

Forest Planning Team
GMUG National Forest
2250 Highway 50
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June 2, 2018

Dear GMUG Planning team,

Please accept the following scoping comments on behalf of High Country Conservation Alliance, The Wilderness Society, Wilderness Workshop, and Rocky Smith on development of a revised forest plan and associated environmental impact statement for the Grand Mesa, Uncompahgre, and Gunnison (GMUG) National Forest.¹ We are excited to be participating in this plan revision process and the opportunity to develop the management vision for and direction of the GMUG National Forest. These comments are specific to the issue of oil and gas development within the context of the revision process.

Introduction

Exploration, drilling, and production of oil and gas, and related operations on national forest lands, can have significant impacts to many resources: wildlife and habitat, including connectivity and fragmentation; human health; air quality; soils; water quality and quantity; scenery; recreation opportunity; and more. Impacts can be immediate, but can also add to cumulative impacts and persist for decades or longer. It is therefore imperative that the GMUG take great care in avoiding, minimizing, and mitigating the impacts from oil and gas development. Providing a robust analysis and framework in forest planning that addresses oil and gas is the foundation for accomplishing that.

Presenting the public with an accurate portrait of oil and gas development – and its impacts – across the GMUG in the DEIS will foster a better understanding of the relationship between this use and other uses that are enjoyed by the public. Given the agency’s plan to conduct its oil and gas availability and leasing planning process subsequent to forest plan revision,² it is critical that the revised forest plan provide a robust foundation from which to tier. The GMUG’s analysis of resources and potential impacts in the revision will lay the foundation for the agency’s future leasing availability decision and how to minimize and mitigate impacts of oil and gas operations.

Best Available Science on the Impacts of Oil and Gas Development

¹ See 83 Fed. Reg. 14243 (Apr. 3, 2018) (Notice of Intent, including Purpose and Need (Needs for Change) and Proposed Action).

² The Revised Draft Assessment states: “Going forward, the GMUG will assemble a list of frequently asked questions (FAQs) about the relationship between the current Forest Planning process and the future oil and gas leasing process that will tier to the Forest Plan. Many comments indicate preferences for items that may be appropriate to address at a strategic, broad scale in the Forest Plan, such that the oil and gas leasing process can then follow within those strategic sideboards.” At 3.

There is a wealth of directly relevant, available science on the relationship between oil and gas development and climate change, wildlife, water quality, air quality, human health, etc. We offer some suggested studies in [Attachment 1](#).

Emissions from oil and gas development occur throughout the chain of production. These impacts are a consequence of various stages of oil and gas development—from the drilling and fracking of oil and gas wells, to air quality impacts and the release of hazardous emissions. The Forest Service must sufficiently address and consider these impacts in its revision process. Aside from the direct health impacts of NOX and VOCs,³ these emissions can also result in significant increases in ground-level ozone (i.e., ozone precursors), and, consequently, can have a dramatic impact on human health. In addition, the rapid development of high volume/horizontal drilling in conjunction with hydraulic fracturing has driven expansion of new sources resulting in increased emissions—a change from the current forest plan that requires consideration by the GMUG in the revision process. See [Attachment 2](#).

The EPA has determined that human emissions of greenhouse gases are causing climate change that is harmful to human health and welfare.⁴ Indeed, virtually every credible climatologist in the world accepts the legitimacy of climate change and the fact that human activity has resulted in atmospheric warming.⁵ According to experts at the Government Accountability Office, federal land and water resources are vulnerable to a wide range of effects from climate change, many of which are already occurring on local forest lands. These effects include, among others, “(1) physical effects, such as droughts, floods, glacial melting, and sea level rise; (2) biological effects, such as increases in insect and disease infestations, shifts in species distribution, and changes in the timing of natural events; and (3) economic and social effects, such as adverse impacts on tourism, infrastructure, fishing, and other resource uses.”⁶ These consequences drive a need for change in the GMUG’s policy and management regarding oil and gas resources. As such, we ask that the GMUG acknowledge these effects in its analysis and alternatives, and develop forest plan direction to avoid, minimize, and mitigate them.

Importantly, current oil and gas operations on the GMUG are located in some of the state’s most important wildlife and big game habitat. See [Attachment 3](#). Elk and mule deer habitat, especially in the Upper North Fork, has been impacted by operations. There is a long track

³ See, e.g., Colorado Department of Public Health and Environment, *2010 Air Quality Data Report* (2010).

⁴ See 74 Fed. Reg. 66,496 (Dec. 15, 2009), *Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act*.

⁵ See, e.g., INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, *The Science of Climate Change* (1995); U.S. Climate Change Science Program, *Abrupt Climate Change* (Dec. 2008); James Hansen, et. al., *Global Surface Temperature Change*, *REVIEWS OF GEOPHYSICS*, 48, RG4004 (June 2010); see also, Richard A. Muller, *Conversion of a Climate Change Skeptic*, *NEW YORK TIMES*, July 28, 2012 (citing Richard A. Muller, et. al., *A New Estimate of the Average Earth Surface Temperature, Spanning 1753 to 2011*; Richard A. Muller, et. al., *Decadal Variations in the Global Atmospheric Land Temperatures*).

⁶ GAO Report, *Climate Change: Agencies Should Develop Guidance for Addressing the Effects on Federal Land and Water Resources* (2007); see also Committee on Environment and Natural Resources, National Science and Technology Council, *Scientific Assessment of the Effects of Global Climate Change on the United States* (2008); Melanie Lenart, et. al. *Global Warming in the Southwest: Projections, Observations, and Impacts* (2007).

record of concern from citizens, and state wildlife officials, about the impacts of development on wildlife populations in the area. See [Attachment 4](#).

Cumulative Impacts

The Forest Service must analyze the cumulative impacts of reasonable foreseeable oil and gas development on the GMUG as well as on adjacent national forest, BLM, and private lands within the subregion. We are particularly concerned that there may be oil and gas development that may affect GMUG resources occurring on proximal lands.

Further, it is very important that the analysis of impacts of potential oil and gas activities be integrated with the analysis of impacts from other activities expected to occur over the life of the revised forest plan. Impacts from, say, vegetation management could interact synergistically with impacts from oil and gas activities to cause major and widespread cumulative impacts to wildlife, water quality, soils, recreational opportunity, scenery, etc. If the analyses of these two example categories of impacts are not done at the same time, it is mandatory that they be coordinated to ensure that cumulative impacts are fully analyzed and disclosed as required by NEPA, and that measures necessary to minimize and mitigate these impacts are stated and applied.

The Draft Assessment for Renewable and Nonrenewable Energy Resources states: “During the Forest Plan Revision EIS process, we will obtain a new RFD Scenario consistent with BLM’s current efforts for the GMUG in order to inform the forest’s effects analysis and allow us to better predict future trends.”⁷ However, that statement is missing from the Revised Draft Assessment. The assumptions underlying past development potential projections and RFD scenarios have changed dramatically, and the GMUG needs to reevaluate development potential and the RFD based on this new information. An accurate RFD should change the assumptions used in the development of alternatives, in analyzing environmental consequences, and in projecting the impact of oil and gas development in terms of jobs and revenues. Wildlife, agriculture, and recreation are economic drivers in the planning area, and these values should not suffer because of outdated oil and gas estimates. More recent oil and gas development projections that would come from a reevaluation of the RFD in light of new data could drastically alter the decisions made in the revision process. For example, new oil and gas estimates may highlight the untapped potential of areas that have already been drilled (e.g., by drilling deeper to formations that were previously not drillable due to technological limitations that no longer exist) and underscore the importance of protecting places with important wildlife, watershed, or other values.

Range of Alternatives

The Forest Service should consider alternatives that are responsive to the urgent need to address climate pollution, including not allowing leasing for fossil fuels. Every ton of carbon dioxide and other greenhouse gases (especially methane⁸) added to the atmosphere contributes

⁷ At 12.

⁸ Methane and other heat-trapping gases are commonly emitted during drilling for, and production of, oil and gas.

to climate change, and any additional fossil fuel development permitted on the GMUG and the subsequent combustion of those fossil fuels will worsen climate change. Therefore, due to the compelling need to protect humankind and federal public lands from the potentially devastating impacts of global warming, the Forest Service should develop and analyze at least one alternative that prohibits new fossil fuel leases on the GMUG.

There are currently 752,478 acres available for oil and gas leasing on the GMUG.⁹ As of September 2016, there were approximately 106,727 acres of the GMUG under lease for oil and gas development on the Paonia Ranger District and the Grand Mesa, with an additional 7,592 acres pending leasing actions in BLM's system.¹⁰ An additional 146,072 acres have been nominated for lease across the GMUG.¹¹ Given the current leased acreage and development across the GMUG, precluding additional future leasing would not in any way stop oil and gas activity on the forest. The consideration of more environmentally protective alternatives in the GMUG's analysis – including a no leasing alternative – is consistent with applicable direction in the Planning Rule, including provisions related to sustainability (§ 219.8) and diversity of plant and animal communities (§ 219.9).

CEQ regulations at 40 CFR 1502.14(a) require agencies to “rigorously explore and objectively evaluate all reasonable alternatives.” An alternative is “reasonable” if it falls within the agency's statutory mandate and meets at least a part of the agency's purpose and need. When determining whether an EIS analyzes sufficient alternatives to allow the Forest Service to take a hard look at the available options, courts apply the “rule of reason.”¹² The reasonableness of the alternatives considered is measured against two guideposts. First, when considering agency actions taken pursuant to a statute, an alternative is reasonable only if it falls within the agency's statutory mandate.¹³ Second, reasonableness is judged with reference to an agency's objectives for a particular project.¹⁴ A no-leasing alternative would meet both tests. First, the Forest Service has decision-making authority with respect to oil and gas leasing on national forests.¹⁵ Second, the alternative would meet the GMUG's purpose and need as stated in the scoping notice by helping to maintain, achieve, and enhance ecological sustainability and diversity.

For each alternative it develops, the GMUG should acknowledge and assess the predicted and reasonably foreseeable impacts of climate change from oil and gas development, disclosing the quantity of greenhouse gas emissions and calculating the social cost of carbon using the established social cost of carbon method or something substantially similar. For each alternative, the GMUG should also include strong, effective, and enforceable mitigation measures as necessary to meet the ecological sustainability mandate of the planning rule.

⁹ Revised Draft Assessment at 15.

¹⁰ *Id.*

¹¹ *Id.* at 18.

¹² *New Mexico ex rel. Richardson v. Bureau of Land Mgmt.*, 565 F.3d 683, 709 (10th Cir. 2009) (citing *Westlands Water Dist. v. U.S. Dep't of the Interior*, 376 F.3d 853, 868 (9th Cir. 2004)).

¹³ *Westlands*, 376 F.3d at 866.

¹⁴ See *Dombeck*, 185 F.3d at 1174–75; *Simmons v. U.S. Army Corps of Eng'rs*, 120 F.3d 664, 668–69 (7th Cir. 1997); *Idaho Conservation League v. Mumma*, 956 F.2d 1508, 1520 (9th Cir. 1992).

¹⁵ 30 U.S.C. § 226(h).

Suitability of Lands

Oil and gas development can have dramatic and long-lasting impacts to natural resources. It is a major industrial activity that involves constructing and maintaining substantial roads into remote places, denuding large areas for pads and facilities, establishing and filling waste pits, constructing pipelines, among other things.

Places with fragile resources (for instance, watersheds with steep slopes, erodible soils, rare or struggling aquatic species) and places that are important for outdoor recreation (for instance, special management areas, iconic recreation places) are not appropriate places for oil and gas development and leasing. We therefore ask that the GMUG make a suitability of lands determination for surface disturbance associated with oil and gas activity. At a minimum, the GMUG should find the following areas unsuitable for surface disturbing activities associated with oil and gas leasing and development: all roadless areas; all research natural areas; special management areas; wild, scenic, and recreational eligible river corridors; riparian areas; moderate or higher quality lynx habitat; alpine areas; big game winter range; deer and elk fawning/calving areas; bighorn sheep habitat, especially lambing grounds; Gunnison sage grouse habitat; slopes with 40 percent or greater steepness; areas with high erosion or mass wasting potential; priority watersheds; iconic recreation places; areas with high and very high scenic integrity ratings; primitive and semi-primitive non-motorized recreational opportunity spectrum settings; campgrounds; picnic grounds; and trailheads.

Allowing industrial activities to occur in these places would impede achieving the desired conditions for recreation and conservation in these areas (and maybe forest-wide), and would frustrate the planning rule's requirement for achieving ecological sustainability.

Oil and gas leases and Colorado Roadless Areas

Roadless areas on the GMUG provide clean drinking and irrigation water and function as biological strongholds for populations of threatened, endangered, and sensitive species. They provide large, relatively undisturbed landscapes that are important to biological diversity and the long-term survival of many at-risk species, and serve as bulwarks against the introduction and spread of non-native invasive plant species. Roadless areas also provide opportunities for primitive and semi-primitive dispersed outdoor recreation, an increasingly important economic driver for West Slope counties. The roadless values that these areas retain are important and must be protected. Protecting roadless areas in the new GMUG Forest Plan will be key to effectively maintaining and restoring ecological integrity as required by the 2012 Planning Rule.

As noted in our comments on the GMUG's Draft Assessments: Renewable and Nonrenewable Energy Resources, Mineral Resources, and Geologic Hazards Assessment, the USFS devotes very little space to the complex issue of the overlap between oil and gas leasing and roadless lands.¹⁶

¹⁶ We note that the USFS did update the DRAFT Forest Assessments: Renewable and Nonrenewable Energy Resources, Mineral Resources, and Geological Hazards Assessment originally released in Nov.

In that brief discussion the agency mischaracterizes the status and impact of roadless protections as they pertain to existing leases issued after 2001 that overlap roadless areas. On pages 16-17 of the Revised Draft Assessment (March 2018) the agency suggests that the Colorado Roadless Rule (CRR) resolved any issues with “gap” leases by superseding the 2001 Roadless Rule (RACR) and grandfathering existing leases. This description is inaccurate for several reasons discussed below, and it must be changed prior to any actual analysis or decision.

First, the RACR has been consistently upheld in court and all injunctions against that Rule vacated. As a result, any injunctions are now nullities with no legal effect. To the extent that leases were issued within GMUG roadless areas after implementation of the RACR, any roadless areas with those leases are subject to protections of the 2001 Rule. And to the extent that the leases allow activities that would violate the RACR, they were improperly issued and violate the law. Improperly issued leases are subject to cancellation.

Second, protections of the RACR and any other prohibitions on surface use that existed at the time the CRR was implemented were carried forward by the CRR pursuant to 36 CFR 294.46(b). On page 7 of the Revised Draft Forest Assessment the agency notes “the legal status of existing leases in Colorado Roadless Areas will be clarified as we develop a list of FAQs related to mineral and energy development.” The GMUG must clearly state that protections of the RACR and any other prohibitions or limitations on surface use that existed at the time the CRR was implemented were carried forward by the CRR. The agency must also ensure that any analysis accurately reflects this legal situation. The agency should avoid suggesting that the RACR provisions regarding oil and gas leases were superseded.

One way for the Forest Service to clarify the status of roadless protections would be to issue a notice to all leaseholders with roadless acreage indicating that the legal effect of the RACR is clear, and that the Rule has been effective since implementation, up until the CRR was approved on July 3, 2012. The agency should also clearly state that it will not approve any proposed activities that would violate the RACR or CRR, as applicable. This should be reflected in the agency’s analysis and in any Forest Plan that GMUG ultimately adopts.

In addition to clarifying the effect of the RACR and CRR, the GMUG should work to proactively ensure protection of roadless areas in the alternatives considered. As stated above, the GMUG should include at least one alternative that prohibits future leasing and should find roadless lands unsuitable for oil and gas leasing in all alternatives. This would ensure surface values are protected from direct impacts and that roadless areas are also protected from the less direct impacts of edge-development that may result from drilling minerals under roadless areas from surface locations outside of roadless boundaries.

The agency should also analyze an alternative protecting all roadless areas with NSO stipulations to preserve important surface values in those areas. Consideration of this alternative must include analysis of the direct, indirect, and cumulative impacts that drilling minerals under these

2017. A Revised Draft version was released in March 2018. The issues discussed here were not resolved in the Revised Draft, and the agency must take a hard look at them in the forthcoming analysis.

roadless areas would have on important resources like wildlife, air quality and climate. While this alternative would go some distance to protecting surface resources, it would still have potentially significant impact on roadless values because the minerals under these roadless areas would still be available for development, and facilities could be located just outside the roadless areas' boundaries.

Finally, the GMUG should consider an alternative that would allow existing and undeveloped leases on the Forest's roadless areas to expire, rather than granting extensions, so that if there is still interest in developing those lands, such development proceeds under leases with updated terms, i.e., a new lease with protective stipulations that comply with the CRR and any other provisions of the revised forest plan.

Conclusion

The GMUG has an opportunity in forest plan revision to make great strides in conservation and sustainable use of the forest. However, the long term viability of multiple forest resources and uses could be severely impacted by present, and future, oil and gas development. It is therefore important that the GMUG carefully and comprehensively analyze the impacts of oil and gas development on the climate, wildlife, air, water, recreation, scenery and other resources that make the GMUG a special place for Colorado and the nation, and to analyze and propose an alternative that precludes future oil and leasing on the forest.

Sincerely,

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