recommendations are actively solicited at the beginning of a planning effort. However, nominations may be made at any time and must receive a preliminary evaluation to

Concern designations to a separate, later planning process. This was done in violation of FLPMA's mandate to "give priority" to designation of ACECs, and without regard to the fact that it is appropriate to consider ACEC designation as part of Resource Management Plan Amendment processes like the White River RMPA (as the BLM has acknowledged by considering designation of ACECs in the context of RMP amendments being done as part of the BLM's national Greater Sage-Grouse process).

Issue Number: PP-CO-WhiteRiver-15-09-9
Organization: Rocky Mountain Wild
Protestor: Megan Mueller

Issue Excerpt Text: We submitted ACEC nominations to the White River Field Office twelve years ago in 2003 (Attachment 6) and again eight years ago in 2007 (Attachments 2 and 3). The BLM has not made a preliminary evaluation on a timely basis to determine if the areas we nominated for ACEC designation meet the relevance and importance criteria, contrary to clear direction in the BLM Manual. The BLM's failure to respond to ACEC nominations in a timely manner clearly violates FLPMA's mandate to "give priority" to ACEC designation.

determine if they meet the relevance and importance criteria, and, therefore, warrant further consideration in the planning process....” (BLM Manual Section 1613.41). If a planning effort is not underway that can consider nominated areas, the authorized officer must make a preliminary evaluation on a timely basis to determine if the relevance and importance criteria are met, and if so, must initiate either a plan amendment to further evaluate the potential ACEC or provide temporary management until an evaluation is completed through resource management planning (BLM Manual Section 1613.21E).

The protesting organization, Rocky Mountain Wild (formerly the Center for Native Ecosystems), submitted ACEC nominations for areas located within the boundaries of the White River Field Office on January 21, 2003, and on March 9, 2007, as indicated in Attachments 6 and 2 of their protest letter, respectively. To date, the BLM has not evaluated these nominated areas to determine whether the relevance and importance criteria are met in these areas.

The BLM grants in part the protests regarding the BLM Manual provision that BLM will conduct a timely evaluation of the Rocky Mountain Wild ACEC nominations, submitted on January 21, 2003, and on March 9, 2007, that are located within the boundaries of the White River Field Office. The BLM will evaluate these nominated areas to determine whether they satisfy the relevance and importance criteria, consistent with the BLM's planning regulations (43 CFR 1610.7-2) and explained in BLM Manual Section 1613. For those areas found to contain relevant and important values, the BLM will provide temporary (interim) management to include reasonable measures necessary to protect the significant resource values from degradation until the areas are fully considered in a resource management planning process. The Record of Decision for the Approved White River RMP Amendment/FEIS will establish a timeline for conducting the evaluation of these nominated areas.

FLPMA – Valid Existing Rights

Issue Number: PP-CO-WhiteRiver-15-02-18

Organization: XTO Energy

Protestor: Kathy Donnelly

Issue Excerpt Text: Through a RMPA, the proposed imposition of timing limitations and disturbance thresholds on existing leases is impermissible because it exceeds BLM’s legal authority under FLPMA. By attempting to impose these restrictions on existing leases, BLM is proposing to modify XTO’s existing lease rights through its land use planning process. This is impermissible because the authority conferred in FLPMA is expressly made subject to valid existing rights. Pursuant

to FLPMA, all BLM actions, such as authorization of Resource Management Plans, are “subject to valid existing rights”.

Issue Number: PP-CO-WhiteRiver-15-02-20

Organization: XTO Energy

Protestor: Kathy Donnelly

Issue Excerpt Text: The White River RMP also cannot defeat or materially restrain XTO’s valid and existing rights to develop its leases through the broad application of COAs or other means on all future activities. See Colorado Environmental Coal, et al., 165 IBLA 221,228 (2005) (citing Colorado Environmental Coal., 135 IBLA 356, 360 (1996), Colorado Environmental Coal. v.

Bureau of Land Management, 932 F. Supp. 1247 (D. Colo. 1996).

Issue Number: PP-CO-WhiteRiver-15-02-22

Organization: XTO Energy

Protestor: Kathy Donnelly

Issue Excerpt Text: New lease stipulations imposed through COAs on pre-FLPMA leases are areas the BLM overreaches by attempting to substantially amend existing federal oil and gas leases. The BLM's overreaching is even more egregious where XTO owns federal oil and gas leases issued prior to FLPMA. Pre-FLPMA leases (issued before October 21, 1976) are not subject to the BLM's FLPMA implementing regulations.

Issue Number: PP-CO-WhiteRiver-15-02-25

Organization: XTO Energy

Protestor: Kathy Donnelly

Issue Excerpt Text: The BLM cannot later impose unreasonable mitigation measures that take away those [valid existing] rights. See *Conner v. Burford*, 84 F.2d 1441, 1449-50 (9th Cir. 1988); 43 C.F.R. §3101.1-2 (the BLM can impose only "reasonable mitigation measures . . . to minimize adverse impacts . . . to the extent consistent with lease rights granted"). The BLM cannot modify XTO's valid and existing rights to impose blanket timing limitations like those included in the White River Proposed RMPA, with exceptions granted only subject to new disturbance thresholds.

Issue Number: PP-CO-WhiteRiver-15-02-66

Organization: XTO Energy

Protestor: Kathy Donnelly

Issue Excerpt Text: The Proposed White River RMPA violates FLPMA by failing to recognize and protect valid existing lease

rights. The BLM cannot deprive XTO of its valid existing lease rights through implementation of Preferred Alternative E's proposed GRSG stipulations and conditions of approval. The BLM's proposed GRSG management prescriptions violate the agency's contractual and statutory obligations to XTO and other lessees. As discussed in Section II.A above, the BLM cannot legally impose new no-surface-occupancy (NSO) stipulations or COAs on existing leases that differ from those entered under the original contractual terms and, this prohibition is particularly true for XTO's pre-FLPMA leases. See discussion in Section II.B above.

Issue Number: PP-CO-WhiteRiver-15-03-18

Organization: Encana Oil and Gas

Protestor: Jason Oates

Issue Excerpt Text: Federal oil and gas leases constitute valid existing rights. (*Sierra Club v. Peterson*, 717 F.2d 1409, 1411 [D.C. Cir. 1983]; *Solicitor's Opinion M-36910*, 88 I.D. 909, 912 [1981]). As development operations are proposed in the future, the BLM cannot attempt to impose stipulations or COAs on Encana's existing leases that are inconsistent with its contractual rights. 43 CFR § 3101.1-2. The BLM has not justified this significant departure from the existing White River RMP or the terms and provisions of Encana's existing leases. Encana protests the BLM's imposition of timing limitations and disturbance thresholds on existing leases that are inconsistent with existing leases for three primary reasons. First, as described in more detail below, the BLM does not have the authority to impose timing stipulations and disturbance thresholds on Encana's valid existing leases under the Federal Land Policy and Management Act of 1976 (FLMPA). Such leases were issued pursuant to the terms of the existing RMP, or prior to said RMP and the

enactment of FLPMA, and the BLM cannot modify the terms of those leases through an RMP amendment. Second, Encana's leases constitute valid existing contracts that cannot be unilaterally modified by the BLM. Encana encourages the BLM Director to modify the Proposed White River RMPA to exclude this inappropriate attempt to modify Encana's valid existing rights. Third, the BLM has not justified the significant increase in timing restrictions on habitat that does not support the imposition of such restrictions.

Issue Number: PP-CO-WhiteRiver-15-03-20
Organization: Encana Oil and Gas
Protestor: Jason Oates

Issue Excerpt Text: The proposed addition of timing limitations and disturbance thresholds on existing leases is impermissible because it exceeds the BLM's legal authority under FLPMA. By attempting to impose these restrictions on existing leases, the BLM is proposing to modify Encana's existing lease rights through its land use planning process. Such a result is not permissible because the authority conferred in FLPMA is expressly made subject to valid existing rights. Pursuant to FLPMA, all BLM actions, such as authorization of Resource Management Plans, are "subject to valid existing rights". 43 USC § 1701 note (h); see also 43 CFR § 1610.5-3(b) (BLM is required to recognize valid existing lease rights). Thus, pursuant to federal law, the BLM cannot terminate, modify, or alter any valid or existing property rights.

Issue Number: PP-CO-WhiteRiver-15-03-22
Organization: Encana Oil and Gas
Protestor: Jason Oates

Issue Excerpt Text: The White River RMP also cannot defeat or materially restrain

Encana's valid and existing rights to develop its leases through the broad application of COAs or other means on all future activities. See Colorado Environmental Coal, et al., 165 IBLA 221, 228 (2005) (citing Colorado Environmental Coal., 135 IBLA 356, 360 (1996) aff'd, Colorado Environmental Coal. v. Bureau of Land Management, 932 F. Supp. 1247 (D. Colo. 1996). The BLM often cites a relatively recent decision from the Interior Board of Land Appeals (IBLA) for the proposition that the agency can impose COAs on existing leases, including the type of seasonal limitations proposed for operation and maintenance activities. Yates Petroleum Corp., 176 IBLA 144 (2008).

Issue Number: PP-CO-WhiteRiver-15-04-12
Organization: WPX Energy
Protestor: Chad Odegard

Issue Excerpt Text: Federal oil and gas leases constitute valid existing rights. Sierra Club v. Peterson, 717 F.2d 1409, 1411 (D.C. Cir. 1983); Solicitor's Opinion M-36910, 88 I.D. 909, 912 (1981). As development operations are proposed in the future, the BLM cannot attempt to impose stipulations or COAs on WPX's existing leases that are inconsistent with its contractual rights. 43 CFR § 3101.1-2. The BLM has not justified this significant departure from the existing White River RMP or the terms and provisions of WPX's existing leases. WPX protests the BLM's imposition of timing limitations and disturbance thresholds on existing leases that are inconsistent with existing leases for three primary reasons. First, as described in more detail below, the BLM does not have the authority to impose timing stipulations and disturbance thresholds on WPX's valid existing leases under the Federal Land Policy and Management Act of 1976 (FLMPA). Such leases were issued pursuant to the terms of the

existing RMP, or prior to said RMP and the enactment of FLPMA, and the BLM cannot modify the terms of those leases through an RMP amendment. Second, WPX's leases constitute valid existing contracts that cannot be unilaterally modified by the BLM. WPX encourages the BLM Director to modify the Proposed White River RMPA to exclude this inappropriate attempt to modify WPX's valid existing rights. Third, the BLM has not justified the significant increase in timing restrictions on habitat that does not support the imposition of such restrictions.

Issue Number: PP-CO-WhiteRiver-15-04-15

Organization: WPX Energy

Protestor: Chad Odegard

Issue Excerpt Text: The proposed addition of timing limitations and disturbance thresholds on existing leases is impermissible because it exceeds the BLM's legal authority under FLPMA. By attempting to impose these restrictions on existing leases, the BLM is proposing to modify WPX's existing lease rights through its land use planning process. Such a result is not permissible because the authority conferred in FLPMA is expressly made subject to valid existing rights. Pursuant to FLPMA, all BLM actions, such as authorization of Resource Management Plans, are "subject to valid existing rights". 43 USC § 1701 note (h); see also 43 CFR § 1610.5-3(b) (BLM is required to recognize valid existing lease rights).

Issue Number: PP-CO-WhiteRiver-15-04-17

Organization: WPX Energy

Protestor: Chad Odegard

Issue Excerpt Text: The White River RMP also cannot defeat or materially restrain WPX's valid and existing rights to develop its leases through the broad application of COAs

or other means on all future activities. See Colorado Environmental Coal, et al., 165 IBLA 221, 228 (2005) (citing Colorado Environmental Coal., 135 IBLA 356, 360 (1996) aff'd, Colorado Environmental Coal. v. Bureau of Land Management, 932 F. Supp. 1247 (D. Colo. 1996). The BLM often cites a relatively recent decision from the Interior Board of Land Appeals ("IBLA") for the proposition that the agency can impose COAs on existing leases, including the type of seasonal limitations proposed for operation and maintenance activities. Yates Petroleum Corp., 176 IBLA 144 (2008).

Issue Number: PP-CO-WhiteRiver-15-04-19

Organization: WPX Energy

Protestor: Chad Odegard

Issue Excerpt Text: As a federal lease, WPX has a legal right to occupy the surface to explore for, produce, and develop oil and gas resources on its leases. See Pennaco Energy v. United States Dep't of the Interior, 377 F.3d 1147, 1160 (10th Cir. 2004); 43 CFR § 3162.1(a) (requiring a federal lease to maximize production). The courts have recognized that once the BLM has issued an oil and gas lease conveying the right to access and develop the leasehold, the BLM cannot later impose unreasonable mitigation measures that take away those rights. See Conner v. Burford, 84 F.2d 1441, 1449-50 (9th Cir. 1988); 43 C.F.R. § 3101.1-2 (The BLM can impose only "reasonable mitigation measures ... to minimize adverse impacts ... to the extent consistent with lease rights granted"). The BLM cannot modify WPX's valid and existing rights to impose blanket timing limitations like those included in the White River Proposed RMPA, with exceptions granted only subject to new disturbance thresholds.

Issue Number: PP-CO-WhiteRiver-15-05-10

Organization: Moffat County Board of Commissioners

Protestor: John Kinkaid, Chuck Grobe, and Frank Moe

Issue Excerpt Text: The proposed management direction for the Dinosaur Trail MLP area and the Lands with Wilderness Characteristics will interfere with the right of federal, state, and private mineral interest owners and lessees to access their mineral rights. If no disturbance is allowed or new rights-of-way are not permitted, then there would be no way to access those mineral interests that are surrounded by the special land designations. All the Lands with Wilderness Characteristics within Moffat County and within the Dinosaur Trail MLP area are designated as either Tier 1 or Tier 2 areas, therefore requiring a NSO or CSU stipulation under Alternative E. *Id.* at Map 2-6. The Lands with Wilderness Characteristics that fall within both the Dinosaur Trail MLP area and Rio Blanco County are designated as Tier 1 or Tier 2 areas, as are three other Lands with Wilderness Characteristics within the County. *Id.* The lack of access to federal, state, and private mineral leaseholds also has the direct effect of leading to drainage of minerals where oil and gas leases are not accessible. The BLM is required to take steps to avoid uncompensated drainage of federal or Indian leases. See 43 CFR §3162.2-2. If the BLM determines that a well is draining federal mineral leases, then it may require the lessee to drill and produce all the wells that are necessary to protect the lease from draining, execute agreements with the owners of interests in the producing well where the United States would be compensated for drainage when the area is unleased, or offer the unleased resources for lease and enter into

a unit or communitization agreement. 43 CFR §§3162.2-2, 3162.2-4. The lessees of federal minerals are also required to protect their leases from drainage by drilling and producing all wells necessary to prevent drainage or pay compensatory royalty for the drainage. 43 CFR §§3100.2-2, 3162.2-3, 3162.2-4.

However, protection from drainage will be impossible if access is limited due to the Lands with Wilderness Characteristics and Dinosaur Trail MLP area having NSO and CSU stipulations, or designated as right-of-way exclusion or avoidance areas.

Issue Number: PP-CO-WhiteRiver-15-05-8

Organization: Moffat County Board of Commissioners

Protestor: John Kinkaid, Chuck Grobe, and Frank Moe

Issue Excerpt Text: There are a number of federal acres leased within the White River Field Office planning area and the leaseholders have a right to access these lands. PRMPA at Map1-4; Map 3-15. There are private and state lands that are leased, particularly in the northern portion of the planning area in Moffat County, to which the landowners and leaseholders are also entitled to legal access. However, the designation of the Dinosaur Trail MLP area and the Lands with Wilderness Characteristics, with their corresponding management direction, severely limits the right of access to these lands in violation of the law.

Issue Number: PP-CO-WhiteRiver-15-07-3

Organization: Western Energy Alliance

Protestor: Spencer Kimball et al

Issue Excerpt Text: The Proposed RMPA impedes lessees from exercising their valid existing rights, particularly through the imposition of overly restrictive stipulations

and Conditions of Approval (COA). FLPMA requires the BLM to ensure that valid existing lease rights are unequivocally protected. In the PRMP, while the BLM states that any new lease stipulations could only be applied to new leases, it did not make such a differentiation for COAs, and lists several instances in which severe restrictions, including prohibitions on surface occupancy, may be applied to existing leases. The BLM makes it clear that timing limitations will be imposed on all oil and natural gas activities within the White River Field Office regardless of site-specific

analysis, and that waivers, exceptions, and modifications will only be granted subject to new disturbance thresholds that did not exist at the time the leases were issued. Such a result is not permissible; as explicitly stated in FLPMA, “All actions...under this Act shall be subject to valid existing rights.” The statute does not leave any room whatsoever for discretionary actions that would be contrary to existing terms and stipulations. As it does not adequately protect valid existing rights, the associations protest the decision.

Summary:

The Oil and Gas Development PRMPA/FEIS violates valid existing rights by proposing to modify stipulations on existing oil and gas leases, and potentially limiting access.

Response:

An oil and gas lease is a valid, existing right, which cannot be modified through the land use planning process (FLPMA, Section 701(h)). Lease stipulations proposed in the Oil and Gas Development PRMPA/FEIS would not be applied to existing oil and gas leases.

The BLM may restrict development of an existing oil and gas lease through Conditions of Approval (COA). However, while COAs may be described generally in the land use planning process, the application of COAs at a site-specific level only take place after a project has been proposed and site-specific environmental analyses has been completed . When making a decision regarding discrete surface-disturbing activities [e.g. Application for Permit to Drill] following site-specific environmental review, the BLM has the authority to impose reasonable measures as COAs to minimize impacts on other resource values, including restricting the siting or timing of lease activities (43 CFR 3100; 43 CFR 3160; IBLA 2006-213, 2006-226; IBLA 2008-197, 2008-200). In its RMPs, the BLM may identify “general/typical conditions of approval and best management practices” that may be employed in the planning area (BLM Handbook H-1601-1, p. C-24).

The Oil and Gas Development PRMPA/FEIS does not modify existing oil and gas leases, and in sections 1.1.1, 1.4.3, and 1.4.5. the RMPA/FEIS repeatedly recognizes valid existing lease rights. Rather, section 2.4 of the document explains that the BLM will apply additional mitigation or COAs to existing leases only when those measures are warranted, as disclosed and analyzed in a subsequent site-specific NEPA analysis, in order to minimize adverse impacts to other resource values, land uses, or users.

Section 2.4 of the Oil and Gas Development PRMPA/FEIS further explains that, “In discussing surface use rights, 43 CFR 3101.1-2 states that the lessee has the right ‘to use so much of the

leased lands as is necessary to explore for, drill for, mine, extract, remove and dispose of all the leased resource' but lessees are still subject to lease stipulations, nondiscretionary statutes, and 'such reasonable measures as may be required by the authorized officer to minimize adverse impacts to other resource values, land uses or users not addressed in the lease stipulations at the time operations are proposed'. Lessees are also required to conduct operations in a manner that not only 'results in maximum ultimate economic recovery of oil and gas with minimum waste' but also 'protects other natural resources and environmental quality' (43 CFR 3162.1)".

When deciding how Lands with Wilderness Characteristic units should be managed, the BLM is required to consider in its evaluation, among other things, valid existing lease rights in the area, access to state or private inholdings, the presence of other resources, development potential, resource availability, economic importance, and compatibility with protection. In the Oil and Gas Development PRMPA/FEIS, only the following two categories of lands with wilderness characteristics have been assigned to Tier 1 management, meaning that the areas will be managed to protect wilderness characteristics as a priority over other multiple uses: (1) those lands with wilderness characteristics units where at least 5,000 contiguous acres are not encumbered by existing leases; and (2) any unleased acreage or leased acreage within low potential areas that are contiguous with an existing Wilderness Study Area. Certain portions of Lands with Wilderness Characteristics that are currently leased will be managed as Tier 2 areas instead of Tier 1 areas to allow for access to private inholdings. Tier 2 areas will be managed to emphasize other multiple uses while applying management restrictions to reduce impacts to wilderness characteristics. (PRMPA/FEIS, pp. 2-34, 2-35) New road construction or upgrading/improvements of existing roads in tier 2 areas of Lands with Wilderness Characteristics would be allowed and construction of new facilities would be considered on a case-by-case basis (PRMPA/FEIS, p. 4-517).

Within the Dinosaur Trail MLP, the acres of BLM federal oil and gas mineral estate that would be closed to leasing only include the existing Bull Canyon, Skull Creek, and Willow Creek Wilderness Study Areas and the National Park Service's Harpers Corner Road withdrawal (PRMPA/FEIS, Table 2-17a-1, record 31). Of the remaining acreage within the MLP, 315,600 acres of BLM federal oil and gas mineral estate would be open to leasing and subject to lease stipulations, including NSO stipulations (83,100 acres), CSU stipulations (186,700 acres), and timing limitations (315,600) (PRMPA/FEIS, Table 2-17a-1, record 32). In regard to right-of-way access to lands in the area, section 4.7.6.6 of the Oil and Gas Development PRMPA/FEIS explains that areas that are included in NSO stipulations or CSU stipulations would be classified as avoidance areas for land use authorizations. Oil and gas related land use authorizations would either be re-routed to avoid these areas or would have design stipulations imposed on them if development in these areas could not be avoided.

Concerning pre-FLPMA leases, the Department of the Interior (DOI) Secretary's authority to administer oil and gas leases and mitigate impacts associated with their development is not dependent upon the age or date of lease issuance or its status as pre- or post-FLPMA. The principal authority for regulation of oil and gas lease operations is the Mineral Leasing Act (MLA), which authorizes the Secretary to require environmental protection determined to be

necessary. The earliest oil and gas lease form used under the MLA, that of 1920, section 2(h), required the lessee “to carry out at the expense of the lessee all reasonable orders and requirements of the lessor relative to prevention of waste and preservation of the property...” Furthermore, since at least 1936, the granting clause of all oil and gas leases has expressly identified that lessees are subject to regulations and orders “now and hereafter promulgated” as put forward in the General Land Office Circular 1386 of May 7, 1936. As previously described, the lease stipulations proposed in the PRMP Amendment would not be applied to existing oil and gas leases, whether those leases are pre- or post-FLPMA.

The Oil and Gas Development PRMPA/FEIS does not violate valid, existing rights.

FLPMA – Consistency with State and Local Plans

Issue Number: PP-CO-WhiteRiver-15-05-12

Organization: Moffat County Board of Commissioners

Protestor: John Kinkaid, Chuck Grobe, and Frank Moe

Issue Excerpt Text: The PRMPA is inconsistent with the Counties’ local land use plans as it places restrictions on oil and gas development, right-of-way construction and maintenance, and defers leasing in some areas. Specifically, Alternative E requires NSO or CSU stipulations on all Lands with Wilderness Characteristic areas except those identified as Tier 3 areas. PRMPA at Ch.2, Table 2-17a, pp.1, 4-5; Table 2-22, p.3. The areas with a NSO or CSU stipulation would also be managed as right-of-way exclusion or avoidance areas. *Id.* at Ch.2, Table 2-17a, pp.4-5; Table 2-22, pp.5-6. Alternative E also requires the deferral of leasing within sage-grouse habitat areas of the Dinosaur Trail MLP until the BLM has issued its Record of Decision for the Northwest Colorado Greater Sage-Grouse RMPA. *Id.* at Ch.2, Table 2-17a, p.2. These proposed management directions all interfere with oil and gas development and the right of federal, state, and private mineral interest owners and lessees to access their

mineral rights. See Section V.E. The BLM has failed to even discuss the inconsistencies the PRMPA has with local land use plans and has therefore made no attempt to resolve the inconsistencies. The BLM’s failure to address or resolve the inconsistencies does not conform to its obligations under FLPMA or NEPA. 43 U.S.C. §1712(c)(9); 43 C.F.R. §1610.3-2(a); 40 C.F.R. §§1502.16(c), 1506.2(d).

Issue Number: PP-CO-WhiteRiver-15-08-6

Organization: National Parks Conservation Association

Protestor: Vanessa Mazal

Issue Excerpt Text: Fundamentally, the definition of ‘significantly’ in NEPA requires consideration of: “Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.” 40 CFR §1508.27(b)(10). In order to ensure coordination and to avoid any potential inconsistencies between state and federal action, the BLM should disclose the relevant applicable CDPHE and EPA standards. This is especially the case for any such control requirements that were used as assumptions in the modeling analysis for the EIS. In doing so, the BLM would also ensure there will be no inconsistencies with the objectives of federal

and state policies and regulations. See 40 CFR §1502.16(c) and 40 CFR §1506.2(d).

Issue Number: PP-CO-WhiteRiver-15-08-8

Organization: National Parks Conservation Association

Protestor: Vanessa Mazal

Issue Excerpt Text: The BLM should include a discussion of, “[p]ossible conflicts between the proposed action and the objectives of Federal, regional, State, and local (and in the case of a reservation, Indian tribe) land use plans, policies and controls for the area concerned.” 40 CFR §1502.16(c)

Issue Number: PP-CO-WhiteRiver-15-11-4

Organization: Garfield County

Protestor: Tom Jankovsky

Issue Excerpt Text: The PRMPA is inconsistent with the Counties’ local land use plans as it places restrictions on oil and gas development, right-of-way construction and maintenance, and defers leasing in some areas. Specifically, Alternative E requires NSO or CSU stipulations on all LWC areas except those identified as Tier 1 areas. PRMPA at Ch.2, Table 2-17a, pp.1, 4-5; Table 2-22, p.3. The areas with a NSO or CSU stipulation would also be managed as right-of-way exclusion or avoidance areas. *Id.* at Ch.2, Table 2-17a, pp.4-5; Table 2-22, pp.5-6. These proposed management directions all interfere with oil and gas development and the right of

federal, state, and private mineral interest owners and lessees to access their mineral rights. See Section V.D. The BLM has failed to even discuss the inconsistencies the PRMPA has with local land use plans and has therefore made no attempt to resolve the inconsistencies. 43 U.S.C. §1712(c)(9); 43 C.F.R. §1610.3-2(a); 40 C.F.R. §§1502.16(c), 1506.2(d). BLM’s failure to address or resolve the inconsistencies does not conform to its obligations under FLMPA or NEPA.

Issue Number: PP-CO-WhiteRiver-15-11-6

Organization: Garfield County

Protestor: Tom Jankovsky

Issue Excerpt Text: In order for the BLM to remain compliant with FLPMA and the BLM’s own rules and regulations, the BLM must fully acknowledge local plans and work to resolve inconsistencies between local plans and the BLM plans. By this letter, the County asserts there are significant inconsistencies or omissions between the County’s Greater Sage-Grouse Conservation Plan and the information contained in the P RMPA/EIS regarding this species. As a result, the County requests the BLM coordinate with Garfield County to resolve those inconsistencies. Regardless of the Alternative chosen by the BLM, the County requests the provisions contained in the County’s Greater Sage-Grouse Conservation Plan be included in that Alternative.

Summary:

The Oil and Gas Development PRMPA/FEIS violates NEPA and FLPMA by failing to discuss the objectives of Federal, regional, State, and local land use plans. Specifically, the Oil and Gas Development PRMPA/FEIS must discuss and avoid inconsistencies with:

- relevant applicable CDPHE and EPA air quality standards
- Counties’ local land use plans, and the BLM’s proposed restrictions on oil and gas development, rights-of-way, and leasing deferrals

Response:

Section 202 (c)(9) of FLPMA requires that “land use plans of the Secretary under this section shall be consistent with state and local plans to the maximum extent he finds consistent with Federal law and the purposes of this Act.” However, BLM land use plans may be inconsistent with state, local, and Tribal plans where it is necessary to meet the purposes, policies, and programs associated with implementing FLPMA and other Federal laws and regulations applicable to public lands (43 CFR. 1610.3-2(a)).

In accordance with this requirement, the BLM has given consideration to state, local, and Tribal plans that are germane to the development of the Oil and Gas Development PRMPA/FEIS. The BLM has worked closely with state, local, and Tribal governments during preparation of the Oil and Gas Development PRMPA/FEIS. Chapter 5 describes coordination that has occurred throughout the development of the Oil and Gas Development PRMPA/FEIS.

A list of the local, state, and Tribal plans that the BLM considered can be found in Section 1.4.7 of the Oil and Gas Development PRMPA/FEIS. The agency will discuss why any remaining inconsistencies between the Oil and Gas Development PRMPA/FEIS and relevant local, state, and Tribal plans cannot be resolved in the Record of Decision (ROD) for the Oil and Gas Development PRMPA/FEIS.

As for disclosing the relevant applicable Colorado Department of Public Health and Environment (CDPHE) and EPA standards, the BLM considered the appropriate National Ambient Air Quality Standards (NAAQS) and Colorado Ambient Air Quality Standards (CAAQS) for land use planning level analysis in Appendix F of the Oil and Gas Development PRMPA/FEIS. The BLM assumes that facilities and associated emissions points would fall under the jurisdiction of EPA and CDPHE for permitting, control requirements, recordkeeping, reporting, and analysis (PRMPA/FEIS, Appendix K p. K-81). The applicable standards are dependent upon the equipment to be used at specific facilities and will be determined at the time of a permit. CDPHE and the EPA (Region 8) are cooperating agencies in the planning process and have provided their significant expertise in the programs under their jurisdiction.

While Garfield County’s Greater Sage-Grouse Conservation Plan was not identified as a local, state, and/or Tribal plan that the BLM considered in its planning effort, the Northwest Colorado Greater Sage-Grouse Proposed RMP Amendment/Final EIS did consider the county’s conservation plan. That amendment, which is expected to be finalized in late summer 2015, will amend the Oil and Gas Development PRMPA/FEIS decisions associated with Greater Sage-Grouse habitat management.

The BLM satisfied FLPMA’s consistency requirement in preparation of the Oil and Gas Development PRMPA/FEIS.

Clean Air Act

Issue Number: PP-CO-WhiteRiver-15-02-29

Organization: XTO Energy

Protestor: Kathy Donnelly

Issue Excerpt Text: The Proposed White River RMPA exceeds the BLM’s limited authority to regulate air emissions or visibility impacts emissions in the Proposed White River RMPA. The BLM sets as its objectives in the Proposed White River RMPA Air Quality Section to “protect air quality and, within the scope of BLM’s authority, minimize emissions that cause or contribute to violations of air quality standards or that negatively impact air quality-related values (AQRVs) (e.g., acid deposition, visibility).” Proposed White River RMPA, Table 2-1, Record 2, pg. 2-1-1. One of the management actions identified in the proposed RMPA is to “[d]evelop Conditions of Approval (COAs) for project specific surface disturbing activities to prevent BLM-permitted actions from causing or contributing to exceedances of ambient air quality standards or causing significant adverse impacts on air quality related values.” *Id.* at pg. 2-1-7. Although XTO supports the BLM’s laudable goal of protecting air quality, the BLM does not, as a matter of clear and unequivocal Federal law, have the authority to impose air emissions standards, ensure that air quality standards are maintained, or protect visibility within the White River Planning Area.

Issue Number: PP-CO-WhiteRiver-15-02-31

Organization: XTO Energy

Protestor: Kathy Donnelly

Issue Excerpt Text: The conformity provisions of the CAA do not apply to the Proposed White River RMPA because they

only apply in non-attainment and maintenance areas, and the White River Planning Area is in attainment. See Proposed White River RMPA, pg. 3-9. Specifically, the National Highway System Designation Act of 1995 (Pub. L. 104-59) amended Section 176 of the CAA to state that conformity requirements apply to: (1) a non-attainment area and each pollutant for which the area is designated as a non-attainment area; and (2) an area that was designated as a non-attainment area but was later re-designated as an attainment area and that is required to develop a maintenance plan. 42 U.S.C. 7506(c)(5). Sources are not pulled into the CAA’s coverage unless and until a non-attainment designation is made. Since the White River Planning Area is still in attainment for ozone, the CAA’s conformity provisions are not applicable. The authority to regulate air emissions does not lie with BLM but with EPA and the state or tribal entity, to which EPA has delegated its authority under the CAA.

Issue Number: PP-CO-WhiteRiver-15-02-33

Organization: XTO Energy

Protestor: Kathy Donnelly

Issue Excerpt Text: Given the restrictions on the BLM’s authority over air quality, the BLM lacks authority to impose any of the emissions measure controls listed in Table 2-1. See Proposed White River RMPA, Table 2-1, Records 5-20, pgs. 2-1-2 to -10. For example, the BLM attempts to require “green completions”; proposes to regulate volatile organic compound (VOC) emissions from glycol dehydrators, condensate tanks, and produced water tanks; and suggests it may decide to require “all new and existing drill rig engines to meet Tier 4 (or more stringent) standards at the Project-level stage by year 2015.” Proposed White River RMPA, Table

2-1, Records 9, 11, 14, pgs. 2-1-4 to -6. These restrictions and potential restrictions are entirely inappropriate and beyond the BLM's authority. Under the CAA, the regulation of reciprocating internal combustion engines and other mobile sources is exclusively within the jurisdiction of the EPA, not the BLM.

Issue Number: PP-CO-WhiteRiver-15-02-36
Organization: XTO Energy
Protestor: Kathy Donnelly

Issue Excerpt Text: Even if the BLM had the authority to regulate, the established requirements in Table 2-1 and the CARPP constitute rules that violate the Administrative Procedures Act (APA) and Executive Order 12866. The CARPP and the air emissions control measures in Table 2-1 amount to a "legislative rule" that imposes new and substantive requirements on the regulated community without proper notice and comment rulemaking in violation of the APA, 5 USC §553 (2000) and without the requisite cost-benefit analysis for agency rulemakings under EO 12866.

Issue Number: PP-CO-WhiteRiver-15-02-39
Organization: XTO Energy
Protestor: Kathy Donnelly

Issue Excerpt Text: In this case, the proposed CARPP and the changes to Table 2-1 are much more than mere guidance to the BLM officers; they represent a binding paradigm shift for the role the BLM plays with regard to air quality by purporting to create the authority and expectation that the BLM will directly regulate air quality and impose specific air quality control requirements on oil and gas operators as "Conditions for Approval" of its oil and gas permits, separate and apart from any conditions imposed by EPA and CDPHE. This

significant change to the existing regulatory framework should not take place without the opportunity for the public to comment and the requisite cost-benefit analysis.

Issue Number: PP-CO-WhiteRiver-15-02-43
Organization: XTO Energy
Protestor: Kathy Donnelly

Issue Excerpt Text: The BLM seeks to regulate several areas in the Proposed White River RMPA in ways that not only exceed its jurisdictional authority but also raise significant technical, operational and environmental consequences that the BLM has not addressed. In several places in Table 2-1 (and the CAARP), the BLM proposes to regulate or add requirements for existing sources. For example, Table 2-1, Record 11 (emissions controls for glycol dehydrators, condensate tanks and produced water tanks), Record 14 (compliance of drill rig engines and fracturing pump engines with EPA generator set Tier 4 emissions standards), Record 15 (compliance of engines at field compression facilities with applicable CDPHE, AQCC and EPA emissions standards), and Record 17 (produced water evaporation ponds), among others, all propose to regulate existing sources. These proposed regulations would circumvent the limitations on regulating existing sources under the CAA. Specifically, Section 111(d) does not directly authorize the EPA to establish standards of performance for existing sources; rather, Section 111(d) directs EPA to "prescribe regulations which shall establish a procedure similar to that under [CAA Section 110] under which each State shall submit to [EPA] a plan which . . . establishes standards of performance" for existing sources within that state.

Issue Number: PP-CO-WhiteRiver-15-03-40
Organization: Encana Oil and Gas

Protestor: Jason Oates

Issue Excerpt Text: The BLM improperly attempts to exercise authority to regulate air quality and air emissions in the Proposed White River RMPA. The BLM sets as its objectives in the Proposed White River RMPA Air Quality Section to “protect air quality and, within the scope of the BLM’s authority, minimize emissions that cause or contribute to violations of air quality standards or that negatively impact air quality-related values (AQRVs) (e.g., acid deposition, visibility).” Proposed White River RMPA, Table 2-1, Record 2, pg. 2-1-1. Although Encana supports the BLM’s laudable goal of protecting air quality, the BLM does not, as a matter of clear and unequivocal Federal law, have the authority to impose air emissions standards, ensure that air quality standards are maintained, or protect visibility within the White River Field Office. The BLM does not have direct authority over air quality or air emissions under the Clean Air Act (CAA’).

Issue Number: PP-CO-WhiteRiver-15-03-42

Organization: Encana Oil and Gas

Protestor: Jason Oates

Issue Excerpt Text: Given the restrictions on the BLM’s authority over air quality, the BLM lacks authority to impose any of the emissions measure controls listed in Table 2-1. See Proposed White River RMPA, Table 2-1, Records 5-20, pgs. 2-1-2 to -10. For example, the BLM attempts to require “green completions”; proposes to regulate volatile organic compound (VOCs) emissions from glycol dehydrators, condensate tanks, and produced water tanks; and suggests it may decide to require “all new and existing drill rig engines to meet Tier 4 (or more stringent) standards at the Project-level stage by year 2015.” Proposed White River RMPA, Table

2-1, Records 9, 11, 14, pgs. 2-1-4 to -6. These restrictions and potential restrictions are entirely inappropriate and beyond the BLM’s authority. Under the CAA, the regulation of reciprocating internal combustion engines and other mobile sources is exclusively within the jurisdiction of the EPA, not the BLM.

Issue Number: PP-CO-WhiteRiver-15-04-32

Organization: WPX Energy

Protestor: Chad Odegard

Issue Excerpt Text: The BLM improperly attempts to exercise authority to regulate air quality and air emissions in the Proposed White River RMPA. The BLM sets as its objectives in the Proposed White River RMPA Air Quality Section to “protect air quality and, within the scope of the BLM’s authority, minimize emissions that cause or contribute to violations of air quality standards or that negatively impact air quality-related values (AQRVs) (e.g., acid deposition, visibility).” Proposed White River RMPA, Table 2-1, Record 2, pg. 2-1-1. Although WPX supports the BLM’s laudable goal of protecting air quality, the BLM does not, as a matter of clear and unequivocal Federal law, have the authority to impose air emissions standards, ensure that air quality standards are maintained, or protect visibility within the White River Field Office. The BLM does not have direct authority over air quality or air emissions under the Clean Air Act (CAA).

Issue Number: PP-CO-WhiteRiver-15-04-34

Organization: WPX Energy

Protestor: Chad Odegard

Issue Excerpt Text: Given the restrictions on BLM’s authority over air quality, the BLM lacks authority to impose any of the emissions measure controls listed in Table 2-1. See Proposed White River RMPA, Table 2-1,

Records 5 - 20, pgs. 2-1-2 to -10. For example, the BLM attempts to require “green completions”; proposes to regulate volatile organic compound (VOCs) emissions from glycol dehydrators, condensate tanks, and produced water tanks; and suggests it may decide to require “all new and existing drill rig engines to meet Tier 4 (or more stringent) standards at the Project-level stage by year 2015”. Proposed White River RMPA, Table 2-1, Records 9, 11, 14, pgs. 2-1-4 to -6. These restrictions and potential restrictions are entirely inappropriate and beyond the BLM’s authority. Under the CAA, the regulation of reciprocating internal combustion engines and other mobile sources is exclusively within the jurisdiction of the EPA, not the BLM.

Issue Number: PP-CO-WhiteRiver-15-07-15
Organization: Western Energy Alliance

Summary:

The BLM violates the Clean Air Act because the BLM does not have the authority to regulate air quality or emissions.

Response:

The BLM manages public lands in accordance with FLPMA. Section 102(8) of FLPMA requires that “the public lands be managed in a manner that will protect...air and atmospheric [values]”.

Under NEPA, the BLM is required “to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment” and to “use all practicable means, consistent with the requirements of the Act and other essential considerations of national policy, to restore and enhance the quality of the human environment and avoid or minimize any possible adverse effects of their actions upon the quality of the human environment” (40 CFR 1500.2). NEPA also requires the BLM to include a discussion of measures that may mitigate adverse environmental impacts (40 CFR 1502.14(f), 40 CFR 1502.16(h)).

Through its RMPs, the BLM establishes desired outcomes for air quality and sets “area-wide restrictions” needed to meet those outcomes (BLM Handbook H-1601-1, p. C-2).

Thus, the BLM must manage the public lands in a manner that appropriately protects air quality and its related values. In the case of the Oil and Gas Development PRMPA/FEIS, the BLM conducted air quality analyses to determine impacts from specific federal actions anticipated

Protestor: Spencer Kimball et al

Issue Excerpt Text: The State of Colorado, through delegation from the Environmental Protection Agency to the Colorado Department of Public Health and Environment, has jurisdiction for air quality, not the BLM. The BLM lacks authority to impose controls and limitations beyond those adopted by the state and EPA. The associations also protest the BLM’s requirements on glycol dehydrators and tank controls in Table 2-1, Record No. 11 which are clearly outside of its jurisdictional authority. CDPHE and EPA both have regulations in place that address glycol dehydrators and tanks. Furthermore, the BLM cannot impose an emission threshold, as it conflicts with the state’s regulatory primacy.

under the Oil and Gas Development PRMPA/FEIS, and then developed emission control strategies and mitigation measures to address those impacts and achieve desired outcomes for air quality (PRMPA/FEIS Table 2-1-1 through Table 2-1-10). This does not mean the BLM is writing new regulations, nor is the BLM establishing itself as a regulatory agency or establishing mitigation measures that are intended to supersede the agencies with regulatory authority over air quality. Rather, the BLM is responding to estimated impacts from the Oil and Gas Development PRMPA/FEIS and complying with direction under NEPA, FLPMA, and the Clean Air Act (PRMPA/FEIS, p. 1-14).

The Oil and Gas Development PRMPA/FEIS does not exceed the BLM's statutory authority by proposing area wide restrictions for activities that impact air quality, nor create new authority for the BLM to regulate air quality

Congressional Appropriations Act

Issue Number: PP-CO-WhiteRiver-15-05-6

Organization: Moffat County Board of Commissioners

Protestor: John Kinkaid, Chuck Grobe, and Frank Moe

Issue Excerpt Text: The BLM claims that it is in compliance with the appropriation acts because it is not designating any lands as "Wild Lands" and is instead complying with BLM Manuals 6310 and 6320 regarding its obligations under Section 201 and 202 of FLPMA to inventory and consider Lands with Wilderness Characteristics in the land use planning process. (PRMPA at Appendix K-417.) However, calling these areas Lands with Wilderness Characteristics or claiming that the BLM is only using its separate inventory authority does not change the result of the proposed management prescription. The BLM is managing public lands as de facto wilderness, whether under the term "Wild Lands" or Lands with Wilderness Characteristics. The management is the same as it would have been if Congress had not shut down all funding related to S.O. 3310. The BLM has only changed the name from "Wild Lands" to Lands with Wilderness Characteristics and is still managing the lands

that have wilderness character to preserve their wilderness qualities. See PRMPA at Ch.2, pp.34-35; Table 2-22, pp.1-3; Ch.4, pp.535-545. The PRMPA contradicts Congress' clear direction that the BLM cease and desist from implementing the provisions of S.O. 3310. Relying on new manuals that still implement S.O. 3310 but do not mention "Wild Lands" does not excuse BLM from a clear violation of Congress Appropriation Acts. 31 U.S.C. §1341(a)(1)(A).

Issue Number: PP-CO-WhiteRiver-15-11-12

Organization: Garfield County

Protestor: Tom Jankovsky

Issue Excerpt Text: The BLM claims that it is in compliance with the appropriation acts because it is not designating any lands as "Wild Lands" and is instead complying with BLM Manuals 6310 and 6320 regarding its obligations under Section 201 and 202 of FLPMA to inventory and consider Lands with Wilderness Characteristics in the land use planning process. PRMPA at Appendix K-417. However, calling these areas Lands with Wilderness Characteristics or claiming that the BLM is only using its separate inventory authority does not change the result of the proposed management prescription.

The BLM is still proposing to manage the areas in the same manner as it would have if Congress had not shut down all funding related to S.O. 3310. The BLM has only changed the name from “Wild Lands” to Lands with Wilderness Characteristics, and is still managing the lands that have wilderness character to preserve their wilderness qualities. See PRMPA at Ch.2, pp.34-35;

Table 2-22, pp.1-3; Ch.4, pp.535-545. The PRMA contradicts Congress’ clear direction that BLM cease and desist from implementing the provisions of S.O. 3310. Relying on new manuals that still implement S.O. 3310 but do not mention “Wild Lands” does not excuse the BLM from a clear violation of Congress’ appropriation acts. 31 U.S.C. §1341(a)(1)(A).

Summary:

The Oil and Gas Development PRMPA/FEIS violates Congressional Appropriations Acts by analyzing Lands with Wilderness Characteristics.

Response:

The BLM’s authority for managing lands to protect or enhance wilderness characteristics is derived directly from Section 202 of FLPMA, which gives the Secretary of the Interior authority to manage public lands for multiple use and sustained yield.

FLPMA makes it clear that the term “multiple use” means that not every use is appropriate for every acre of public land, and that the Secretary can “make the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use...” (FLPMA, Section 103(c)). Further, FLPMA directs that the public lands be managed in a manner “that, where appropriate, will preserve and protect certain public lands in their natural condition” (FLPMA, Section 102(a)). FLPMA authorizes the Secretary of the Interior to use land use planning as a mechanism for allocating resource use, including wilderness character management, amongst the various resources in a way that provides for current and future generations.

Accordingly, the BLM considered the protection of lands with wilderness characteristics in the Oil and Gas Development PRMPA/FEIS. The Oil and Gas Development PRMPA/FEIS identifies areas where the BLM will manage to protect lands with wilderness characteristics.

The BLM properly exercised its authority to identifying protections for lands with wilderness characteristics.

Clarifications

Issue Number: PP-CO-WhiteRiver-15-03-2

Organization: Encana Oil and Gas

Protestor: Jason Oates

Issue Excerpt Text: In addition, the BLM should clarify how it will determine habitat

boundaries going forward. Both the BLM and Colorado Parks and Wildlife (CPW) occasionally modify identified habitat boundaries, and because the Proposed White River RMPA will impose certain restrictions on operators based on the absence or presence of various types of habitat, the source of data

the BLM will use to determine habitat boundaries must be made absolutely clear. For example, the BLM proposes to use habitat maps based on CPW's information in certain places, notably for the purpose of calculating collective and acute effects for determination of wildlife thresholds. See Proposed White River RMPA, Table 2-4, Record 6, pg. 2-4-3; Record 13, pg. 2-4-13; Table 2-6, Record 9, pg. 2-6-6; Record 10, 2-6-7. In Appendix E, the BLM uses its own GIS data for the same calculations, but makes at least one reference to CPW data. (Proposed White River RMPA app. E, pg. E-19- E-43.) The operator is unsure whether to rely on the BLM's RMPA or on CPW's latest maps, or whether site-specific surveys that rebut either or both the BLM's or CPW's information should be used. The BLM should clarify whether it intends to use BLM or CPW data for mapping habitat boundary changes going forward.

Issue Number: PP-CO-WhiteRiver-15-04-2

Organization: WPX Energy

Protestor: Chad Odegard

Issue Excerpt Text: In addition, the BLM should clarify how it will determine habitat

boundaries going forward. Both the BLM and Colorado Parks and Wildlife (CPW) occasionally modify identified habitat boundaries, and because the Proposed White River RMPA will impose certain restrictions on operators based on the absence or presence of various types of habitat, the source of data the BLM will use to determine habitat boundaries must be made absolutely clear. For example, the BLM proposes to use habitat maps based on CPW's information in certain places, notably for the purpose of calculating collective and acute effects for determination of wildlife thresholds. See Proposed White River RMPA, Table 2-4, Record 6, pg. 2-4-3; Record 13, pg. 2-4-13; Table 2-6, Record 9, pg. 2-6-6; Record 10, 2-6-7. In Appendix E, the BLM uses its own GIS data for the same calculations, but makes at least one reference to CPW data. (Proposed White River RMPA app. E, pg. E-19- E-43.) WPX is unsure whether to rely on the BLM's RMPA or the CPW's latest maps, or whether site-specific surveys that rebut either or both the BLM's or CPW's information should be used. The BLM should clarify whether it intends to use BLM or CPW data for mapping habitat boundary changes going forward.

Summary:

The BLM should clarify whether it intends to use BLM or Colorado Parks and Wildlife (CPW) data for mapping habitat boundaries.

Response:

In Section 2.4.6.1 of the Oil and Gas Development PRMPA/FEIS, the BLM explains that "Mapping used in conjunction with the threshold alternatives is a simplified version of [Colorado Parks and Wildlife (CPW)] 2012 Natural Diversity Information Source (NDIS) mule deer data. Implementation of a threshold management system requires timely tracking of fluid mineral development and the application/calculation of buffers in a GIS framework. Operation and interpretation of this system would have been severely complicated by NDIS mapping's extensive range overlap, so a simplified version composed of discrete polygons was developed in coordination with CPW staff. This mapping prioritizes mule deer and their ranges in the following hierarchy: severe winter range, summer range, winter concentration area, and general winter range. This mapping would be capable of incorporating routine CPW updates (Map 2-7)."

Future exercises conducted by the BLM to modify habitat boundaries would include coordination with CPW and would follow the framework described above (i.e., no overlap between seasonal ranges, and prioritization of seasonal ranges within the identified hierarchy).