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NORTHWEST ROCKY MOUNTAIN WASHINGTON, DC INTERNATIONAL

May 15, 2014

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Colorado River Valley Field Office
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Email: WRNFleases@blm.gov

BY ELECTRONIC MAIL
AND OVERNIGHT DELIVERY

Re: Scoping comments for NEPA analysis of 65 improperly-issued leases on White River National Forest

Dear Mr. Bennett:

Please accept these comments on behalf of Wilderness Workshop, the Sierra Club, Conservation Colorado, Natural Resources Defense Council, Western Colorado Congress, The Wilderness Society, Citizens for a Healthy Community, High Country Conservation Advocates, San Juan Citizens Alliance, and Rocky Mountain Wild (collectively, the Conservation Groups), regarding the Bureau of Land Management's (BLM) planned environmental impact statement (EIS) addressing 65 improperly-issued oil and gas leases on the White River National Forest. See 79 Fed. Reg. 18576 (April 2, 2014) (notice of intent).

Wilderness Workshop is a nonprofit organization based in Carbondale, Colorado. Wilderness Workshop's mission is to protect and conserve the public lands and natural resources of the Roaring Fork Watershed, the White River National Forest, and adjacent public lands. Wilderness Workshop is one of a number of local stakeholders working to protect the Thompson Divide, and other areas in the National Forest, from oil and gas development.

The Sierra Club was founded in 1892 and is the nation's oldest grassroots environmental organization. The Sierra Club is incorporated in California, and has approximately 600,000 members nationwide and is dedicated to the protection and preservation of the environment. The Sierra Club's mission is to explore, enjoy and protect the wild places of the earth; to practice and promote the responsible use of the earth's ecosystems and resources; and to educate and enlist humanity to protect and restore the quality of the natural and human environments. The Sierra Club has a Rocky Mountain Chapter, which was formed more than 30 years ago to preserve, protect, and enjoy the wild places of Colorado. Today, the Rocky Mountain Chapter has more than 15,000 members and is comprised of 10 local groups spread out across the state of Colorado, including the Roaring Fork Valley group and the Uncompahgre Group based in Grand Junction, and has members that live in and use this area for recreation such as hiking, snowshoeing, cross-country skiing, climbing, backpacking, camping, fishing and wildlife viewing, as well as for business, scientific, spiritual, aesthetic and environmental purposes.

Conservation Colorado is a grassroots organization working to protect our air, land, water, and people. We focus on ending the era of dirty fossil fuels and accelerating the transition

to clean, renewable energy; solving the climate change crisis; and preserving public lands, clean air and clean water for everyone. We have a long and successful history in Colorado of collaborating on the key environmental issues of the day, and establishing strategic partnerships to find success at the state and federal levels.

The Natural Resources Defense Council (NRDC) is a nonprofit environmental membership organization with more than 400,000 members throughout the United States. Over 45,000 NRDC members and activists reside in Colorado. NRDC has had a longstanding and active interest in the protection of the public lands in Colorado, and in the White River National Forest in particular. With its nationwide membership and a staff of lawyers, scientists, and other environmental specialists, NRDC plays a leading role in a diverse range of land and wildlife management and resource development issues. Over the years, NRDC has participated in a number of court cases involving resource development issues throughout the American West, including Colorado and the White River National Forest. NRDC members use and enjoy the White River National Forest for a wide range of activities, including recreation, wildlife viewing, and solitude.

Western Colorado Congress (WCC) is an alliance for community action dedicated to challenging social, environmental and economic injustice. WCC members live in and near oil & gas producing regions of Colorado, including the greater Piceance Basin. Hundreds of WCC members live in Garfield and Mesa Counties, close to lands pertaining to this federal decision. Our folks are landowners, impacted neighbors, concerned citizens and mineral owners who reside near Carbondale, Silt, Battlement Mesa, Rifle, and Collbran. The leases in question, if developed, could significantly hurt local health, quality of life, community well-being, agriculture, and ecosystems.

The Wilderness Society has a long-standing interest in the management of federal lands in Colorado and engages frequently in the decision-making processes for land use planning and project proposals that could potentially affect citizen-proposed wilderness areas and other wilderness-quality lands managed by the U.S. Forest Service and BLM in Colorado. TWS is and has been an ardent supporter and defender of the Roadless Area Conservation Rule, and we and our members care deeply about conserving our roadless forest lands in Colorado and nationally. TWS members and staff enjoy a myriad of recreation opportunities on our public lands, including hiking, biking, nature-viewing, photography, and the quiet contemplation in the solitude offered by wild places. Founded in 1935, our mission is to protect wilderness and inspire Americans to care for our wild places.

Citizens for a Healthy Community (CHC) is a grassroots community organization formed by concerned residents in 2009 to protect people and their environment from irresponsible oil and gas development in the Delta County Region of Colorado. CHC has more than 300 members across the region and its board of directors consists of local farmers, wine makers, small business owners, and other residents concerned about irresponsible oil and gas development.

Rocky Mountain Wild is dedicated to conserving and recovering native and naturally functioning ecosystems in the Greater Southern Rockies and Plains. Its members value the clean water, fresh air, healthy communities, sources of food and medicine, and recreational opportunities provided by native biological diversity. Rocky Mountain Wild passionately believes that all species and their natural communities have the right to exist and thrive. Rocky Mountain Wild uses the best available science to forward its mission through participation in policy, administrative processes, legal action, public outreach and organizing, and education. We focus on oil and gas development as this is a threat to many of the species in our region and fragments the habitat they need to survive.

High Country Conservation Advocates (HCCA) was founded in 1977 as High Country Citizens' Alliance, and continues to protect the health and natural beauty of the land, rivers, and wildlife in and around Gunnison County now and for future generations. In Gunnison County, we tirelessly work to protect roadless areas and ensure that any proposed oil and gas development in the headwaters of iconic western rivers is done responsibly.

San Juan Citizens Alliance has been the lead conservation organization working in the San Juan Basin for 25 years. SJCA is a grassroots organization dedicated to social, economic and environmental justice in the San Juan Basin. We organize San Juan Basin residents to protect our water and air, our public lands, our rural character, and our unique quality of life while embracing the diversity of our region's people, economy and ecology. Our members live, work, play, and are deeply engaged with the San Juan public lands. We have actively engaged in every major land management decision on the San Juan public lands for more than 25 years.

INTRODUCTION

The Conservation Groups support BLM's reconsideration of the 65 improperly-issued leases. This National Environmental Policy Act (NEPA) process will allow the Forest Service and BLM to correct several errors in the issuance of the 65 leases. In addition to the NEPA violation addressed in Board of Commissioners of Pitkin County and Wilderness Workshop, et al., 173 IBLA 173 (2007) (Pitkin County), and identified in the notice of intent, the issuance of the leases was improper for several other reasons. These include other systemic violations of NEPA and the Endangered Species Act, and disregard of the Forest Service's 2001 Roadless Area Conservation Rule. See pp. 5-10, infra. Given the systemic nature of the legal violations plaguing these leases, addressing them in a single analysis is the only appropriate way to proceed. BLM's planned EIS for all 65 leases will avoid dozens of piecemeal disputes and inconsistencies in the treatment of individual leases.

Reconsideration of the improperly-issued leases is particularly important because they affect some of the most ecologically important land in western Colorado. The 65 leases cover numerous inventoried roadless areas and habitat for a variety of wildlife. Many of the leases, such as those on parts of the Thompson Divide, also support local ranchers, hunters and anglers, recreationists, and the businesses that depend on those existing uses. These environmental values and uses all are incompatible with oil and gas development.

For that reason, we urge BLM to cancel the 65 improperly-issued leases and preserve these parts of the National Forest for other uses. Not only does BLM have the authority to take this step, but consideration of such an alternative is required by NEPA.

We also note that BLM's analysis of the 65 leases takes place against the backdrop of two new planning decisions by BLM and the Forest Service: the proposed Resource Management Plan for BLM's Colorado River Valley Field Office (the CRVFO RMP), and the Forest Service's Oil and Gas Leasing EIS for the White River National Forest (the Oil and Gas Leasing EIS). Both planning decisions are expected to be adopted later this year, and will govern BLM's decisions on the 65 leases. The Conservation Groups have previously raised a number of issues with regard to both the proposed CRVFO RMP and the Oil and Gas Leasing EIS. We urge BLM to consider these concerns and ensure they are addressed in applying the plans to the 65 improperly-issued leases. We attach our protest on the CRVFO RMP, and comments on the draft Oil and Gas Leasing EIS, and incorporate those documents by reference. In addition, BLM must identify and disclose all connected actions and cumulative impacts resulting from other activities occurring under these plans.

DISCUSSION

A. BLM MUST CONSIDER AN ALTERNATIVE CANCELLING ALL THE LEASES

1. BLM Must Use A Baseline Of No Leasing As Its No Action Alternative.

First, BLM must include a No-Action alternative in its EIS. 40 C.F.R. § 1502.14(d). Because the EIS will reconsider BLM's earlier decision to issue the leases, the No-Action Alternative must represent the pre-leasing status quo: an outcome where none of the 65 leases are issued. The point of NEPA is to consider impacts before leasing occurs.[1] If some other baseline were used for the No-Action Alternative – such as the status quo today with invalid leases in place – it would turn the BLM's analysis on its head and effectively eliminate the purpose of reconsidering BLM's earlier decisions based on additional NEPA analysis.

BLM's notice of intent (NOI) appears to contemplate that an alternative cancelling all 65 leases will be considered. 79 Fed. Reg. at 18576 (stating that "BLM will determine whether these 65 leases should be voided . . ."). We support such an effort, and urge that this option be designated as the preferred alternative.

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[1] See, e.g., New Mexico ex rel. Richardson v. Bureau of Land Mgt., 565 F.3d 683, 716-18 (10th Cir. 2009) (NEPA analysis of all "'reasonably foreseeable impacts must occur . . . before an 'irretrievable commitment of resources' is made," such as issuance of a lease without no surface occupancy stipulations); Custer Cnty. Action Ass'n v. Garvey, 256 F.3d 1024, 1040 (10th Cir. 2001) (no-action alternative serves as a benchmark to measure the potential impacts of the proposed action).

2. BLM Has Authority To Cancel Leases, And Should Do So.

While adopting the No-Action alternative at this stage will require cancelling leases, BLM can and should take this step. There is no legal obstacle to cancellation because the 65 leases were issued in violation of NEPA.

The law is clear that no vested rights are created when leases are issued in violation of NEPA. Sangre de Cristo Devt. Co. v. United States, 932 F.2d 891, 894-96 (10th Cir. 1991). Department of Interior regulations provide that "[l]eases shall be subject to cancellation if improperly issued." 43 C.F.R. § 3108.3(d). The Interior Board of Land Appeals (IBLA) and federal courts have ruled that leases sold in violation of NEPA or other procedural laws may be cancelled. Grynberg v. Kempthorne, 2008 WL 2445564, *4 (D. Colo. June 16, 2008) (BLM has authority to "cancel [a] lease administratively for invalidity at its inception."); Celeste C. Grynberg, 169 IBLA 178, 183 (2006) ("It is well established that the Secretary of the Interior has the authority to cancel any oil and gas lease issued contrary to law because of the inadvertence of his subordinates, including administrative errors committed prior to lease issuance.") (citing Boesche v. Udall, 373 U.S. 472, 476 (1963)); Clayton W. Williams, Jr., 103 IBLA 192, 202 (1988).

In fact, BLM has cancelled leases issued under circumstances identical to the 65 leases at issue here. Following the IBLA ruling in Pitkin County, BLM declared the leases in that case invalid ab initio, withdrew them effective as of their date of issuance, and refunded the company's rental and bonus bids for the leases. See Aug. 12, 2009 letter from BLM to Encana, attached at SG Interests SDR Petition Appx. pp. 244-45 (BLM decision voiding the leases). BLM can and should take the same step here.[2]

3. BLM Must Consider Cancelling Leases for Noncompliance with the Endangered Species Act.

BLM has another basis for cancelling many of the 65 leases: they were issued without compliance with the Endangered Species Act (ESA). As part of this process, BLM must identify and cancel those leases.

Section 7(a)(2) of the ESA requires that "[e]ach federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out by such agency…is not likely to jeopardize the continued existence of any endangered species or

[2] To the extent leases have been committed to unit agreements, the unit areas can be contracted to exclude the leases being cancelled. 43 C.F.R. § 3186.1 ¶ 2 (unit area can be contracted "when requested by [BLM]," which shall occur "whenever such . . . contraction is deemed to be necessary or advisable"). Moreover, while producing wells have been drilled on only a small handful of the 65 leases, these producing leases may also be cancelled by BLM. See 43 C.F.R. § 3108.3.

threatened species" or "result in the destruction or adverse modification of" a listed species' designated critical habitat. 16 U.S.C. § 1536(a)(2). To ensure compliance with these substantive provisions, the "action agency" must "consult" with and obtain the expert opinion of the U.S. Fish & Wildlife Service (FWS), before the agency takes any discretionary action that "may affect" a listed species or designated critical habitat. Id.; 50 C.F.R.§ 402.14(a); Nat'l Wildlife Fed'n v. Nat'l Marine Fisheries Serv., 524 F.3d 917, 924 (9th Cir. 2008).

Issuance of an oil and gas lease represents a federal action that may affect listed species or critical habitat, and leasing therefore may not occur without completion of the consultation process. See 16 U.S.C. § 1536(a); 50 C.F.R. §§ 402.14, 402.13; Connor v. Burford, 848 F. 2d 1441, 1455 (9th Cir. 1988) (BLM could not issue oil and gas leases until FWS analyzed consequences of all stages of leasing plan in a Biological Opinion).

The IBLA's Pitkin County decision recognized this requirement: in addition to invalidating leases for violating NEPA, it also ruled that the leases violated the ESA. See Pitkin County, 173 IBLA at 186-87. The Interior Department's Office of the Solicitor for the Rocky Mountain Region also has concluded that the ESA requires the Forest Service and BLM to complete formal consultation with FWS prior to issuing an oil and gas lease containing habitat occupied by threatened or endangered species:

> [T]he Department of the Interior may not deny all rights to drill on a Federal oil and gas lease, unless it has expressly reserved that right in the initial lease terms by, for example, imposing a no surface occupancy stipulation (NSO). This means that the appropriate stage for comprehensive study in the case of endangered species…is the leasing stage. … This also means that in the absence of an NSO stipulation biological opinions need to be completed at the leasing stage to determine whether the Department must expressly reserve the right to prohibit all surface activity on the lease.

Memorandum from Regional Solicitor, Rocky Mountain Region, to Regional Director, Fish and Wildlife Service, Region 6, at 2 (Nov. 18, 1992).

For at least some of the 65 leases being reviewed, BLM failed to meet this requirement. For example, BLM was required to consult with FWS when it issued the Lake Ridge leases in the Thompson Divide to SG Interests in 2003. The Lake Ridge lease parcels fall within or in close proximity to areas identified as providing occupied or high potential habitat for the Canada lynx, a species listed in 2000 as threatened under the ESA.[3] 65 Fed. Reg. 16052 (Mar. 24, 2000). However, BLM did not consult with FWS when it issued the leases in 2003. Nor is there any indication that BLM even assessed lynx presence in the leasing area or evaluated its ESA obligations prior to issuing the leases. This failure violated the ESA.

[3] See SG Interests SDR petition at 31 and Appx. p. 278, attached. Consultation was also required to address potential impacts to other listed species in the area, including Greenback Cutthroat Trout and Ute Ladies' Tresses.

Other leases likely were issued with a similar flaw. BLM's NOI, in fact, notes that its analysis will address changes since 1993 to species listed as threatened or endangered under the ESA. 79 Fed. Reg. at 18577. As part of that effort, BLM must identify which of the leases were issued in violation of the ESA, 16 U.S.C. § 1536(a)(2), and should cancel those leases.

B. IN MAKING A NEW LEASING DECISION, BLM MUST OBTAIN UPDATED CONSENT TO LEASE FROM THE FOREST SERVICE

The NOI explains that BLM will make a new leasing decision, which may include: (a) voiding the leases, (b) reaffirming them, or (c) modifying their terms. 79 Fed. Reg. at 18576. In making that decision, BLM must obtain consent to lease from the Forest Service under the Federal Onshore Oil and Gas Leasing Reform Act of 1987 (FOOGLRA). That consent will identify whether particular lands are available to lease, and what stipulations and conditions must be attached to any leases.

Under FOOGLRA, BLM cannot offer national forest lands for lease without obtaining the Forest Service's consent. 30 U.S.C. § 226(h); 43 C.F.R. § 3101.7(c). To obtain that consent, BLM must provide the Forest Service with a description of the specific lands proposed for leasing. 43 C.F.R. §§ 3101.7(a), (c); BLM Handbook H-3101-1 at 27 and Appendix 3 page 3; BLM Handbook H-3120-1 at 10. Upon receiving that description, the Forest Service confirms that the lands are available for leasing under the forest plan and that there is no new information that requires additional environmental analysis prior to leasing. 36 C.F.R. § 228.102(e). In addition, the Forest Service must ensure that the proposed leases comply with all applicable laws. 55 Fed. Reg. 10423, 10430 (Mar. 21, 1990). For example, the Forest Service cannot consent to issuance of leases that would violate NEPA or the Roadless Area Conservation Rule. See pp. 9-10, infra. The Forest Service also informs BLM of stipulations or conditions that should be imposed on leases. Id. § 228.102(e)(2). Any leases issued by BLM must include stipulations or other conditions required by the Forest Service as part of the consent process. 43 C.F.R. §§ 3101.7-2(a).

To comply with these laws, BLM must obtain updated consent from the Forest Service before making a new decision on the 65 leases. The Forest Service's consent is as important now as it was when the leases were first issued. Part of the consent process requires a Forest Service determination of whether significant new information requires additional environmental analysis. 36 C.F.R. § 228.102(e)(1). If such new information exists, or the existing NEPA analysis is inadequate, new analysis is required before the Forest Service consents to leasing. Id.

A new assessment by the Forest Service is needed because the NEPA analysis under which the leases were initially issued - a 1993 Oil and Gas Leasing EIS for the White River National Forest - is totally outdated. BLM and the Forest Service, in fact, both acknowledge that the 21-year-old EIS is inadequate to support leasing decisions for the 65 leases. The Forest Service is revising that 1993 EIS, and we understand that a final analysis and new planning

decision are expected later this year.[4] BLM similarly recognizes the need for new information and does not plan to rely on the Forest Service's 1993 EIS. Instead, the NOI indicates that BLM's analysis of the 65 leases will incorporate as much of the Forest Service's new Oil and Gas Leasing EIS as possible. 79 Fed. Reg. at 18577. Given the consensus that significant new information exists and that the 1993 EIS does not adequately address leasing, BLM cannot rely on the Forest Service's previous consent based on that 1993 EIS. The Forest Service must be given the opportunity to review the environmental issues raised by the 65 leases based on a current NEPA document. When it reviews the new Oil and Gas Leasing EIS the Forest Service may conclude, for example, that additional site-specific analysis of certain issues is needed before deciding whether to issue particular leases.

FOOGLRA, moreover, requires BLM to do more than just allow the Forest Service to consider the environmental impacts of leasing particular lands. The law also requires BLM to abide by the Forest Service's choices about whether lands may be leased and under what conditions. Along with its new EIS, the Forest Service will issue a new record of decision (ROD) later this year identifying which national forest lands are available for leasing and what stipulations and conditions must be attached to leases. 36 C.F.R. § 228.102. Those new decisions will be binding: BLM's decision on the 65 leases will have to comport with the Forest Service's new oil and gas leasing decision. 43 C.F.R. § 3101.7; 36 C.F.R. § 228.102.

For example, to the extent any of the 65 leases covers land designated as unavailable for leasing by the Forest Service, those leases will have to be cancelled. Similarly, any no surface occupancy stipulations required as a result of the Forest Service's Oil and Gas Leasing EIS and ROD must be attached to the leases. And even if leasing in certain areas is allowed under the new ROD, it is not required. The Forest Service may determine that leasing specific lands is not "appropriate" despite being permitted under the forest plan. 55 Fed. Reg. at 10430 (a finding that leasing is consistent with forest plan "is more narrow than the decision as to whether or not the Forest Service will authorize the Bureau of Land Management to offer the specified lands for leasing").

In short, BLM cannot make a new leasing decision based on an updated environmental analysis without also obtaining updated consent to lease from the Forest Service. The Forest Service must be given an opportunity to assess current environmental conditions, choose whether to consent to leasing, and identify necessary conditions for any leases that are not cancelled.

[4] See http://a123.g.akamai.net/7/123/11558/abc123/forestservic.download.akamai.com/11558/www/nepa/61875_FSPLT2_277716.pdf (executive summary from 2012 draft EIS).

C. IF IT DOES NOT CANCEL ALL THE LEASES, BLM MUST ATTACH LEASE NOTICES OR STIPULATIONS PROTECTING ROADLESS AREAS

Our understanding is that at least 42 of the leases under consideration, and a majority of the total leased acreage in the 65 leases, lie within inventoried roadless areas on the White River National Forest. But most or all of the leases covering those roadless lands appear to lack stipulations or notices expressly requiring compliance with the Forest Service roadless rules. To the extent BLM does not cancel these leases, the agency must add lease notices or stipulations that cover all lands within Forest Service roadless areas and require compliance with both the Forest Service's 2001 Roadless Area Conservation Rule (the roadless rule) and the 2012 Colorado roadless rule. While these rules (and other applicable laws) are incorporated into standard federal lease terms, stipulations or conditions expressly referencing the roadless rule are necessary to ensure that the rule is implemented.

The 2001 roadless rule bars any road construction or reconstruction within inventoried roadless areas on national forest land. 66 Fed. Reg. 3244, 3272-73 (Jan. 12, 2001). Any rights under leases offered after promulgation of the 2001 roadless rule are subject to that rule.[5] This is because BLM's standard lease form provides that the lessee's rights are subject, among other requirements, to: (a) "applicable laws," and (b) "regulations . . . hereafter promulgated" when not inconsistent with the lease. BLM lease form 3100-11. Further, our understanding is that the 65 leases have the standard provision mandated by Forest Service Manual 2822.42, which requires "compl[iance] with all the rules and regulations of the Secretary of Agriculture . . . governing the use and management of the National Forest System (NFS) when not inconsistent with the rights granted by" BLM in the lease.[6]

While many of the leases in question were issued during periods when the roadless rule was embroiled in litigation, that rule was eventually upheld by the United States Court of Appeals for the Tenth Circuit and is the law of the land today. State of Wyoming v. U.S.D.A., 661 F.3d 1209 (10th Cir. 2011).[7]

Subsequently, in 2012, the Forest Service adopted a state-specific rule for Colorado that requires similar protections. 36 C.F.R. § 294.40-294.49. Because the 2012 Colorado rule is "not inconsistent with" leases that are already limited by the 2001 rule, the lessees must comply with

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[5] At least some leases issued in Colorado before 2001 also are subject to the roadless rule. See, e.g., lease COC 63886, attached.

[6] To the extent BLM or any of the lessees assert that the leases conveyed rights not subject to the roadless rule, they are invalid. See Grynberg, 2008 WL 2445564 at ** 2-4 (upholding decision that lease was "invalid ab initio" where BLM failed to obtain required consent from Forest Service); 43 C.F.R. § 3108.3(d) (leases subject to cancellation if improperly issued).

[7] Moreover, many of the leases were sold during periods over the course of the litigation when the roadless rule had not been enjoined and was indisputably in force. For example, the Lake Ridge leases in the Thompson Divide were sold during such a period in mid-2003. But to our knowledge, no stipulations or lease notices were attached to these leases at the time.

the 2012 rule as well. See BLM lease form 3100-11; Forest Service Manual 2822.42 (standard stipulation).

BLM has acknowledged that the roadless rule is an applicable law governing lease rights. For example, when issuing leases elsewhere in Colorado, BLM attached a lease notice regarding the roadless rule. See, e.g., leases COC 65523 (page 12 of 15), COC 63886 (page 11 of 11); see also, 43 C.F.R. § 3101.1-3 (lease information notices "give notice of existing legal requirements . . . relative to lease management within the terms and conditions of the standard lease form"). BLM and the Forest Service, however, failed to attach such notices or stipulations for the large majority of the 65 leases at issue here.

This omission violated Forest Service regulations, which require that all "appropriate stipulations . . . necessary to implement" the forest plan, and to comply with other laws, must be included in the lease. 55 Fed. Reg. at 10430; see also, 36 C.F.R. § 228.102(e). By omitting any express reference to the roadless rule, the Forest Service failed to meet this requirement.[8] A notice or stipulation expressly referencing the roadless rule is necessary because it ensures that the rule will be implemented when the lessee proposes development on the lease. For example, BLM and the Forest Service routinely attach lease stipulations or notices where certain areas of a lease are subject to requirements for protection of specific natural resources such as wetlands, big game winter range, landslide-prone areas, steep slopes, areas of critical environmental concern, and habitat for endangered or threatened species. See, e.g., lease COC 65523, attached. Roadless areas are no different. A notice or stipulation expressly referencing the roadless rule is necessary to ensure that its requirements are not overlooked during the development phase.

This omission should be corrected. BLM has an obligation to conduct its own NEPA analysis, or review and adopt the Forest Service's analysis as its own. 40 C.F.R. § 1506.3; BLM Handbook H-3101-1 at 26. In doing so, BLM must "state how . . . decisions based on [the EIS] will or will not achieve the requirements of . . . environmental laws and policies." 40 C.F.R. § 1502.2(d). Moreover, BLM can correct the mistake itself by imposing roadless stipulations on the leases. See 43 C.F.R. § 3101.7-2(a) (BLM "may add additional stipulations" beyond those required by the surface managing agency).

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[8] The Forest Service's oversight appears to have resulted from at least two factors. First, the agency was operating under the 1993 oil and gas leasing EIS, which was prepared eight years before promulgation of the 2001 roadless rule. Second, when the Forest Service carried forward its 1993 oil and gas leasing decision in a 2002 forest plan, the agency assumed (incorrectly) that the roadless rule did not apply. Record of Decision for White River National Forest Land and Resource Management Plan – 2002 Revision at 9-10, 37, attached (2002 forest plan ROD treats the 2001 roadless rule as enjoined and allows significant road building in inventoried roadless areas). These omissions represent additional legal violations in the original issuance of the 65 leases, and are another reason why updated consent to lease must be obtained from the Forest Service. As noted above, where there is significant new information or circumstances an updated NEPA analysis must be completed before the Forest Service consents to leasing. 36 C.F.R. § 228.102(e)(1).

Whether by lease notice or lease stipulations, BLM must ensure that the roadless rule is applied to the leases.

Thank you for your consideration of these comments.

Sincerely,

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Cc (w/enclosures):
Peter Hart

Cc (w/o enclosures):
Scott Fitzwilliams
Matthew McKeown
Chris Seldin

ATTACHED DOCUMENTS
(all materials submitted on enclosed thumb drive)

1. April 28, 2014 Wilderness Workshop Petition for Colorado State Director Review of decision extending suspension of 18 leases held by SG Interests (with appendix and attachments)

2. April 28, 2014 Wilderness Workshop Petition for Colorado State Director Review of decision extending suspension of 7 leases held by Ursa Piceance, LLC (with exhibits)

3. November 30, 2012 Comments by Wilderness Workshop et al. on White River National Forest draft Oil and Gas Leasing Environmental Impact Statement (with exhibits)

4. May 5, 2014 Protest by Wilderness Workshop, et al. of BLM Colorado River Valley Field Office proposed Resource Management Plan and Final Environmental Impact Statement (exhibits on file with Field Office)

5. BLM Oil and Gas Lease COC 65523

6. BLM Oil and Gas Lease COC 63886