COLORADO
Department of Natural Resources
1313 Sherman St., Room 718
Denver, CO 80203

May 21, 2020

San Juan National Forest
Columbine Ranger District
Attn: Walter Brown, Project Manager
367 Pearl Street
P.O. Box 439
Bayfield, CO 81122
(*Submitted electronically)*

RE: Petrox Northern Extension Pipeline and Horizontal Drilling EA

Dear Mr. Brown,

In support of its mission to "develop, preserve and enhance Colorado's natural resources for the benefit and enjoyment of current and future citizens and visitors," the Colorado Department of Natural Resources (CDNR) appreciates the opportunity to provide public input on the Petrox Northern Extension Pipeline and Horizontal Drilling proposal under consideration by the San Juan National Forest (SJNF).

Colorado Parks and Wildlife (CPW), a division of CDNR, has been consulted during the development of this environmental assessment (EA), and has provided feedback related to wildlife and habitat considerations, and other direct environmental effects through public scoping comments and on the draft EA. The following comments supplement CPW's input, focusing on the state's interests in preserving the integrity of the Colorado Roadless Rule (CRR) (36 CFR § 294) and the project's potential to impact roadless values in the HD Mountains Colorado Roadless Area (CRA).

The remaining tracts of undeveloped, unfragmented forest lands that were brought into the CRA system under the CRR are of critical importance to Colorado's iconic big game species and other wildlife, and to our state's natural systems. In addition, they provide for the primitive, backcountry experiences enjoyed by Colorado residents and visitors alike, and support the recreation economies that sustain many of our state's rural communities. For these reasons, the state has sought to partner with the USFS to

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preserve roadless areas on National Forest System (NFS) lands for the enjoyment of future generations by placing them under special management provisions.

<u>Background: Colorado Roadless Rule</u>

In 2012, U.S. Department of Agriculture Secretary Tom Vilsack adopted the final Colorado Roadless Rule (CRR) after more than a decade of controversy and legal limbo over federal roadless area protections. The final rule provides distinct direction for managing CRA roadless values, including:

> "(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 dependent on large, relatively undisturbed areas of land; (5) primitive, semi-primitive non-motorized, and semi-primitive motorized classes of dispersed recreation; (6) reference landscapes; (7) naturally appearing landscapes with high scenic quality; (8) traditional cultural properties and sacred sites; (9) other locally identified unique characteristics."[1] *(36 CFR § 294.11)*

The final rule designated nearly 4.2 million acres of NFS lands across 363 inventoried CRAs across the state as a result of robust public input, as well as extensive negotiation between Colorado and the USFS.

Although conserving roadless values within these large tracts of undisturbed NFS lands in our state is the central purpose of the CRR, the rule accommodates USFS' need to consider decisions that would modify CRA boundaries, or management actions with the potential to diminish roadless characteristics within a particular CRA. The CRR indicates that such actions should be minimized or avoided to the extent possible, and decisions to approve them accompanied by "detailed analysis and clear justification."[2] *(CFR § 294.44 (d))*

It is CDNR's position that the USFS should evaluate alternatives that include actions designed to offset impacts to - or enhance - roadless values within a given CRA, if not to the CRA system, in the long run. This value is consistent with guidance presented in the 2001 Roadless Area Conservation Rule (2001 Roadless Rule) that served as the impetus for the 2012 CRR; is referenced in the 2012 CRR itself with respect to various activities, such

[1] USDA, Colorado Roadless Rule (CRR) FEIS Volume 1, 3.3-3.7, 2011

[2] See *§ 294.46 (d)(1-4)* in reference to requirements for minimizing surface disturbances for oil and gas well pads in non-Upper Tier CRAs; § 294.44 (e) on minimizing disturbances for LCZs in non-Upper Tier CRAs

as tree cutting and linear construction zone remediation; and has been upheld in previous decisions.[3] Decision processes that result in the approval of activities that are likely to diminish roadless values should demonstrate that serious consideration has been given to options for minimizing and/or offsetting negative impacts. Without this evidence, such actions have the potential to erode the force of the CRR in its implementation, and to compromise the CRA system as a whole.

Proposed Action

In this case, the USFS has vetted a variety of options in arriving at the proposed action, but it's unclear what criteria the agency used to weigh the benefits and risks of these options to roadless area characteristics against other values. In addition, the information presented in the EA does not indicate whether the USFS gave serious consideration to an alternative that would offset (indirectly or directly) the known effects of the proposed action on roadless values in the HD Mountains CRA.

The project under consideration involves a proposal to locate oil and gas production and transport facilities within and across the HD Mountains CRA, in order to fulfill fluid mineral leases that pre-date the final rule. The CRR includes exceptions to management restrictions for infrastructure and temporary road building, consistent with the terms of pre-existing oil and gas leases. The no surface occupancy stipulation in the lease associated with the project is subject to exception, waiver or modification, which gives the USFS discretion to locate infrastructure within the boundaries of the CRA. However, the CRR also limits the conditions under which infrastructure and transport systems within CRAs can be excepted. Specifically, it allows:

> "...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 or the construction, reconstruction or maintenance of a pipeline needed 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 route. *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*."
> *(CRF § 294.444 (c)(4))*

[3] See, e.g., Rio Grande National Forest Summitville Interchange Project (2018) https://www.fs.usda.gov/nfs/11558/www/nepa/107984_FSPLT3_5230053.pdf, and Arapaho National Forest Elkhorn Project (2014): https://www.fs.usda.gov/nfs/11558/www/nepa/79400_FSPLT3_1658775.pdf

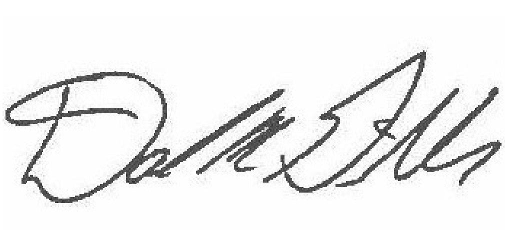
The proposed action would provide simultaneous authorization to build both "source" infrastructure within a CRA boundary and a transport system across the CRA boundary. CDNR is concerned that this approach, if adopted, could pave the way for future development within the CRA, especially if the final analysis in this decision falls short of unequivocally demonstrating that other options that would minimize or offset roadless impacts have been evaluated.

To the above ends, CDNR encourages the USFS to ensure that the agency has fully vetted options that would minimize or offset roadless value impacts. We further request that the final decision better explain the criteria that the agency used to evaluate risks and benefits to roadless values, as compared with other considerations, in arriving at its final conclusions.

<u>Conclusion</u>

CDNR remains committed to working with the USFS to uphold the legacy and integrity of the 2012 CRR. The current decision has significance to Colorado's interest in protecting roadless values within the HD Mountains CRA, and elsewhere. We would be open to exploring other opportunities for serving as a resource to the SJNF in this decision.

Truly,



Dan Gibbs
Executive Director

CC: Jennifer Eberlein, USFS; Kara Chadwick, USFS; Mark Lambert, USFS; Mark Lambert, USFS; Jenna Sloan, USFS; Cory Chick, CPW; Matt Thorpe, CPW; Dan Prenzlow, CPW