SAN JUAN CITIZENS ALLIANCE
CENTER FOR BIOLOGICAL DIVERSITY

May 22, 2020

James Simino
Columbine District Ranger
P.O. Box 439
Bayfield, CO 81122

RE: Comments on Environmental Assessment for the Northern Extension Pipeline and Associated Fruitland Coal Gas Horizontal Drilling Project

Dear Mr. Simino:

The San Juan Citizens Alliance and Center for Biological Diversity are providing these comments on the draft Environmental Assessment for the Northern Extension Pipeline and Associated Fruitland Coal Gas Horizontal Drilling Project (EA). As you know, San Juan Citizens Alliance has a decades-long interest in the HD Mountains dating to the mid-1980s.

We are beyond disappointed by the blatant disregard of the values of the HD Mountains Roadless Area, and the EA's attempt to evade and avoid compliance with multiple, overlapping layers of regulatory, administrative, and contractual requirements to protect these roadless area values.

The land area at issue is protected by the Colorado Roadless Rule's prohibition on pipelines, the No Surface Occupancy stipulation of lease COC 64935, and the direction in the San Juan Forest Plan. The EA has casually disregarded all of these layers of protection in order to advance a private company's financial interests.

The Colorado Roadless Rule was promulgated with the advice and input of the Colorado Governor's advisory task force, after a decade of discussion, dozens of public meetings, and tens of thousands of comments. The ban on linear construction zones, i.e. pipelines, was added into the Colorado Roadless Rule for the express purpose of preventing exactly the type of degradation this pipeline project threatens.

The San Juan National Forest should be embracing the spirit and intent of the Colorado Roadless Rule. Unfortunately, in this project the agency seems to be desperately grasping at straws to undermine, circumvent, or flatly ignore roadless area protection.

PROJECT PURPOSE

The EA describes as one of two purposes the analysis of a special use permit for the "construction, operation, and maintenance of off-lease pipelines identified as the Northern Extension Pipeline." (EA at 1) The pipeline's described purpose is to connect several gas wells on the northwest periphery of the HD Mountains to the Petrox primary gas gathering system in Fosset Gulch on the eastern side of the HD Mountains.

The EA describes various ROW widths, ranging from a permanent 30-foot wide ROW to a 60-foot wide construction disturbance zone (EA at 8). Our comments reflect the surface disturbance impacts of the 60-foot wide construction zone.

The proponent has apparently purposely placed a portion of FGU #6-1 well pad within the edge of the HD Mountains Roadless Area, rather than on immediately adjacent non-roadless lands. This raises the question why there is no alternative evaluated that avoids impacts to the roadless area. By intentionally siting this well pad within an acre of roadless area, the proponent with the Forest Service's concurrence seems to believe that it can exercise a Colorado Roadless Rule exception on a distinctly different portion of the roadless area more than 2 miles distant across private property. If so, this is a duplicitous attempt to sabotage the plain language of the Colorado Roadless Rule, and would be plainly disallowed by the Rule.

In short, this proposed pipeline violates the No Surface Occupancy stipulations of the lease, and it violates clear and unambiguous prohibitions in the Colorado Roadless Rule against linear construction zones (i.e. gas pipelines) on lands where leases prohibit use of the surface, and on lands where the purpose is simply to cut across the roadless area for convenience.

LACK OF INFORMATION IN ENVIRONMENTAL ASSESSMENT

The public's ability to participate in review of this project is severely hamstrung by the lack of information provided. The maps lack the detail necessary to evaluate the project's location, associated documents including the Biological Assessment and Biological Evaluation were only provided after repeated requests and just a few days before the comment deadline, the EA contains no mention of important issues like impacts to conservation values of private lands under conservation easement, and of many other topics of clear relevance and concern.

For example, the EA describes the proposed pipeline route under Alternative 2 as follows:

> The majority of the Northern Extension Pipeline would follow existing disturbance corridors including: 1) an old road bed for approximately 4.6 miles; 2) various USFS roads for approximately 1.6 miles; 3) U.S. Highway 160 for approximately 0.4 miles; 4) a power line for approximately 0.2 miles; and 5) other previously disturbed areas associated with fences, agricultural fields, and an existing gas well pad. These previously disturbed portions of the pipeline would require minimal clearing and surface disturbance. Approximately 0.6 miles of the pipeline would traverse through undisturbed habitats. (EA at 8)

Despite this description, neither the text of the EA nor any map displays the location of: the "old road bed;" the power line; the "other previously disturbed areas associated with fences, agricultural fields, and an existing gas well pad;" the "undisturbed habitats." This kind of information is critical to assist the public in understanding the values on the ground, and in critiquing the Forest Service's evaluation of impacts. The failure to provide such detail undermines the agency's ability to take the hard look NEPA requires.

AFFECTED ENVIRONMENT IS NOT ACCURATELY DESCRIBED

The EA does not accurately describe the existing environmental condition, thus it utterly fails to accurately assess environmental consequences from the proposed action. The EA concocts an invented circumstance of "previously disturbed" vs. "previously undisturbed" areas, and then creates the illusion that the untracked, roadless forests and meadows in the HD Mountains in some fashion have been "previously disturbed" despite the plain, visual evidence of intact, undisturbed, natural vegetation and soil cover across the roadless area. In contrast to the roadless area, the EA asserts that nearby agricultural fields are "previously undisturbed." Photographs of the proposed pipeline route through the roadless area follow below. Clearly, the only "disturbance" is a 12-inch wide dirt footpath from the passage of elk, deer, bears, and perhaps cattle.

Proposed pipeline route through the HD Mountains Roadless Area.

Proposed pipeline route through the HD Mountains Roadless Area.

SJCA staff walked the pipeline corridor on two occasions in May 2020. We observed the remnants of a long-abandoned roadway on national forest and state lands in lower Little Squaw Creek, outside the roadless area. However, the pipeline route within the roadless area has little or no evidence of any past disturbance. In any case, whatever historical use might have occurred in the 1950s or 1960s is irrelevant, as the San Juan National Forest subsequently determined the HD Mountains Roadless Area met the criteria for designation within the federal Colorado Roadless Rule.

The EA claims inaccurately that "These previously disturbed portions of the pipeline would require minimal clearing and surface disturbance." (EA at 8) As the photos make abundantly clear, scraping bare a 60-foot wide ROW linear construction zone using "using a dozer, excavator, pipelayer, and/or wheel trencher" will cause substantially more than minimal clearing and surface disturbance. As the EA describes, "The dozer would clear the pipeline ROW of brush, boulders, unavoidable trees, and other major obstacles prior to trenching" and "After clearing, the dozer would run the length of the ROW to level out sharp changes in elevation." (EA at 8) These are not indications of minimal clearing and surface disturbance. This is a scraped bare, 60-foot wide linear construction corridor rammed through undisturbed terrain in the HD Mountains Colorado Roadless Area on leased lands that ban surface occupancy and disturbance.[1]

The pipeline route is described as traversing "…an old road bed for approximately 4.6 miles…." (EA at 8) The route from the Fosset Gulch Road through Pole Gulch and over a small saddle to Little Squaw Creek (approximately 0.9 miles in length) is apparently considered to be an old road bed. While there may have once been a road or vehicle track in this location, this route has recovered from past disturbances and should be treated as undisturbed. (EA at 8) Alternative 3 is described as avoiding impacts to mature trees in Pole Gulch, this is part of the alignment described as "disturbed" in Table 2. The presence of mature trees indicates that vegetation has largely recovered from any previous disturbance. (EA at 12) Some of the "previously disturbed terrain" described in Table 2 has recovered and should be treated as undisturbed. (EA at 12) The EA should specifically document its assertions about "previously disturbed" terrain.

NEPA requires a "hard look" at the environmental consequences of a proposed action. If the proposal fails to accurately and honestly depict the actual conditions in the field, the analysis can only fail NEPA's hard look requirement.

THE PROPOSED ACTION VIOLATES THE COLORADO ROADLESS RULE

<u>The EA Fails to Disclose Impacts of the Proposed Action to the Roadless Characteristics of the HD Mountains Roadless Area</u>. The Colorado Roadless Rule describes the purpose of the rule:

> **The intent of this regulation is to protect roadless values by restricting** tree cutting, sale, and removal; road construction and reconstruction; and **linear construction zones within Colorado Roadless Areas (CRAs),** with narrowly focused exceptions. (emphasis added) (36 CFR § 294.40)

The Rule defines roadless area characteristics, which the San Juan NF found present in the HD Mountains CRA. Resources or features that are often present in and characterize Colorado Roadless Areas, include the following (36 CFR § 294.41):

[1] Even if the corridor scraped bare is only 30 feet wide, the impacts would be devastating.

(1) High quality or undisturbed soil, water, and air;
(2) Sources of public drinking water;
(3) Diversity of plant and animal communities;
(4) Habitat for threatened, endangered, proposed, candidate, and sensitive species, and for those species dependent on large, undisturbed areas of land;
(5) Primitive, semi-primitive nonmotorized and semi-primitive motorized classes of dispersed recreation;
(6) Reference landscapes;
(7) Natural-appearing landscapes with high scenic quality;
(8) Traditional cultural properties and sacred sites; and
(9) Other locally identified unique characteristics.

The HD Mountains Roadless Area is characterized by essentially all of these features.

- as the photos above attest, the area consists of high quality and undisturbed soil, water and air.
- It contains a diversity of plant and animal communities, in this case ponderosa pine forest and oak woodlands, interspersed with grassy meadows and containing pockets of Douglas fir. These plant communities provide habitat and refuge for deer, elk, black bear, turkey, and many other species.
- the area lies in the midst of critical winter range for deer and elk, and comprises the heart of one of the region's most significant big game migration routes.
- the area provides outstanding primitive non-motorized recreation opportunities, particularly in shoulder seasons in the spring and fall when other areas are still blocked by snow.
- the provides an important reference landscape against the surrounding areas where intensive management occurs for coalbed methane extraction.
- the undeveloped area contains unmodified, naturally-appearing landscapes that stand in contrast to surrounding regions with agricultural, timber, and mineral activities.
- Numerous significant cultural resource properties blanket the HD Mountains, with nearby Chimney Rock National Monument most prominent among them, but also other existing and proposed National Historic Register districts.
- the HD Mountains comprise the lowest elevation undeveloped landscape in the San Juan Mountains, which contributes directly to its regional uniqueness.

The EA contains no description whatsoever of impacts to the identified roadless area characteristics. Instead, the EA offers a bland, generalized, and unsupported statement that "The Proposed Action would have no unacceptable impacts to CRA characteristics," (EA at 25) without specifically addressing each one of those characteristics where they would be impacted, especially within Section 8 where the pipeline would clear an area up to 60 feet wide, and where the pipeline operator would post "[m]arkers … at frequent intervals along the pipeline," Impacting the naturalness and undisturbed nature of the forest. (EA at 37) The public that advocated vigorously on behalf of the Colorado Roadless Rule for more than a decade does not concur that the project impacts are in any way "acceptable." Because the EA lacks any discussion of how the project changes the undeveloped landscape of the roadless area where the drill pad and pipeline impact those values, modifies undisturbed soil, air and water, disrupts of migration corridors, creates visual scars, impacts primitive recreation, or impacts any of the other roadless area characteristics, the Forest Service lacks any basis for an assertion that a 60-foot wide linear construction zone through the roadless area is an "acceptable" impact to the roadless area characteristics. Further, and as addressed elsewhere, the EA's characterization that "[t]he pipeline ROW would be located entirely within existing disturbance in the HD Mountains CRA" (EA at 26), is false. Recent visitors detected no "old road bed" (EA at 26) throughout most of the course of the Alternative 2 proposed pipeline corridor; field-verified USGS maps from the 1920s to today likewise show no constructed trail feature on the ground through most of the area over that century.[2]

The Proposed Action Violates the Colorado Rule Linear Construction Zone Provision. The EA contains an inaccurate discussion of the Colorado Roadless Rule. The Forest Service Roadless Area Conservation Rule was adopted in 2001 and applied nationwide, including Colorado. In 2012, a state-specific Forest Service Colorado Roadless Rule was adopted. The Colorado Roadless Area addressed a specific perceived limitation in the 2001 national rule by including prohibitions on linear construction zones in roadless areas. As the Colorado Roadless Rule notes, "Although limited LCZ use is expected, it is a State-specific concern because the 2001 Roadless Rule does not restrict them and the potential for adverse impacts to roadless characteristics." (39580 Federal Register Vol. 77, No. 128)

Linear construction zones in the form of pipelines was a particular and expressly anticipated concern of the Colorado Roadless Rule because LCZs would conflict with and degrade the very purpose and intent of the Rule. Hence, the Forest Service placed strict limitations on approval of linear construction zones. The proposed Petrox Northern Extension Pipeline clearly violates both the letter and the spirit of the prohibition on linear construction zones contained in the Colorado Roadless Rule.

The Colorado Roadless Rule defines a linear construction zone:

> A temporary linear area of surface disturbance over 50-inches wide that is used for construction equipment to install or maintain a linear facility. The sole purpose of the linear disturbance is to accommodate equipment needed to construct and transport supplies and personnel needed to install or maintain the linear facility. It is not a road, not used as a motor vehicle route, not open for public use, and is not engineered to road specifications. (36 CFR § 294.41)

The Rule prohibits oil and gas pipelines in Colorado Roadless Areas, with two narrow exceptions. "The rule prohibits oil and gas pipelines within CRAs, except on oil and gas leases within CRAs where surface use is allowed and for leases outside of CRAs that need to connect to infrastructure within a CRA." (39587 Federal Register Vol. 77, No. 128) The Petrox pipeline does not satisfy either exception.

The first is an exception for leases within Colorado Roadless Areas *where surface use is allowed*. For non-upper tier roadless areas including the HD Mountains CRA, the Rule only provides for "the construction, reconstruction or maintenance of a pipeline associated with operation of an oil and gas lease that allows surface use within a Colorado Roadless Area." (36 CFR § 294.44(c)(4))

Lease COC 64935 has a No Surface Occupancy stipulation and does not allow surface use for the express purpose of protecting roadless area characteristics, so this exception does not apply. The NSO

[2] *See* https://ngmdb.usgs.gov/topoview/viewer/#12/37.2413/-107.5004.

stipulation is part of the lease, so the lease does not "allow surface use within" the Colorado Roadless Area. The purpose of the NSO stipulation is to limit the lessee's rights, and the lessee clearly has no right to build inside the roadless area. This LCZ exception does not apply to the proposed pipeline on Lease COC 64935 in the HD Mountains Roadless Area. As discussed elsewhere, the Forest Service's proposed waiver of the NSO stipulation is unlawful.

The second exception permits pipeline construction where it is necessary "to connect to infrastructure within a Colorado Roadless Area from outside a Colorado Roadless Area where such a connection would cause substantially less environmental damage than alternative routes." (36 CFR § 294.44(c)(4)) This exception also does not apply. There is not any infrastructure within the roadless area on lease COC 64935, hence nothing to connect with. The project describes a well pad FGU#6-1 on *another* lease several miles distant from lease COC 64935 as partially located within the boundary of the HD Mountains Roadless Area. However, intruding through the roadless area on Lease COC 64935 is not "necessary" to connect with the proposed location of FGU#6-1 as the proposed connection to the well pad is not – and need not be – within the roadless area. The fact that the Forest Service chose to site *part* of the well pad within the HD Mountains Roadless Area does not mean that *connection* to the pipeline is, or need be, within the Roadless Area. The pipeline can connect to the well pad *outside* the roadless area boundary. And, as discussed elsewhere, there is no rationale and no alternative analysis for why well pad FGU#6-1 cannot be moved a few dozen feet to be entirely outside the roadless area boundary.

However, the Forest Service's attempt to utilize this specific Colorado Roadless Rule exception makes clear why the agency has proposed to site FGU#6-1 within the HD Mountains Roadless Area: without that 100-foot intrusion, there would be no infrastructure within the roadless area to connect to, and thus the Colorado Roadless Rule would flatly prohibit construction of the right-of-way through the roadless area in Section 8.

Furthermore, the EA does not demonstrate that its preferred pipeline route through the roadless area causes "substantially less environmental damage" than alternative routes. The EA refused to analyze pipeline routes entirely outside the roadless area, hence there is no basis provided for a conclusion that destroying the roadless area causes "substantially less" environmental damage that staying out of the roadless area. Other alternatives like the two-pipeline alternative are dismissed for financial reasons, not because of environmental analysis. The elimination of that alternative without exploring its environmental damage violates both the Colorado Roadless Rule and NEPA. The Colorado Roadless Rule provision means that the Forest Service cannot choose to put an LCZ through a roadless area if an alternative exists that would not result in substantially more environmental damage. Because the Forest Service did not address the environmental impacts of the "two pipeline" alternative, and because such an alternative would not result in substantially more environmental damage, the LCZ exception does not apply.

Further, the EA similarly fails to address the environmental impacts of another reasonable alternative, the "skirt the roadless area" alternative. (EA at 15) The Forest Service declined to address that alternative in detail, explaining:

> The topography and resource values east of the CRA are rugged and challenging and include erosive soils and steep north-facing slopes with areas of soil instability or thick timber. The potential impacts from such a corridor would not be consistent with the NSO stipulation on

> lease COC64935. The reclamation challenges would be almost insurmountable, and an NSO exception could not be granted. Additionally, this alternative would result in a large scar next to the CRA. (EA at 15)

Because the EA does not compare in detail the impacts of this alternative with those of the proposed action, it never states specifically that the proposed action would involve "*substantially* less environmental damage." Nor does the EA explain why such a corridor outside the roadless area would conflict with the NSO stipulation, or why the Forest Service could not simply waive the stipulation for a pipeline corridor outside the roadless area, while it would waive the stipulation to protect the roadless area for the proposed pipeline route. The EA similarly fails to explain why a large scar *next to* a roadless area is disqualifying as an alternative, while proposed to approve a pipeline corridor that would result in a large scar *within* the HD Mountains Roadless Area is acceptable. Such contradictory positions are arbitrary and capricious.

Finally, the Colorado Roadless Rule prohibits specifically building pipelines across roadless areas simply as a matter of convenience. "The construction of pipelines for the purposes of transporting oil or natural gas through a Colorado Roadless Area, where **the source(s) and destination(s) of the pipeline are located exclusively outside of a Colorado Roadless Area**, shall not be authorized." (emphasis added) (36 CFR § 294.44(c)(4)) The Petrox pipeline's purpose as spelled out in the EA is to collect and transport gas and produced water from wells outside of the HD Mountains Roadless Area to the northwest to a gathering system located outside of the roadless area to the southeast. The proposed pipeline is exactly the circumstance specifically proscribed by the Rule.

The EA also makes reference to an irrelevant section of the Colorado Roadless Rule: "The CRR encourages utilization of previously disturbed areas and requires LCZs to minimize ground disturbance where feasible." (EA at 27) This does not apply to the present circumstance where a LCZ is plainly prohibited, as is the case here. And as noted above, despite the imaginary description of the condition of the roadless area, there is no previously disturbed area within the roadless area to locate the pipeline.

<u>The Forest Service Must Clarify the Role of the State of Colorado in the Review of this Project</u>. The Colorado Roadless Rule requires that "[t]he Forest Service will offer cooperating agency status to the State of Colorado, for all proposed projects and planning activities subject to this rule that would be implemented on lands within Colorado Roadless Areas." (36 CFR § 294.45(b)) We could locate nothing in the materials made available for this project indicating that the Forest Service offered cooperating agency status to the State. The EA itself does not identify any cooperating agency assisted in review or preparation of that document. Any subsequently prepared NEPA document must disclose: (1) when and how the Forest Service offered cooperating agency status to the State of Colorado; and (2) the State of Colorado's response to that offer.

THE COLORADO ROADLESS RULE REQUIRES AN ENVIRONMENTAL IMPACT STATEMENT

The Colorado Roadless Rule requires preparation of an environmental impact statement for analysis for impacts, without exception:

> "Proposed actions that would significantly alter the undeveloped character of a Colorado Roadless Area require an Environmental Impact Statement (EIS)." (36 CFR § 294.45)

Blading a 60-foot wide linear corridor through meadows and stands of ponderosa pine is a construction activity that creates a permanent scar on the landscape that significantly alters the undeveloped character of the HD Mountains CRA.

The Colorado Roadless Area FEIS notes:

> Development of LCZs can remove or degrade habitat, increase fragmentation, facilitate new introductions or increase the spread of non-native invasive species, and increase noise and human-caused disturbance of terrestrial wildlife. The linear feature constructed, reconstructed or maintained by use of an LCZ, such as a power line, can essentially be permanent features on the landscape. (FEIS at 219)

As a permanent feature on the landscape that degrades habitat, increases fragmentation, facilitates spread of invasive species, and increases noise and disturbance of wildlife, the Petrox pipeline clearly meets the threshold of a significant impact and the Forest Service cannot avoid compliance with the Rule's requirement to prepare an Environmental Impact Statement. The pipeline project negatively impacts all of the nine roadless characteristics spelled out in the Rule.

The EA apparently attempts to assert a permanent, 60-foot wide linear scar is not changing the undeveloped character of the HD Mountains CRA by inventing an imaginary circumstance about existing disturbance along the intended pipeline route. The EA fantastically describes a 12-inch meandering dirt cattle and game trail winding between stately ponderosa pine trees and through meadows as some type of existing disturbance that is apparently no different than a bulldozed and scraped bare 60-foot wide linear construction zone. This is an absurd contention. It can only be interpreted as an attempt to subvert the plain and unambiguous language of the Colorado Roadless Rule that prohibits this pipeline through this roadless area on this NSO lease.

The Colorado Roadless Rule includes a reminder of the rationale for prohibiting linear construction zones in roadless areas:

> "The LCZ provisions of the final rule are designed to encourage placement of linear facilities outside of roadless areas to conserve the large tracts of undisturbed lands that roadless areas provide." (39578 Federal Register Vol. 77, No. 128)

The Forest Service's description of the Colorado Roadless Rule reaffirms that oil and gas pipelines on No Surface Occupancy leases like this one in the HD Mountains are not allowed.

> "The rule prohibits oil and gas pipelines within CRAs, except on oil and gas leases within CRAs where surface use is allowed and for leases outside of CRAs that need to connect to infrastructure within a CRA." (39587 Federal Register Vol. 77, No. 128)

The Colorado Roadless Rule thus prohibits the Forest Service from implementing Alternative 2.

NEPA REQUIRES AN ENVIRONMENTAL IMPACT STATEMENT

NEPA requires agencies to prepare environmental impact statements where the impacts "may" be significant. Here, the EA concludes that the scale and nature of impacts includes damage to numerous resources that is predicted to be both "moderate" and "long term":

- "Overall effects to the HD Mountains CRA and its values would be low to moderate and long-term." (EA at 25)

- "residences would be impacted for the … long-term from the implementation of the Proposed Action." (EA at 35, failing to address the intensity of the impact)

- "visual impacts to the landscape would be low to moderate for the long-term." (EA at 48)

- "the potential for spills to reach surface waters would be long-term, [and] low to moderate." (EA at 57)

It is difficult to understand how the Forest Service can conclude that there will be no significant impacts when the EA repeatedly discloses the potential for moderate, long-term effects.

In determining whether an agency should prepare an EIS, CEQ regulations identify ten factors to evaluate concerning intensity. 40 C.F.R. § 1508.27(b). Several of these factors tip heavily in favor of preparing an EIS, including:

- "Unique characteristics of the geographic area," because the pipeline will traverse and the FGU #6-1 pad will scrape the HD Mountains Roadless Area, which is recognized and protected by the Colorado Roadless Rule, the San Juan Forest Plan, and the NSO stipulation, and whose values will be degraded by the proposed action;

- "The degree to which the action may establish precedent for future actions with significant effects or represents a decision in principle about a future consideration," because, as noted elsewhere, the EA asserts that the proposed Alternative 2 pipeline route is necessary for the drilling of future wells in the area.

- "Whether the action is related to other actions with individually insignificant but cumulatively significant impacts," because as discussed below, the EA's discussion of cumulative impacts is so devoid of detail concerning the nature and degree of cumulative impacts that it is impossible for the Forest Service to conclude that cumulative impacts will not be significant.

- "Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment," because the proposal threatens to violate the Colorado Roadless Rule and the Forest Plan. The project also will also interfere with the State of Colorado's goal to reduce the state's carbon emissions. HB19-1261, signed into law on May 30, 2019, establishes a statewide goal "of achieving, at a minimum, a twenty-six-percent reduction in statewide greenhouse gas pollution by 2025, a fifty-percent reduction in statewide greenhouse gas pollution by 2030, and a ninety-percent reduction in statewide greenhouse gas pollution by 2050," measured relative to 2005 statewide greenhouse gas pollution levels. By increasing the State's greenhouse gas emissions through the drilling of

> wells, construction and operation of the wells and pipelines, and through the downstream transport and combustion of the gas drilled, this project will put the state farther away from achieving those goals, threatening to violate a law critical to the protection of the environment. The EA fails to even acknowledge this state law, or the potential for this project to violate the law's goals.

NO ANALYSIS OR DOCUMENTATION OF COMPLIANCE WITH FOREST PLAN

The proposed pipeline project is located within Management Prescription Area 3.25, HD Mountains, in the San Juan Land and Resource Management Plan (Forest Plan). The EA contains no mention of compliance with Forest Plan direction or objectives. As described in the Forest Plan:

> "The roadless area provides many social and ecological benefits. As urban areas grow in southwest Colorado, undeveloped private lands continue to be converted to urban areas and rural infrastructure. In the increasingly developed landscape in the vicinity of the HD Mountains, this large unfragmented tract of land serves a critical role (in that it provides functioning watersheds and biological strongholds that promote diversity for plant and animal populations). The area provides a large, relatively undisturbed landscape with opportunities for dispersed outdoor recreation (opportunities that diminish as open space and natural settings are developed elsewhere). The area also serves as a bulwark against the spread of non-native invasive plant species and provides a reference area for study and research related to development in the roadless area." (Forest Plan at 229)

The Forest Plan details desired conditions that include:

> "3.25.9 In general, management activities maintain or improve roadless area values, wherever practicable, with a long-term goal of returning the landscape to an unroaded condition." (Forest Plan at 232)

The proposed project requires that the Forest Service ignore the contractual obligations of the existing NSO lease, and ignore the unambiguous prohibition on linear construction zones for pipelines on NSO leases in Colorado Roadless Areas. The EA makes no attempt to conform these decisions to violate the roadless area protections of the lease and the Rule with the Forest Plan's desired conditions to maintain or improve roadless area values.

LEASE COC 64935 NO SURFACE OCCUPANCY LEASE STIPULATIONS

Lease COC 64935 was purchased by Petrox in May, 2001 with stipulations included that prohibit surface uses for the protection of roadless area values and characteristics. This stipulation was included for the express purpose of ensuring that new leasing did not conflict with the federal Roadless Area Conservation Rule that was promulgated in January, 2001 and applied to roadless areas in Colorado and nationwide. The lease was issued subsequent to federal roadless rule promulgation.

In 2007, the San Juan NF reaffirmed the need for No Surface Occupancy stipulations on lease COC 64935. The Northern San Juan Basin Coalbed Methane Project ROD (April 2007) retained the stipulation prohibiting surface occupancy or use on this lease specifically in order "to continue protection of roadless values in the HD Mountains Inventoried Roadless Area." (ROD at 37)

The NSO stipulations for lease COC 64935 require that "any changes made to this stipulation must be in accordance with applicable land use plan guidance." (ROD at 37) The land use plan guidance noted above is to "maintain or improve roadless area values." Attempting to waive an NSO stipulation in order to scrape bare a 60-foot wide swath with a bulldozer does not maintain or improve roadless area values. That would violate the conditions of the lease and the direction of the Forest Plan.

The lease stipulations, in addition to protecting roadless area character, also require consideration of visual quality and old growth. The proposed route through the roadless area passes through ponderosa pine stands with significant old growth indications. The EA must include an updated inventory of old growth characteristics for the project area, or provide citations to prior inventories for this location. Based on our years of first-hand experience with old growth in the HD Mountains, Little Squaw Creek and this section of the roadless area host ponderosa pine stands very similar to other stands in Goose Creek, for example, identified as meeting old growth criteria. Any subsequently prepared NEPA document must provide supporting evidence for the EA's suspect conclusion that "[n]o old growth ponderosa pine forests are located within the project area." (EA at 39)

The analysis in the EA misstates the NSO stipulation, which is a blanket prohibition on surface occupancy, and provides the rationale behind the surface occupancy prohibition. The EA confuses this NSO stipulation by misconstruing it as simply encouraging the avoidance of "areas with high potential for water erosion and low potential for revegetation." (EA at 43) The NSO stipulations are a contractual requirement in the lease that prohibits surface use and occupancy to protect the roadless area. It is inaccurate to construe the stipulations as simply helpful guidelines as the EA seems to presume, but in fact the stipulations are contractual limitations. The Northern San Juan Basin ROD provides a long list of rationales for the NSO stipulations. Just because the EA claims that the pipeline will have limited impacts to areas with potential erosion and low potential for revegetation does not provide justification to ignore the fundamental explicit contractual stipulation that bans surface occupancy to protect the roadless area values. As noted previously, bulldozing a pipeline route through the roadless area negatively impacts the nine roadless characteristics in the Rule, and cannot be construed as protective of roadless area values.

The EA is replete with factually inaccurate portrayals of the existing environment, such as: "The majority of the pipeline, approximately 37 acres, would follow an existing disturbance corridor associated with an old road bed and would require minimal clearing and surface disturbance." (EA at 44) As noted previously and documented by photos, the corridor through the roadless area does not resemble an old road bed in the slightest. These inaccurate statements apparently are included in the EA for the purpose of misleading the public into believing that illegally ignoring the plain language of the Colorado Roadless Rule and the No Surface Occupancy stipulations on the lease is hunky dory because the area is already trashed.

THE REQUESTED NSO STIPULATION EXCEPTION VIOLATES FEDERAL REGULATIONS

The EA states that "Petrox is requesting that the SJNF grant a one-time exception, per 36 Code of Federal Regulations (CFR) 228.104, to the NSO stipulation because this is the environmentally preferred route with the least surface impacts." This explanation does not conform with the actual requirements of 36 CFR § 228.104.

The regulations state that an exception must be consistent with the Forest Plan (36 CFR §228.104(b)(2)(ii)). As noted previously, the Forest Plan direction for this part of the San Juan National Forest is "maintain or improve roadless area values." Clearly, bulldozing a pipeline corridor through the roadless area does not maintain or improve its values. An exception to the NSO stipulation cannot be granted and adhere to this regulatory requirement.

Additionally, the regulations require that "the management objectives which led the Forest Service to require the inclusion of the stipulation in the lease can be met without restricting operations in the manner provided for by the stipulation given the change in the present condition of the surface resources involved…" 36 CFR § 228.104(b)(2)(iii)). There is no documented change in condition of surface resources since the NSO stipulation was imposed in 2001. The management objectives stated by the Forest Service in 2007 when it reaffirmed the NSO Stipulation were documented by this stated rationale: "Stipulation is needed to continue protection of roadless values in the HD Mountains Inventoried Roadless Area." (NSJB ROD 2007 at 37) The management objectives of protecting the roadless values in the HD Mountains will not be met by approving an exception to bulldoze a 60-foot corridor through the roadless area.

As noted in our comments below, the Forest Plan also requires avoidance of locating Rights of Way in Visual Resource Management Class II areas, which includes the HD Mountains roadless area. Excepting the NSO stipulation on lease COC 64935 contradicts this management objective for visual resource management spelled out in the Forest Plan.

THE EA FAILS TO CONSIDER A RANGE OF REASONABLE ALTERNATIVES

In taking the "hard look" at impacts that NEPA requires, an EA must "study, develop, and describe" reasonable alternatives to the proposed action.[3] The Tenth Circuit explains that this mandate extends to EAs as well as EISs. "A properly-drafted EA must include a discussion of appropriate alternatives to the proposed project."[4] This alternatives analysis "is at the heart of the NEPA process, and is 'operative even if the agency finds no significant environmental impact.'"[5] Reasonable alternatives must be analyzed for an EA even where a FONSI is issued because "nonsignificant impact does not equal no impact. Thus, if an even less harmful alternative is feasible, it ought to be considered."[6] When an agency considers reasonable alternatives, it "ensures that it has considered all possible approaches to, and potential environmental impacts of, a particular project; as a result, NEPA ensures that the most intelligent, optimally beneficial decision will ultimately be made."[7]

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[3] 42 U.S.C. § 4332(2)(C) & (E); 40 C.F.R. § 1508.9(b) (an EA "[s]hall include brief discussions ... of alternatives").

[4] *Davis v. Mineta*, 302 F.3d 1104, 1120 (10th Cir. 2002) (granting injunction where EA failed to consider reasonable alternatives).

[5] *Diné Citizens Against Ruining Our Env't v. Klein*, 747 F. Supp. 2d 1234, 1254 (D. Colo. 2010) (quoting *Greater Yellowstone Coal. v. Flowers*, 359 F.3d 1257, 1277 (10th Cir. 2004)). *See also W. Watersheds Project v. Abbey*, 719 F.3d 1035, 1050 (9th Cir. 2013) (in preparing EA, "an agency must still give full and meaningful consideration to *all* reasonable alternatives" (emphasis added) (internal quotation and citation omitted)); 40 C.F.R. § 1502.14 (describing alternatives analysis as the "heart of the environmental impact statement").

[6] *Ayers v. Espy*, 873 F. Supp. 455, 473 (D. Colo. 1994) (internal citation omitted).

[7] *Wilderness Soc'y v. Wisely*, 524 F. Supp. 2d 1285, 1309 (D. Colo. 2007) (quotations & citation omitted).

In determining whether an alternative is "reasonable," and thus requires detailed analysis, courts look to 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. Second, reasonableness is judged with reference to an agency's objectives for a particular project."[8] Any alternative that is unreasonably excluded will invalidate the NEPA analysis. "The existence of a viable but unexamined alternative renders an alternatives analysis, and the EA which relies upon it, inadequate."[9] The agency's obligation to consider reasonable alternatives applies to citizen-proposed alternatives.[10]

The EA describes its purpose as to "respond to Petrox's application to further develop their valid and existing federal oil and gas leases." (EA at 3) The application includes construction of a pipeline to collect gas from three additional coalbed methane wells. Thus the EA must consider all reasonable alternatives to the proposed project consisting of a pipeline to collect gas from these three wells.

During scoping, the Forest Service identified several alternatives that addressed concerns about impacts to the HD Mountains Roadless Area. (Scoping Notice (Aug. 27, 2018)) These included an Alternative 4 for a two-pipeline system to transport gas a shorter distance to the west and avoid the roadless area, and an Alternative 8 to locate the proposed FGU#6-1 well pad outside of the roadless area boundary. (Scoping Notice at 3-4) However, the EA declined to analyze either of these alternatives and dismissed them without providing any specific analysis or comparison to the proposed action that would allow the public and the decision-maker opportunity for review and comment.

As a result, the EA does not include any action alternative that avoids impacts to the roadless area.

<u>The Forest Service Must Analyze the Two-Pipeline Alternative</u>. The EA states that under this alternative, "[t]he ends of two systems would be located outside the CRA boundary, requiring approximately 2 more miles of pipeline corridor to connect a northern system to the existing pipeline system in the Sauls Creek area operated by BP."

This alternative would have a number of distinct advantages over Alternative 2, and would put in sharp relief the trade-offs at the heart of the Petrox's proposal. This alternative includes a 2-mile section of pipeline to the west of USA-Amoco Com AC #1, eliminating the need for about 5 miles of pipeline to the south of FGU#6-1. It would thus be shorter (disturbing fewer acres of both private and Forest Service land), would require less maintenance, and would involve fewer financial costs to the applicant for construction. With less land disturbed, it would also likely have fewer impacts to wildlife, soils, and scenic values. Most importantly, it would entirely avoid location of a pipeline through the roadless area.

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[8] *Diné Citizens Against Ruining Our Env't*, 747 F. Supp. 2d at 1255 (quoting *New Mexico ex rel. Richardson*, 565 F.3d at 709).

[9] *Id.* at 1256.

[10] *See Ctr. for Biological Diversity v. Nat'l Highway Traffic Safety Admin*., 538 F.3d 1172, 1217-19 (9th Cir. 2008) (finding EA deficient, in part, for failing to evaluate a specific proposal submitted by petitioner); *Colo. Envtl. Coal. v. Dombeck*, 185 F.3d 1162, 1171 (10th Cir. 1999) (agency's "[h]ard look" analysis should utilize "*public comment* and the best available scientific information") (emphasis added).

Although the two-pipeline alternative would have vastly fewer impacts to roadless area characteristics, the EA provides three reasons for refusing to analyze this alternative in detail. All of these reasons are without merit. First, the EA states that "BP will not accept third-party gas and water in their pipeline system, which is already at capacity." (EA at 15) The Forest Service does not state the basis for this conclusion. If the Forest Service has communications with the pipeline owner, we request that that information be made part of the record and be provided to the public. Further, we understand that BP recently sold all of its operations in the San Juan Basin, and so BP's resistance to the use of the pipeline is irrelevant.[11] It is possible the new operator may be willing to allow Petrox to use its pipeline at the right price. Finally, even if the new owner continues to decline to allow Petrox access to its pipeline, Petrox could extend the pipeline down Saul's Creek Road toward Bayfield, co-locating the Petrox pipeline with the existing pipeline formerly owned by BP until it reached another pipeline connection. The EA repeatedly extols the virtues of co-locating pipelines with already disturbed areas. (EA at 26 (stating that co-locating pipelines with existing disturbance would "reduce the impacts from 'scarring'"); EA at 48 (co-locating pipelines with existing disturbance would minimize visual impacts)) In short, BP's alleged disinterest in accepting gas and water is not a valid basis for rejecting the two-pipeline alternative.

Second, the EA rejects the two-pipeline alternative because "[m]anaging a two-pipeline system to produce gas and water from the Northern FGU would present additional operational and financial challenges." (EA at 15) This statement is too vague to establish a valid basis for rejecting this alternative. The EA does not assert that the two-pipeline system would present additional management costs to the Forest Service, so we assume that the EA is alleging that Petrox would have to bear the additional "challenges." The EA does not describe the nature and magnitude of the costs associated with pipeline management. Any further NEPA analysis must detail precisely the "additional operational and financial challenges" Petrox allegedly faces under this alternative, and explain whether and why such challenges might render Petrox's entire proposal infeasible. Further, the Forest Service here appears more concerned about Petrox's potential profitability than the protection of the HD Mountains Roadless Area, which has the agency's duties precisely backwards. The mere fact that one alternative may impose additional costs related to pipeline management, without more, is not a valid reason for dismissing an alternative.

If the EA thoroughly describes the contrasting environmental impacts to the roadless area, and the two-pipeline alternative has fewer impacts while posing some additional administrative or financial challenges for the proponent, the public's interest is clearly best served by protecting the roadless area. If the company chooses not to pursue a project because of financial challenges, that choice solely falls to the company. It is not the Forest Service's – or the public's – obligation to sacrifice roadless area characteristics (while also voiding regulatory and contractual protections of the roadless area) for the financial convenience of an oil company.[12]

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[11] *See* L. Weber, BP finalizes sale of San Juan Basin assets, Durango Herald (Mar. 10, 2020) ("BP America Production Co. finalized its sale of assets in the San Juan Basin natural gas and oil field on Feb. 28 to a European renewable energy company, IKAV"), attached as Ex. TZ1, and available at https://durangoherald.com/articles/317726 (last viewed May 20, 2020).

[12] Fosset Gulch Pipeline, LLC apparently made financial investments prior to the Forest Service's environmental review under NEPA. On April 29, 2015 the pipeline company purchased an access road right of way across intervening private property to the well pad location described in Alternative 2, and a pipeline right of way

Third, in dismissing the two-pipeline alternative, the EA states that "the middle portion of the Proposed Action area between the two pipeline systems associated with this alternative would remain void of a pipeline capable of transporting gas and water from future wells in the area." (EA at 15) This is a particularly arbitrary and capricious basis for dismissing this alternative. If the Forest Service is dismissing an alternative because it forecloses "future wells," then the Forest Service must disclose the reasonably foreseeable impacts of these "future wells" which will not be possible but for the pipeline's construction.

Here, the Forest Service appears to acknowledge that the "future wells" are a connected action to the proposed pipeline route the agency proposes to select.[13]

When determining the scope of a federal action, Council on Environmental ("CEQ") regulations implementing NEPA require that agencies consider "direct," "indirect," and "cumulative" impacts of the action and any "connected actions"—those that are "closely related" to the major federal action.[14] Connected actions must be considered together to prevent an agency from dividing a project into multiple "actions," "each of which individually has an insignificant environmental impact, but which collectively have a substantial impact."[15]

Actions are "connected" if they: "(i) [a]utomatically trigger other actions which may require environmental impact statements; (ii) [c]annot or will not proceed unless other actions are taken previously or simultaneously; and (iii) [a]re interdependent parts of a larger action and depend on the larger action for their justification."[16] Both the Ninth and Tenth Circuits utilize an "independent utility" test to determine whether multiple actions are connected so as to require an agency to consider them in a single NEPA review.[17] "The crux of the test is whether *each of two projects* would have taken place with or without the other and thus had independent utility."[18] This test requires analysis of both projects to determine whether they both would have taken place without the other. Here, the Forest Service itself asserts that without the pipeline as proposed in alternative 2, there would be no pipeline "capable of transporting gas and water from future wells in the area." (EA at 15) Thus, it is not the

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agreement with the specific pipeline alignment of Alternative 2. These prior financial commitments should be irrelevant to the government's environmental reviews.

[13] Even if the Forest Service does not consider the future wells to be "connected actions" to the pipeline, it must disclose the impacts of the future wells as indirect or cumulative effects of the pipeline, because future wells are reasonably foreseeable enough that they provide a basis for dismissing the two-pipeline alternative.

[14] 40 C.F.R. § 1508.25.

[15] *Native Ecosystems Council v. Dombeck*, 304 F.3d 886, 894 (9th Cir. 2002) (citation omitted).

[16] 40 C.F.R. § 1508.25.

[17] *Native Ecosystems Council*, 304 F.3d at 894; *Utahns for Better Transp. v. U.S. Dep't of Transp.,* 305 F.3d 1152, 1183 (10th Cir. 2002).

[18] *Sierra Club v. BLM*, 786 F.3d 1219, 1226 (9th Cir. 2015) (quoting *Cal. ex rel. Imperial Cnty. Air Pollution Control Dist. v. U.S. Dep't of the Interior*, 767 F.3d 781, 795 (9th Cir. 2014)) (internal quotation marks omitted) (emphasis added); *Wilderness Workshop v. BLM*, 531 F.3d 1220, 1229 (10th Cir. 2008). In *Wilderness Workshop*, the district court concluded additional wells were not connected actions to a proposed pipeline approval because the Forest Service asserted in that EIS "that gas from new wells 'would find other alternative means of transport from the area' if the pipeline does not exist." Here, where the Forest Service has reviewed and rejected alternative routes through the middle of the project area, that is not the case.

case that each of the two projects (future wells and pipeline) would take place without each other, making the two connected actions.

The Forest Service cannot have it both ways. It cannot dismiss an alternative because it will foreclose additional wells that the proposed action will facilitate and then fail to disclose the impacts of constructing those very same wells.

Because all of the reasons the Forest Service provides for dismissing the two-pipeline alternative are arbitrary and capricious and lack a reasoned bases, the Forest Service must analyze this alternative in any subsequently prepared NEPA document.

The Forest Service Must Consider the Alternative of Moving the FGU#6-1 Pad Outside the HD Mountains Roadless Area. Alternative 2 places "about half" of the 250 foot by 200 foot FGU#6-1 well pad within the HD Mountains Roadless Area. (EA at 9) The "move the pad" alternative would place FGU#6-1 either onto adjacent private or adjacent Forest Service lands outside the roadless area. Such an alternative would be practical because it would still provide Petrox with access to natural gas, and would connect to the proposed pipeline.[19]

In contrast to Alternative 2, the "move the pad" alternative would protect all of roadless area characteristics enumerated in the Colorado Roadless Rule from pad construction.[20] Further, because moving the pad would result in the termini of the pipeline being outside of HD Mountains Roadless Area, the Colorado Roadless Rule would prohibit pipeline construction through that area in Section 8, T34N R5W.[21] As such, this alternative would allow the decisionmaker and the public to understand the tradeoffs between roadless area protection and impacts to non-roadless forest or private lands. It would also allow the Forest Service to comply with San Juan National Forest Plan guidance concerning protection of the HD Mountains Roadless Area, and would comply with the NSO lease. If the pad were moved to non-roadless lands to the northeast of that proposed in Alternative 2, it is also likely that the road across private land could be shortened.

The EA declines to examine this alternative in detail because "[t]he well pad location would require greater cut-and-fill slopes and volumes necessary for pad construction as compared to Alternatives 2 and 3. Impacts to the private landowner (visual and auditory), mature timber, drainages, and meadows would be greater with this alternative." (EA at 15)

This explanation is arbitrary and capricious because the EA fails to identify where the area is that would have these allegedly greater impacts, and assumes that there are no lands in the dozens of adjacent acres of Forest Service and private land that could serve as alternate sites. (The Scoping Notice map identifies the alternate site as entirely on private land, but the EA contains no

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[19] The map accompanying the Scoping Notice identifies the alternate pad site as on private land to the southeast of that chosen for Alternative 2 (*see* https://www.fs.usda.gov/nfs/11558/www/nepa/109131_FSPLT3_4406204.pdf), though the Forest Service provides no rationale for choosing that specific site, and provides no explanation for why other sites outside of the roadless area were not considered.
[20] *See* 36 C.F.R. § 294.41.
[21] *See* 36 C.F.R. § 294.44(c)(4) (allowing linear construction zones in non-upper tier roadless forest only if "needed to connect to infrastructure within a Colorado Roadless Area from outside a Colorado Roadless Area").

identification of a site.) In fact, based on our review of the private and public land near the pad site identified in Alternative 2, there are ample, nearby alternative pad locations outside the roadless area boundary and any or all of those require analysis in the EA. The EA dismisses consideration of a single prospective location outside of the roadless area, apparently on adjacent private land, with a generalized reference to additional impacts, and with no detailed comparison of the impacts from the footprint of the Alternative 2 pad location and the "move the pad" location. None of these impacts are described in detail in the EA, when that is exactly the analysis that must take place.

The EA's rationale also ignores the unique nature of roadless areas and the values they conserve under the Colorado Roadless Rule, under the San Juan Forest Plan, and under the existing oil and gas lease. It is perfectly appropriate for the Forest Service to consider potentially greater impacts to "mature timber, drainages, and meadows" outside of a roadless are in order to protect critical roadless values given special protection by the Colorado Roadless Rule, the Forest Plan, and the oil and gas lease which put in place an NSO stipulation precisely to protect roadless area values. Further, it is not a reasonable conclusion for the Forest Service to reject the "move the pad" alternative because doing so has the potential to harm *private property owners*. The Forest Service has no statutory duty to protect private parties from private oil and gas drillers at the expense of Forest Service resources. As a matter of policy, it would set a terrible precedent for the Forest Service to decide that roadless areas must be sacrificed in order to benefit adjacent private lands from an acre or two of disturbance, particularly given that the private landowner is under no legal duty to protect the lands from oil and gas or other development. In any event, this is exactly the kind of trade-off that NEPA requires the agency to consider before the agency can make the decision to sacrifice the roadless area to drilling.

Proposed well pad location in Alternative 2. This a view looking south outside the roadless. The opening in the bottom left corner of the photo is the Munger's NW corner of their property.

The proposed wellsite is in gambel oak dominated acreage towards the base of hill on right of photo above. Judging from wellsite plat and EA descriptions, the foreground is outside the roadless area boundary with CRA lands a bit further to south.

The EA describes one-half of the 1.8 acre FGU #6-1 well pad as within the roadless area. This pad could be moved 100 feet or so to the east and be located outside the roadless area. However, it appears Petrox (or the Forest Service) purposefully chose this barely within the roadless area in order to concoct a rationale to allow for a pipeline to be bulldozed across a No Surface Occupancy lease several miles distant. This sort of sham analysis is distinctly forbidden by NEPA. The EA needs to analyze an alternative location that avoids the roadless area, and hence avoids roadless area impacts.

Additionally, the 60-wide bulldozed pipeline corridor traverses virtually the same lands that the EA claims would be unacceptably impacted by a well pad. The EA requires explanation of how the bulldozed pipeline corridor does *not* pose unacceptable cut and fill slopes, impacts to mature timber, visual impacts to meadows, and drainages while a well pad in the same location *would* do so. This inconsistency underscores the arbitrary and capricious nature of the agency's dismissal of the alternative.

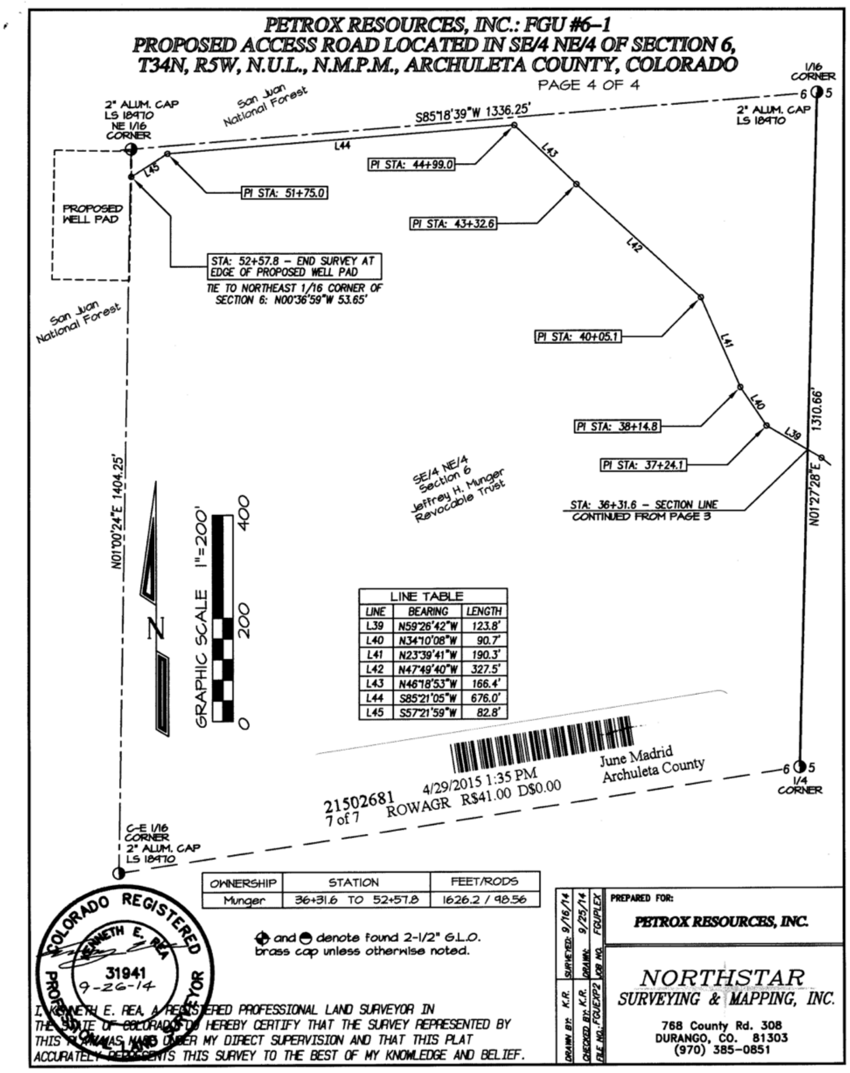
Other nearby alternative locations outside the roadless area on national forest lands provide reasonable alternatives to siting the FGU#6-1 inside the roadless area boundary. Specifically, one obvious location that avoids the roadless area exists on the south half of the northeast quarter of the northeast quarter of Section 6, as depicted in the image below. This by the way highlights a serious shortcoming from the EA's lack of detailed topographic maps that depict the locations with enough resolution for a reader to reasonably review and respond to described impacts.

An alternative location for FGU#6-1 in Section 6 exists approximately in the middle of this photo, and avoids the roadless area.

East view along Munger/SJNF property line (downhill) - not as steep a gradient down/east of gate/road/proposed pipeline. Possible wellsite to north/left of fence line.

Given that the EA refused to analyze nearby alternative FGU#6-1 well pad locations almost within spitting distance from the proposed location, one can only surmise that the location of FGU#6-1 in Alternative 2 on less than one acre of roadless area is entirely for the purpose of subterfuge to circumvent the Colorado Roadless Rule. Detailed analysis of alternate nearby locations as NEPA requires would either focus that discussion or dispel it.

The following diagram is the surveyed location of FGU#6-1 in Alternative 2. As is readily apparent, this well pad location could be moved as little as 100 feet or so to the northeast onto other adjacent national forest lands outside of the roadless area. It could also be moved a few hundred farther eastward. A location like this outside of the roadless area must be analyzed. Failure to do so will violate NEPA. We request that the Forest Service schedule a public site visit to National Forest lands adjacent to the current site of FGU#6-1 to identify potential alternate sites for the well pad that will protect the roadless area.



OLD GROWTH PONDEROSA PINE

The Northern San Juan Basin CBM Project FEIS describes the three methods used to inventory old growth as field inventory, analyzing timber stand exam data, or photo interpretation (FEIS at 3-230).

Field inventories are described as the most reliable method, followed by the use of existing timber inventory data from stand exams. The least reliable method is photo interpretation.

The criteria utilized by the San Juan NF to identify old growth include:

> (1) Average age of upper canopy trees 200 years or greater;
> (2) Average diameter of upper canopy trees 16 inches or greater;
> (3) Ten or more trees per acre that are at least 16 inches diameter at breast height (d.b.h.) or greater; and
> (4) One or more rotten trees, or one or more "dead or broken top" trees per acre.
> (FEIS at 3-231)

The Northern San Juan Basin CBM Project FEIS summarizes the value of old growth ponderosa pine stands:

> Stands of old growth ponderosa pine are an important biological resource for several reasons. First, the structure of these stands is typically more diverse, both horizontally and vertically. Trees of various ages and densities occur throughout the stand. Second, the understory is also typically more diverse than that of younger, more homogenous stands. Third, old growth trees and stands contain tremendous genetic diversity, having survived and adapted to many droughts and other small climatic changes (Kaufmann, 2003). Finally, old growth stands provide important habitat for a number of wildlife species, including FS sensitive and management indicator species, such as the northern goshawk, woodpeckers, and migratory songbirds. Old growth forests also provide habitat to a variety of species with small home ranges or poor dispersal capacity, including lichens (Enns 1998). (FEIS at 2-232)

The EA contains no information about inventory of old growth ponderosa pine in the project area, which is an obvious oversight given its incorporation as one of the attributes specifically included in the NSO stipulations. During preparation of the Northern San Juan Basin CBM Project EIS, the geographic focus for old growth inventory was largely on Ignacio Creek, Goose Creek and areas farther to the south and east in the HD Mountains. What inventory method -- field survey, stand exam data, or photo interpretation – was used to assess old growth status of the pipeline project area? What are the characteristics – diameter, estimated age, etc. – and the locations of the estimated "50 to 100 trees" that will be chainsawed in the right-of-way's path? (*See* EA at 44) Please provide the relevant data, or citation to the inventory, for old growth ponderosa in the project area, and along the proposed pipeline route through the HD Mountain Roadless Area specifically.

RELATION OF FGU#6-1 WELL PAD AND PIPELINE TO PRIVATE LAND CONSERVATION EASEMENT VALUES

The EA does not include any analysis of impacts to the recognized conservation values of the private lands under conservation easement from the proposed pipeline and well pad access road.

The 251-acre parcel of private land in Sec. 32, T35N, R5W, and Sections 5 and 6, T34N, R5W, is under conservation easement held by La Plata Open Space Conservancy, recorded 12/24/2009. The purpose of the easement is to "protect and enhance the Property's existing wildlife habitat and migration corridor" and "to assure that the Property will be retained forever predominantly in its natural, agricultural, scenic and open space condition, and to prevent any use of the Property that will significantly impair or interfere with the Conservation Values of the Property."

The property provides habitat for a wide variety of wildlife species as detailed in the conservation easement. Wildlife values include summer and winter range for mule deer and elk, migration corridor for elk, overall range for Abert's squirrel, range for mountain lions, summer and fall concentration area for black bear, range for wild turkey, and winter range for bald eagle. In addition, Colorado Parks and Wildlife has identified an active peregrine falcon nest (a state-listed species of special concern) immediately south of the property, and it is also suitable and probable habitat for Mexican spotted owl (a federal and state listed threatened species). The property includes riparian areas and wetlands. It contains scenic open space, portions of which can be viewed and enjoyed by the public from Highway 160 and from adjoining national forest land. It adjoins other private conservation easement-protected land, and adjacent national forest roadless area.

VISUAL IMPACTS

The EA appropriately notes that visual impacts from a pipeline are "typically prominent" to a viewer in the foreground, middle ground and background views. This is a particularly jarring impact when creating a new, linear pipeline corridor through an otherwise undisturbed setting like the HD Mountains Roadless Area. The pipeline's impact are permanent and long-term, lasting for the life of the pipeline.

The visual impacts within the roadless area are apparently downgraded in the EA because they are not visible from Highway 160. However, these impacts are substantial and prominent to roadless area visitors.

The EA attempts to wave off the explicit requirement of the NSO stipulation in Lease COC 64935 to avoid impacts to areas with a visual quality objective of retention by again inventing the imaginary circumstance that the roadless area somehow already has an existing disturbed corridor, which is utter nonsense. The EA also irrelevantly asserts that bulldozing a pipeline corridor across the roadless area, in violation of the NSO visual quality stipulation, is not as bad as a cutting a corridor on a steep hillside. That is a false choice. The NSO stipulation does not say to compare various options, it states avoid the impact to the specific visual quality objection of retention. The Forest Service cannot concoct a made up scenario and pretend that bulldozing a 60-foot wide swath through an area intended to retain its visual quality objective meets the NSO stipulation.

The EA fails to incorporate any discussion of conformance with the Forest Plan's direction for visual resource management. As depicted in the Forest Plan, the HD Mountains Roadless Area is a Visual Resource Management Class II category (Forest Plan Fig. 2.15). The Forest Plan guidelines require avoidance of locating Rights of Way or other land use authorizations in VRM Class II areas:

2.18.29 The following areas are identified as avoidance areas for ROW, communications sites, and other land use authorizations: all areas having VRM Class I or II, …. (Forest Plan at 144)

The Forest Plan plainly requires avoidance of routing pipelines through the HD Mountains roadless area VRM Class II area.

Below is an image of gas pipeline through the San Juan National Forest with a 60-foot wide disturbance corridor. This is the type of impact from a linear construction zone that the Colorado Roadless Rule was intended to prevent, and which the Forest Plan direction prohibits in the HD Mountains roadless area.

WILDLIFE IMPACTS

The EA refers to BMPs (pages 3, 8, 10, 11, 29, 31, 38, 43, 44, 56, 57, 58, 59) but it is unclear what specific BMPs would be required for the components of this project. For example, the EA states that:

> Additional Design Criteria listed in the 2006 NSJB FEIS and the Forest Plan are also applicable to the project and can be found at: https://data.ecosystem-management.org/nepaweb/nepa_project_exp.php?project=126 and

https://www.fs.usda.gov/main/sanjuan/landmanagement/planning , respectively. (EA at 16)

The websites to which the EA directs the reader are the main project pages for the Forest Plan and the Northern San Juan Basin EIS, providing neither the public nor the decisionmaker with any guidance or useful information about *which* design criteria apply, or even *where* they could be found in the thousands of pages of material linked to each webpage. It would be helpful to have the specific applicable BMPs included in the EA, perhaps as an Appendix, rather than obscured, somewhere, in potentially dozens of other documents, simply because the “list is extensive.” (EA at 19)

Some of the mitigation measures or BMPs are also so vague as to make it impossible to understand their effectiveness. For example, “[r]iparian vegetation would be protected as much as possible during vegetation clearing.” (EA at 16) How much riparian vegetation is it “possible” to avoid, and how much not? Given that the pipeline route will require clearing an area up to 60 feet wide across nine or ten intermittent drainages under Alternative 2, the potential for impact to riparian vegetation despite this vague measure seems high. The EA admits that the propose action “would impact approximately 1.3 acres of wetland areas, including 0.1 acres of freshwater emergent wetlands, 0.2 acres of freshwater forested/shrub wetlands, and 1 acre of riverine wetlands,” all of which likely contain or abut riparian vegetation, raising the question as to why the pipeline route was not designed to avoid these areas altogether. (EA at 56)[22]

Another measure appears to be little more than a plan for a future plan to identify damage after it happens, with no details about what the plan would entail. (*See* EA at 17 (“A monitoring plan will be developed and implemented to determine if project activities will cause a long-term change from desired conditions in any aquatic management zones impacted by project activities.”)) The EA does not explain why the details of the plan cannot be provided before the action is approved. Such a vague plan can’t be relied on to mitigate impacts.

The Biological Assessment/Biological Evaluation that is relied on for analysis of impacts to wildlife was not readily available until a few days before the comment deadline, making it difficult to evaluate some of the statements made in this EA.

Black bears (Ursus americanus) are not mentioned in the EA. Bears are common in the HDs and potential impacts should be discussed.

The U.S. Forest Service should consider addressing state Species of Greatest Conservation Need (SGCN) as designated by the Colorado Division of Parks and Wildlife (CPW) in its State Wildlife Action

[22] A federal court in April 2020 issued a nationwide injunction prohibiting the U.S. Army Corps of Engineers from permitting wetland disturbance to construction oil and gas pipelines pursuant to Nationwide Permit 12. *See Northern Plains Res. Council v. United States Army Corps of Eng'rs*, 2020 U.S. Dist. LEXIS 66745, 19-CV-44-BMM (D. Mont. Apr. 15, 2020), and Order Amending Summary Judgment Order (Doc. #151), *Northern Plains Res. Council v. United States Army Corps of Eng'rs*, 19-CV-44-BMM (D. Mont. May 11, 2020) at 38 (“The Corps is enjoined from authori[zi]ng any dredge or fill activities for the construction of new oil and gas pipelines under NWP 12 pending completion of the [Endangered Species Act Section 7] consultation process and compliance with all environmental statutes and regulations”). This injunction would apply to, and would prohibit the construction of, the Northern Extension pipeline if it involves the use of Nationwide Permit 12.

Plan (https://cpw.state.co.us/aboutus/Pages/StateWildlifeActionPlan.aspx) in analyses of impacts to wildlife resources. The SWAP is federally required documentation that allows the state to access federal wildlife conservation funding, and as such should be considered by federal agencies when assessing wildlife impacts.

The impacts of noise and disturbance on wildlife species has received increased attention, and the results clearly indicate that negative impacts, primarily through avoidance, are significant. Impacts of trail use on elk, for example, were studied by Wisdom et al. 2018; they found elk avoidance of areas up to 311 meters (1,000 feet) from trails depending on type of human use, with greatest avoidance distances from motorized uses.

Such avoidance continued after the human uses ceased. Deer and elk will undoubtedly avoid the area during construction activities. See also Dwinnell et al. (2019) for impacts of energy development disturbance on mule deer; they found that the functional loss of habitat was 4.6 times that of the direct loss due to roads, well pads and other facilities. The contention in this EA that elk and deer may be acclimated to human disturbance, rendering impacts less severe, is unsupported. Acclimation may occur for some individual animals but is certainly not true of all animals, particularly those migrating into the area in winter; these animals are less likely to be acclimated to human presence and disturbance. (EA at 65)

The EA includes no mention of American peregrine falcon. Colorado Parks and Wildlife (Colorado Division of Wildlife) in its 2009 letter of support (attached) for the conservation easement on the Munger property identified an active peregrine falcon nest in the project area, and noted that a USFS biologist documented successful rearing of young. Peregrine falcon is on the state's special concern list and list of Species of Greatest Conservation Need. The EA needs to incorporate analysis of impacts from pipeline construction and operation on peregrine falcons.

Similarly, in the same support letter the state noted that the Forest Service previously identified the area as suitable habitat for Mexican spotted owl, which is a state and federal listed threatened species. The BA/BE claims there is no suitable habitat in the project area, which is contradicted by the Forest Service's prior claims of suitable habitat. The EA needs to appropriately evaluate the presence and impact to suitable habitat and use by Mexican spotted owls.

This project will negatively impact bird communities. The impacts of oil and gas development and production sites on birds has been investigated in northern New Mexico. Francis et al. (2012) found significant avoidance of well pads by some bird species and changes to vegetation due to differences in plant seed distribution by birds. While this research was conducted in a different vegetation type (pinyon-juniper) than occurs on this project site, some impacts to bird distribution and use are certain to occur due to this project. See Kleist et al. 2018 for further information on impacts to bird communities.

The project could also destroy habitat for the imperiled norther goshawk, a sensitive species. (EA at 21) Goshawk nest and hunt in denser ponderosa pine forests; this project has the potential to disrupt such forest by removing large trees in a swath up to 60 feet wide. The only mitigation measure to protect goshawk is both vague and ineffective.

> If the project occurs during the breeding season for northern goshawk (April 1 through August 15), surveys would be conducted prior to construction activities. If an active nest is found, spatial and timing restrictions would be placed on construction activities, based on consultation with the USFS biologist. (EA at 17; *see also id*. at 20)

This measure would allow numerous unoccupied nest trees to be toppled, as long as they are currently unoccupied. This ignores the fact that goshawk may use several different nests over their lives, and destroying unoccupied nests could harm goshawk breeding in subsequent years. Because the "spatial and timing restrictions" are undefined, vague and discretionary, it is impossible to tell whether they would protect goshawk or not. This imprecise measure also appears at odds with the "Management Recommendations for Northern Goshawk" which states: "No adverse management activities should occur at any time in suitable nest areas," whether or not the nest is currently occupied.[23] At a minimum, the Forest Service must explain this apparent discrepancy and how the discretionary, ill-defined measures could possibly protect goshawk and their habitat.

Any fences that are reconstructed during the project should meet wildlife friendly guidelines established by Colorado Parks and Wildlife:
(https://cpw.state.co.us/Documents/LandWater/PrivateLandPrograms/FencingWithWildlifeInMind.pdf)

Construction activities should occur outside the time periods of migratory bird nesting (April 1 to August 31) and big game wintering (December 1 to April 30), leaving a construction window of September 1 through November 30. (Table 4, EA at 17)

While this project is unlikely to affect range-wide migratory bird populations, impacts to local populations should be analyzed and mitigated. (EA at 20)

The EA contains no discussion of the compensatory habitat mitigation measures required by the Northern San Juan Basin CBM Project ROD and FEIS. For example:

> Every five years, unless otherwise determined by the Authorized Officer, operators conducting oil and gas activities in the NSJB EIS project area will complete elk and deer habitat enhancement project(s). The project(s) must enhance acreage in elk habitat or deer winter range in the Project Area, preferably on state or federal lands in an amount that is equal or greater to the acreage disturbed in elk habitat or deer winter range by oil and gas activities in the NSJB EIS Project Area. (FEIS at 3.9.6.4.2)

What is the status of compliance with this required mitigation measure, and what enhancement projects specifically are contemplated in connection to the proposed project under analysis in this EA?

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[23] Reynolds, R.T, et al. 1992. Management Recommendations for the Northern Goshawk in the Southwestern United States. General Technical Report RM-217. Fort Collins, Colorado: U.S. Department of Agriculture, Forest Service. Page 6. This report is relied on by the San Juan Forest Plan, at page 317. See also San Juan Forest Plan Final EIS at ("LRMP direction includes … Management Recommendations for the Northern Goshawk in the Southwestern United States (Reynolds et al. 1992).")

RECREATION IMPACTS

The EA fails to note that recreational solitude is extraordinary in much of the HDs, owing to the lack of developed trail systems and the generally lack of familiarity by the public of recreation opportunities available in the HD Mountains. (EA at 34)

The EA notes that the "Northern Extension Pipeline would alter the natural setting or character of the area used for recreation." (EA at 34) This is a clear statement of the project's impact to one of the nine roadless area characteristics that the Colorado Roadless Rule was promulgated to protect. It further emphasizes the inappropriateness of the Forest Service's intention to undermine the Rule's protection of roadless area values in the HD Mountains.

Cross-country skiing is not recognized as a recreational use in the project area, but occurs regularly in mid-winter in various locations within the project area. (EA at 33)

The effects on recreational use of Pole Gulch during construction are described as "moderate" but construction activities would likely eliminate any recreational use of Pole Gulch. (EA at 35)

WATER DEPLETION

The EA notes that the CBM wells will deplete groundwater designated by the Colorado State Engineer as tributary to surface water.

> "Based on the nontributary groundwater delineation of the Produced Nontributary Ground Water Rules, the proposed FGU #6-1 and two recompletion wells would be located within the "tributary" area of the Fruitland Formation (OSE 2010). Therefore, produced water extraction from these wells could result in a surface water loss to the Piedra River and Los Piños River during the production phase of the Proposed Action. This would be a long-term impact that could affect irrigation flows and existing water rights. (EA at 58)

Out of priority diversion and consumption of water is not allowed in Colorado. How does the project proponent and the Forest Service intend to comply with Colorado's administration of water rights and avoid harm to senior holders of adjudicated water rights? The EA requires a discussion of how impact to these senior water users will be mitigated or avoided.

CUMULATIVE IMPACTS

NEPA requires agencies to disclose and take a hard look at "not only the direct impacts of a proposed action, but also the indirect and cumulative impacts of 'past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions.'" *Colorado Environmental Coalition v. Dombeck*, 185 F.3d 1162, 1176 (10th Cir. 1999) (quoting 40 C.F.R. § 1508.7).

"[I]n considering cumulative impact, an agency must provide 'some quantified or detailed information; ... [g]eneral statements about possible effects and some risk do not constitute a hard look absent a justification regarding why more definitive information could not be provided.'" *Ocean Advocates v. U.S. Army Corps of Eng'rs,* 402 F.3d 846, 868 (9th Cir. 2005) (alterations in original) (quoting *Neighbors of Cuddy Mountain v. U.S. Forest Serv.*, 137 F.3d 1372, 1379–80 (9th Cir. 1998)). "This cumulative analysis 'must be more than perfunctory; it must provide a useful analysis of the cumulative impacts of past, present, and future projects.'" *Id*. (quoting *Kern v. U.S. Bureau of Land Mgmt*., 284 F.3d 1062, 1075 (9th Cir. 2002)) (internal quotation marks omitted). Federal courts have struck down NEPA analyses where the cumulative impact analyses "discusse[d] only the direct effects of the project at issue on [a small area]" and merely "contemplated" other projects but had "no quantified assessment" of their combined impacts. *KlamathSiskiyou Wildlands Ctr. v. Bureau of Land Mgmt*., 387 F.3d 989, 994 (9th Cir. 2004).

Here, the EA addresses cumulative impacts in a vague, cursory manner, and with almost no attempt to quantify the extent of those impacts together with the proposed action. Most importantly, whether the Forest Service considers additional drilling on or near the proposed path of the pipeline, the agency considers it reasonably foreseeable enough that it is a factor in the agency's decision to dismiss the "two pipeline" alternative, as discussed above. The Forest Service fails to disclose or quantify the effects of that future drilling, while finding it reasonably foreseeable. In evaluating cumulative impacts to roadless values, the EA states that "[o]il and gas exploration and development is expected to continue within and adjacent to the HD Mountains CRA in the foreseeable future." (EA at 26) Stating that there will be future development without disclosing the impacts of that development is arbitrary and capricious.

Addressing cumulative impacts to geology and mineral resources, the EA states that "[p]ast, present, and reasonably foreseeable activities that would impact [those] resources in the project area are limited to existing and future CBM development. Cumulative effects of nearby CBM development and the Proposed Action would result in … short- and long-term surface disturbance, which may increase the number and rate of landslides on high hazard soils; and potentially increased risk of methane seeps and coal fires along the Fruitland Outcrop." (EA at 31) Again, the EA acknowledges potentially significant cumulative effects, but does not provide the public with useful information concerning the when, where, and how of these activities, or to quantify the impacts of those activities when taken together with the proposed action, contravening settled law. The EA similarly admits that cumulatively, "past and continuing CBM development … degrades the scenic quality of the landscape and increases noise levels in otherwise natural settings," again without addressing the location, nature, duration, and intensity of those impacts. (EA at 36).[24] Concerning impacts to plants, the EA asserts that "other CBM development… [has] previously altered native vegetation in the project area" and that "CBM development … [has] and will continue to contribute to the presence of noxious weeds within the project area"(EA at 45), but fails to provide details as to the location and quantity of these past and future actions. The EA admits that unidentified future "CBM development projects in the area have and will continue to cumulatively decrease the cover and increase the forage [for wildlife], particularly in ponderosa pine habitat" (EA at 66), without disclosing the timing, location, or extent of those cumulative impacts, or how they will interact cumulatively with the impacts of the proposed action.

Similarly, the EA states that "[t]here are also vegetation management projects planned in the reasonably foreseeable future that could involve thinning, timber removal, and prescribed fire" in the area. (EA at 38) Again, the EA fails to address the location and nature of these projects or quantify

[24] The EA discloses that "[e]xisting CBM development within one mile of the project area includes six wells and associated pipelines" (EA at 36), but does not disclose the location (via a map) or impacts of those facilities.

their impacts, as NEPA requires. The EA acknowledges that "management activities including but not limited to timber management, road construction, and residential development are expected to further impact visual resources in the area." (EA at 50) The EA fails to disclose the nature or timing of these projects, or to quantify the intensity of the impacts to visual resources, in violation of NEPA.

The EA admits the potential for cumulative damage to wildlife habitat – "Both Alternatives 2 and 3 would contribute to the continued degradation of the greater landscape for elk and mule deer" (EA at 66) - but again fails to disclose the location or degree of those impacts.

In sum, the EA's analysis of cumulative effects – which fails to quantify the impacts or even describe the location or timing of the future projects – violates NEPA.

CONCLUSION

The EA is replete with inaccuracies and missing information. The Forest Service needs to start over, prepare an Environmental Impact Statement that adequately complies with NEPA, and reflects real world circumstances. The NEPA document needs to evaluate reasonable alternatives such as moving the FGU #6-1 well pad a few feet to keep it out of the roadless area, and needs a credible analysis of the Colorado Roadless Rule, the No Surface Occupancy Stipulations of Lease COC 64935, and relevant Forest Plan requirements.

As an aside, this project perfectly illustrates the reason why conservation advocates vigorously insist of permanent legislative protection for threatened landscapes. The Forest Service is apparently intent on thwarting protection of the HD Mountains roadless area values even with multiple overlapping layers of strict regulatory, administrative, and contractual limitations prohibiting construction of a pipeline through the roadless area. It appears the only means to guarantee adherence with roadless area protection is to legislate that protection to ensure the agency's compliance.

Sincerely yours,

Mark Pearson

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cc: Kara Chadwick, Supervisor, San Juan National Forest
Jennifer Eberlien, Regional Forester, Rocky Mountain Region
Vanessa Mazal, Policy Advisor - Federal Affairs, Colorado Dept. of Natural Resources

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THE Durango HERALD

BP finalizes sale of San Juan Basin assets

European company IKAV buys natural gas operations

By Liz Weber
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New Mexico reporter
Tuesday, March 10, 2020 8:52 PM   Updated: Tuesday, March 10, 2020 10:32 PM

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BP America Production Co. finalized its sale of assets in the San Juan Basin natural gas and oil field on Feb. 28 to a European renewable energy company, IKAV.

BP originally announced its plan to pull out of the San Juan Basin in August 2018, a larger strategy in which the company had to divest about $6 billion to fund the further purchase of oil and gas operations in other regions of the U.S.

La Plata County Commissioner Gwen Lachelt said she was notified of the sale's completion March 4. While IKAV – which will function under a different name for U.S. operations – has not directly communicated with the county commissioners, she said she expected it would be setting up an appointment with the commission and other officials in the next couple of weeks.

“What I’m really pleased about is it sounds like the new company plans to keep 100% of their employees in the area, which is comforting because we have so many BP wells,” Lachelt said. “Starting off with new people would be difficult.”

According to its website
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IKAV specializes in wind and solar development and has offices in Europe, including Paris, Milan, Madrid, Luxembourg, and Hamburg, Germany. The renewable energy company was founded by Constantin von Wasserschleben in 2010. The company has made about 50 individual investments since 2011, primarily in renewables, according to its website. It reports to manage more than $1.6 billion of renewable and energy assets, with 500 megawatts of solar and 800 megawatts of wind projects.

BP’s selling of assets was not unexpected

BP America Production Co. sold its assets, like this one photographed in 2018, in the San Juan Basin to a European-based company IKAV.

Jerry McBride/Durango Herald file

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for those watching the developments in the basin. In August 2018, Williams Partners sold its assets in the San Juan Basin for a reported $1.125 billion, and previously in 2016, ConocoPhillips sold its assets for $3 billion.

Although companies are pulling out of their San Juan Basin natural gas operations, the region was once a leading natural gas producer for the U.S. The area was discovered in the 1920s and began to flourish in the 1990s, with about 30,000 wells. But as global prices for natural gas decreased in the mid-2000s and other energy fields like renewables became cheaper, production in the San Juan Basin decreased.

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STATE OF COLORADO

Bill Ritter, Jr., Governor
DEPARTMENT OF NATURAL RESOURCES

DIVISION OF WILDLIFE

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Exhibit B
Verification of Conservation Values
Jeffrey H. Munger Revocable Trust Conservation Easement

151 East 16th Street
Durango, CO 81301

8 October 2009

Ms. Katherine Roser
La Plata Open Space Conservancy
P.O. Box 1651
Durango, Co. 81302

RE: PROPOSED CONSERVATION EASEMENT - JEFFREY MUNGER PROPERTY

Dear Kathy:

The Jeffrey Munger property is located east of Bayfield, near Yellow Jacket pass, in an area mapped by the Colorado Division of Wildlife (CDOW) as critical winter range for big game animals. Mule deer and elk used the area heavily especially during winter months.

The CDOW and the Southern Ute tribe have been cooperating on a deer migration study in the HD Mountains where this proposed easement is located. Study objectives include mapping important corridors and evaluating how expanding gas development may impact these wintering deer herds. The study is starting its sixth year of data collection and we have fitted several deer in the area with Vhf and satellite radio-collars. Preliminary study results confirm that the area in question is a valuable migration corridor. Any efforts to protect migration corridors and winter range, especially in the face of the expanding gas development will be essential in retaining this land as effective mule deer habitat.

This property and the diverse plant communities associated with it provide numerous wildlife values in addition to those for mule deer. We have documented the value of this area as critical winter range for migrating elk herds with a radio collar study approximately ten years ago. Deer and elk herds serve as a food source for large predators, most namely the mountain lion, which are common in this general area. Abundant Gamble oak stands in the area provide a valuable fall food source for black bears which also frequent the area. A variety of small mammals: cottontail and jackrabbits are common and provide a steady food source for medium-sized predators such as coyote and bobcat. Although uncommon, and shy, grey fox are seen occasionally.

An expanding population of Merriam's Turkey raise broods in the open pastures on the easement property. Spring feeding areas are critical for rearing young turkeys. The cliffs just south of the property have an active Peregrine Falcon[1] nest. The USFS biologist monitors this nest annually and has document successfully reared young in the recent past. The USFS has also identified this area as Mexican Spotted Owl[2] suitable habitat. While surveys have not conclusively identified nesting spotted owls here, we have possible sightings.

The Munger property contains valuable wildlife habitat which in turn supports a diversity of wildlife species. Efforts to protect this property with a conservation easement would benefit the public and the wildlife that inhabit this area. If we can provide additional information or answer any questions, please contact your local District Wildlife Manager Cary Carron.

Sincerely,

Patt Dorsey

Patt Dorsey
Area Wildlife Manager, Durango

xc: Konishi, Spezze, Area file, DWM

[1] The Peregrine Falcon is a bird listed a State Special Concern.

[2] The Mexican Spotted Owl is listed as Federal and State Threatened species.