



April 24, 2015

Via Federal Express

Bureau of Land Management
Director (210)
Attention: Protest Coordinator
20 M Street SE, Room 2134LM
Washington, D.C. 20003

Via U.S. Mail

Bureau of Land Management
Director (210)
Attention: Protest Coordinator
P.O. Box 71383
Washington, D.C. 20024-1383

RE: Protest of the White River Proposed Resource Management Plan Amendment and Final Environmental Impact Statement for Oil and Gas Development

Dear BLM Director Kornze:

Western Energy Alliance and West Slope Colorado Oil and Gas Association (WSCOGA) submit this protest to the proposed White River Proposed Resource Management Plan Amendment and Final Environmental Impact Statement (PRMPA/FEIS) pursuant to 43 C.F.R. §1610.5-2.

Western Energy Alliance represents over 450 companies engaged in all aspects of environmentally responsible exploration and production of oil and natural gas in the West. WSCOGA is a member-based organization focused on promoting the development of natural gas and oil resources in Northwest Colorado. Members of both Western Energy Alliance and WSCOGA (the associations) are committed to developing the significant oil and natural gas resources within the White River planning area in an environmentally responsible manner. The associations have a vested interest in the decisions made by the Bureau of Land Management (BLM) for the planning area that affect existing and future leases as well as exploration and development activities. The associations have standing because they participated in the White River RMP/EIS process, and provided information to BLM in a comment letter dated January 28, 2013.

The associations support BLM's planning efforts to balance multiple and often competing interests in the White River planning area in accordance with the Federal Land Policy and Management Act (FLPMA). However, we have serious concerns that the PRMPA will render it nearly impossible to develop oil and natural gas leases in the planning area. BLM has clearly violated the Energy Policy Act of 2005 that requires it to protect natural resource values with the least restrictive stipulations possible.

We are also concerned that BLM will not have the manpower or expertise to enforce and regulate the program it has proposed. Given the onerous restrictions and the vast discretion given BLM, it will be very difficult for operators to commit the financial resources to future development in the area. The environment of uncertainty will significantly impede investment of the resources necessary to develop the oil and natural gas potential in the White River Planning Area. In addition, existing investments will likely lose considerable value because the BLM proposes to apply new restrictions to existing leases, which will prevent operators from meaningfully exercising their valid existing rights.

Western Energy Alliance protests nine components of the PRMP/FEIS: (1) Violation of valid existing lease rights; (2) lack of justification for excessive restrictions; (3) the Dinosaur Trail Master Leasing Plan (MLP); (4) use of development thresholds on a planning area basis; (5) arbitrary and unduly burdensome Greater Sage-Grouse restrictions; (6) inappropriate regulation of air emissions; (7) inclusion of a Water Resource Monitoring Plan without public comment; (8) unjustified lands with wilderness characteristics; and (9) inadequate socio-economic impacts analysis.

Statement of Reasons as to Error in the PRMPA

1. Valid Existing Lease Rights: The PRMPA impedes lessees from exercising their valid existing rights, particularly through the imposition of overly restrictive stipulations and Conditions of Approval (COA). FLPMA requires BLM to ensure that valid existing lease rights are unequivocally protected. In the PRMP, while 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. 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.

2. Lack of Justification for Excessive Restrictions: In the PRMPA, BLM has not provided justification for imposing prohibitive stipulations of No Surface Occupancy (NSO) and Controlled Surface Use (CSU) to 867,400 acres. Section 363 of the Energy Policy Act of 2005 (EPA 2005) requires the

Secretary of the Interior and the Secretary of Agriculture to enter into a Memorandum of Understanding (MOU) regarding oil and natural gas leasing and to ensure that lease stipulations are applied consistently, coordinated between agencies, and “only as restrictive as necessary to protect the resources for which the stipulations are applied.”

Pursuant to EAct 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.

In comparison to the 1997 White River RMP, the PRMPA would almost double the amount of acreage subject to TLS and nearly triple the amount of acreage subject to NSO stipulations. BLM has failed to explain how this dramatic increase comports with EAct 2005, and should revise the PRMPA accordingly.

3. Dinosaur Trail Master Leasing Plan: BLM proposes an 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. 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.

4. Development Thresholds: 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. 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, 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. Under the PRMPA, an individual project that has little or minimal impact on wildlife habitat could not be

approved when the thresholds proposed have been exceeded. Existing procedures allow BLM to evaluate and mitigate potential impacts from individual projects, and these procedures should be followed instead of “thresholds” which BLM admits have no prior applications. BLM should also reserve the discretion to use adaptive management to more flexibly approve projects and appropriate mitigation.

The associations further protest BLM’s failure to allow year-round operations within the planning area. BLM will consider year-round well development, but only subject to numerous, onerous requirements. Rather, BLM should reserve the flexibility to grant WEMs to timing limitations and allow year-round operations on a site- or project-specific basis, rather than through arbitrary thresholds, and revise the PRMPA accordingly.

5. Arbitrary and Unduly Burdensome Greater Sage-Grouse Restrictions: Western Energy Alliance protests BLM’s use of unduly burdensome restrictions on oil and natural gas development in greater sage-grouse (GrSG) habitat. BLM’s proposed restrictions on oil and natural gas development in GrSG Priority and General Habitats: (1) are not based in science; (2) are unduly and unnecessarily restrictive; and, (3) are arbitrary and capricious in comparison to other recently-approved and draft BLM GrSG planning documents. BLM’s GrSG measures must be revised.

The PRMPA proposes, among other things, NSO restrictions within 0.6 miles of active and inactive leks with strict and narrowly interpreted criteria for exception or modification and that existing facilities within that radius be removed within five years of approval of the ROD; a 2% disturbance cap limit on surface occupancy and long-term conversion or adverse modification of certain sage-grouse habitat within a lease-holding; expanded timing limitations in Priority and General Habitat; and additional threshold limitations on development in Priority and General Habitat. See Chapter 2, Table 2.6.

Conversely, the Northwest Colorado Draft RMPA/DEIS for GrSG (GrSG DRMPA) preferred alternative proposed a 5% disturbance cap on GrSG Management Zones, allowing for certain exception, modification, and waiver criteria.¹ Additionally, the GrSG DRMPA allows BLM to authorize disturbance in excess of 5% “if data-based documentation is available to warrant a conclusion that GRSG populations are healthy and stable or increasing.”² The Associations’ comments on the GrSG DRMPA are attached to this protest for your reference.

Similarly, the Lander RMP Revision, signed just last year, prescribes a 5% disturbance threshold with viable exception criteria. Notably, the Lander planning area includes higher density GrSG habitat than the WRFO planning area, yet imposes more reasonable GrSG measures on development.

¹ GrSG DRMPA at xxxii, 38-39.

² *Id.* at 519.

Pursuant to statute and regulation BLM is required to use high quality, “accurate scientific information” in its planning process,³ and present the data in a way that “the public can readily understand.”⁴ Similarly, under the Data Quality Act, the BLM is required to ensure and maximize the “quality, objectivity, utility, and integrity of information disseminated” from BLM to the public.⁵ BLM entirely ignored relevant valid scientific studies on the GrSG, including:

- Applegate D., N. Owens. 2014. Oil and gas impacts on Wyoming’s sage-grouse: summarizing the past and predicting the foreseeable future. *Human-Wildlife Interactions* 8(2):284-290;
- Dzialak MR, C.V. Olson, S.M. Harju, S.L. Webb, J.P. Mudd. 2011. Identifying and Prioritizing Greater Sage-Grouse Nesting and Brood-Rearing Habitat for Conservation in Human-Modified Landscapes. *PLoS ONE* 6(10): e26273. doi:10.1371/journal.pone.0026273;
- Guttery M.R, D.K Dahlgren, T.A. Messmer, J.W.Connelly, and K.P. Reese. 2013. Effects of Landscape-Scale Environmental Variation on Greater Sage-Grouse Chick Survival. *PLoS ONE* 8(6): e65582. doi:10.1371/journal.pone.0065582; and
- Zink R.M. 2014. Comparison of Patterns of Genetic Variation and Demographic History in the Greater Sage-Grouse (*Centrocercus urophasianus*): Relevance for Conservation. *The Open Ornithology Journal* 2014, 7, 00-00.

BLM has an obligation to ensure the integrity of information used in its land use planning decisions. Here, however, BLM failed to show whether it utilized any science at all to draft its GrSG protective measures. BLM must be transparent and provide clarity on the basis of its GrSG restrictions.

BLM’s current GrSG measures are more restrictive than existing federal reports and recommendations and far more unduly restrictive than more recent scientific and biological studies. The PRMPA proposes to impose upon lessees’ valid existing lease rights a “no significant impact” standard for oil and natural gas operations, violating the terms of the leases, and violating BLM’s statutory mandate under FLPMA to manage public lands for multiple use, and its recognition of oil and natural gas resources as a “major use” of public lands. Accordingly, BLM must revise the PRMPA to provide reasonable, science-based and record-supported, protective measures for the GrSG.

Further, BLM’s proposed 2% surface disturbance threshold stands to expose the agency to litigation risk where development on private minerals would count towards the threshold at the expense of adjacent federal minerals. These issues include BLM’s statutory and regulatory

³ 40 C.F.R. § 1500.1(b).

⁴ 40 C.F.R. § 1502.8.

⁵ See Section 515 of the 2001 Consolidated Appropriations Act, Public Law 106-554.

responsibilities to prevent waste and drainage, as well as potential takings claims from companies, and claims from other third parties, such as counties that would not be receiving their share of federal oil and natural gas royalties from the State of Colorado's federal royalty share.

Finally, BLM's GrSG restrictions are arbitrary, capricious, and contrary to law. The GrSG measures are substantially more restrictive than measures put in place in recent BLM planning documents, such as the 2014 Lander RMP Revision, and are significantly out of alignment from those restrictions proposed in the Northwest Colorado GrSG DRMPA. The PRMPA provides no justification or scientific support for its dramatic departure from these recent BLM decisions, evidencing arbitrary and capricious decision-making that will not withstand legal scrutiny.

BLM must be consistent in its application of GrSG restrictions, and must provide justification based on accurate science and data. The PRMPA must provide GrSG management that allows for transparency and regulatory certainty for companies to promote responsible and efficient leasing, exploration, and development.

6. Inappropriate Regulation of Air Emissions: BLM's one-year pre-development baseline monitoring requirement in Appendix J, 3.1.2 is onerous and goes beyond BLM's jurisdiction. BLM has not adequately justified why such extremely expensive and time-consuming monitoring is necessary given that the area in question is currently in attainment for all criteria pollutants. BLM also exceeds its regulatory purview in Appendix J 4.2, where it requires specific projects to track emissions of criteria pollutants, Volatile Organic Compounds, Hazardous Air Pollutants and greenhouse gas emissions for use in potential enforcement activity, outlined in Appendix J, 4.4.3. By adding the Comprehensive Air Resources Protection Protocol (CARPP – Appendix J), BLM will create unnecessary confusion and even contradicting requirements for air quality compliance. 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 BLM. BLM lacks authority to impose controls and limitations beyond those adopted by the state and EPA.

Due to regional wind patterns moving from west to east, western Colorado, including the WRFO Planning Area, is substantially affected by pollution from all parts of the West Coast and Mexico. Criteria air-pollutant baseline levels must account for these external sources, and quantify their concurrent contribution before the baseline can be used to measure rates from present levels. BLM provides no indication of applying this local-versus-external source calibration to its air quality monitoring data.

The associations also protest 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, BLM cannot impose an emission threshold, as it conflicts with the state's regulatory primacy. Any emission reductions achieved on these below-threshold targets will be highly expensive and likely negated by emissions associated with additional construction, fuel and transportation activities required for compliance. This proposed rule would result in significant economic cost with no measurable environmental benefits.

The associations further protest the inclusion of emissions offsets as a “reasonable mitigation” strategy in Appendix J, 3.5.2. This reference is vague, broad and was not included in the Draft RMPA. BLM should remove any reference to emission offsets as a potentially required strategy. As BLM lacks jurisdiction on air quality, the PRMPA must be revised accordingly.

7. Water Resource Monitoring Plan: The Water Resource Monitoring Plan was not included in the Draft White River RMPA (DRMPA), and we protest its inclusion in the PRMPA without adequate public notice and comment. In Appendix I 2.0 part 2 BLM states it can modify this plan with a maintenance action “as necessary” to meet “changing circumstances.” This is vague, broad and beyond BLM’s statutory authority regarding water quality and quantity, for which the state has jurisdiction. The associations also protest the duplicative data collection procedures proposed in Appendix I 4.2.3. By seeking to establish data collection requirements for groundwater sampling, BLM is infringing upon state regulatory authority. The PRMPA should be revised accordingly.

8. Lands with Wilderness Characteristics: BLM made substantial changes to designated Lands with Wilderness Characteristics (LWCs) in the planning area, including the addition of several areas not discussed in the DRMPA and the significant expansion of a number of other LWCs. BLM substantially increased the acres of LWCs from the DRMPA to the PRMPA, adding new areas not identified until a 2013 inventory, and overall increased the acreage of LWCs to 301,900 acres. 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. BLM further added five new LWCs encompassing 27,800 total acres, none of which were included in the DRMPA because BLM did not identify them until a 2013 survey.

Designation of these areas is not just a procedural action by the BLM—the designations result in burdensome restrictions on development of substantial portions of the Planning Area, including NSO, CSU, and TLS. Under Section 102 of FLPMA, Congress directed BLM to manage lands on a multiple-use basis to “...best meet the present and future needs of the American people” in a “combination of balanced and diverse resource uses,” including minerals development. Importantly, in Section 103(c) of FLPMA, Congress listed resources that BLM should take into account in allocating management, and “wilderness characteristics” is not included as such a resource. On the other hand, mineral development is a “principal or major use” of public lands under FLPMA. Congress further emphasized the importance of minerals development by declaring that public lands be managed “in a manner which recognizes the Nation’s need for domestic sources of minerals.”

The addition of new LWCs and significant increases in size of other LWCs is a significant change upon which the associations had no opportunity to comment. BLM’s expansion of LWCs in the planning area therefore requires 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 DRMPA and provide an opportunity for comment prior to issuing its ROD and final approved RMPA.

9. Inadequate Socio-Economic Impact Analysis: 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 PRMPA makes only fleeting remarks on the importance of oil and natural gas revenues to the state, but offers no specifics and makes no attempt to quantify the cumulative negative effects from 83,300 acres of land closures, increased imposition of prohibitive stipulations, an MLP, costly air and water requirements, and other restrictions that will make it extremely difficult if not impossible in some circumstances to develop oil and natural gas in the planning area.

BLM has singled out oil and natural gas activity for further restrictions, and these restrictions are based on an unsubstantiated need for change of the current RMP based on an outdated evaluation (2007 Reasonable Foreseeable Development Scenario) of future drilling and development activity that severely overestimates oil and natural gas impact. The PRMPA should respond proportionately to actual activity levels.

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

Thank you for considering these points of protest. The associations welcome the opportunity to meet with BLM to discuss and negotiate a potential resolution to one or more of the issues presented in this protest.

Sincerely,



Kathleen Sgamma
Western Energy Alliance



David Ludlam
West Slope Colorado Oil & Gas Association

Enclosures

cc: Ruth Welch, BLM Colorado State Director
Kent Walter, BLM White River Field Manager
Joe Meyer, BLM Northwest District Manager