



**CONFIDENTIAL**

**VIA ELECTRONIC SUBMISSION**

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*Re: Environmental Assessment: Project 63679;  
Thompson Divide Withdrawal*

Dear Ms. Retzlaff:

Gunnison Energy LLC (“Gunnison”) appreciates the opportunity to comment on the Draft Environmental Assessment (the “Draft EA”) that the United States Forest Service (“Forest Service”) prepared to consider impacts to people and the environment associated with the proposed withdrawal of approximately 224,713 acres in Colorado from all forms of entry, appropriation, and disposal under the public land, mining, mineral leasing, and geothermal leasing laws. The land subject to the Forest Service’s proposal includes stretches in Gunnison, Garfield, Mesa, and Pitkin Counties. The Draft EA emphasizes that this withdrawal would be subject to all valid and existing rights, including federal oil and gas leases. Gunnison is the owner of existing federal oil and gas leaseholds located within the area proposed to be withdrawn.

Gunnison is a small, privately-owned company founded in 2001 to produce natural gas and oil along the southern flank of the Piceance Basin. Gunnison has an established track record of environmentally responsible operations in Colorado. Gunnison’s employees live and work in western Colorado, including the area in and around the Thompson Divide. Gunnison is proud of its relationship with the citizens and communities in which it does business, committed to preserving the environmental integrity of the lands in which the company operates, and to continuing the company’s role in enhancing the socioeconomic condition of the people and communities that support Gunnison’s operations.

For more than two decades, Gunnison has collaborated with the Forest Service and the Bureau of Land Management (“BLM”) to ensure that Gunnison’s projects meet the highest standard of environmental sensitivity and economic efficiency. During that time, Gunnison has demonstrated repeatedly that successful energy development and environmental sensitivity are not mutually exclusive.

The decision whether to adopt the withdrawal proposal lies with the Secretary of the Interior. Because the Secretary is required to “manage the public lands under principles of multiple use and sustained yield,”<sup>1</sup> the Secretary must consider “a combination of balanced and diverse resource uses that takes into account the long-term needs of future generations for renewable and nonrenewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values.”<sup>2</sup> The Draft EA fails to draw a rational connection between the proposed withdrawal and these factors.

The essential ground for the proposed withdrawal appears to be the Forest Service’s repeated suggestion that withdrawal will provide significant environmental and ecological benefits to the Thompson Divide without any meaningful impact to energy developers or communities adjacent to the withdrawal area. That basis is flawed both legally and factually. The Draft EA does not provide any explanation for why a multi-decade withdrawal is necessary to protect environmental values in an area that is already subject to comprehensive mitigation framework that accounts for the impact of commercial activity. The Draft EA does not identify any activity that will become accessible if the withdrawal occurs or any ecological value that requires withdrawal to protect. And while the Draft EA makes numerous assertions about the qualitative benefits withdrawal might have on various environmental and socioeconomic resources, it entirely omits any evaluation of the qualitative benefits associated with energy development.

The Draft EA appears to premise its understanding of the subject area’s geological prospectivity on outdated assessments of the mineral resources. A more contemporary review of geophysical survey data and contemporary well performance demonstrate that Draft EA’s understanding of regional geology is inaccurate.

At least twice in the last ten years, bills have been introduced in Congress seeking to implement a withdrawal very similar to the one proposed here.<sup>3</sup> In both instances, the bills never proceeded past the introduction stage. Yet the Forest Service nevertheless requests that the Secretary now withdraw more land than the amount proposed in the bills that Congress has twice rejected. Given that background, the current process could be interpreted as an effort to evade the political processes that traditionally govern land use equities.

The current proposal expands the boundaries of the previously designated Thompson Divide Area with no explanation why including this additional land is necessary. While the development of the 2017 bill was a collaborative process in which federal officials engaged a broad array of stakeholders – including energy producers – the current process has not proceeded in the same manner.

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<sup>1</sup> 43 U.S.C. § 1732(a).

<sup>2</sup> 43 U.S.C. § 1702(c).

<sup>3</sup> See S. 481, 115th Cong. (2017); S. 651, 113th Cong. (2013).

As the Forest Service knows, Gunnison supported the 2017 bill that was introduced in Congress.<sup>4</sup> At that time, Gunnison expended significant resources working with a diverse group of stakeholders to ensure that the boundaries proposed for the Thompson Divide were rationally related to environmental and economic realities and fully protected existing rights. The boundaries in the current proposal, however, now encompass areas in which Gunnison has existing operations and areas Gunnison will develop under the terms of valid, existing rights. Gunnison cannot support this expanded proposal as presently written.

Because the current withdrawal proposal is inconsistent with Congressional preference,<sup>5</sup> because the Forest Service's grounds for the proposal are unexplained, and because the proposed withdrawal is unnecessary to protect the resource values about which the Forest Service purports to be concerned, the current version of the Thompson Divide withdrawal proposal requires reconsideration. At minimum, Gunnison requests respectfully that the boundaries for the proposed withdrawal be restored the boundaries the stakeholders agreed upon in association with the 2017 bill.

## **I. RELEVANT STATUTORY BACKGROUND.**

The Mineral Leasing Act provides the substantive authority for BLM's oil and gas program. The very first sentence of the Mineral Leasing Act explains that Congress' purpose in enacting the Act was "[t]o promote the mining of coal, phosphate, oil, oil shale, and sodium on the public domain."<sup>6</sup> Congress has determined that it is "in the national interest to foster and encourage private enterprise in," among other endeavors, "the orderly and economic development of domestic mineral resources, reserves, and reclamation of metals and minerals to help assure satisfaction of industrial, security and environmental needs."<sup>7</sup> And Congress has instructed that "[i]t shall be the responsibility of the Secretary of the Interior to carry out this policy when exercising [her] authority under such programs as may be authorized by law."<sup>8</sup>

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<sup>4</sup> See Attach. A, Letter from M. Brad Robinson to Hon. Michael Bennet (July 22, 2015).

<sup>5</sup> The Secretary must deny an application for withdrawal "if, in the opinion of the Secretary, the applicant is attempting to circumvent the Congressional review provisions of [43 U.S.C. § 1714(c)] concerning withdrawals of 5,000 or more acres in the aggregate." 43 C.F.R. §2310.3-3. Here the Secretary need not speculate concerning either the applicants' intent or Congress' perspective. The Draft EA acknowledges that "[p]rotecting the Thompson Divide area from energy development impacts has long been the goal of a diverse group of stakeholders, including hunters, ranchers, conservationist, and local governments." Draft EA at 1. As noted above, these groups have already requested this same relief from Congress. The only reason the present withdrawal has been advanced in this format is because Congress has twice rejected it when advanced in a legislative context.

<sup>6</sup> Act of Feb. 25, 1920, ch. 85, § 32, 41 Stat. 437.

<sup>7</sup> Mining & Minerals Policy Act of 1970, 30 U.S.C. § 21a.

<sup>8</sup> *Id.*

The National Environmental Policy Act (“NEPA”)<sup>9</sup> governs the Forest Service’s preparation of the Draft EA. “NEPA does not . . . ‘require agencies to reach particular substantive environmental results.’”<sup>10</sup> NEPA “requires only that the agency take a ‘hard look’ at the environmental consequences before taking a major action.”<sup>11</sup> “NEPA is a procedural statute that does not modify an organic statute.”<sup>12</sup> Because “NEPA does not expand an agency’s substantive powers . . . [,] any action taken by a federal agency must fall within the agency’s appropriate province under its organic statute(s).”<sup>13</sup> Given the value and importance of oil and gas development to both Colorado and the nation, the Secretary must be advised of, and should prioritize, the socioeconomic, energy security, and other values of mineral development.

## **II. EXTENSIVE FEDERAL REVIEW SUPPORTS CONTINUED MINERAL DEVELOPMENT.**

The Forest Service represents that the proposed withdrawal’s purpose is to protect the withdrawn lands “from the potential adverse effects that may arise from mineral exploration and development.”<sup>14</sup> The Forest Service asserts that the requested withdrawal would protect “the agricultural, ranching, wildlife, air quality, recreation, ecological, and scenic values of the Thompson Divide Area for both intrinsic and economic value to local communities.”<sup>15</sup>

That characterization suggests a solution in need of a problem. Energy development in and around the Thompson Divide Area has been the subject of comprehensive NEPA analyses. Over the last two decades, multiple federal agencies – working collaboratively with numerous oil and gas operators – conducted these analyses, which have updated and refined through multiple rounds of environmental review. Each round included consideration and approval of the same impacts addressed in the Draft EA. Time and again, federal agencies have determined that impacts to the values the Draft EA identifies can be adequately mitigated through, among other features, permitting processes, conditions of approval, and industry best practices. The Draft EA itself, in fact, concedes that adequate measures exist. What is missing from the Draft EA is any explanation of what cannot be protected absent the proposed withdrawal.

### **A. FEDERAL OIL AND GAS LEASING AND DEVELOPMENT PROCESS.**

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<sup>9</sup> 42 U.S.C. §§ 4321-4370m-11.

<sup>10</sup> *Cure Land, LLC v. U.S. Dep’t of Agric.*, 833 F.3d 1223, 1229 (10th Cir. 2016) (quoting *Los Alamos Study Grp. v. U.S. Dep’t of Energy*, 692 F.3d 1057, 1060 (10th Cir. 2012)).

<sup>11</sup> *Citizens Comm. to Save Our Canyons v. Krueger*, 513 F.3d 1169, 1178 (10th Cir. 2008) (quoting *Utah Shared Access All. v. U.S. Forest Serv.*, 288 F.3d 1205, 1207-08 (10th Cir. 2002)).

<sup>12</sup> *Vill. of Barrington, Ill. v. Surface Transp. Bd.*, 636 F.3d 650, 665 (D.C. Cir. 2011) (internal quotations omitted).

<sup>13</sup> *Nat. Res. Def. Council, Inc. v. U.S. Env’tl. Prot. Agency*, 859 F.2d 156, 169 (D.C. Cir. 1988).

<sup>14</sup> Draft EA at 2.

<sup>15</sup> *Id.*

The Federal Land Policy and Management Act (“FLPMA”)<sup>16</sup> governs the land use planning process that precedes federal oil and gas leasing and development. Among other considerations, the Secretary must plan to: (i) protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values;<sup>17</sup> *and* (ii) account for the Nation’s need for domestic sources of minerals, food, timber, and fiber from the public lands.<sup>18</sup> Through an exhaustive NEPA process involving extensive opportunities for public review and comment, resource management plans are prepared for all federal lands and resources.<sup>19</sup> Each BLM field office prepares an environmental impact statement (“EIS”) that analyzes management alternatives for the lands and resources within the field office’s boundaries.<sup>20</sup> “[A]pplicable regulations [] require that the public must have a chance ‘to become meaningfully involved in and comment on the preparation and amendment of’ [resource management plans].”<sup>21</sup>

The Draft EA acknowledges that environmental review for the Thompson Divide withdrawal tiers to the final environmental impact statements (“EISs”) for the resource management plans covering the lands within the withdrawal area.<sup>22</sup> Those plans – as amended and supplemented – establish which areas within each field office’s boundaries are open to oil and gas leasing and which areas are closed. For open areas, the resource management plan analyzes impacts of reasonably foreseeable development and enumerates stipulations needed to provide extra protection for sensitive resources in the planning area. All subsequent activity on designated lands, including oil and gas development, must conform to the resource management plans.<sup>23</sup> Any development of leaseholds that Gunnison owns or that Gunnison might acquire will conform with all applicable resource management plans and related planning documents.

Resource management planning is not the end of environmental review. Operators of federal oil and gas leaseholders are required to submit exploration or development proposals in the form of an Application for Permit to Drill (“APD”) to BLM for an environmental analysis and application of measures to mitigate impacts before any drilling for oil and gas can occur.<sup>24</sup> BLM is responsible for approving APDs, including both the surface use plan and subsurface drilling program, and applying appropriate mitigation measures for affected resources on BLM-administered lands or minerals. Before approving an APD, BLM must comply with NEPA and

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<sup>16</sup> 43 U.S.C. §§ 1701-87.

<sup>17</sup> *See* 43 U.S.C. § 1701(a)(8).

<sup>18</sup> *See* 43 U.S.C. § 1701(a)(12).

<sup>19</sup> *See* 43 U.S.C. § 1712(a).

<sup>20</sup> *See* 43 C.F.R. § 1610.1(b).

<sup>21</sup> *W. Energy All. v. Zinke*, 877 F.3d 1157, 1161 (10th Cir. 2017) (quoting 43 C.F.R. § 1610.2(a)).

<sup>22</sup> Those plans include the White River National Forest Land and Resource Management Plan; the Grand Mesa, Uncompahgre, and Gunnison National Forest Land and Resource Management Plan; and the Colorado River Valley Field office Resource Management Plan. *See* Draft EA at 2.

<sup>23</sup> *W. Energy All.*, 877 F.3d at 1161-62; 43 C.F.R. § 1610.5-3.

<sup>24</sup> 43 C.F.R. § 3162.3-1(c).

consider the proposed action's environmental impacts.<sup>25</sup> The environmental review includes an onsite inspection of the proposed well, access road, and pipeline locations, as well as other areas of proposed surface use. Review and approval of submitted APDs is conducted at the field office level.

## **B. GUNNISON'S MASTER DEVELOPMENT PLAN.**

In addition to APDs, proponents of oil and gas development have the option of submitting a Master Development Plan. A Master Development Plan provides information common to multiple planned wells, including drilling plans, surface use plans of operations, and plans for future production. Master Development Plans also include information on associated facilities (e.g., roads, pipelines, utility corridors, and compressor stations). BLM's internal guidance documents have encouraged the use of Master Development Plans as a best practice for managing federal lease development, emphasizing that "[a]n EA . . . prepared for development of two or more oil, gas, or geothermal wells provides substantial time savings over writing individual EAs or EISs for each well approval and generally results in improved impact analysis."<sup>26</sup> BLM has consistently recognized that, unlike piecemeal development, master planning "facilitates the consideration of cumulative effects early in the process and enables broad application of identified mitigation measures, and minimizes the overall timeframe for approval."<sup>27</sup>

In Spring 2016, BLM and Gunnison initiated discussions concerning the possibility of preparing a master development plan for Gunnison's operations in Colorado. In January 2017, at BLM's request, Gunnison submitted its proposal for the North Fork Mancos Master Development Plan (the "MDP"). Under the original proposal, Gunnison would drill, complete, and operate up to thirty-five horizontal wells and would construct access roads and gathering pipelines in Gunnison and Delta Counties. The MDP project area includes fourteen project-related federal oil and gas leases grouped into four federal oil and gas units: Trail Gulch Unit in the north, Sheep Park II Unit in the center, Iron Point Unit in the southwest, and Deadman Gulch Unit in the southeast. The proposed Thompson Divide withdrawal includes leases that are included in the Trail Gulch Unit.<sup>28</sup>

On January 18, 2017, BLM initiated a sixty-day scoping period for the MDP. On May 10, 2018, BLM issued a Preliminary EA for the MDP, including a preliminary finding that the MDP "will not have a significant effect on the human environment." The Preliminary EA was made available for a thirty-day public comment period.

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<sup>25</sup> 30 U.S.C. § 226(p)(2)(A).

<sup>26</sup> Bureau of Land Mgmt., Instruction Mem. No. 2005-247 (Sept. 30, 2005).

<sup>27</sup> Onshore Oil & Gas Order No. 1, 72 Fed. Reg. 10,308, 10,310 (Mar. 7, 2007).

<sup>28</sup> The proposed withdrawal area also encompasses lands within the Huntsman Ridge Unit another federal unit that for which SG Interest is the designated operator. Gunnison is a working interest partner in the Huntsman Ridge Unit.

On February 28, 2019, BLM published a Revised Preliminary EA (the “Revised PEA”). The Revised PEA explained that, during BLM’s preparation of a Final EA, Gunnison’s management team “informed BLM of modifications [to the MDP] based on updated technical and operational analysis of the [MDP].” The Revised PEA was “similar to the [Preliminary EA] but incorporate[d] additional or revised information consistent with [the] modifications” Gunnison initiated. “Because of the scale of some of the modifications, [BLM] determined that additional public review was appropriate” and made the Revised PEA available for a thirty-day public comment period.

On August 15, 2019, BLM released a Final EA (the “2019 EA”). On the same day: (i) BLM issued a Decision Record, approving portions of the MDP not involving National Forest System Lands; and (ii) the United States Forest Service issued a Draft Decision Notice indicating the Forest Service’s intent to approve the Surface Use Plan of Operations (“SUPO”) for the MDP and initiated a 45-day period in which persons or groups that had previously filed comments on the MDP could file an objection to that approval.

On January 10, 2020, the Forest Service issued a Final Decision Notice, approving surface disturbance and surface use associated with portions of the MDP proposed to occur on National Forest System lands. On January 27, 2020, BLM issued a second Decision Record consistent with the Forest Service’s Final Decision. The January 28, 2020 Decision Record approved portions of the MDP that involve the use of National Forest System lands.

Gunnison’s master planning provided early notice to BLM and the public of where Gunnison’s operations were contemplated and of the scale and intensity of the development proposed. This early analysis provided BLM with the tools necessary to perform a comprehensive review of site-specific development proposals, enabling an accurate analysis of cumulative effects and preserving agency resources. “Because the process allows for better planning of field development, adverse environmental impacts are minimized.”<sup>29</sup>

Gunnison’s MDP incorporates numerous operational design features and environmental protection measures that further reduce the potential impacts of Gunnison’s development activities beyond the levels approved in the NEPA work prepared for the controlling resource management plans. The EA prepared in association with the MDP acknowledged and accounted for these features. Although the adequacy of certain portions of the EA was challenged in judicial proceedings, no Court has ever ruled that any aspect of the EA is inadequate or fails to comply with applicable law.<sup>30</sup> To the contrary, BLM’s and Forest Service’s approval of the MDP proves

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<sup>29</sup> Onshore Oil & Gas Order No. 1, 72 Fed. Reg. at 10,310.

<sup>30</sup> On May 10, 2021, a coalition of special interest groups filed a challenge to BLM’s approval of the MDP in the United States District Court for the District of Colorado, contesting the adequacy of BLM’s consideration of the climate change impacts from greenhouse gas emissions associated with Gunnison’s anticipated development under the MDP. *See Citizens for a Healthy Cmty. v. U.S. Dep’t of the Interior*, No. 21-cv-01268-MSK (D. Colo.). On February 18, 2022, BLM requested that the federal district court remand the MDP to BLM so that BLM could undertake the

that, by utilizing master planning, oil and gas development can occur without undue degradation to environmental values.

Oil and gas development in and around the Thompson Divide represents activity that has been exhaustively studied, analyzed, and *approved* on numerous occasions over many years. Given that background, there is no reason that unnecessary restrictions should be placed on development now. Because the Draft EA ignores this history and fails to identify any factors that requires a change in course now, the proposed withdrawal – in its current form – should be reconsidered.

### **III. ALTERNATIVE A IS INCONSISTENT WITH THE SECRETARY'S OBLIGATIONS UNDER ADMINISTRATIVE LAW.**

The Draft EA states that the Secretary “has discretion to allow or deny, in whole or part, a withdrawal application.”<sup>31</sup> When an executive official exercises discretion, it is axiomatic that the official “must cogently explain why [she] has exercised [her] discretion in a given manner.”<sup>32</sup> The agency “must examine the relevant data and articulate a satisfactory explanation for its action including a ‘rational connection between the facts found and the choice made.’”<sup>33</sup> Agency reasoning is invalid when it constitutes little more than pretext to support an outcome selected before the agency begins consideration of the issue.<sup>34</sup>

#### **A. THE DRAFT EA FAILS TO JUSTIFY WITHDRAWAL.**

The Draft EA acknowledges that, even without withdrawal, lands within the Thompson Divide will enjoy all the protections that both the Forest Service and BLM have previously considered sufficient to protect environmental resources from the impacts of energy

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supplemental environmental analyses the special interest groups requested. On September 27, 2023 – after more than nineteen months of supplemental review – both BLM and the Forest Service once again approved the MDP. The agencies determined that the oil and gas development contemplated under the MDP did not represent “a major [f]ederal action significantly affecting the quality of human environment, individually or cumulatively with other actions in the general area,” explaining that the “environmental effects are not significant . . . and do not exceed those effects” described in the EISs prepared for the regional resource management plans.” Finding of No Significant Impact, DOI-BLM-CO-G020-2023-0003-EA (Sept. 27, 2023).

<sup>31</sup> Draft EA at 2 (citing 43 C.F.R. § 2310.3-3).

<sup>32</sup> *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 48 (1983).

<sup>33</sup> *Id.* (quoting *Burlington Truck Lines v. United States*, 371 U.S. 156, 168 (1962)).

<sup>34</sup> *See Dep’t of Commerce v. New York*, 139 S. Ct. 2551, 2575-76 (2019) (rejecting agency’s reasoning as pretextual when evidence revealed a “disconnect between the decision made and the explanation given.”).



development.<sup>35</sup> The Draft EA, in fact, fails to provide a single example of an impact that could not be mitigated absent withdrawal.

Chapter 4 of the Draft EA purports to summarize the “environmental consequences” of withdrawal (Alternative A) versus no action (Alternative B) across a range of resources. For many of these resources, the Draft EA concludes the no-action / non-withdrawal alternative could result in adverse environmental impacts caused by additional mineral exploration and development.<sup>36</sup> Yet, for each of these alleged impacts, the Draft EA itself concedes—as it must—that existing regulatory safeguards are in place to mitigate these impacts, if not prevent them altogether.<sup>37</sup> The Draft EA notes repeatedly that “[i]mplementation of land management plan and resource management plan measures, best management practices, project design features, and mitigation measures assigned during site-specific project planning would reduce the risk of adverse effects” to the resources in question.<sup>38</sup>

Given these qualifiers, the Forest Service has failed to provide any information on which the Secretary could rely to justify the expansion of the area proposed to be withdrawn in 2017, let alone a withdrawal of almost 225,000 acres. As a matter of administrative law, the Secretary could not afford weight to the purported adverse environmental impacts for the no action (Alternative B) scenario, insofar as the Draft EA does not establish these impacts will, in fact, occur absent withdrawal.

## **B. THE DRAFT EA’S QUALITATIVE ANALYSIS OF NON-MARKET VALUES IS INCOMPLETE.**

The Draft EA attempts to account for “non-market values, such as the value of recreation experiences and preservation of natural areas” in “qualitative terms.”<sup>39</sup> The Draft EA attributes value to, among other items, “ecosystem services” that the Draft EA considers “essential for

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<sup>35</sup> Draft EA at 4 (recognizing that, under Alternative B – the “No Action” alternative – “[a]ny future proposals for the sale or exchange of land, or mineral leasing, exploration, or development would be subject to the appropriate NEPA and decision-making processes to examine site-specific impacts of specific proposals.”)

<sup>36</sup> *See, e.g.*, Draft EA at 30-43 (identifying potential adverse impacts to recreation resources, scenery, cultural resources, rangelands and grazing, USFS special areas, watershed resources, aquatic and terrestrial wildlife, botanical species, air quality, and climate change).

<sup>37</sup> *See id.*

<sup>38</sup> *See id.*; *see also id.* at 33 (noting that the Forest Service and the BLM would “conduct cultural resource inventories and evaluate all cultural resources located within the area of potential effect” before “authorizing any future mineral exploration and development”); *id.* at 43 (emphasizing that future developments “must ... receive all relevant federal and state air quality permits, and later provide regular reporting ... thereby demonstrating the proposed operations would follow state and federal air quality regulations.”); *id.* at 45 (observing “that any future well development” would utilize methods and technology to reduce greenhouse gas emissions).

<sup>39</sup> *Id.* at 11.

meeting basic human needs, including support for psychological well-being (for example, aesthetic enjoyment.”<sup>40</sup> The Draft EA lists several “ecosystem services” that it contends are derived from undeveloped lands including “fresh water and air, waste regulation, biodiversity maintenance, soil formation, protection from natural hazards, and opportunities for solitude and spiritual connection to the landscape.”<sup>41</sup> Gunnison does not contest the legitimacy of these benefits. But the Draft EA’s focus on this category of benefits represents only half the work that NEPA requires.

The problem with the Draft EA’s methodology is that it measures the qualitative value of halting oil and gas production without accounting for the qualitative benefits of the same production. As a result, the benefits the Draft EA identifies can be understood, at best, as absolute values that are meaningless without incorporation of the benefits that oil and gas production and consumption produce. The Draft EA’s enumeration of non-market values associated with conservation, offered alone, provides no insight into whether approving the proposed withdrawal is reasonable or prudent. To truly understand the proposed action’s impact, a reader would need to know the relative value to society of producing and consuming the oil and gas that would be produced in the absence of withdrawal. The Draft EA’s analysis provides no insight into the economic, actuarial, and societal benefits of the lives and lifestyles that are made possible through the consumption of oil and gas and the use of petroleum-based products.<sup>42</sup>

The Draft EA disregards the impact the consumption of oil and gas have on economic generation and socio-emotional well-being after the oil and gas is processed, refined, fractionated, and turned in thousands of products — including circuit boards for cell phones and computers, blades for wind turbines, plastics for everything from household construction products to outdoor recreational equipment, and jet fuel for connecting us to business colleagues and loved ones. The Draft EA does not account for the benefit of oil and gas used in pharmaceuticals and the delivery of health care services that assist workers to prevent or overcome illness and allow those same workers to remain in the workforce. Nor does the Draft EA account for the economic advantage and geopolitical strategic advantage that production of domestic oil and gas provide to Colorado and the nation.

Gunnison does not contend that a survey of each alternative’s qualitative benefits is a useless tool for any purposes. But as presented in the Draft EA, the inherent subjectivity in input selection undermines the document’s ability to meaningfully inform federal agencies, the Secretary, or the public concerning the net benefits of the proposed withdrawal. As discussed

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<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> As an illustrative example, the Draft EA notes that “[r]angelands are an important piece to the way of life and socioeconomic vitality in the Thompson Divide area and its people.” Draft EA at 17. But the Draft EA also recognizes that mineral development has occurred in the region for at least a century. *See id.* at 20 (observing that coal has been obtained from sites within the Thompson Divide “for the last 100 years”). The Draft EA provides no explanation for why it considers certain activities part of the region’s social fabric while dismissing the importance of other activities that have occurred co-extensively for more than a century.

above, BLM and the Forest Service have already undertaken – in multiple NEPA analyses – meaningful review of the direct, indirect, and cumulative impacts of energy development. In each instance, the agencies have determined that, when properly managed, energy development is appropriate. The Forest Service should not abandon its previous conclusions through reliance on non-optimal metrics that do not assist in the evaluation of withdrawal’s true costs.

#### **IV. DESIGNATION ALONE IMPACTS GUNNISON.**

Gunnison’s support for the withdrawal boundaries that were proposed in 2017 was based partially on the fact that the 2017 proposal did not include any lands within Gunnison’s pre-existing units on which future surface development was anticipated. Gunnison expressed its concern at that time that “merely having gas operations with the [Thompson Divide] boundary [would] lead to permitting delays and increased environmental compliance costs.”<sup>43</sup> Even though the 2017 bill was never adopted, Gunnison’s concern has been validated. While the Draft EA observes that all valid existing rights will be respected within withdrawn areas, Gunnison’s projects have already been delayed based on the *perception* that certain lands were included in a *potential* withdrawn area.

As described above, Gunnison has worked collaboratively with BLM and the Forest Service since at least 2016 to develop the MDP and conduct the environmental analysis necessary to support the MDP’s adoption. During the most recent review and approval phase – as BLM reconsidered the MDP on remand from the federal district court – BLM field office staff frequently advised Gunnison representatives that the Interior Solicitor and officials within BLM’s Washington, DC headquarters needed to review all decisions related to the MDP given the location of Gunnison’s leases in the Thompson Divide area. BLM took this approach even though the earlier Thompson Divide withdrawal proposals all purported to recognize valid, existing rights and all Gunnison’s existing operational locations were excluded from the withdrawal zone.<sup>44</sup>

Other stakeholders have made similar errors. In their legal challenge to the initial approval of the MDP, the special interest groups alleged in their complaint that portions of the MDP area were located within the Thompson Divide area.<sup>45</sup> Based partially on the special interest groups’ misunderstanding of Gunnison’s rights, Gunnison was forced to litigate over the sufficiency of the MDP for two-and-a-half years in two different lawsuits filed in federal court.<sup>46</sup> To this day, special interest groups and individual stakeholders continue to assert in protests, objections, and comments

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<sup>43</sup> Attach. A at 1.

<sup>44</sup> See Attach. A at 2 (referencing assurance BLM had provided Gunnison that Gunnison’s leaseholds would not be included in the withdrawn area and that Gunnison’s operations could proceed as normal).

<sup>45</sup> See Pet. for Review of Agency Action & Inj. Relief ¶ 4, at 3, *Citizens for a Healthy Cmty. v. U.S. Dep’t of the Interior*, No. 21-cv-01268-MSK (D. Colo. May 20, 2021).

<sup>46</sup> See *Gunnison Energy v Haaland*, No. 23-cv-1696- NYW-NRN (D. Colo.); *Citizens for a Healthy Cmty. v. U.S. Dep’t of the Interior*, No. 21-cv-01268-MSK (D. Colo.).

at public meetings that the inclusion of Gunnison's leaseholds within the Thompson Divide area constitutes a basis to deny Gunnison operational permits on its leases.

The reality is that mere association with the Thompson Divide proposal has delayed Gunnison's operations and forced Gunnison to incur many millions of dollars in legal and regulatory costs. The Draft EA does not account for any of these costs. Nor does the Draft EA address any impact restricting mineral development in Gunnison's units will have on private stakeholders or the environment.

Gunnison has already invested more than \$100 million in gathering, compression, and treatment facilities intended to serve the wells contemplated in the MDP area.<sup>47</sup> Those facilities – designed to serve the full build out of development contemplated under Gunnison's leases – have fixed operating costs. BLM's continued deferral of Gunnison's permits denies Gunnison the ability to bring additional production volumes into the facilities, artificially (and exponentially) increasing Gunnison's operating expenses on a per energy unit basis. Running these facilities below capacity negates Gunnison's objective to be a low-cost producer and keeps Gunnison from achieving an internal rate of return on Gunnison's investment in these facilities.

Gunnison has entered contractual arrangements to transport hydraulic fracturing sand to its well sites by rail, as opposed to truck. Those arrangements involve committed rail service over many years (beginning in 2023). Regulatory delay and uncertainty implicate the possibility that Gunnison will be unable to guaranty rail service in the future. Transport by rail significantly reduces the greenhouse gas emissions associated with Gunnison's operations, eliminates the surface impacts to both roads and natural areas associated that would otherwise result from thousands of additional truck trips, and improves roadway safety and convenience for local community members.

The lack of certainty concerning when Gunnison can expect to develop its wells has harmed Gunnison's relationships with many service providers and vendors. Efficient oil and gas development involves coordination with a wide range of contractors and service providers on a schedule that commits money and resources often many years in advance of the date when operations are to commence. Continued delays based on the public's misunderstanding, or mischaracterization, of what is permitted in withdrawn areas has already resulted in Gunnison having to terminate, postpone, or modify numerous contractual arrangements, often paying contractual penalties or losing deposits.

As a result of Gunnison being unable to make advance commitments, Gunnison is frequently forced to wait to purchase goods and services at the last minute, resulting in higher prices and lower availability for those goods and services. Equally important, several of Gunnison's preferred vendors have declined to work with Gunnison because of Gunnison's

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<sup>47</sup> Gunnison continues to invest heavily in its leaseholds. Gunnison has an approved budget of more than \$27 million for 2024 operations alone. In total, Gunnison's net investment in the area subject to its MDP exceeds \$460 million.

inability to guaranty the timing and scope of the work Gunnison will need. The uncertainty associated with Gunnison’s project development has already elevated Gunnison’s project costs for both current operations and Gunnison’s proposed wells.

Gunnison’s contractual challenges have environmental, as well as economic, impacts. If Gunnison is unable to meet contractual commitments to services providers and vendors within the timelines Gunnison’s contracts contemplate, Gunnison may not be able to secure all the equipment and services necessary to execute each of the environmental mitigation measures the MDP contemplates.<sup>48</sup>

## V. THE PROPOSAL RELIES ON FLAWED ECONOMIC COMPARISONS.

Beyond the impact to Gunnison’s operations, the Draft EA’s analysis of the socioeconomic impacts associated with withdrawal also fail to provide a fair and complete assessment on the importance of the energy economy and value of potential mineral development generally in the area proposed to be withdrawn. Rather than use a broad suite of data to make an apples-to-apples comparisons between the socioeconomic impact of various sectors, the Draft EA cherry picks certain statistics to skew the importance of certain sectors.

While, for example, there are *numerically* less energy sector workers than recreation/tourism workers in the four-county area, the overall *percentage* of energy sector workers in this area is still far higher than the state average.<sup>49</sup> Table 1 in the Draft EA states there are 1,381 “mining and mining-related” jobs out of the 19,758 total jobs in the economic sectors considered for the four-county area, meaning that approximately 6.9% of the considered jobs in the affected area related to the energy sector (i.e., “oil and gas extraction, coal mining, metal ore mining, and nonmetallic minerals mining, as well as mining-related jobs in pipeline construction and transportation.”).<sup>50</sup> But, as the Draft EA states in the following paragraph, the overall percentage of Colorado workers in the “mining and mining-related sector” was only 0.9% in 2022.<sup>51</sup> Taken together, data in the Draft EA show that recreation and tourism is indeed an important part of the economy in the impacted area, but so too is energy. And in fact, the Draft EA is replete with language noting the historic importance of mining and energy operations in these

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<sup>48</sup> Given the inequitable impact that even a *possible* withdrawal has had on Gunnison’s ability to develop its properties – properties located outside the proposed withdrawal area – Gunnison requests that any final environmental document issued in association with the currently proposed withdrawal emphasize expressly that withdrawal shall have no impact on the environmental review processes for projects within or in proximity to the exterior boundaries of the withdrawn area. Recognition of valid, existing rights means just that – that existing rights are preserved in full. Gunnison does not ask to evade any environmental review obligations or for any special treatment when environmental review is conducted. Gunnison asks only that its projects are subjected to the same processes – and under the same timeline – as any other federal mineral project.

<sup>49</sup> See Draft EA at 8-9 & Table 1.

<sup>50</sup> *Id.* at 8.

<sup>51</sup> *Id.*

communities.<sup>52</sup> Even if the total number of energy-related jobs are currently less than what they were at their peak in this area previously, that does not mean the energy sector is no longer important or desired in these communities that have historically relied on it.

Equally important, the Draft EA does not provide a meaningful comparison of financial impacts from the energy versus recreation sector in the actual withdrawal area itself. The Draft EA's conclusions instead appear to be based on recreation/tourism contributions from the entire four-county area, which includes popular recreation areas not actually in the withdrawal area (*e.g.*, Aspen and Snowmass, and the White River and Gunnison National forests as a whole).<sup>53</sup> This unfairly skews the data in favor of recreation/tourism. The most direct evidence the Draft EA provides concerning the value of the “recreation economy” in the withdrawal area is a 2013 study noting 138 recreation-supported jobs generating approximately \$17.2 million annually (in 2023 dollars).<sup>54</sup> The Draft EA also estimates \$12.3 million (in 2023 dollars) in total visitor spend on recreation in the withdrawal area.<sup>55</sup> But the Draft EA fails to provide this same level of data for economic contributions from the energy sector in the withdrawal area, thereby precluding a complete comparison. And in any event, it should be noted the Draft EA actually concedes (on another page in another subsection) that “oil and gas-related revenues ... taxes ... rents and royalties ... personal income taxes on earnings, and business income taxes” in the four county area are substantial, and that “[r]ents, royalties, and bonuses” totaled approximately \$125 million dollars in 2022.<sup>56</sup> Even if just a fraction of that \$125 million relates solely to the proposed withdrawal area, the energy economy is therefore on par with—if not exceeds—the recreation economy in the withdrawal area.

Beyond these false comparisons, the Draft EA also credits “non-market” value to the promotion of recreational activities, such as increased consumption of local “market goods” like lodging and gas.<sup>57</sup> But the same “non-market” credits are not given to energy sector activities. This again unfairly skews the purported benefits of withdrawal and ignores that the inverse is also true absent withdrawal. If land can be developed for mineral extraction, that creates opportunity for a spike in demand for local lodging, fuel, transportation, and related local business needs – at least in the short term while construction is underway – not to mention the creation of more local jobs to support the development and operational labor needs of these facilities as they come online.

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<sup>52</sup> *See, e.g., id.* at 7 (noting Garfield County workers are “historically [] economically tied to the oil and gas industry” and the “economic foundations ... are built on national resource development”); *id.* at 8-9 (stating “[t]he four-county area has a history of oil and gas development”).

<sup>53</sup> *See id.* at 8-9.

<sup>54</sup> *Id.* at 9.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.* at 10.

<sup>57</sup> *Id.* at 10-11.

## **VI. THE DRAFT EA RELIES ON INACCURATE MINERAL EVALUATIONS.**

The reasonably foreseeable development scenario that the Draft EA relies upon for its evaluation of impacts under Alternative B only considers potential development “of those areas identified as having high occurrence potential for oil, gas, or both” in the Draft Mineral Potential Report that the Forest Service and BLM prepared in association with the Draft EA.<sup>58</sup> The agencies’ Mineral Potential Report classifies only 63,500 acres – or twenty-eight percent of the land within the proposed withdrawal area – as having high occurrence potential.<sup>59</sup> Of this amount, the agencies have determined that statutory and regulatory restrictions make development on all but 11,748 acres either impermissible or likely non-economic.<sup>60</sup> The Draft EA implies that approving the proposed withdrawal will not have a significant impact on mineral development because there is a limited amount of land within the proposed withdrawal area that oil and gas companies are likely to be interested in developing.

Significant flaws in the Mineral Potential Report’s geologic and petrophysical analyses undermine the Draft EA’s conclusions concerning the likelihood of oil and gas development in the proposed withdrawal area. As a preliminary matter, the Mineral Potential Report’s conclusions are directly contrary to previous analyses federal agencies have undertaken. In 2012, BLM issued a comprehensive Reasonably Foreseeable Development Scenario for oil and Gas for the Uncompahgre Field Office.<sup>61</sup> The 2012 study refers to “high” potential for occurrence of oil and gas (excluding coalbed natural gas) within the Uncompahgre Study Area and high occurrence potential for all areas within the Piceance Basin play units that the United States Geological Survey designated. Yet the current Mineral Potential Report concludes that only a fraction of the same area represents a “high” potential area. Nothing in the current Mineral Potential Report, Reasonably Foreseeable Development Report, or the Draft EA explains why the potential in these areas changed at all, much less why it would change from “high” to “low,” especially when, as discussed below, more recent data is considered.

The Mineral Potential Report is also inconsistent with Gunnison’s recent production, geologic, and seismic data, all of which suggest a much higher potential value of oil and gas production within the Proposed Withdrawal Area. As referenced above, Gunnison’s Trail Gulch Unit and SG’s Huntsman Ridge Unit each lie within the proposed withdrawal outline. Gunnison has proprietary geologic data covering the Mancos and Mesaverde intervals in this area and nearby. In the Trail Gulch area, Gunnison has 19.4 sq miles of 3D seismic data that was acquired

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<sup>58</sup> Draft Reasonably Foreseeable Development Report (“RFDR”) at 15.

<sup>59</sup> Draft EA at 5.

<sup>60</sup> See RFDR at 16. The restrictions that the RFDR cites include: (i) lands included within the boundaries of a permitted ski area; (ii) lands designated as not open for oil and gas leasing under various land use planning documents; and (iii) lands within Colorado roadless areas of which have “no surface occupancy” restrictions on development. The 11,748 acres that the RFDR considers “high potential” represents approximately 5% of the land included in the withdrawal proposal.

<sup>61</sup> Stillwell, et al., *Reasonable Foreseeable Dev. Scenario for Oil & Gas for the Uncompahgre Field Office, Colo.* (Feb. 16, 2012).

in 2019. The Mineral Potential report categorizes only a portion of the Trail Gulch unit area as having high occurrence of oil and gas potential in the Mancos and then quickly shifts to low occurrence potential in the Mancos to the east. This sudden shift from high to low is based on outdated evaluations and is inconsistent with Gunnison's more recent data.

The Mineral Potential Report's Mancos occurrence ranking outline appears to be directly correlated to thermal maturity maps that were used in the report; these thermal maturity maps appear to reference public data. Many maps shown in the report, including the Mancos thermal maturity maps, refer to outdated sources (e.g., Kirschbaum, 2003) and lack sufficient data for hardline classifications. Gunnison has sufficient proprietary data that contradicts the mapping used in the Mineral Potential Report, specifically the thermal maturity of the Mancos Petroleum System. As an illustrative example, in areas which the Mineral Potential Report depicts with Ro (vitrinite reflectance) contours in a range of 0.75 to 1.1,<sup>62</sup> core data and lab measurements reveal measurements in the 1.45 to 1.85 Ro range, suggesting a higher maturity that undermines the accuracy of the Mineral Potential Report's classifications.

Drilling results, petrophysical analysis, and geologic analysis show, with high confidence, that Gunnison's operated leases have an original gas in place ("OGIP") of over 200 BCF per governmental section in the Mancos Shale. The Occurrence Potential for Oil and Gas map from the assessment, Figure 43 from the Mineral Potential Report shows the occurrence ranking of oil and gas in the Mancos using high and low contours and states that high occurrence potential areas are a "result of deeper burial and greater distribution of thermally mature sources."<sup>63</sup> Gunnison has various proprietary seismic data sets in the area, including two 3D seismic projects acquired in 2019, which yield confidence in the mappable extent of the gas rich Mancos beyond what Figure 43 reflects, stretching into the purported "low" occurrence area near the Trail Gulch area. Gunnison also has numerous log and core data points which support the understanding of the Mancos potential related to porosity, water saturation, pay thickness, and expected OGIP. Based on the contemporary data, the Mancos potential should remain high, at a minimum to the extent of the present day Mesaverde Outcrop, similar to the aerial extent of the United States Geological Survey's Piceance Basin play units.

A proper mineral potential report considers numerous multidisciplinary sources, including, among other sources: well data and logs; advanced petrophysical analysis of well data; core data; lab measurements; 3D seismic; 2D Seismic; widescale regional geophysics (Gravity and Magnetics); production data; and surface geology. Pertinent to the current analysis, an understanding of pressure, maturity, expected target depth, target thickness, the construction of a 3D structural framework, and regional fault understanding are all necessary to properly evaluate the Mancos' potential. Gunnison's Trail Gulch project is in the deepest, highest pressure, and thickest Mancos intervals of Gunnison's entire operating project area, making the entirety of the Trail Gulch Unit a "high" occurrence area.

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<sup>62</sup> Draft Mineral Potential Report, Fig. 29 at 82. The data in Figure 29 is derived from a 2003 study.

<sup>63</sup> *Id.*, Fig. 43 at 96.



The Mineral Potential Report does not appear to have considered contemporary data that would allow federal agencies to reach an accurate understanding of any of these factors.<sup>64</sup> Because the Draft EA's conclusions related to mineral occurrence are premised on an outdated and inaccurate analyses, the Draft EA's conclusion that the withdrawal area has de minimis development potential is both misleading and inaccurate.

## **VII. CONCLUSION.**

Gunnison appreciates the Forest Service's careful consideration of these comments and the efforts the Forest Service and BLM have undertaken to understand environmental impacts across the region. The result of this effort is confirmation that robust oil and gas development can occur in and around the Thompson Divide with appropriate and beneficial environmental protections. Gunnison's long record of leading with best-in-class environmental practices proves the proposal considered in the Draft EA should not be adopted.

Gunnison's reiterates its requests that: (i) to the extent any withdrawal is proposed, the withdrawal boundaries should be returned to those boundaries contemplated in the 2017 bill; and (ii) language be added to the proposal documents clarifying that no special environmental review processes apply to federal mineral projects in or near the withdrawn area. With these modifications, Gunnison stands ready to support the proposal. As always, Gunnison remains available as a resource for the agency to provide information about operational parameters and development prospects within the proposed withdrawal area.

Sincerely,



Salar Nabavian  
President, Gunnison Energy LLC

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<sup>64</sup> Gunnison notes that federal agencies are in possession of significant volumes of data that could have been used to prepare a more robust evaluation of mineral potential. BLM has, for example, large volumes of Gunnison's data related to production, stratigraphy, and petrophysical behavior associated with Gunnison's most recent well in the Trail Gulch Unit. Gunnison has submitted, among other items, drilling and completion reports, production data, and a paying well determination for all its wells. None of this data appears to have played any part in the Draft EA's analyses.

# ATTACHMENT A



**GUNNISON ENERGY LLC**

**AN OXBOW COMPANY**

Delivered Via Electronic Mail

July 22, 2015

Honorable Michael Bennet  
United States Senator  
State of Colorado  
702 Hart Senate Office Building  
Washington, DC 20510

**Re: Letter of Support  
Thompson Divide Withdrawal and Protection Act**

Dear Senator Bennet:

As you know, Gunnison Energy LLC ("GELLC") is a small natural gas exploration and production company primarily doing business in the Delta and Gunnison County areas of Colorado. GELLC has been actively involved with the Thompson Divide Coalition ("TDC") as well as local regulators for the past several years concerning the Thompson Divide Withdrawal and Protection Act (the "Act"). GELLC has attempted to constructively participate in discussions which would lead to protection of certain areas of interest to TDC but also protect GELLC's existing oil and gas lease rights and operating conditions.

The area, which TDC is attempting to protect, encompasses in excess of 180,000 acres which includes over 100,000 acres of already existing valid federal leases. Exploration and production operations have been occurring on leases within the area since the early 1950's. GELLC and other oil and gas companies have been actively exploring for and producing natural gas in the North Fork of the Gunnison region for over 60 years.

GELLC has expressed concern that already leased and producing areas have been included in the TDC area boundary. In addition, GELLC is concerned that merely having gas operations within the TDC boundary will lead to permitting delays and increased environmental compliance costs. In order to address these and other concerns, GELLC has worked with the TDC to alter the southern boundary so as to exclude certain of the already gas producing lands from the TDC area. Other currently non-disturbed lands will remain in the TDC defined area. Attached is a map indicating the revised TDC boundary.

With the change in boundary and the assurances I have received concerning our continued normal operations in this area, I support passage of the Act.

Thank you and please advise if further information is needed.

Very truly yours,



M. Brad Robinson  
President

Att.

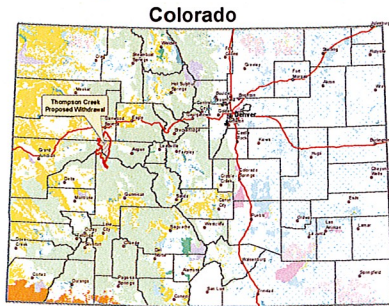
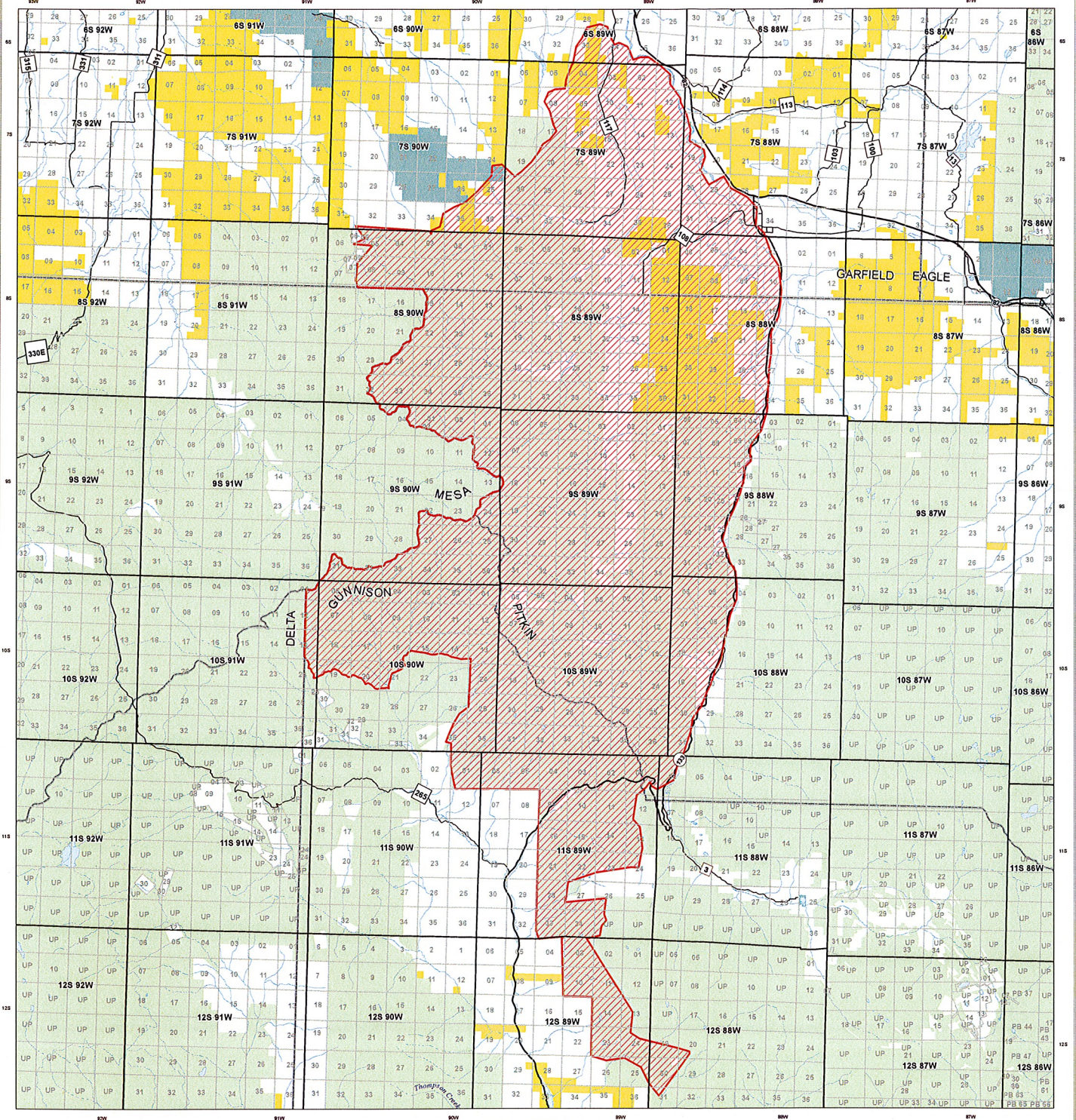
CC: Gunnison County Commissioners  
Delta County Commissioners  
Mr. Zane Kessler  
Executive Director  
Thompson Divide Coalition



# Thompson Creek Divide Proposed Withdrawal

June 30, 2015

This map prepared at the request of Senator Michael Bennet



- Legend**
- Thompson Creek Divide Proposed Withdrawal
  - County Boundaries
  - Surface Land Ownership**
  - Bureau of Land Management
  - Private
  - State
  - US Forest Service
  - FCROADS