

Comments of the Colorado and National Wildlife Federations

January 28, 2013

United States Bureau of Land Management  
Oil & Gas Draft RMPA/EIS Comments  
Bureau of Land Management White River Field Office  
220 East Market Street  
Meeker, CO 81641

Via electronic mail to [Colorado\\_WROGEIS@blm.gov](mailto:Colorado_WROGEIS@blm.gov)

To Whom It May Concern:

Please accept the following comments on the Draft Resource Management Plan Amendment/Draft Environmental Impact Statement for the Bureau of Land Management Colorado White River Field Office on behalf of the Colorado Wildlife Federation and the National Wildlife Federation.

The National Wildlife Federation (NWF) is a nation-wide, member-supported non-profit organization aimed at conservation, education, and advocacy. NWF is affiliated with conservation organizations in 47 states and territories, and is dedicated to conserving wildlife and its habitat nationwide. NWF is especially concerned with federal management of public lands. The Colorado Wildlife Federation (CWF) is the Colorado affiliate of NWF, and is also a member-supported non-profit organization. CWF is Colorado's oldest conservation organization. CWF's mission is to promote the conservation, sound management, and sustainable use of Colorado's wildlife and its habitat.

We note that in addition to these comments, CWF and NWF participated in submitting the White River Field Office Backcountry Conservation Area Proposal, which outlines a Backcountry Conservation Area designation that could help safeguard high quality fish and wildlife habitat on some 229,000 acres of backcountry-quality land within the WRFO. These comments are in addition to that proposal, and address more generally our concerns with the failures of the RMPA/EIS to adequately disclose adverse impacts to wildlife and provide for multiple-use management and sustained yield.

**I. Background**

Regulations adopted by CEQ require a reasonable range of alternatives to be presented and analyzed in the EIS so that issues are "sharply defined" and the EIS provides "a clear basis for choice among options . . . ." 40 C.F.R. § 1502.14. CEQ regulations and court decisions make clear that the discussion of alternatives is "the heart" of the NEPA process. Environmental analysis must "[r]igorously explore and objectively evaluate all reasonable alternatives." Objective evaluation is compromised when agency officials bind themselves to a particular

outcome or foreclose certain alternatives at the outset. BLM must use the scoping process to develop alternatives that emphasize needed environmental protection, for example, even if such alternatives limit and/or strongly regulate other actions. BLM's obligations under FLPMA to manage the public lands for multiple uses in a sustained manner and to prevent unnecessary or undue degradation of the lands and their resources demand no less.

BLM must bear in mind that the "primary purpose" of an EIS is to "insure that the policies and goals defined in [NEPA] are infused into the ongoing programs and actions of the Federal Government." 40 C.F.R. § 1502.1. The policies and goals of NEPA include:

Encouraging a "productive and enjoyable harmony between man and his environment,"  
Promoting "efforts which will prevent or eliminate damage to the environment and biosphere,"  
Using "all practicable means and measures . . . to create and maintain conditions under which man and nature can exist in productive harmony . . .," and  
Fulfilling "the responsibilities of each generation as trustee of the environment for succeeding generations,"

42 U.S.C. §§ 4321-4331; *see also* BLM Handbook H-1790-1.V. B.2.a(3). Thus, the issues that BLM must identify for analysis in its EIS include the above goals and policies, and we ask BLM to "insure" that these considerations are "infused" into the land management decisions considered in the EIS and authorized by the final revised RMP.

NEPA requires BLM to address a number of other factors that BLM should not overlook as it completes the RMP amendment process for the White River Field office. NEPA requires the BLM to "insure that presently unquantified environmental amenities and values" are given consideration, "recognize the worldwide and long-range character of environmental problems and thus support international efforts to prevent declines in the world environment," and "initiate and utilize ecological information in the planning and development of resource-oriented projects." 42 U.S.C. § 4332, 40 C.F.R. § 1507.2; *see also* BLM Handbook H-1790-1.V. B.2.a.(3). In amending this RMP, BLM should consider, analyze, and, wherever appropriate, facilitate international efforts to prevent environmental decline. Second, the EIS supporting the RMP should explicitly address those environmental values, such as scenery and solitude, for which an economic price is not easily set. Finally, the best available ecological information should be utilized in developing the EIS and RMP.

Under FLPMA, land use plans for public lands are to "use and observe" multiple use and sustained yield principles, give priority to designation and protection of areas of critical environmental concern, and provide for compliance with pollution control laws. 43 U.S.C. § 1712(c). *See* 43 U.S.C. § 1711(a); BLM Handbook H-1601-1.

FLPMA explicitly provides that BLM need not accommodate all resource uses on all lands. BLM must consider the relative value of the resources involved. There are no replacements or substitutes for some resources on the public lands, such as crucial wildlife habitats, cultural and paleontological resources, clean air, clean water, and wilderness-quality lands. As such, they have a greater relative value than resources that can be provided by other means or in other locations. The alternative plans that are developed, and particularly the preferred alternative, must give special emphasis to preserving rare resources.

Since sustained yield can be achieved by providing for regular periodic outputs of renewable resources, BLM must consider this measure of sustained yield rather than just high-level annual measures. Occasional (periodic) outputs of some resources may be far more sustainable than attempts to produce the resource annually, especially at a “high-level.” For example, drought may render livestock grazing unacceptable some years.

In addition to the requirement to manage for multiple use and sustained yield, Congress declared that the public lands are to be “managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values . . .” as well as to “preserve and protect certain public lands in their natural condition” and provide “food and habitat for fish and wildlife.” 43 U.S.C. §1701(a)(8) (emphasis added). Alternatives that do not meet these criteria should be rejected without further consideration.

## **II. Affected Resources**

The area and habitats encompassed by the White River Field Office offer some of the finest big game hunting in the United States. Colorado Parks and Wildlife Game Management Units 11 and 21 have produced world-class mule deer bucks and high-quality elk for many years. Hunters travel to northwest Colorado every fall for this hunting experience, contributing approximately \$68 million annually to the economies of Rio Blanco, Moffat, and Garfield Counties. This economic contribution and hunting heritage can only be sustained, however, if big game populations can be maintained at or near CPW objective levels, and if the area can continue to present a quality hunting experience for residents and visitors alike.

The Piceance Basin, known as the “mule deer factory” due to the once-abundant deer populations there, remains home to the largest migratory mule deer herd in North America, as well as strong populations of deer, elk, and imperiled greater sage-grouse. Colorado Parks and Wildlife data presented to the Wildlife Commission in 2011, however, indicate that, following decline over thirty years due to severe winters, drought, and habitat loss to energy development, the population of CPW’s Data Analysis Unit D-7 (which encompasses the Piceance) has fallen from an early-1980s high of approximately 120,000 to just 43,700 following the 2011 hunting season. This is a mere 65% of CPW’s stated herd objective of 67,500 deer.

BLM is preparing the current Oil and Gas Amendment because existing levels of oil and gas development have greatly exceeded the levels foreseen in the existing White River Resource Management Plan. The proposed alternative (Alternative C) authorizes approximately 15,000 new oil and gas wells on 1,800 new well pads, whereas the allegedly more-protective Alternative B authorizes approximately 9,200 new oil and gas wells. Under the analysis in the EIS (which, as discussed below, substantially understates reasonably foreseeable adverse wildlife impacts), the BLM's preferred alternative would result in a loss of fully 25% of mule deer winter range and 20% of occupied greater sage-grouse habitat.

### **III. Failure to Employ Best Available Information**

BLM's analysis of direct, indirect, and cumulative impacts to big game and avian species within the White River Area fails to meet the most basic requirement of NEPA – employing reliable, up-to-date, scientific information. Under the preferred alternative, BLM sets a “management goal” of sustaining big game at a level of at least 70 percent of CPW's long-term population objective. DRMPA/EIS 2-19. This goal, however, is unaccompanied by any rigorous or quantitative analysis of the foreseeable relationships between habitat loss, indirect effects, and population levels. Most glaringly, however, this goal is set based on the patently false assertion that the current population of CPW deer unit D-7, White River, has a current population of 106,000 deer, “substantially larger than the CPW population objective.” DRMPA/EIS 3-51. The source of this assumption is unclear (BLM cites “CDOW data, 2006” without a specific source), but the most recent population estimate (fall 2011) for DAU D-7 is 43,700 deer. If BLM assumes (without disclosing its methodology) that its plan would reduce a herd of 106,000 to 47,250 (70% of CPW's population objective of 67,500), how much more severe will the effects be on a population already well below objective and suffering decline from years of energy development, drought, and harsh winters?

### **IV. Inadequacy of Mitigation Measures**

The preferred alternative does not even pretend to offer a serious proposal to protect against habitat fragmentation and the cumulative effects of development. The plan's goal is to limit disturbance to 25% of winter range within each lease area is far short of a credible proposal to limit habitat and population loss. The BLM needs to provide stronger enforcement mechanisms if the proposed protections are going to be effective.

At a minimum, BLM should allow no more than one well pad per mile. There is evidence that 160-acre spacing for well pads may not be sufficient to conserve crucial big game habitat, especially in calving and fawning areas. *See Wyoming Game and Fish Department, Recommendations for Development of Oil & Gas Resources Within Crucial & Important Wildlife Habitats 2004* [<http://gf.state.wy.us/downloads/pdf/og.pdf>]. Given current technology, it is unclear why this density is even necessary. Using directional drilling with a 2,500ft reach

reduces surface density dramatically, and is currently used in the industry. One well pad per section is not out of the question and 320-acre spacing is clearly attainable.

The DRMPA/EIS's assumptions regarding mitigation are untenable for a variety of other reasons. First, although its methodology is undisclosed and unclear, it appears to assume a linear relationship between gross habitat loss and population decline (under alternative C, loss of approximately 30% of habitat leads to a loss of approximately 55% of mule deer population (106,000 to 47,250) over the course of the plan. However, seasonal habitats are not uniformly equivalent, nor are well pads evenly distributed across the landscape. Occupied seasonal habitats are generally occupied because they are the best resources available, and unoccupied substitute habitats of equivalent quality are not available – otherwise, they would be occupied. Displacement of mule deer and elk from their occupied seasonal ranges will only lead to greater competition, particularly in severe winters, and to population effects which could be even greater than ones simply proportionate to percentage of habitat lost.

Secondly, the DRMPA/EIS assumes, again without documentation or disclosed methodology, that interim reclamation will reduce the magnitude of adverse impacts to big game habitat. However, the EIS itself (4-184) acknowledges that BLM reclamation efforts to date in comparable areas have been largely unsuccessful. The EIS furnishes no evidence why we should believe that reclamation efforts in the White River Field Office will achieve an unprecedented level of success. Indeed, the EIS model (E-2) appears to assume that interim reclamation will completely restore habitat to functionality after only six years, in an arid landscape where sagebrush communities can take many decades to re-establish, if such re-establishment is even possible.

## **V. Failure to Consider Reasonable Range of Alternatives**

Currently, the United States Fish and Wildlife Service is in the process of developing a rule for the greater sage-grouse under the Endangered Species Act. Recognizing the critical role of BLM lands as habitat for this species and the threat from energy development, the BLM has convened a National Technical Team to compile the best available scientific knowledge regarding sage-grouse conservation and develop recommendations for avoiding continued decline that could contribute to the extinction of the species.

Bafflingly, the White River DRMPA/EIS flatly and arbitrarily refuses to even discuss or consider the recommendations of the National Technical Team:

The BLM published a Notice of Intent in the Federal Register on December 9, 2011, initiating a range-wide planning process that would analyze the National Technical Team Report Alternative in detail. The BLM Northwest Colorado

District Office is in the process of completing an Environmental Impact Statement and possible Plan Amendment that will consider and analyze this alternative in detail, and will address BLM-managed lands in the White River Field Office planning area. The Oil and Gas Development RMP Amendment does address management of greater sage-grouse but only in the context of decisions related to oil and gas development. The National Technical Team (NTT) Report presented guidance related to the fluid minerals program but also to wide range of programs including travel and transportation management, recreation, lands and realty, range, wild horses, solid minerals, locatable minerals, salable minerals, vegetation treatments, and fire management. Addressing changes to other programs besides fluid minerals and the creation of special designations is outside the scope of this planning effort. Further, the BLM is not making allocation decisions related to areas open or closed to oil and gas leasing during this planning effort. Therefore, the Greater Sage Grouse NTT Report Alternative has been considered but eliminated from detailed analysis for this planning process.

DRMPA/EIS 1-18. This flat refusal to even consider the BLM's own experts' guidance on sage-grouse conservation contravenes BLM's obligations under NEPA to consider best available scientific information and a reasonable range of alternatives, its multiple-use management obligations under FLPMA, and its duties under the Endangered Species Act to avoid contributing to the likelihood of extinction of a species eligible for listing under that Act. The reasoning proffered for rejecting the NTT Report out of hand is untenable. Just because the NTT Report covers uses other than oil and gas does not give the BLM *carte blanche* to ignore reliable scientific and technical information relevant to an oil and gas plan amendment. Second, BLM engages in a logical fallacy that because it has decided *a priori* not to close any lands to oil and gas leasing in this amendment that it cannot consider the NTT Report (presumably because its recommendations might compel the closure of certain habitats to leasing).

## **VI. Failure to Consider Master Leasing Plans**

BLM's cursory "analysis" of Master Leasing Plans in Appendix I fails to meet the obligations of Instruction Memorandum 2010-117. IM 2010-117 requires preparation of a Master Leasing Plan where:

- A substantial portion of the area to be analyzed in the MLP is not currently leased.
- There is a majority Federal mineral interest.
- The oil and gas industry has expressed a specific interest in leasing, and there is a moderate or high potential for oil and gas confirmed by the discovery of oil and gas in the general area.
- Additional analysis or information is needed to address likely resource or cumulative impacts if oil and gas development were to occur where there are:

Citizen groups nominated two areas within the WRFO – the Eastern Book Cliffs/Piceance Basin area and the Dinosaur Lowlands area. BLM acknowledges that both areas meet criteria 2, 3, and 4 (DRMPA/EIS I-3 to I-4). It rejects consideration of MLPs because approximately 78% of the Book Cliffs and 60% of the Dinosaur Lowlands are currently leased, then briefly reiterates the general management measures of the overall RMP, without considering management measures applicable to the specific resources of the two proposed MLPs. Although IM 2010-117 does not define the term “substantial,” CWF and NWF are deeply troubled by the Colorado BLM’s continued refusal to consider MLP analysis wherever more than 50% of an area is under lease. The Book Cliffs offer approximately 93,000 acres of unleased public land and the Dinosaur Lowlands some 211,000 acres. The Instruction Memorandum address “substantial” unleased lands, not “majority” unleased lands. There are nearly 300,000 acres within these two MLP zones where the BLM itself acknowledges important resource conflicts, including wildlife, cultural resources, wilderness potential, and State Wildlife Areas. DRMPA/EIS I-4. A cramped reading of the word “substantial” in IM 2010-117 is not a valid reason for failing even to consider alternative management possibilities for these two resource-rich areas.

## **VII. Conclusion**

CWF and NWF are deeply disappointed that the Draft RMPA/EIS fails to employ accurate, up-to-date scientific information, relies on unwarranted assumptions regarding mitigation, and fails to consider any alternatives that could meaningfully conserve sustainable levels of resources other than oil and gas production. We believe that the current EIS should be abandoned and replaced by a new EIS and proposed RMP that:

1. Employs current and reliable scientific information
2. Incorporates alternatives that provide meaningful protection for wildlife resources, including mule deer, elk, and sage-grouse habitat
3. Takes into account the analysis and recommendations of the Greater Sage-Grouse National Technical Team
4. Conducts a meaningful analysis of potential Master Leasing Plans for the Eastern Book Cliffs and Dinosaur Lowlands

Sincerely,

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