

January 17, 2023

Douglas J. Vilsack, Colorado State Director
Bureau of Land Management
Colorado State Office
2850 Youngfield Street
Lakewood, Colorado 80215
Via email: BLM_CO_Thompson_Divide@blm.gov

RE: Notice of Proposed Withdrawal and Public Meeting, Thompson Divide Area

Dear Director Vilsack,

Please accept these comments on behalf of the undersigned groups in response to the *Notice of Proposed Withdrawal and Public Meeting, Thompson Divide Area, Colorado* published in the Federal Register in October. 87 Fed. Reg. 62878 (Oct. 17, 2022). We strongly support the proposed administrative withdrawal to protect existing values and uses within the Thompson Divide.

Communities surrounding the Thompson Divide have long been unified in the goal of protecting the area.¹ Requests for a legislative withdrawal of the area to protect existing values and uses date back more than a decade.² Legislation that would withdraw the Divide has been introduced

¹ See e.g., Mayors Ben Bohmfalk & Jonathan Godes, *Guest Column: Glenwood Springs and Carbondale – unified for the Thompson Divide*, GLENWOOD SPRINGS POST INDEPENDENT, Dec. 11, 2022 (articulating strong support for an administrative withdrawal of Thompson Divide from local communities, urging agencies to “move quickly and make this a priority,” and reiterating that “For over a decade, through various councils and mayors, our two towns [Carbondale and Glenwood Springs] have been consistent and strong supporters of the work done by groups, like the Thompson Divide Coalition and Wilderness Workshop, to eliminate the threat of oil and gas development from this beloved landscape.”), attached as exhibit 1.

² See e.g., Letter from the Town of Crested Butte to Doug Vilsack, BLM’s Colorado State Director (Jan. 2023) (supporting withdrawal of Thompson Divide and citing four decades of support for “permanent protection from large scale extractive industries”), attached as exhibit 2; Bd. of Cnty. Comm’rs, Pitkin Cnty., Colorado, Res. 030-2009 (May 13, 2009) (supporting efforts to protect Thompson Divide from energy development and noting that “[e]nergy development on federal lands in these areas is inconsistent with such preservation and protection...”), attached at pp. 7-8 of exhibit 3; Bd. of Cnty. Comm’rs, Garfield Cnty., Colorado, Res. 09-67 (Sept 14, 2009) (supporting efforts to withdraw the Thompson Divide and touting existing values there that could be negatively impacted by oil and gas development), attached as exhibit 4; Bd. of Cnty. Comm’rs, Garfield Cnty., Colorado, Res. 10-73 (Oct. 4, 2010) (supporting “legislative initiatives and other opportunities to protect the Divide from energy development in a manner that respects existing rights”), attached as exhibit 5; Bd. of Trustees, Town of Carbondale, Colorado, Res. No. 9, Series of 2010 (Aug. 17, 2010), attached as exhibit 6; Letter from Office of the Mayor, City of Glenwood Springs, Colorado to Congressman John Salazar (Aug. 6, 2010) (supporting the Thompson Divide withdrawal and committing to work to ensure “the Thompson Divide gets the permanent protection it deserves”), attached as exhibit 7; Letter from Bd. of Cnty. Comm’rs, Pitkin Cnty., to Congressman John Salazar (Jul. 10, 2010) (supporting aims of the Thompson Divide Withdrawal and Protection Act), attached at pp. 1-6 of exhibit 3; Letter from Bd. of Cnty. Comm’rs, Garfield Cnty., to

in both chambers of Congress and maintains broad support, but an administrative withdrawal is necessary and appropriate to protect the area while a permanent legislative withdrawal works its way through Congress.³

Importantly, some protections currently exist for portions of the Thompson Divide. In 2015 the White River National Forest (WRNF) issued an Oil and Gas Leasing Decision that closed approximately 60,000 acres of the Divide to leasing to protect sensitive values and uses in the area.⁴ However, another 165,000 acres of the Thompson Divide remain open and available to new leasing under stale and outdated management plans for the Grand Mesa, Uncompahgre, and Gunnison National Forest (GMUG). Closing the remaining acreage is necessary to protect the whole area. Further, a WRNF closure approved by the Forest Supervisor is narrower and less durable than the Secretarial administrative withdrawal currently under consideration. So, the proposed administrative withdrawal will provide additional, meaningful protections for the entire Thompson Divide.

Other existing regulations are also inadequate to safeguard Thompson Divide's extraordinary values and uses. For example, the 2012 Colorado Roadless Rule provides protection for inventoried roadless areas within the Divide, but that rule does not prohibit new leasing. Nor does it do anything to protect sensitive Thompson Divide roadless areas from indirect impacts of new leasing and development just outside of their boundaries. So, without an administrative withdrawal, Thompson Divide roadless areas could still be leased for new mineral development and significantly impacted by development of new leases.

Congressman John Salazar (Sept. 15, 2010) (same), attached as exhibit 8; Letter from Bd. of Cnty. Comm'rs, Gunnison Cnty., to Congressman John Salazar (Sept. 21, 2010) (same), attached as exhibit 9; City Council, Glenwood Springs, Colorado, Res. 2012-21 (Oct. 4, 2012) (supporting Senator Bennet's Draft Bill to withdraw the Thompson Divide), attached as exhibit 10; Roaring Fork elected officials' letter to BLM (Dec. 17, 2015) (supporting BLM's proposed alternative to cancel improperly issued leases in the Divide and reciting long-term support for protection of the Thompson Divide.), attached as exhibit 11.

³ See e.g., CORE Act support brief (generally, documenting the depth, breadth, and diversity of support for a permanent legislative withdrawal of the Thompson Divide), at 51 (noting poll results showing 60 percent of respondents said Thompson Divide should be off-limits to oil and gas drilling and managed for wildlife and grazing), 68 (Glenwood Spring Post Independent editorial supporting withdrawal of the Thompson Divide), 90 (Op-Ed from Carbondale Mayor describing broad-based support for Thompson Divide withdrawal), 170 (support from Town of Vail), 190-193 (documenting past support for the Thompson Divide Withdrawal and Protection Act), attached as exhibit 12; see also Letter from the City of Glenwood Springs & Town of Carbondale to Doug Vilsack, BLM's Colorado State Director (Jan. 5, 2023) ("We support the administrative withdrawal and the meaningful interim protection that it will provide while a permanent legislative solution works its way through Congress. We hope that the administrative withdrawal remains a priority for the Departments of Interior and Agriculture and proceeds quickly. We look forward to fully engaging in the process early and throughout as cooperating agencies."), attached as exhibit 13; Letter from the Town of Paonia to Doug Vilsack, BLM's Colorado State Director (Jan. 11, 2023) (supporting legislation that would "permanently protect these lands from oil and gas development" and for the "important interim protections" provided by the proposed Thompson Divide administrative mineral withdrawal), attached as exhibit 14.

⁴ USDA, Forest Service, Final Record of Decision: Oil and Gas Leasing on Lands Administered by the WRNF (Dec. 3, 2015). See also pp. 4-5 *infra*.

The threat is real. In recent years sensitive lands west of Thompson Divide have been mined and drilled, carved up by pipelines, fragmented by new roads and well pads, littered with wastewater pits, and threatened by new leasing. Some notable examples include approval and construction of the Bull Mountain Pipeline, which cut a road big enough to drive a semi-truck through three roadless areas near the Divide⁵; master development plans in the North Fork headwaters, approving hundreds of new oil and gas wells outside of the Thompson Divide⁶; persistent threats of new leasing in the North Fork Valley, west of the Divide⁷; and mining for coal under nearby roadless areas that resulted in new roads being bulldozed into roadless areas⁸. Accidents and incidents have characterized nearby drilling as well, validating concerns about risks to the area's sensitive water resources.⁹

The undersigned groups represent broad-based and far-ranging members from the affected communities and around the country, reflecting the reality that protecting the Thompson Divide is supported by people throughout the State of Colorado and across the nation. We ask that you finalize and adopt the 20-year withdrawal as soon as possible, and we offer the following comments to aid you in the process.

We also support comments submitted separately by High Country Conservation Advocates.

I. THE SECRETARY MUST CONSIDER THESE IMPORTANT FACTORS.

Applicable regulations require that the Secretary consider several factors prior to approving this withdrawal, and that the Secretary furnish proof of such consideration to Congress. 43 C.F.R § 1714(c). We provide helpful information and comments on those factors below.

⁵ Staff Report, *Pitkin County, environmental groups sue feds over pipeline*, ASPEN TIMES (March 6, 2008), available at <https://www.aspentimes.com/news/pitkin-county-environmental-groups-sue-feds-over-pipeline/>.

⁶ *Judge says further study needed on North Fork Valley oil and gas lease project*, ASSOCIATED PRESS (Mar. 28, 2019), available at <https://www.postindependent.com/news/judge-says-further-study-needed-on-north-fork-valley-oil-and-gas-lease-project/>.

⁷ See e.g., Andrew Travers, *Controversial gas leases in the North Fork area up for sale again*, ASPEN DAILY NEWS (Jan. 13, 2013), available at https://www.aspendailynews.com/controversial-gas-leases-in-the-north-fork-area-up-for-sale-again/article_3b02bad2-adcc-53da-9ba1-20afb03f8c1c.html; Mark Jaffe, *BLM drops controversial western Colorado parcels from oil and gas sale*, DENVER POST (Feb. 6, 2013), available at <https://www.denverpost.com/2013/02/06/blm-drops-controversial-western-colorado-parcels-from-oil-and-gas-sale/>; Jennifer Dickson, The Wilderness Society, *Press Release: Controversial oil leasing proposal moves forward in Colorado's North Fork Valley* (Oct. 26, 2018), available at <https://www.wilderness.org/articles/press-release/controversial-oil-leasing-proposal-moves-forward-colorados-north-fork-valley>.

⁸ Jason Blevins, *Coal company says its freshly bulldozed road in roadless area near Paonia is legal*, THE COLORADO SUN (Jun. 20, 2020), available at <https://coloradosun.com/2020/06/20/mountain-coal-road-gunnison-forest-roadless-legal/>.

⁹ Dennis Webb, *Energy firm fined for North Fork leaks*, GRAND JUNCTION DAILY SENTINEL (Dec. 18, 2018), available at https://www.gjsentinel.com/news/western_colorado/energy-firm-fined-for-north-fork-leaks/article_d6ee4178-0356-11e9-af64-10604b9ffe60.html.

43 C.F.R. § 1714(c)(2)(1) - a clear explanation of the proposed use of the land involved which led to the withdrawal.

In this case, the purpose of the withdrawal is to protect vulnerable values and existing uses that are at risk from future mineral leasing and development. A 2014 letter to BLM from officials at Pitkin County, the Town of Carbondale, and the City of Glenwood Springs offered a clear explanation for the need to protect the Thompson Divide's unique values and uses, and the risk to those values and uses posed by mineral development in the area:

It is no overstatement to say that the future of our rural, resort and recreation-based economies depends on preserving the clean air, clean water, and non-industrial rural character that attract our visitors. Traffic, air quality, and other impacts flowing from a decision to permit oil and gas development on the WRNF will directly and adversely affect these pillars of our economy. While we recognize the importance of energy production, we strongly believe that protecting and promoting tourism, recreation, and other resort-based industries will better serve our economic future in Pitkin County. Simply put, we already have in place tremendously successful economic engines that depend upon clean air, clean water, and the rural character of our communities. We believe it is both unnecessary and shortsighted to authorize development that places those engines at risk. *See, e.g., State of New Mexico v. Bureau of Land Management*, 565 F.3d 583, 710 (10th Cir. 2009) ("Accordingly, BLM's obligation to manage for multiple use does not mean that development must be allowed Development is a possible use, which the BLM must weigh against other possible uses-including conservation to protect environmental values").¹⁰

These comments highlight the values and uses at-risk with new mineral leasing and development in the Thompson Divide, and why local governments have long supported a mineral withdrawal for the area.

Importantly, though, it is not just the existing tourism, recreation, and other resort-based industries that depend on protecting the Thompson Divide. The Thompson Divide retains extraordinary value to the local agricultural industry, providing clean water and critical summer grazing lands. And the area retains irreplaceable habitat and unfragmented mid-elevation wildlands that are increasingly rare and would be degraded by industrial development.

The WRNF Supervisor summed up the Divide's values in 2015 when the agency closed portions of the area to future leasing: "the [area] is strongly valued locally, regionally, and nationally for the existing natural character including wildlife, fish, ranching, recreation, air quality, and sense

¹⁰ Letter from Pitkin County, the Town of Carbondale, and the City of Glenwood Springs to BLM, Re: Requests of SG Interests and Ursa Resources for Extension of Oil and Gas Lease Suspensions Currently Undergoing State Director Review (Feb. 14, 2014), at 8, attached as exhibit 15.

of place.”¹¹ The same values characterize the GMUG. All of the Thompson Divide’s important wildlife habitat, recreation opportunities, grazing lands, clean air and water, and high proportion of roadless lands are unique and deserve protection.

Congress broadly defined the Secretary’s “withdrawal” power to withhold federal lands from mining or settlement, “in order to maintain other public values in the area or reserv[e] the area for a particular public purpose or program.” 43 U.S.C. § 1702(j). FLPMA provides guidance on the “public values,” directing the Secretary to ensure that “the public lands [would] be managed in a manner that [would] protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values; that, where appropriate, [would] preserve and protect certain public lands in their natural condition; that [would] provide food and habitat for fish and wildlife and domestic animals; and that [would] provide for outdoor recreation and human occupancy and use.” *Id.*, at 1701(a)(8). These directives justify the proposed administrative withdrawal of the entire Thompson Divide for the clear purpose of protecting the area’s sensitive and vulnerable existing values and uses from future mineral leasing and development.

43 C.F.R. § 1714(c)(2)(2) - an inventory and evaluation of the current natural resource uses and values of the site and adjacent public and nonpublic land and how it appears they will be affected by the proposed use, including particularly aspects of use that might cause degradation of the environment, and also the economic impact of the change in use on individuals, local communities, and the Nation.

Much work has already been done to inventory and evaluate uses and values in the Thompson Divide. The following paragraphs discuss some of this work that should be considered by the Secretary.

Attached is a “Project Review Report” with the results of a query of Colorado’s Conservation Data Explorer (CODEX). The report reflects a search of multiple conservation datasets and includes a synthesis of Colorado Natural Heritage Program (CNHP) and Colorado Parks and Wildlife (CPW) data for sensitive animal and plant species and natural communities within the proposed administrative withdrawal boundary. The report discloses documented occurrences of regulatory species; rare species; important natural communities; species of economic, recreational or conservation value; Potential Conservation Areas; areas with special management designations; lands under conservation easement; hatcheries; state wildlife areas; state parks; and important and specially designated wetlands.¹² The Secretary’s inventory of natural resources within the project area should identify the values included in the attached report and consider the potential benefits that the proposed withdrawal would have on these values.

¹¹ USDA, Forest Service, Final Record of Decision: Oil and Gas Leasing on Lands Administered by the WRNF (Dec. 3, 2015), at 5.

¹² See CODEX, Project Review Report for the Thompson Divide Proposed Mineral Withdrawal (1/11/2023) (hereafter “CODEX report”), attached as exhibit 16.

Wildlife and Habitat Values: The Thompson Divide provides important habitat for wildlife, ranging from deer, elk, and moose, to bears, mountain lions, and lynx, as well as genetically pure populations of Colorado River cutthroat trout and many more species.¹³ It comprises two of the best hunting units in Colorado and serves as a significant revenue generator for local and state economies.

In 2009, officials from the Colorado Division of Wildlife “DOW” (now Colorado Parks and Wildlife “CPW”) compiled a summary of wildlife values within the area. The summary focuses on the Thompson Creek watershed and surrounding areas, but it provides valuable information and a template/methodology to guide the Secretary’s own inventory. The DOW summary highlights Thompson Divide’s important habitat values, and it provides information on the economic impact the area’s existing values and uses have on Colorado’s economy.¹⁴

Thompson Divide’s wildlife values would be harmed by mineral leasing and the accompanying development. Noise, traffic, roads, and infrastructure associated with mineral development degrade habitat quality and quantity. Mineral leasing and development also bring the potential for air and water pollution. These impacts have been studied and those studies have been summarized in prior comments on record with the U.S. Forest Service and the BLM.¹⁵

The Thompson Divide retains high habitat value because there are few roads, the rivers run pure, and animals retain large, unfragmented swaths of land. Looking at the Divide from a regional perspective, it is an important part of a larger complex of roadless areas connecting the Grand and Battlement Mesas with the main stem of the Rocky Mountains.¹⁶ The Thompson Divide is the piece that holds it all together, an ecological chockstone that bridges these important habitats. It is an area that should be given the highest protection for existing values and for the values that this intact landscape may provide in future years—in the face of continued development pressures and a changing climate, among other threats.

Protecting habitat connectivity is a priority for the Department of Interior and for the State of Colorado.¹⁷ Withdrawing the Thompson Divide from availability for new leasing would support these priorities by protecting important seasonal habitats and eliminating the threat of habitat

¹³ See *id.*, at Tables 1-6.

¹⁴ John Groves, District Wildlife Manager, Colorado Division of Wildlife, *Thompson Divide Coalition Wildlife Summary* (Apr. 14, 2009), attached as exhibit 17.

¹⁵ See *e.g.*, Wilderness Workshop et al., Comments to the U.S. Forest Service on the WRNF Oil and Gas Leasing DEIS (Nov. 30, 2012) at 40-53 (summarizing science and impacts oil and gas leasing and development has on terrestrial and aquatic wildlife, as well as rare plants), attached as exhibit 18; see also Pitkin County, Comments to the U.S. Forest Service on the WRNF Oil and Gas Leasing DEIS (Nov. 30, 2012) at 24-5, attached as exhibit 19.

¹⁶ See Rocky Mountain Wild, Thompson Divide Connectivity Map, attached as exhibit 20.

¹⁷ See Dept. of the Interior, Secretarial Order 3362 “Improving Habitat Quality in Western Big Game Winter Range and Migration Corridors” (Feb. 9, 2018); see also Executive Order D 2019 011 “Conserving Colorado’s Big Game Winter Range and Migration Corridors” (Aug. 21, 2019).

fragmentation associated with development of new leases in the area. The CODEX Report attached highlights some of the Thompson Divide's important migration corridors.¹⁸

Roadless Areas and Other Specially Designated Areas: In 2012, after years of public engagement and analysis, the U.S. Forest Service implemented the Colorado Roadless Rule. The Rule provides protection from roadbuilding and tree cutting on tens of thousands of acres in the Thompson Divide including the East Divide/Four Mile Park, Clear Creek, Hunstman Ridge, Tomahawk, McClure Pass, Assignment Ridge, Thompson Creek Roadless Areas, and more. Taken together, Thompson Divide's roadless areas represent one of the largest complexes of non-wilderness roadless lands and one of the most valuable and diverse mid-elevation forested landscapes left in Colorado. As mentioned above, the Colorado Roadless Rule does not prohibit new leasing, so without an administrative withdrawal many of these roadless areas could be leased and subject to the direct and indirect impacts of development associated with new leases.

These roadless areas retain high quality soil, water, and air; sources of public drinking water; diversity of plant and animal populations; habitat for listed, threatened, proposed, sensitive, and candidate species, as well as habitat for those dependent on large swaths of undeveloped land; primitive, semi-primitive non-motorized, and semi-primitive motorized classes of dispersed recreation; reference landscapes; natural appearing landscapes with high scenic quality; traditional cultural properties and sacred sites; and other locally identified unique characteristics. See 36 C.F.R. § 294.41. During the rulemaking process, detailed information was provided to the U.S. Forest Service on the unique roadless values within these Thompson Divide roadless areas.¹⁹ That information should be reviewed and incorporated into the record for this proposed administrative withdrawal.

Thompson Divide also includes at least one Area of Critical Environmental Concern (ACEC), the Thompson Creek ACEC, and the Thompson Creek watershed retains important wilderness values. BLM has committed to manage the area to protect its wilderness character.

Thompson Divide also contains several Potential Conservation Areas (PCAs) identified and prioritized for protection by the CNHP due to high biodiversity significance. These PCAs include Avalanche Creek, Coal Creek, Crystal River, Dark Canyon, East Creek, Fourmile Creek, Horse Ranch Park, Lennox Mesa, Little Coal Creek, Lost Lake, McClure Pass, Middle Thompson Creek, and many more.²⁰ Many of these PCAs have no protection from mineral leasing and development. A few are currently closed to leasing, but those areas would still benefit from the broader and more durable protections of the proposed administrative mineral withdrawal.

¹⁸ See exhibit 16 (CODEX report), at Table 6.

¹⁹ See letter from Steve Yamashita, DOW, Dept. of Natural Res., State of Colorado, to Jim Goodyear "RE: Recommendations to the State Inventoried Roadless Area Task Force on the White River National Forest Inventoried Roadless Areas" (Jun. 8, 2006), attached as exhibit 21; USDA Forest Service, Rocky Mountain Region, Profiles of Colorado Roadless Areas (July 23, 2008), attached as exhibit 22; White River National Forest Roadless Area Descriptions, attached as exhibit 23.

²⁰ See exhibit 16 (CODEX report), at Table 6.

Mineral development in and around these sensitive areas could result in significant direct and indirect impacts, including air and light pollution, fragmentation and destruction of habitat, and water degradation or contamination. Withdrawing these lands from availability for mineral leasing will protect the existing values from these impacts.

Nonfederal Community Resources: The proposed administrative withdrawal also overlaps or abuts State Wildlife Areas, State Natural Areas, hatcheries, open space and parks owned and operated by local governments, trails and recreational facilities (including the Sunlight and Spring Gulch ski areas), and many private ranches with conservation easements intended to protect the area's scenic values, rural character, and natural resources.²¹

Water Resources: Water quality and quantity are among the most important values the Thompson Divide provides. Local communities depend on water from the Divide. For instance, Carbondale receives part of its primary municipal water supply directly from the Thompson Creek watershed. Ranchers and farmers along the Crystal River depend on the Divide's water resources. And recreation outfitters (i.e., fly-fishing) depend on pristine riparian and aquatic ecosystems, both within and downstream of the Divide's watersheds.

Similarly, water flowing from the Divide is critical to sustain agriculture in the North Fork Valley, which is a hub of organic agriculture and one of only two federally recognized wine regions in Colorado. Organic agriculture, specialty crops, and high-quality hay all depend on the availability of abundant water free from contamination. For farmers and ranchers, water quantity and quality are both of utmost importance. The valley's water supply relies on protecting the North Fork from source to use, which means that sediment from new roads, well-pads, pipelines, and other energy development must be prevented from entering this critical water system.

Significant work has been undertaken to assess and protect sensitive water resources within the Divide that should be considered in any inventory and evaluation.²² The Thompson Divide Coalition and the Roaring Fork Conservancy have monitored water quality for streams within the Divide, including Thompson Creek. In 2013, the groups released a study confirming high water quality and the absence of contamination.²³ Similar efforts have been undertaken in the North Fork Valley.²⁴ These efforts should be considered by the Secretary. The proposed administrative withdrawal could protect the area's water resources.

²¹ See *id.*, at Tables 6, 7.

²² See *id.*, at Table 8 (disclosing National Wetland Inventory Features within the Project Area).

²³ Robert E. Moran, Ph.D., *Thompson Divide Supplemental Water Quality 2013* (Aug. 2014), attached as exhibit 24; see also Dorothy Atkins, *Testing of water near Thompson Divide reveals very high quality*, ASPEN DAILY NEWS (Aug. 15, 2014) (group sponsored study confirms pristine waters remain uncontaminated), attached as exhibit 25.

²⁴ See e.g., *Water quality monitoring program turns 18*, DELTA COUNTY INDEPENDENT (Mar. 19, 2019), available at https://www.deltacountyindependent.com/news/north-fork/water-quality-monitoring-program-turns-18/article_de9b004b-9029-5ae2-bcd8-2218449f245c.html.

In 2014, several branches of Thompson Creek won an Outstanding Waters designation from the Colorado Water Control Commission due to exceptional water quality.²⁵ The designation provides the highest protection under the State’s antidegradation rule and requires maintenance of the area’s existing high water quality. See 5 CCR 1002-31.8. Under the designation, these rivers “constitute an outstanding state or national resource . . . and shall be maintained at their existing quality.” 5 CCR 1002- 31; Sec. 31.8(1)a, CWQD, 2013. To achieve this designation, the proposal must prove that the waters meet existing water quality criterion, are a demonstrated national resource, or are otherwise significantly pristine and unaffected by anthropogenic disturbance. *Id.*

Forest Service analyses have also shown that shallow groundwater within the Thompson Creek watershed makes the area particularly susceptible to groundwater contamination.²⁶ While the Thompson Creek watershed is currently closed to oil and gas leasing, the proposed 20-year administrative withdrawal is broader would provide additional protection from potential development. And the Secretary’s approval would make the proposed administrative withdrawal more durable than the current closure. Other sensitive watersheds in the Divide also deserve the protection of the proposed withdrawal.

Importantly, protecting the water flowing from the Thompson Divide would have broad impacts. Streams and creeks flowing from the area feed the upper Colorado watershed and sustain more than 40 million people downstream, as well as millions of acres of sensitive habitat.²⁷ Due to severe drought in the basin and the impacts of climate change, the need to protect and conserve Colorado River water has never been greater. Withdrawing the Thompson Divide will eliminate water demands associated with new mineral development in the area and ensure that more water remains in the system. The withdrawal would also reduce the likelihood of contamination high up in the watershed that could affect so many people, related values, and reliant uses downstream.

Recreation and Scenery: The Thompson Divide is a recreational Mecca with opportunities for skiing, snowmobiling, climbing, mountain biking, and hiking, wildlife viewing, hunting, and fishing. The West Elk Loop and Scenic Byway, which forms the southeast boundary of the Divide

²⁵ This designation, implemented in the 1992 Colorado State Legislature House Bill 92-1200, was established under Section 25-8-209, creating, “an outstanding waters designation for certain waters for which no degradation will be allowed” (CWQD, 1992). See also Will Grandbois, *Thompson Creek branches gain protections*, GLENWOOD SPRINGS POST INDEPENDENT (June 14, 2014), available at <https://www.postindependent.com/news/local/thompson-creek-branches-gain-protections/>.

²⁶ See WRNF, Oil and Gas Leasing FEIS, Ch. 3 – Affected Environment, at 94; see also *id.*, at 150 (discussing potential groundwater contamination from oil and gas drilling).

²⁷ See Rachel Estabrook & Michael Elizabeth Sakas, *The Colorado River is drying up—but basin states have ‘no plan’ on how to cut water use*, CPR News (Sep. 17, 2022) (“scientists now recommend that water managers plan for the river to provide just 9 million acre-feet of water annually. That’s a reduction of about a quarter from the amount used in 2021”), available at <https://www.cpr.org/2022/09/17/colorado-river-drought-basin-states-water-restrictions/>.

and traverses through the proposed withdrawal further south.²⁸ The Crystal River, an eligible wild and scenic stream, also marks the southeast boundary of the Thompson Divide. These scenic and recreational values may be significantly and negatively impacted by new mining and mineral development.²⁹ Withdrawing Thompson Divide from new leasing would protect the area's existing recreational and scenic uses and values from the impacts of mineral development such as increased industrial traffic, displacement of recreational uses, noise, and diminishment of natural settings that recreationists seek.

Recreational resources in the Thompson Divide are also threatened by climate change and the climate impacts that stem from new mineral development. Those impacts were described in a letter supporting the administrative mineral withdrawal sent by the Mount Sopris Nordic Council, which manages and maintains the Spring Gulch Nordic ski area within the Thompson Divide:

... increased extraction and use of fossil fuels accelerates climate change, an existential threat to cross country skiing at Spring Gulch. And it's not a future, conceptual concern. Already winters start later and end earlier, resulting in a shorter ski season forcing the Nordic Council to initiate an expensive climate resiliency and adaptation plan. The most direct impact is to areas that historically accumulated snow in early winter and held it late into spring but that are now snow free in the early and late winter. In the summer of 2022, we developed 6 km of new trails in areas that have better snow retention. In 2023, we will create a new parking area adjacent to the new trails so that skiers don't have to navigate several hundred yards of mud in early winter and in the last month of ski season.³⁰

The Nordic Council's comments also discuss direct impacts to the landscape from new mineral leasing and development that would negatively impact Spring Gulch, but the Council's comments related to climate change underscore the need to stop leasing and developing fossil fuels writ large. They show how, in the Thompson Divide, we can protect valuable existing uses or we can lease and develop fossil fuels. But we really can't do both.

Agriculture: Thompson Divide also provides summer range for livestock operators. Local ranchers have long advocated for protection of the Thompson Divide, and against the threat that mineral

²⁸ See Redstone, Colorado Community website at <https://www.redstonecolorado.com/byway>.

²⁹ See e.g., Rasch, Rebecca; Reeves, Matt; Sorenson, Colin. 2018. Does oil and gas development impact recreation visits to public lands A cross-sectional analysis of overnight recreation site use at 27 national forests with oil and gas development. *Journal of Outdoor Recreation and Tourism*. 24: 45-51, available at <https://www.fs.usda.gov/research/treesearch/57343#>.

³⁰ Letter from Mike Shook, Bd. President, Mount Sopris Nordic Council, to Doug Vilsack, BLM Colorado State Dir. (Jan. 12, 2023), attached as exhibit 26.

development poses to their way of life.³¹ Water from the Thompson Divide also helps sustain the rich and growing agricultural community in the North Fork Valley described above.³²

In 2013 BBC Research & Consulting prepared a report entitled *The Economic Contribution of Thompson Divide to Western Colorado*.³³ The report found that hunting, fishing, grazing, and recreation activities in the Thompson Divide support nearly 300 jobs and produce \$30 million a year in economic value.³⁴ While the report is now dated, it provides a good starting point and a sound methodology for BLM to consider as it inventories and evaluates contemporary uses and values in the Divide.

Notably, oil and gas drilling is NOT an existing use of the Thompson Divide. There is currently no active drilling within the withdrawal area. Some drilling occurred years ago, but no exploratory drilling has occurred for a long time.³⁵ While a handful of undeveloped leases are held in the Thompson Divide, their validity has been challenged and as discussed below, there is little evidence that development would be economic. To the contrary, most oil and gas leases in the Divide have been canceled or expired without development. Meanwhile other demands on the landscape have increased, including recreational demands. These shifts intensify the importance and reliance of local communities on existing uses and values, and erode any claims that mineral leasing and development in the area provide a significant benefit to local communities.

BLM should not overestimate potential impacts to the oil and gas industry.³⁶ History has shown very little oil and gas development within the Thompson Divide. Reports suggest that mineral development in the area may not be economic. In 2014, before most of the oil and gas leases in the Divide expired or terminated, a highly qualified petroleum engineer prepared an *Economic Analysis of the Potential for Oil and Gas Development in the Thompson Divide Area*.³⁷ The analysis

³¹ See letter from local ranchers to President Biden (Sept. 16, 2022) (describing support for protection of the Thompson Divide and asking for an administrative withdrawal of the area), attached as exhibit 27; see also video by Dorothy M. Atkins, *The Battle over the Thompson Divide* (featuring local ranchers discussing their interests in the Divide and the impacts that new oil and gas development would have on those interests), available at https://vimeo.com/94083304?embedded=true&source=vimeo_logo&owner=21079294.

³² See also Letter from the Colo. Farm and Food All., Valley Organic Growers Ass., and the Western Slope Cons. Ctr., to Doug Vilsack, BLM Colorado State Director “Re: Support for Thompson Divide Administrative Mineral Withdrawal” (Jan. 13, 2023), attached as exhibit 28.

³³ BBC Research & Consulting, *The Economic Contribution of Thompson Divide to Western Colorado* (March 2013), attached as exhibit 29.

³⁴ *Id.*, see also Dorothy Atkins, *Thompson Divide contributes \$30M and 294 jobs to the local economy*, ASPEN DAILY NEWS (Mar. 21, 2013), available at https://www.aspendailynews.com/thompson-divide-contributes-30m-and-294-jobs-to-the-local-economy/article_9e013ebf-bfda-5098-a0eb-e7f4da34c9ec.html.

³⁵ For example, wells in the Wolf Creek storage field were drilled as production wells in the 1960s. The wells ran dry in the 1970s and the wells have been used to store natural gas produced elsewhere ever since.

³⁶ A new report shows that benefits of oil and gas development are frequently overblown and the high costs of such development are overlooked. See Chris Stiffler & Pegah Jalali, Colorado Fiscal Institute, *Clearing the Air: The Real Costs and Benefits of Oil and Gas for Colorado* (Jan. 2023), attached as exhibit 35.

³⁷ Dr. John D. Wright, Wright Consulting Company, Inc., *Economic Analysis of the Potential for Oil and Gas Development in the Thompson Divide Area* (Feb. 11, 2014), attached as exhibit 30.

concluded that attempting to develop oil and gas leases in the area “is not an economically viable venture and that it is highly likely that any attempts to develop the leases would lead to a substantial loss of money for the operator.”³⁸ The author also concluded that leaseholders with interests in the area were speculating on leases without an intent to develop them.³⁹

Also in 2014, MHA Petroleum Consultants prepared a report entitled *Thompson Divide Area Geological & Economic Assessment*.⁴⁰ The report findings follow:

MHA finds little to no economic viability for the drilling of oil or gas wells on the leases within the TDA [Thompson Divide Area]. With the enormous infrastructure capital costs required, in conjunction with low potential reserve numbers, little value can be assigned to these leases. Expenses aside, the logistics involving the “roadless area”, wetlands, wildlife, recreation, public opposition, and multiple other obstacles, makes this area extremely unattractive to drill and operate wells.⁴¹

All of this existing information suggests that an administrative withdrawal would effectively protect Thompson Divide’s existing uses and values, including the area’s important natural, agricultural, recreational values, and that foreclosing new mineral leasing is likely to have little or no actual impact on individuals, local communities, and the Nation.

43 C.F.R. § 1714(c)(2)(3) - an identification of present users of the land involved, and how they will be affected by the proposed use.

“Keep it as it is” has been a rally cry of efforts to protect Thompson Divide since those efforts began.⁴² The administrative withdrawal proposed would protect the interests of present users.

As discussed above, the Thompson Divide is primarily used by local ranchers, as well as hunters and fishers and recreationists from near and far. Water from the Divide flows into multiple watersheds and supports agricultural, recreational, and domestic uses in nearby communities. Nearby private landowners owe much to the roadless qualities and undeveloped visual backdrop offered by the Thompson Divide.

³⁸ *Id.*, at 2.

³⁹ *Id.*

⁴⁰ MHA Petroleum Consultants, *Thompson Divide Area Geological & Economic Assessment* (Jan. 28, 2014), attached as exhibit 31.

⁴¹ *Id.*, at 1.

⁴² Video by Peter McBride, *A Divide United* (The Thompson Divide Region in central Colorado is a quarter million acres of National Forest. Energy development is knocking on its door. The community surrounding it is united—to keep it as it is), available at <https://vimeo.com/60620735>; see also video by Trout Unlimited and Sportsmen for Thompson Divide, *The Thompson Divide – Hunting Film Tour* (“Let’s keep it like it is”), available at <https://www.youtube.com/watch?v=IOSKgRt0Bbc>.

The goal of protecting these existing values has unified locals and Thompson Divide users of every political persuasion since efforts to secure a permanent legislative withdrawal began in 2009. Early media stories described the breadth of support:

The coalition members include the North Thompson Cattlemen’s Association, which has grazing rights in the area of concern; numerous owners of ranches or other property in the area; recreationalists; hunting and fishing groups; and several conservation groups.⁴³

The Coalition has only grown in size and diversity over the years, as is exhibited by the signatories on this letter and by comments the Secretary will receive in favor of the proposed Thompson Divide administrative withdrawal.

As discussed above, extractive mining interests in the Divide are minimal. There is no active mineral development within the Divide. The few existing leases may not be valid and experts doubt that developing them would be economic. There is an existing gas storage field within the Divide, but that use would be protected with other valid existing rights.

The proposed withdrawal would effectively help protect agricultural, recreational, and other existing users of the Divide and the values that support existing uses.

43 C.F.R. § 1714(c)(2)(4) - an analysis of the manner in which existing and potential resource uses are incompatible with or in conflict with the proposed use, together with a statement of the provisions to be made for continuation or termination of existing uses, including an economic analysis of such continuation or termination.

The withdrawal is intended to protect existing uses against the threat of new mineral leasing and development. It would foreclose new mineral leasing, but it would respect valid existing rights—including leases. Consequently, some mineral development could still occur on valid leases in the area despite the withdrawal. However, there is little contemporary interest in new mineral development associated with existing leases. Most existing leases remain undeveloped despite having been let years ago. So, new mineral development that would conflict with the withdrawal seems unlikely as discussed and supported by expert opinions above.

There is some interest in capturing fugitive methane escaping from historic coal mines within the Thompson Divide to reduce or eliminate harmful climate emissions. BLM and the U.S. Forest Service should be clear to protect this potential activity in any final withdrawal decision.

43 C.F.R. § 1714(c)(2)(5) - an analysis of the manner in which such lands will be used in relation to the specific requirements for the proposed use.

⁴³ Scott Condon, *Conservationists, cowboys team to oppose gas leases near Carbondale*, ASPEN TIMES (April 9, 2009), attached as exhibit 32.

Here again, the purpose is to protect existing uses. The withdrawal simply continues existing uses with the exception of new mineral leasing. As discussed throughout these comments, the proposed withdrawal would protect nearly all of the current values and uses in the Divide. It would foreclose new leasing, but that is neither a dominant or promising use at this point.

43 C.F.R. § 1714(c)(2)(6) - a statement as to whether any suitable alternative sites are available (including cost estimates) for the proposed use or for uses such a withdrawal would displace.

The Thompson Divide is a singular place. In the early 1900s, after a month-long hunting expedition into the area, President Theodore Roosevelt called it “a great, wild country.”⁴⁴ Today the Divide maintains much of the same rugged character that Roosevelt saw over a century ago. Indeed, sporting groups have labeled it “one of the great American places.”⁴⁵ Former Colorado Governor and now Senator, John Hickenlooper has described Thompson Divide as a Colorado “crown jewel.”⁴⁶ Protecting the values and uses that define the character of Thompson Divide can only occur in one place.

The mineral resources that would be withdrawn by this proposal, on the other hand, occur in many other places. For example, recent oil and gas assessments in the Piceance Basin confirm significant quantities of technically recoverable oil and gas underlying already developed fields.⁴⁷ Technological advancements have resulted in increased estimates of recoverable oil and gas throughout the country. That means that there are additional opportunities to drill and produce gas in fields that have already been developed, rather than industrializing the few wildlands we’ve got left. We can develop oil and gas in many locations around the country, but there is only one Thompson Divide.

43 C.F.R. § 1714(c)(2)(7) - a statement of the consultation which has been or will be had with other Federal departments and agencies, with regional, State, and local government bodies, and with other appropriate individuals and groups

We urge BLM to work closely with the U.S. Forest Service, which will lead the NEPA analysis associated with this proposed administrative withdrawal, to ensure consideration is thorough and expedient. Early tribal consultation is critical to the success of this process. Also, every effort to engage the most impacted communities must be taken, including formal invitations to

⁴⁴ Paul Tolme, *The Fight Over the Thompson Divide*, 5280 MAGAZINE (March 2016), attached as exhibit 33; see also Will Grandbois, *Thompson Divide an important, historic hunting ground*, GLENWOOD SPRING POST INDEPENDENT (Oct 9, 2014), attached as exhibit 34.

⁴⁵ See Trout Unlimited “Thompson Divide” website, <https://greatamericanplaces.tu.org/thompson-divide/> (touting it as one of the Great American Places) (accessed 1/7/23).

⁴⁶ See exhibit 33.

⁴⁷ See e.g., Hawkins, S.J., Charpentier, et al. 2016, Assessment of continuous (unconventional) oil and gas resources in the Late Cretaceous Mancos Shale of the Piceance Basin, Uinta-Piceance Province, Colorado and Utah, 2016: U.S. Geological Survey Fact Sheet 2016-3030, 4 p., <http://dx.doi.org/10.3133/fs20163030>.

impacted counties and adjacent communities to participate in the NEPA process as cooperating agencies.

43 C.F.R. § 1714(c)(2)(8) - a statement indicating the effect of the proposed uses, if any, on State and local government interests and the regional economy.

In the long campaign to achieve a permanent withdrawal for Thompson Divide, communities including Pitkin County, the Town of Carbondale, and the City of Glenwood Springs have provided volumes of comments and appeals outlining their interests in the Divide. BLM should consider those documents and the interests described therein as part of this process.⁴⁸

43 C.F.R. § 1714(c)(2)(9) - a statement of the expected length of time needed for the withdrawal.

The Secretary should maximize the term of any administrative withdrawal approved to ensure the strongest protection for the Thompson Divide while legislation works its way through Congress.

We urge the agency to proceed with this administrative withdrawal as quickly as possible. We stand willing to help facilitate that in any way that may be useful.

43 C.F.R. § 1714(c)(2)(10) - the time and place of hearings and of other public involvement concerning such withdrawal.

We appreciate the public meeting already held in Carbondale in December. We urge BLM to work closely with the U.S. Forest Service to ensure the process includes robust and meaningful opportunities for public comment moving forward. The agencies should ensure that additional meetings are held on both sides of McClure Pass, in Carbondale and Crested Butte, for example. And we ask that Spanish translation services be available throughout the process.

43 C.F.R. § 1714(c)(2)(11) - the place where the records on the withdrawal can be examined by interested parties.

Given that the NEPA analysis will be undertaken by the U.S. Forest Service, but the Secretary will make the ultimate decision approving an administrative withdrawal for the Thompson Divide, we recommend the agencies coordinate on one location, or one project website/database where all records will be made available to the public.

43 C.F.R. § 1714(c)(2)(12) - a report prepared by a qualified mining engineer, engineering geologist, or geologist which shall include but not be limited to information on: general geology, known mineral deposits, past and present mineral production, mining claims, mineral leases, evaluation of future mineral potential, present and potential market demands.

⁴⁸ See e.g., exhibits 15 and 19 attached.

BLM cooperated in the U.S. Forest Service’s preparation of the 2015 oil and gas leasing decision on the WRNF. Much of the work used to inform that decision may be updated and used to inform the proposed administrative withdrawal.

The existing analysis for leasing on the GMUG is outdated and stale, and that analysis was also never properly adopted by the BLM. Consequently, the existing analysis will provide very little adequate information or analysis to inform this report or the U.S. Forest Service’s NEPA analysis. Additional analysis will be necessary on the GMUG to support the Secretary’s decision administratively withdrawing the Thompson Divide.

II. AN ADMINISTRATIVE WITHDRAWAL FOR THE THOMPSON DIVIDE WOULD FURTHER EXECUTIVE AND ADMINISTRATIVE POLICIES.

On January 27, 2021, President Biden issued an Executive Order (E.O.) on Tackling the Climate Crises at Home and Abroad, and set out this policy:

The United States and the world face a profound climate crisis. We have a narrow moment to pursue action at home and abroad in order to avoid the most catastrophic impacts of that crisis and to seize the opportunity that tackling climate change presents. Domestic action must go hand in hand with United States international leadership, aimed at significantly enhancing global action. Together, we must listen to science and meet the moment.⁴⁹

The E.O. acknowledges that the climate crisis “threatens our people and communities, public health and economy, and, starkly, our ability to live on planet Earth.”⁵⁰ It also offers promise:

Despite the peril that is already evident, there is promise in the solutions—opportunities to create well-paying union jobs to build a modern and sustainable infrastructure, deliver an equitable, clean energy future, and put the United States on a path to achieve net-zero emissions, economy-wide, by no later than 2050.⁵¹

The President’s policy demands that:

My Administration [] organize and deploy the full capacity of its agencies to combat the climate crisis to implement a Government-wide approach that reduces climate pollution in every sector of the economy; increases resilience to the impacts of climate change; protects public health; conserves our lands, waters, and biodiversity; delivers

⁴⁹ Exec. Order No. 14008 of January 27, 2021: “Tackling the Climate Crisis at Home and Abroad,” *reprinted in* 86 Fed. Reg. 7619, 7619 (Feb. 1, 2021), *available at* <https://www.federalregister.gov/documents/2021/02/01/2021-02177/tackling-the-climate-crisis-at-home-and-abroad>.

⁵⁰ 86 Fed. Reg. at 7622

⁵¹ *Id.*

environmental justice; and spurs well-paying union jobs and economic growth, especially through innovation, commercialization, and deployment of clean energy technologies and infrastructure. Successfully meeting these challenges will require the Federal Government to pursue such a coordinated approach from planning to implementation, coupled with substantive engagement by stakeholders, including State, local, and Tribal governments.⁵²

Protection of public lands, waters, and biodiversity is an important pillar of this policy.

Section 208 of the E.O. directs the Secretary of Interior to pause new oil and gas leasing on public lands pending completion of a comprehensive review and reconsideration of the agency's entire minerals program in light of its "broad stewardship responsibilities."⁵³ It demands that the Department of Interior take appropriate measures to adjust policies based on climate costs.⁵⁴ A Fact Sheet released along with the E.O. notes that "[f]ossil fuel extraction on public lands accounts for nearly a quarter of all U.S. greenhouse gas emissions."⁵⁵ Withdrawing public lands from availability for mineral leasing could help reduce climate impacts from development.

Section 214 of the E.O. directs that agencies empower workers by advancing conservation, agriculture, and reforestation.⁵⁶ It demands the "[g]overnment must protect America's natural treasures, increase reforestation, improve access to recreation, and increase resilience to wildfires and storms, while creating well-paying union jobs for more Americans, including more opportunities for women and people of color in occupations where they are underrepresented."⁵⁷ The policy also highlights the important role that farmers, ranchers, and forest landowners have in helping to combat the climate crisis "by sequestering carbon in soils, grasses, trees, and other vegetation and sourcing sustainable bioproducts and fuels."⁵⁸ Protecting the Thompson Divide from new mineral leasing and development will help in achieving these goals. Eliminating the threat of mineral development would ensure resources and energy are invested in protecting the area's existing values and less climate damaging uses. That will lead to more jobs that aid in and benefit from the protection and conservation of the public lands and waters of the Thompson Divide.

⁵² *Id.*

⁵³ *Id.*, at 7624-25.

⁵⁴ *Id.*

⁵⁵ See U.S. Dept. of the Interior, FACT SHEET: President Biden to Take Action to Uphold Commitment to Restore Balance on Public Lands and Waters, Invest in Clean Energy Future (Jan. 27, 2021), *available at* <https://www.doi.gov/pressreleases/fact-sheet-president-biden-take-action-uphold-commitment-restore-balance-public-lands>; *see also* Merrill, M.D., Sleeter, B.M., Freeman, P.A., Liu, J., Warwick, P.D., and Reed, B.C., 2018, Federal lands greenhouse gas emissions and sequestration in the United States—Estimates for 2005–14: U.S. Geological Survey Scientific Investigations Report 2018–5131, 31 p., <https://doi.org/10.3133/sir20185131>.

⁵⁶ 86 Fed. Reg. at 7626

⁵⁷ *Id.*

⁵⁸ *Id.*

Section 216 of the E.O. reiterates the Administration’s broad goal of “conserving at least 30 percent of our lands and waters by 2030.”⁵⁹ It also sets out a process for the Secretaries of Agriculture and Interior to work with other leaders to identify lands and waters that qualify for conservation.⁶⁰ The Thompson Divide represents a good candidate for conservation. Withdrawing the area would protect the sensitive and unique values, as well as existing uses, and it would reduce climate impacts associated with new leasing and mineral development. Failure to protect the Thompson Divide with this administrative withdrawal would be a missed opportunity.⁶¹

Thanks for considering these comments,

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⁵⁹ *Id.*, at 7627

⁶⁰ *Id.*

⁶¹ “Approximately 60% of land in the continental U.S. is in a natural state, but we are losing a football field worth of it every 30 seconds. The decline of nature threatens wildlife; across the globe, approximately one million animal and plant species are at risk of extinction in the coming decades, [including one-third of U.S. wildlife.](#)” See U.S. Dept. of the Interior, FACT SHEET: President Biden to Take Action to Uphold Commitment to Restore Balance on Public Lands and Waters, Invest in Clean Energy Future (Jan. 27, 2021) (citing information from the United Nations), available at <https://www.doi.gov/pressreleases/fact-sheet-president-biden-take-action-uphold-commitment-restore-balance-public-lands>. See *id.* (“The U.S. Geological Survey reports that only 12% of lands are permanently protected”).

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- Ex. 3 – Pitkin Co. '09 Res. and '10 Ltr to Salazar Supporting TDWPAct.pdf
- Ex. 4 - Bd. of Cnty. Comm'rs, Garfield Cnty., Colorado, Res. 09-67 (Sept 14, 2009)
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- Ex. 6 - Bd. of Trustees, Town of Carbondale, Colorado, Res. No. 9, Series of 2010 (Aug. 17, 2010)
- Ex. 7 - Mayor, City of Glenwood Springs, Colorado to Congressman John Salazar (Aug. 6, 2010).pdf
- Ex. 8 – Letter from Bd. of Cnty. Comm'rs, Garfield Cnty., to Congressman John Salazar (Sept. 15, 2010)
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