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November 29, 2012

David Francomb  
Deputy District Ranger  
White River National Forest, Aspen-Sopris Ranger District  
P.O. Box 309 Carbondale, CO 81623

Re: Noble Energy, Inc. Comments on the White River National Forest Oil and Gas Leasing Draft Environmental Impact Statement

Dear Deputy District Ranger Francomb:

Noble Energy, Inc. ("Noble") hereby submits the following comments on the United States Department of Agriculture, United States Forest Service ("USFS"), White River National Forest Oil and Gas Leasing Draft Environmental Impact Statement ("White River Leasing DEIS") as announced in the Federal Register on August 31, 2012. 77 Fed. Reg. 53,198. Noble submits these comments to the USFS because of the likelihood of significant detrimental impacts that any decision other than Alternative A of the USFS's analysis ("White River Leasing Analysis") will have upon Noble's ongoing operations and future responsible development of oil and gas resources on valid existing lease rights in the White River National Forest ("White River Forest").

Noble has significant interest in areas managed by the White River Forest including over 11,000 gross acres of federal oil and gas leases and almost 13,000 acres of private leases and mineral deeds. Noble operates numerous wells in the White River Forest, and specifically in the Cache Creek Area (South Grand Valley, Battlement Mesa, and Rulison), and has produced since production initiated in 2006 approximately 120 billion cubic feet of natural gas and approximately 64,000 barrels of oil from these wells. To date, Noble has drilled 362 natural gas wells. Noble's valid existing leasing rights provide for an additional 1,483 wells to be drilled. Moreover, Noble has numerous employees in our Rifle Field Office as well as contractors that perform activities in the area managed by the White River Forest. The adoption of the White River Oil and Gas Leasing EIS and proposed amendments to the White River Forest Plan will significantly impact both Noble's existing operations and its future operations in the White River Forest.

## **GENERAL COMMENTS**

As the USFS is aware, portions of the White River Forest have significant potential for responsible oil and gas development. White River Leasing DEIS, pg. 3-158; *see also* Reasonably Foreseeable Development Scenario for Oil and Gas Activities on the White River National Forest. The USFS should not unreasonably restrict access to this important source of domestic energy. As currently drafted, Noble opposes Alternatives B, C, and D because they place far too many onerous and

unreasonable restrictions on future responsible oil and gas leasing and development. Alternatives C and D apply no surface occupancy (“NSO”) restrictions on nearly all acres open to oil and gas leasing within the White River Forest. White River Leasing DEIS, pg. 2-80. This is a significant increase over the limitations contained in the current White River Forest Plan and Leasing Decision adopted by the BLM in 1993. Alternatives C and D further apply controlled surface use (“CSU”) or timing stipulations to a staggering 100 percent of the lands open to oil and gas leasing. *Id.* This is a significant and unprecedented increase over the current Forest Plan and should be carefully reconsidered. The USFS is making it virtually impossible to reasonably develop oil and gas resources within the White River Forest. These restrictions will have a negative impact on the region’s economy and they will make the region far less competitive for responsible oil and gas development. White River Leasing DEIS, pg. 3-276.

When finalizing the White River Leasing Analysis, the USFS must ensure compliance with the Energy Policy Act of 2005, Energy Policy and Conservation Act of 2000 (“EPCA”), the National Energy Policy, and Executive Order Number 13212 (66 Fed. Reg. 28,357 (May 18, 2001)) to reduce rather than increase impediments to federal oil and gas leasing and development. As currently presented, the USFS has failed to comply with these policies because it is proposing huge new impediments to domestic energy development, especially under Alternatives B, C, and D. The USFS must reconsider Alternatives B, C, and D in particular given these policies as they clearly require the USFS to decrease rather than increase impediments to domestic energy production.

The USFS cannot utilize conditions of approval (“COAs”) in an attempt to modify or constrain valid existing rights. The Secretary of the Interior and the federal courts have interpreted the phrase “valid existing rights” to mean that BLM cannot impose stipulations or COAs that make development on the existing leases either uneconomic or unprofitable. *See Utah v. Andres*, 486 F.Supp. 995, 1011 (D. Utah 1979); *Connor v. Burford*, 84 F.2d 1441, 1449-50 (9th Cir. 1988); 43 C.F.R. § 3101.1-2 (BLM can impose only “reasonable mitigation measures . . . to minimize adverse impacts . . . to the extent consistent with lease rights granted”). This analysis is equally true for the USFS. The USFS cannot attempt to impose unreasonable mitigation measures or COAs on Operator’s existing leases within the White River Forest; the USFS must fully and completely honor all valid existing rights, including Noble’s existing oil and gas lease rights.

### **The USFS Must Manage Public Lands in the White River Forest for Multiple Uses, Including Oil and Gas Development**

As the USFS prepares its leasing analysis for the White River Forest, the USFS must remember that federal lands are intended to be managed for multiple uses, including the development of domestic energy resources. Throughout the White River Leasing DEIS, it appears the USFS is strenuously attempting to limit, if not preclude entirely, all future oil and gas development within the White River Forest. In Alternatives B, C, and D the USFS is unreasonably limiting oil and gas development through the use of overly prescriptive lease stipulations. These overreaching stipulations will almost certainly substantially reduce oil and gas development within the White River Forest. The USFS should carefully reconsider its analysis and attempt to develop a more reasonable, and balanced use of the public lands within the forest that provides for responsible oil and gas development.

### **Valid Existing Lease Rights Must Be Protected**

The USFS does not adequately or sufficiently protect valid existing rights in the White River Leasing DEIS. The USFS should expressly recognize that oil and gas leases are existing rights that cannot be modified unilaterally by the USFS or BLM. Once the BLM, on behalf of the USFS, has issued a federal oil and gas lease without NSO stipulations, and in the absence of a nondiscretionary statutory prohibition against development, neither the BLM nor the USFS can completely deny development on the leasehold. *See, e.g., National Wildlife Federation, et al.*, 150 IBLA 385, 403 (1999). Only Congress has the right to completely prohibit development once a lease has been issued. *Western Colorado Congress*, 130 IBLA 244, 248 (1994).

Thus, the USFS must acknowledge when it prepares the White River Leasing Analysis it is not working from a blank slate. Rather, many of the decisions made by the USFS in its previous leasing decisions will impact and limit its options in the current analysis. In particular, the USFS must acknowledge that operators such as Noble have valid, existing lease rights. The USFS cannot assume that existing leases will not be developed. The USFS must carefully review, acknowledge, and accept its limitations during this amendment process. As explained throughout these comments, the USFS cannot limit, restrain, or unreasonably interfere with existing rights.

In the revised leasing decision and accompanying environmental impact statement (“EIS”), the USFS should also recognize that an oil and gas lease is a contract between the federal government and the lessee, and that the lessee has certain rights thereunder. *See Mobil Oil Exploration & Producing Southeast, Inc. v. United States*, 530 U.S. 604, 620 (2000) (recognizing that lease contracts under the Outer Continental Shelf Lands Act gives lessees the right to explore for and develop oil and gas); *Oxy USA, Inc. v. Babbitt*, 268 F.3d 1001, 1006-7 (10th Cir. 2001) (noting that the Tenth Circuit has long held that federal oil and gas leases are contracts) *rev'd on other grounds*, *BP America Production Co. v. Burton*, 549 U.S. 84 (2006). Although the USFS may revise its leasing decision for the White River Forest, the USFS—and the public—should be reminded that the USFS cannot unilaterally alter or modify the terms of existing leases.

The BLM recently recognized the nature of existing oil and gas lease rights in the Pinedale, Wyoming RMP issued by the BLM in November 2008:

“Existing oil and gas or other mineral lease rights will be honored. When an oil and gas lease is issued, it constitutes a valid existing right; BLM cannot unilaterally change the terms and conditions of the lease . . . Surface use and timing restrictions from this RMP cannot be applied to existing leases.”

Pinedale RMP, pg. 2-19. Similar language exists in the December 2008 Rawlins, Wyoming RMP. *See* Rawlins RMP, pg. 20. Noble encourages the USFS to include similar language in the White River Leasing Analysis.

**Stipulations for Responsible Oil and Gas Development Should be Only as Restrictive as Necessary to Protect the Resources for Which the Stipulations Are Applied**

When developing the White River Leasing Analysis, the USFS should ensure that stipulations developed for future oil and gas leasing are the least restrictive as necessary to adequately protect other resource values. Since the USFS issued its last leasing document for the White River Forest in 1993, Congress passed the Energy Policy Act of 2005. Section 363 of that Act required the Secretary of the Interior and the Secretary of Agriculture to enter into a Memorandum of Understanding (“MOU”) regarding oil and 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.” Energy Policy Act of 2005, Pub. L. No. 109-58, § 363(b)(3), 119 Stat. 594, 722 (2005). The MOU required by § 363 of the Energy Policy Act of 2005 was finalized in April of 2006 as USFS Agreement No. 06-SU-11132428-052. Pursuant to the Energy Policy Act and the MOU required thereby, the stipulations for oil and gas leases within the White River Forest should not be onerous or more restrictive than necessary. Based on Noble’s review of the proposed Alternatives in the White River Leasing DEIS, the USFS neither followed the MOU’s guidance nor the express direction in the Energy Policy Act of 2005. In almost every instance, the USFS proposes to adopt stipulations that are far more restrictive when compared to existing stipulations. As drafted, the USFS’s proposal to eliminate lands with only standard stipulations under Alternatives B, C, and D is a stark example of the USFS’s failure to comply with the Energy Policy Act and the MOU required by section 363 of that act. The USFS must consider the MOU when selecting its Preferred Alternative or adopting an alternative in the White River Leasing Analysis. Although the USFS recognizes the existence of the MOU mandated by the Energy Policy Act, the USFS’s stipulations are inconsistent with the MOU, which contemplates that stipulations be as least restrictive as possible. Noble encourages the USFS to amend and revise its leasing analysis to appropriately apply the MOU to ensure that stipulations are far less restrictive than set forth under Alternatives C and D in the White River DEIS.

Beyond the general comments provided above, Noble additionally offers the following comments regarding specific aspects of the White River Leasing DEIS. For the agency’s convenience, these comments are organized by chapter and section of the White River Leasing DEIS.

**Adverse Impacts to Investments and Mineral Assets**

A review of Alternatives B, C, and D found in the White River Leasing DEIS suggests that the substantial economical and socio-economical investments made by various operators over time to acquire valid existing lease rights and develop the same would be undermined by the closing of lands for responsible oil and gas development. Moreover, Alternatives B, C, and D would unnecessarily diminish current mineral assets within the White River Forest.

Noble, as well as other operators, have invested heavily in leases, infrastructure, equipment, various environmental and regulatory analyses and surveys, local manpower, daily operations, and other expenses associated with the development and operation of responsible commercially-viable oil and gas production. These heavy investments were made, and continue to be made based on a reasonable assumption that land positions could be assembled once initial production proved the area’s viability and that additional lands would be available for lease in the future.

By closing – outright or via management practices – vast areas to new leasing, which is contemplated by Alternatives B, C, and D, the White River Leasing DEIS would compromise many of these investments and may ultimately force operators to reevaluate the economic conditions to determine whether to allow leases to expire. Simply put, many assets in the Piceance Basin could quickly become economically uncompetitive leaving affected counties and local communities to bear the brunt of decreased revenue from important mineral development as well as direct, indirect, and induced employment from responsible oil and gas development and operation.

## **CHAPTER 1 PURPOSE AND NEED FOR ACTION**

### **Section 1.4.5.4 – Lease Terms and Conditions**

The USFS appropriately recognizes that an oil and gas lease conveys the right to develop those resources on the leased land. White River Leasing DEIS, pg. 1-11. The USFS should also recognize that federal oil and gas lessees are required to maximize the amount of oil and gas produced from federal lands under a federal lease to the greatest extent possible in order to provide economic benefit to the federal treasury. *See 43 C.F.R. § 3162.1.* It is not simply a fact that oil and gas operators want to develop the federal leases, they are, in fact, required by the terms of their contract with the federal government to maximize oil and gas development. Noble encourages the USFS to recognize this fact in the final EIS.

### **Section 1.5.2 – Bureau of Land Management Decision**

To the greatest extent possible, the USFS should encourage the Bureau of Land Management (“BLM”) to review and adopt the analysis contained in the White River Leasing Environmental Impact Statement (“EIS”) and to issue its own record of decision. *Board of Commissioners of Pitkin County*, 173 IBLA 173 (2007). In the past BLM and USFS have failed to communicate and BLM has not independently reviewed and adopted the USFS’s leasing analysis. *See Id.* As a result, federal oil and gas leases have been cancelled to the detriment of oil and gas operators who purchased said leases in good faith and assuming BLM and USFS communicated as contemplated by national laws and policies. While Noble understands the USFS cannot force BLM to tier to or adopt this analysis, the USFS should, to the extent possible, encourage BLM to participate as a cooperating agency.

### **Section 1.6.4 – Issues Discussed but Considered Not Relevant**

Noble concurs with the USFS’s decision not to analyze in detail potential impacts from hydraulic fracturing and not to analyze an alternative focusing on the so-called Thompson Divide Area of Interest. With respect to hydraulic fracturing, Noble believes that the potential impacts associated with completion operations, if any, can be adequately addressed if and when site-specific development operations are proposed consistent with federal, state, and/or local statutes, rules, regulations, orders, and ordinances applicable at such time. Noble additionally believes that an Alternative related to the Thompson Divide Area of Interest is not necessary given the fact that BLM is proposing no new leasing under Alternative B and will impose NSO stipulations under Alternatives C and D. Those alternatives more than adequately address issues associated with the Thompson Divide Area.

### **Section 1.8 – Reasonably Foreseeable Development Scenario**

When discussing the Reasonably Foreseeable Development Scenario for oil and gas (“RFD Scenario”), the USFS very appropriately explains that the RFD Scenario is not a limit or threshold on future development. White River Leasing DEIS, pg. 1-28. Rather, the RFD Scenario is a tool utilized by the USFS to estimate the potential impacts of oil and gas development.

The Secretary of the Interior, through the IBLA, has made clear in at least nine separate decisions that the RFD Scenario is not a planning decision, nor is it a limit on future development. *Wyoming Outdoor Council, et al.*, 176 IBLA 15, 45 (2008); *Biodiversity Conservation Alliance, et al.*, 174 IBLA 1, 9 – 13 (2008) (holding with respect to the Great Divide RMP that the RFD Scenario is not a limitation on development); *Deborah Reichman*, 173 IBLA 149, 157 – 158 (2007) (holding with respect to the Dakota Prairie Grasslands Little Missouri National Grasslands RMP that the RFD Scenario is not a limitation on development); *National Wildlife Fed'n*, 170 IBLA 240, 249 (2006) (holding with respect to the Great Divide RMP that the RFD Scenario is not a limitation on development); *Wyoming Outdoor Council, et al.*, 164 IBLA 84, 99 (2004) (holding with respect to the Pinedale RMP that the RFD Scenario does not establish “a point past which further exploration and development is prohibited”); *Southern Utah Wilderness Alliance*, 159 IBLA 220, 234 (2003) (holding that the Book Cliffs RMP did not establish a well limit); *Theodore Roosevelt Conservation Partnership, et al.*, IBLA Docket No. 2007-208, Order at \*22 (Sept. 5, 2007); *Wyoming Outdoor Council, et al.*, IBLA Docket No. 2006-155, Order at \*26 - 27 (June 28, 2006) (determining RFD Scenario for Pinedale RMP is not a limitation on future development); *Biodiversity Conservation Alliance, et al.*, IBLA No. 2004-316, Order at \*7 (Oct. 6, 2004) (citing *Southern Utah Wilderness Alliance*, 159 IBLA at 234) (holding with respect to the Great Divide RMP that the “RFD scenario cannot be considered to establish a limit on the number of oil and gas wells that can be drilled in a resource area.”).

Even more recently, two federal courts confirmed that the RFD Scenario is not intended as a limit on oil and gas development. First, the United States District Court for the District of Columbia recently affirmed the Secretary’s position that the RFD Scenario is not a limit on future development in Wyoming. *Theodore Roosevelt Conservation Partnership v. Salazar*, 605 F.Supp.2d 263, 283 (D.D.C. 2009). The trial court’s determination was affirmed by the United States Court of Appeals for the District of Columbia Circuit, a decision that can only be overturned by the Supreme Court of the United States. In the decision, the federal appellate court determined that the RFD Scenario is merely an analytical tool, not “a point past which further exploration and development is prohibited.” *Theodore Roosevelt Conservation P’ship v. Salazar*, 616 F.3d 497, 509 (D.C. Cir. 2010).

As indicated by the number of decisions cited above, the purpose of the RFD Scenario continues to be a source of confusion and litigation. The USFS must carefully explain to the public that the RFD Scenario is not a cap or limitation on future development in the White River Forest. In order to prevent future litigation and appeals, the USFS must continue to include language in the Record of Decision describing the purpose of the RFD Scenario and the fact that the RFD Scenario is not a planning decision or limitation on future oil and gas development. The USFS must carefully draft any and all references to the RFD Scenario in the White River Leasing Analysis and accompanying EIS.

## **CHAPTER 2 ALTERNATIVES INCLUDING THE PROPOSED ACTION**

Overall, Noble does not believe the USFS has developed and analyzed a reasonable range of alternatives in the White River Leasing DEIS. Under all four scenarios presented, the USFS intends to significantly curtail and limit otherwise responsible oil and gas development in the White River Forest. The USFS did not analyze an alternative that would foster or encourage the development of the significant oil and gas resources located within the White River Forest or the economic impacts related to the proposed alternatives in the DEIS. As such, the USFS unreasonably limited the range of alternatives in a manner inconsistent with the USFSs' obligations under the National Environmental Policy Act of 1969 (NEPA). NEPA requires federal agencies to "rigorously explore and objectively evaluate all reasonable alternatives." 40 C.F.R. §1502.14 (a). Although the range of alternatives an agency must consider is not infinite, the USFS must analyze a reasonable set of alternatives. *Utahns For Better Transportation v. United States Department of Transportation*, 305 F.3d 1152, 1166 (10th Cir. 2002). In the White River Leasing Analysis the USFS did not reasonably analyze alternatives that could foster responsible oil and gas development. As such, the USFS failed to consider a reasonable range of alternatives and must prepare supplemental analysis to consider a more reasonable range of alternatives.

### **Section 2.2.3 – Action A: No Action (Current Management)**

Given the alternatives presented in the White River Leasing DEIS, Noble reluctantly supports Alternative A, the current management regime. Each of the other Alternatives presented in the White River Leasing DEIS unreasonably limits and forecloses future oil and gas leasing and development to an extent that is simply unacceptable. Even under Alternative A, just over 400,000 acres are available for oil and gas leasing out of the almost two million acres contained in the White River Forest.

### **Section 2.2.4 – Alternative B: No New Leasing**

Although Noble understands this alternative is required by the USFS Regulations, 36 C.F.R. § 228.102(c)(2), Noble urges the USFS not to adopt Alternative B. Such an Alternative is not consistent with the Energy Policy Act, the National Energy Policy, or reasonable management of the public lands. It is imperative the USFS increases the responsible domestic production of energy, not eliminate or preclude such development.

### **Section 2.2.5 – Alternative C: Proposed Action**

Noble does not support Alternative C, which would reduce the number of acres available for lease to just over 260,000 acres across the entire White River Forest. Under this alternative, the USFS would close through management direction 1,215,777 acres to future leasing which is a staggering percentage of the overall White River Forest. The USFS should not unreasonably limit responsible oil and gas development on federal lands.

Further, Noble strenuously disagrees with the USFS's assumption that under this alternative Noble's existing leases, which constitute valid existing rights, would not be developed. White River Leasing DEIS, pg. 2-48. The USFS's statement on page 2-48 appears to reflect a bias on behalf of the USFS to terminate existing, but not yet producing leases, in order to implement more strenuous

stipulations. This is particularly concerning as Noble understands BLM is currently analyzing proposals to develop some of these leases. The USFS must honor valid existing rights including those existing oil and gas lessees within the White River Forest.

Noble is additionally opposed to the proposal that of the 260,000 acres that may be offered under Alternative C, 200,000 of said acres would be offered only with NSO stipulations. White River Leasing DEIS, pg. 2-54. Such restrictions could significantly limit, if not preclude, future responsible oil and gas development under this Alternative. Noble urges BLM not to adopt Alternative C. Noble believes that oil and gas can be responsibly developed in this area without adverse impact to the environment and encourages the USFS to develop more reasonable and less restrictive stipulations. Examples of this include numerous Best Management Practices put in place as a result of collaboration between industry working groups and the BLM.

Further, the USFS has not analyzed or disclosed the potential impacts the limited future leasing under Alternatives C and D may have upon existing leases. Noble owns numerous leases within the White River Forest, but to the extent these leases are isolated, they are virtually impossible and not economically feasible to develop. Any responsible oil and gas producer who decides to take the risk of exploring by drilling a wildcat area must do so only after assembling a large enough block of leasehold acreage so that, if the drilling is successful, it can obtain an adequate return on the high risk dollars invested. BLM has, in other contexts, recognized this need for control of a reasonable acreage block. *See Prima Oil & Gas Co.*, 148 IBLA 45, 51 (1999) (BLM policy to suspend leases when “a lessee is unable to explore, develop, and produce leases due to the proximity, or commingling of other adjacent Federal lands needed for logical exploration and development that are currently not available for leasing”). The USFS must recognize, study, and report the economic impact its decision to close significant portions of the White River Forest to leasing, or to make significant portions only available with major constraints, will have upon future responsible exploration and development in the area. It is not enough for the USFS to simply assert that existing lease rights will be protected. Rather, the USFS must analyze how existing lease rights will be impacted by future limitations on future additional leasing and development and identify the protections it will afford to existing leases.

#### **Section 2.2.6 – Alternative D: Mixed Roadless Stipulations**

For many of the same reasons noted with respect to Alternative C, Noble is opposed to the USFS’s proposed management under Alternative D. As with Alternative C, under Alternative D the USFS would only offer 260,000 acres for lease, administratively closing approximately 1.2 million acres. White River Leasing DEIS, pg. 2-56. Such a decision unreasonably restricts responsible oil and gas development especially given the fact the vast majority of these areas would only be offered with CSU or NSO stipulations.

Noble remains opposed to the USFS’s assumption that existing, but not producing leases would expire and would only be offered with the new more stringent stipulations developed by the USFS in the White River Leasing DEIS. White River Leasing DEIS, pg. 2-56. Such a statement reflects a bias on the part of the USFS to deny development on existing leases, regardless of the terms of their leases. Case in point, Noble has drilled 362 wells to date and has the ability to develop 1,483 more wells under valid existing lease rights. The USFS must not select Alternative D.

## **CHAPTER 3 AFFECTED ENVIRONMENT AND ENVIRONMENTAL CONSEQUENCES**

Throughout Chapter 3 of the White River Leasing DEIS, the USFS appropriately indicates that surface disturbing activities are not part of the proposed action. Nonetheless, the USFS appropriately discloses potential future surface disturbing activities based on the RFD Scenario. By doing so, the USFS has not expended unnecessary resources attempting to disclose potential site-specific impacts of oil and gas development, while still analyzing reasonably foreseeable development. *See New Mexico v. Bureau of Land Management*, 565 F.3d 683, 718 (10th Cir. 2009); *N. Alaska Envt'l. Ctr. v. Kempthorne*, 457 F.3d 969, 977 (9th Cir. 2006); *N. Borough v. Anders*, 642 F.2d 589, 606 (D.C. Cir. 1980). Noble applauds the USFS for not attempting to anticipate potential impacts of development which cannot be reasonably foreseen or analyzed at this point in time.

### **Section 3.2.2 – Affected Environment – Surface Water**

The USFS should recognize in the White River Leasing DEIS that the Colorado Department of Public Health and Environment (“CDPHE”), with the assistance from the Colorado Oil and Gas Conservation Commission (“COGCC”), regulates all surface discharge of water, including water produced from oil and gas development and storm water discharges, through the Colorado Pollutant Discharge Elimination System permit process. Although the document mentions the CDPHE’s role in managing surface waters, the EIS should describe the State of Colorado’s primacy over such issues. The USFS should ensure that nothing in the White River Leasing DEIS interferes with CDPHE’s regulatory process given both CDPHE’s expertise and its direct authority via the US Environmental Protection Agency (“EPA”) and the Clean Water Act over water quality. Further, the USFS should recognize that produced water from oil and gas development can have beneficial impacts within the White River Forest. In similar documents BLM has recognized the production of water can be a beneficial impact, especially when the water can be used for agricultural, ranching, and wildlife purposes. *See* Bighorn Basin BLM Resource Management Plan Draft Environmental Impact Statement, pg. 3-36. Noble encourages the USFS to work with oil and gas operators, the CDPHE and other users in the White River Forest to maximize the appropriate best use of produced water.

### **Section 3.2.8 – Affected Environment – Air**

Air quality in Colorado continues to be an important issue for oil and gas operators, the public and regulatory agencies. Fortunately, according to the USFS’s analysis in the White River RMPA/DEIS, air quality in the White River Forest is very good. White River Leasing DEIS, pgs. 3-117 – 3-128. The available data collected in the area demonstrates compliance with all national ambient air quality standards, which have also been adopted in Colorado. *Id.* With respect to visibility, the information in the White River Leasing DEIS indicates that visibility in the area is also very good. *Id.*, at 3-124 – 3-125. Although there is only limited data regarding air quality within the area, all of the available information demonstrates that the air quality in the region is very good. Of particular note, the information in the DEIS indicates that ozone concentrations are actually declining across the area. White River Leasing DEIS, pg. 3-121. The data also indicates that nitrogen dioxide and carbon monoxide values are incredibly low within the White River Forest. White River Leasing DEIS, pg. 3-122. Given the excellent air quality in the area, the USFS should not attempt to impose unreasonable limitations on future oil and gas development based on air quality values.

When preparing the White River Leasing Analysis, the USFS must be cognizant of its limited authority to regulate air quality and air emissions. The USFS does not have direct authority over air quality or air emissions under the Clean Air Act (“CAA”). 42 U.S.C. §§ 7401 *et seq.* Under the express terms of the CAA, EPA has the authority to regulate air emissions. In Colorado, EPA has delegated its authority to CDPHE. *See COLO. REV. STAT.* §§ 25-7-1309. CDPHE recently issued regulations for oil and gas-related emissions. *See CDPHE, Air Quality Control Division, Regulation No. 7, CCR 1001-9* (Dec. 2006), and these regulations are the primary authority for regulation of oil and gas-related emissions in Colorado.

With respect to potential visibility impacts, the USFS’s authority is also limited by existing federal law. Under the CAA, a federal land manager’s authority is strictly limited to considering whether a “proposed major emitting facility will have an adverse impact” on visibility within designated Class I areas. 42 U.S.C. § 7475(d)(2)(B) (2012). Oil and gas operations do not meet the definition of a major emitting facility. 42 U.S.C. § 7479 (i). Further, under the CAA, the regulation of potential impacts to visibility and authority over air quality in general, rests with the CDPHE. 42 U.S.C. §§ 7407(a). The goal of preventing impairment of visibility in Class I areas will be achieved through the regional haze state implementation plans (“SIPs”) that are being developed. 42 U.S.C. § 7410(a)(2)(J). Accordingly, the USFS has little authority over air quality and cannot impose emissions restrictions, either directly or indirectly, on natural gas operations in Colorado, particularly if the overall goal is to reduce potential visibility impacts.

The Secretary of the Interior, through the IBLA, has unequivocally determined that in states such as Colorado the states, and not the federal land managers such as BLM or the USFS, have authority over air emissions:

In Wyoming, ensuring compliance with Federal and State air quality standards, setting maximum allowable limits (NAAQS and WAAQS) for six criteria pollutants CO (carbon monoxide), SO<sub>2</sub> (sulfur dioxide), NO<sub>2</sub>, ozone and particulate matter (PM<sub>10</sub> and PM<sub>2.5</sub>), and setting maximum allowable increases (PSD Increments) above legal baseline concentrations for three of these pollutants (SO<sub>2</sub>, NO<sub>2</sub>, and PM<sub>10</sub>) in Class I and Class II areas is the responsibility of WDEQ [Wyoming Department of Environmental Quality], subject to EPA oversight.

*Wyoming Outdoor Council, et al.*, 176 IBLA 15, 26 (2008). This analysis applies equally to the USFS. Noble encourages the USFS to add a statement in the White River Leasing EIS clarifying the scope of the USFS’s. The USFS does not have the authority to impose regulations or mandate control measures on emission sources, including oil and gas operations, within Colorado.

Noble encourages the USFS to revise its statement on page 3-116 of the White River Leasing DEIS regarding the National Ambient Air Quality Standard (“NAAQS”) for ozone. In the White River Leasing DEIS, the USFS appears to question EPA’s decision to set the NAAQS at 0.075 ppm for ozone in 2008. As the USFS is well aware, President Obama indicated his unwillingness to modify the NAAQS in a letter from the office of Management and Budget dated September 2, 2011. There is no indication that the President intends to revise this directive and, as such, the NAAQS for ozone will remain at 0.075 ppm at least until 2013 when EPA completes its scheduled review of the standard. Appropriate standards are currently in place and should be adopted by the USFS in the final EIS.

### **Section 3.2.11 – Affected Environment – Geology/Minerals**

The USFS indicates that existing, producing leases will continue to be developed particularly in the Hells Gulch and Cache Creek Project Areas, which is one of Noble's main leased present and future production areas. White River Leasing DEIS, pg. 3-160. This statement seems inconsistent with the USFS's previous assertion that existing, but not producing, federal leases will not likely be developed. White River Leasing DEIS, pg. 2-48. It is disingenuous for the USFS to state that producing leases will continue to be developed while other existing leases will not be developed. As previously discussed, this appears to indicate a potential prejudice against future responsible oil and gas development on existing leases under their existing terms.

When discussing federal units the USFS indicates there is one pending application for new units on National USFS lands within the White River Forest, the Lakeridge Unit. On the same page, however, the USFS also mentions the Groundhog Gulch II Unit application. White River Leasing DEIS, pg. 3-162. The USFS provides no information regarding the Groundhog Gulch II Unit application in the White River Forest Leasing DEIS. To the extent this information is important for the public, it should be included within the White River Forest Leasing DEIS.

As already noted, Noble is extremely concerned about the USFS's statement that all existing, but not producing, federal leases would expire and only further be leased with new stipulations. White River Leasing DEIS, pg. 3-169. This information appears to reflect a bias on the part of the USFS that additional development on existing leases will not be allowed. Noble may also have interest in future Unit applications on valid existing rights.

### **Section 3.2.46 – Paleontology**

Noble appreciates the USFS's recommendation that ground disturbing activities associated with oil and gas development can often lead to the beneficial discovery of previously unknown paleontological resources. White River Leasing DEIS, pgs. 3-182, 3-194. As noted in the White River Leasing DEIS, the beneficial discoveries can occur both as part of wellpad or road construction and because of the necessary surveys conducted prior to surface disturbing activities. The USFS should recognize that oil and gas development often leads to significant discoveries of previously unknown paleontological resources and should not unreasonably restrict responsible oil and gas development in order to protect paleontological resources.

### **Section 3.3 – Biological Resources**

Noble appreciates that the USFS recognizes that under valid existing leases the agency must allow road access within the lease. White River Leasing DEIS, pg. 3-215. Included with the rights granted under a federal oil and gas lease is the right to access the leases for the purpose of developing oil and gas resources. 43 C.F.R. § 3101.1-2. The USFS must continue to recognize these rights.

Noble is concerned with the USFS's assumptions contained in Section 3.3.9.1 – Rare Plant Analysis Assumptions. Assumption two indicates that lands without NSO stipulations were considered "most vulnerable to potential future development." White River Leasing DEIS, pg. 3-250. This statement potentially reflects significant bias on the part of the USFS that oil and gas development has

an adverse impact that must be avoided or minimized at all costs. Noble firmly believes that oil and gas development can take place in concert with other uses of the public lands. Noble further believes that responsible oil and gas development is an appropriate use of the public lands given the USFS's multiple use mandate.

Noble disagrees with the USFS's statement that under Alternative A threatened and endangered plant species may be adversely impacted because there are no NSO stipulations on the existing leases. White River Leasing DEIS, pgs. 3-253, 3-254. Threatened and endangered plant species have adequate protection under the Endangered Species Act and under the USFS's normal processes for approving surface use plans of operation for oil and gas activities. The USFS is also aware of the exact locations of several of these plant species and has an adequate NSO buffer for impact avoidance. In most instances, as the USFS is well aware, site-specific plant surveys are required before any surface disturbing operations. To the extent threatened or endangered plants are identified, or even their habitat is identified, the USFS will modify or move proposed operations. 43 C.F.R. § 3101.1-2; 36 C.F.R. § 228.107. Given the additional protections provided by the Endangered Species Act itself, it is highly unlikely that certain threatened or endangered plants would be harmed by oil and gas operations. For the same reason, Noble disagrees with the USFS's statement that Alternatives A and B may not meet the current obligations of the White River Forest Plan to protect threatened and endangered species. Given the site-specific reviews and studies that are completed prior to any surface disturbing operations it is highly unlikely any threatened or endangered plants would be harmed by oil and gas operations. White River Leasing DEIS, pg. 3-260. For that reason, Noble believes the USFS needs to modify this language in the final EIS.

### **Section 3.4 – Socioeconomic Resources**

As discussed in Section 3.4 of the White River Leasing DEIS, responsible oil and gas development provides an important source of jobs within the Piceance Basin. White River Leasing DEIS, pg. 3-268. The USFS's own analysis shows that drilling and development activity accounted for over 1,000 direct jobs and almost 4,000 indirect jobs. *Id.* In these difficult economic times it is imperative that the federal government do everything to foster economic activity and new jobs rather than stifle development. The USFS must carefully consider the negative impact its proposed action will have on the economy in the region.

Additionally, the USFS recognizes that the extraction and drilling of oil and gas within the analysis area counted for almost 100 million dollars in labor income. *Id.* Again, in these very difficult economic times it is vital that the federal government foster economic activity rather than attempt to limit development of domestic natural resources.

The USFS also recognizes that oil and gas activity may provide an important source of economic revenue to both local and national government royalties and *ad valorem* taxes; under Alternatives A and B, a relatively significant amount of revenue for government coffers. Additionally, Alternative A in particular will provide significant employment within the region. Alternative C, however, should not be adopted by the USFS because it significantly curtails potential future employment in the region. President Obama has directed federal agencies to take every action necessary to foster the creation of new jobs, not significantly limit their development. The USFS must carefully reconsider Alternative C for this reason alone. White River Leasing DEIS, pg. 3-276.

### **Section 3.4.5 – Recreation**

Overall, Noble disagrees with the USFS's assumption that limited oil and gas development activity will always have a negative impact on recreation resources. Often times oil and gas development can help provide infrastructure to allow for increased use of the public lands for camping, hunting, hiking, and other forms of recreation. Case in point, Noble recently contributed \$150,000 to restore reservoirs on Battlement Mesa to provide erosion protection and to reintroduce Colorado Cutthroat Trout into the reservoirs. In July 2012, the Colorado Division of Parks and Wildlife and the USFS, among others, arranged for 4 media outlets to be present to observe the reintroduction and discuss the positive impacts of these efforts.

In areas where BLM does not want the public to utilize oil and gas development roads, it can simply administratively close the roads to all uses other than oil and gas and government related activities. Once oil and gas development activities are completed, these roads can be reclaimed and abandoned returning the area to its natural, un-roaded condition. The suggestion that all oil and gas activities negatively impact recreation is simply unfounded and unsupported by the record. Noble urges the USFS to reconsider its analysis throughout Section 3.4 to remove this potential bias.

### **Section 3.5 – Inventoried Roadless Areas**

Throughout Section 3.5 the USFS needs to clarify between inventoried roadless areas as identified in the 2001 Protection of the Inventoried Roadless Areas codified at 36 C.F.R. §§ 294.10 – 294.14 the so-called “2001 Roadless Rule” and other areas that have been inventoried and deemed to be roadless. Without the distinction, it makes it very difficult for members of the public to identify officially designated roadless areas or simply areas that have been later identified by the USFS. Given the adoption of Colorado’s new specific rule for roadless areas within the State, this distinction becomes even more important. 77 Fed. Reg. 39576 (Jul. 3, 2012) (to be codified at 36 C.F.R. part 294 (“Colorado Roadless Rule”). With this distinction in mind, Noble believes the USFS needs to support the statement contained in Section 3.5.3.2.2 that inventoried roadless areas that do not contain a NSO stipulation are vulnerable to development. The new Colorado Roadless Rule specifically protects valid existing rights, including oil and gas lease rights, within inventoried roadless areas. The USFS is therefore determined that these areas can be developed to the limited extent allowed by valid existing leases. To the extent the lands are not under lease, the new Colorado Roadless Rule provides ample protection for these areas. Upon review, the White River Forest Leasing DEIS does not seem to adequately recognize the new protections developed by the Colorado Roadless Rule. For this reason, Noble believes the analysis must be revised and updated.

### **Section 3.6.1 – Cultural Resources**

As the USFS recognized with respect to paleontological resources, the USFS should recognize that cultural resources can be discovered and appropriately protected as a result of responsible oil and gas development activities. Sometimes inadvertent discoveries are a direct result of proposed oil and gas activities due to the site-specific surveys that are required prior to any oil and gas activities. As a result of the surveys and studies conducted by oil and gas operators prior to initiating operations, numerous cultural resources have been identified and appropriately protected while even other resources not eligible for federal registry protections are identified and better understood. In many cases these

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resources would have been undiscovered and potentially unprotected if not for oil and gas operations. USFS should recognize this fact throughout the analysis in Section 3.6.

## **CONCLUSION**

Overall Noble encourages the USFS not to adopt any of the Alternatives presented in the White River Leasing DEIS as they unreasonably constrain future responsible oil and gas development. Noble is particularly concerned with the impacts the revised leasing analysis will have upon its valid existing oil and gas leases. Noble believes, and has demonstrated through its local operations, that oil and gas development can take place in harmony with the environment. Noble encourages the USFS to develop a more reasonable set of alternatives that would allow oil and gas development to continue in the White River Forest and recognize valid existing lease rights.

Sincerely,



Jeffry A. Schwarz  
Rockies Business Manager

cc: Robert Veldman  
Kristin Koblis  
Denee DiLuigi, Esq.