



May 31, 2013

United States Department of the Interior
Bureau of Land Management
Tres Rios Field Office
2921 I Highway 184
Dolores, Colorado 81323

RE: Oil and Gas Lease Sale February 2014 Scoping Comments

Comments submitted via e-mail: blm_co_tres_rios_2014_lease_sale@blm.gov and clementson@blm.gov and wdodd@blm.gov; and hand delivered.

Dear Tres Rios Field Office:

San Juan Citizens Alliance, The Wilderness Society, Sheep Mountain Alliance, Earthworks, and Dolores River Boating Advocates respectfully submit the following comments on the Bureau of Land Management Tres Rios Field Office (TRFO) request on its website for public input regarding the February 2014 oil and gas lease sale nominations and proposed stipulations (terms and conditions) for five parcels containing approximately 5,444 acres of federal mineral estate located in Dolores and San Miguel counties, Colorado.

San Juan Citizens Alliance (SJCA) since 1986 has been the lead conservation organization in southwest Colorado. SJCA has been actively involved in energy development, public lands management, and water issues, and has commented on every major energy development issue within the TRFO area since 1986. For the past decade SJCA has lead an effort to find long-term solutions to land and water management issues in the Dolores River basin, which is directly relevant to the proposed lease sale.

The Wilderness Society (TWS) protects wilderness and inspires Americans to care for our wild places. TWS represents more than a half million members and supporters nationwide, all of whom have a great interest in the protection and enhancement of the natural values and recreational opportunities provided by our public lands. TWS has been involved in the Dolores River basin discussions for over six years.

Sheep Mountain Alliance (SMA) is a grassroots citizen organization dedicated to the preservation of the natural environment in the Telluride Region and Southwest Colorado. To this end, Sheep Mountain Alliance will provide education for and protection of regional ecosystems, wildlife habitats and watersheds. SMA has been active on issues in San Miguel County for over two decades.

Earthworks is a nonprofit organization dedicated to protecting communities and the environment from the impacts of irresponsible mineral and energy development while seeking sustainable solutions. Earthworks has commented on energy development issues in the TRFO for the past 15 years.

1022½ Main Avenue
PO Box 2461
Durango, CO
81302

970.259.3583
970.259.8303

Dolores River Boating Advocates (DRBA) is a resource for boaters, a source for information about conservation efforts, and catalysts for river stewardship and advocacy in the Dolores River basin.

GENERAL COMMENTS

We believe the offering of these lease parcels is not appropriate at this time, and urge the TRFO to defer these parcels. The deferral for all the parcels should be until the Resource Management Plan (RMP) for the TRFO is updated, and a final agency decision on the new RMP is made. In addition, the deferral of parcels 6739, 6741, 6742, and 6729 should be deferred until after the Lower Dolores Working Group process, and any Congressional action on a National Conservation Area (NCA) for the Dolores River corridor area is completed.

In the comments submitted by most of the undersigned organizations in response to the Draft Supplemental Environmental Impact Statement (DEIS) for the Gothic Shale Gas Play Area (comments dated November 25, 2011, and fully incorporated within these comments), we presented the BLM with a Citizens Proposed San Juan Master Leasing Plan (CPSJMLP). The BLM has yet to make public any response to that proposal, which is for a clearly warranted Master Leasing Plan (MLP). All the parcels can and should be part of a MLP, and should not be leased prior to one being completed.

It is noteworthy that there are numerous non-producing oil and gas leases surrounding the proposed lease parcels (TRFO-Feb-2014_Preliminary3_8.pdf). The leasing of these additional parcels when existing leases are not being utilized is clearly not in the public interest and must be justified.

An Environmental Assessment (EA), as the BLM states it intends to prepare for these leases, is not sufficient. Due to the lack of a defensible RMP in place, an Environmental Impact Statement must be prepared prior to any leases in the TRFO.

We focus our comments to four areas of concern:

- The timeliness of this leasing
- Scope of National Environmental Policy Act Compliance
- Proposed Leasing Stipulations
- Specific issues that need to be addressed in the Environmental Analysis

We reserve the right to supplement these comments to BLM during more formal, procedural elements of the proposal to lease for oil and gas.

THE TIMELINESS OF THIS LEASING:

1) Resource Management Plan:

The Resource Management Plan (RMP) for the TRFO is currently the 1985 San Juan/San Miguel RMP and the 1991 RMP Amendment for Oil and Gas Leasing. These documents are grossly out of date.

The new RMP for the TRFO is expected to be released this year. As of today and as of the date of website notification, the RMP, and the Supplemental Environmental Impact Statement (SEIS) have neither been completed nor circulated for public comment, nor implemented. In addition, supplemental air analysis required as part of proposed Gothic Shale natural gas drilling has never been incorporated into Tres Rios Field Office Planning documents. The BLM must not consider leasing until these documents, as reference sources, have been vetted by the public and finalized/adopted by the agency.

Reliance on the 1985 San Juan/San Miguel RMP and the 1991 RMP Amendment for Oil and Gas Leasing fails to provide adequate tiering for any accurate oil and gas leasing evaluation to be undertaken for a February 2014 lease timeframe. Relying on 27- and 22- year old RMPs/RMP Amendments is unacceptable as the BLM must comply with the Federal Land Policy and Management Act for the BLM's multiple use mission. Leasing minerals in this area will be a precursor to shale gas/oil development that has never been analyzed in BLM RMPs nor adequately acknowledges the technologies to be encompassed in evaluating impacts of the proposed action. The BLM must address these grave deficiencies if the intention is to proceed with the proposed February 2014 Oil and Gas Lease Sale.

The BLM explicitly acknowledged the deficiencies in its underlying analysis of oil and gas development in the lease sale area when it undertook the Supplement to the Draft Environmental Impact Statement (SDEIS) for the Draft Land Management Plan and Draft EIS, dated August 26, 2011, precisely due to the lack of proper analysis in the Gothic Shale Gas Play Area, of which all the proposed lease parcels are within. Until this document is finalized by the BLM it is clearly too early to enter into new lease obligations.

It must further be noted that most of the organizations represented here commented on the SDEIS, and our comments of November 25, 2011 are incorporated in full within these comments.

2) Lower Dolores River Working Group / Dolores River Dialogue:

When the BLM's Draft Resource Management Plan was released in 2007 it reaffirmed the earlier finding of Wild and Scenic River suitability for the Lower Dolores River, but acknowledged that the Dolores River Dialogue (DRD) had been discussing the river and had the potential to find consensus on an alternative to Wild and Scenic suitability that could address community concerns while still protecting the outstandingly remarkable values (Draft Plan Appendix D, page D-20).

In December of 2008, launched by the DRD, the Lower Dolores River Working Group came together to do two things. First the Group was tasked with providing the BLM with stakeholder feedback needed to embark on an update of the Dolores River Corridor Management Plan. The group did this and provided the agency with a lengthy report on a variety of management and resource questions in July of 2010. The Working Group's second task was to investigate if there were tools other than Wild and Scenic suitability/potential designation that could protect river values while also addressing concerns of some in the community about suitability. In March of 2010, after eighteen months of focused deliberation, the Working Group reached consensus to pursue a

National Conservation Area (NCA) designation, and created a Legislative Subcommittee to develop the content of a proposal. This was no small task for a Working Group of roughly fifty members representing every possible stakeholder. Working Group stakeholders include but are not limited to irrigators and water managers, ranchers, off highway vehicle recreationists, rafters, surrounding counties and towns, conservation groups, private landowners, oil and gas interests, as well as the Bureau of Reclamation, Colorado Parks and Wildlife, and the Southern Ute Tribe.

The BLM has since chosen to postpone the update of the Dolores River Corridor Management Plan due to the ongoing NCA discussions. At this time, the Legislative Subcommittee continues to make progress on a proposal for an NCA. Specifically, the Legislative Subcommittee is currently working to determine the boundary of the potential NCA along the Dolores River in San Miguel County where a number of these leases are located. Of particular concern are parcel numbers 6739, 6729, 6741, and 6742.

It is completely inappropriate to make leases available in an area for which the specific management plan has been postponed, focused community discussions about legislation are ongoing and viable, and the overarching updated planning framework has not yet been finalized. Before new leases are offered that could potentially impact the Lower Dolores River corridor and the associated Outstandingly Remarkable Values, two things need to occur. First, the Resource Management Plan needs to be finalized. Second, the Lower Dolores River Working Group process needs to reach completion, and if the Group does move forward with a legislative proposal, leases should be postponed until legislation is passed into law by Congress.

SCOPE OF NATIONAL ENVIRONMENTAL POLICY ACT COMPLIANCE

The Tres Rios Field Office must fully comply with the National Environmental Policy Act for February 2014 Oil and Gas Lease Sale. National Environmental Policy Act (NEPA) regulations under 40 CFR § 1508.27 define "significantly" based on the criteria of context and intensity:

(a) Context. This means that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality. Significance varies with the setting of the proposed action. For instance, in the case of a site-specific action, significance would usually depend upon the effects in the locale rather than in the world as a whole. Both short- and long-term effects are relevant.

(b) Intensity. This refers to the severity of impact. Responsible officials must bear in mind that more than one agency may make decisions about partial aspects of a major action. The following should be considered in evaluating intensity:

- Impacts that may be both beneficial and adverse. A significant effect may exist even if the Federal agency believes that on balance the effect will be beneficial.
- The degree to which the proposed action affects public health or safety.
- Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically

critical areas.

- The degree to which the effects on the quality of the human environment is likely to be highly controversial.
- The degree to which the possible effects on the human environment is highly uncertain or involves unique or unknown risks.
- The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.
- Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.
- The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.
- The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.
- Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.

Reliance on an Environmental Assessment is clearly inadequate based on numerous context and intensity issues under the significance criteria. From our review of the information and analysis thus far provided, there are substantial questions regarding both the context and intensity of the proposed action that mandate preparation of an Environmental Impact Statement ("EIS"). As the Tenth Circuit has explained, "[i]f the agency determines that its proposed action may 'significantly affect' the environment, the agency must prepare a detailed statement on the environmental impact of the proposed action in the form of an EIS." *Airport Neighbors Alliance V. us'* 90 F.3d 426, 429 (10111 Cir. 1996) (citation omitted). Similarly, according to the Ninth Circuit: We have held that an EIS must be prepared if 'substantial questions are raised as to whether a project ... may cause significant degradation to some human environmental factor.' To trigger this requirement a 'plaintiff need not show that significant effects will in fact occur,' [but instead] raising 'substantial questions whether a project may have a significant effect' is sufficient. *Idaho Sporting Cong. v. Thomas*, 137 F.3d 1146, 1149-50 (9111 Cir. 1998) (citations omitted).

In evaluating whether unique characteristics of the geographic area such as proximity to historic or cultural resources, wild and scenic rivers, or ecologically critical areas exist are significant. Clearly, the Dolores River corridor, and the lands associated with parcels 6739, 6729, 6741, and 6742, meet the definition of significant.

Likewise for these parcels, the highly controversial nature of how they are managed can not be doubted, due to the high level of wide-spread community involvement in active discussions precisely around this issue. In addition, neither the 1985 RMP nor the 1991 Amendment contain any analysis of hydraulic fracturing or horizontal oil or gas drilling.

The use of these technologies has spurred a national, regional, and local debate, clearly demonstrating the highly controversial nature of their use.

The degree to which the proposed lease sale may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration is likewise clearly demonstrated in that should development of these parcels proceed, the impact on future decisions around possible NCA or Dolores River Corridor management would be severely constrained.

The degree to which the proposed lease sale has possible effects on the human environment which are highly uncertain or involves unique or unknown risks is clear from the BLMs decision to undertake the SDEIS for the Gothic Shale Gas Play Area. Until that document is finalized, along with the air quality analysis included in the SDEIS, leasing is premature. In addition, neither the 1985 RMP nor the 1991 Amendment contain any analysis of hydraulic fracturing or horizontal oil or gas drilling. The use of these technologies has spurred a national, regional, and local debate that arises precisely due to the possible effects their use has on the human environment that are highly uncertain and involve unknown risks.

The degree to which the effects on the quality of the human environment are likely to be highly controversial includes issues associated with private surface ownership, drilling operations, stimulation/hydraulic fracturing, flaring, water, air, geology and the vast infrastructure needed to operate conventional oil and gas operations (including pipelines, waterlines, electric lines, compressors, Central Delivery Points, Produced water, chemical used for fracking,), and the emerging technologies associated with shale gas.

An action is "highly controversial" if there is "a substantial dispute [about] the size, nature, or effect of the major Federal action rather than the existence of opposition to a use." *Blue Mts. Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1212 (9th Cir. 1998). The proposed project is undoubtedly highly controversial on stimulation/hydraulic fracturing alone which has become a national/international focal point. Impacts associated with stimulation/hydraulic fracturing, flaring, water, air and geology are also "highly uncertain" and involve "unknown risks." An action is "highly uncertain" or involves "unknown risks" requiring preparation of an EIS where "uncertainty may be resolved by further collection of data or where the collection of such data may prevent speculation on potential ... effects." *Natl. Parks & Conservation Assn. v. Babbitt*, 241 F.3d 722, 732 (9th Cir. 2001) (internal citations and quotations omitted).

Preparation of an EIS in these situations "obviate[s] the need for speculation by insuring that available data are gathered and analyzed prior to the implementation of the proposed action." *Id.* In evaluating the degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration, the potential full-scale field development of a 12,000 acre lease for natural gas and/or oil and seasonal wildlife exceptions establish a precedent for future actions with significant impacts.

An EIS is necessary to address the unique and significant characteristics of this lease to ensure that the agency can consider reasonable alternatives necessary to protect the environment.

Another significance criteria component is whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts. Given the uncertain scale of this project at the lease phase, we think it incumbent on BLM to address the impacts of full-scale field development as part of the NEPA process for this proposed action, as BLM has acknowledged in its decision to undertake the SDEIS.

Scoping

SJCA does not believe that BLM's scoping process for the February 2014 Oil and Gas Lease has been initiated, nor is the agency in compliance with Council On Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of the NEPA, 40 Code of Federal Regulations (CFR) Parts 1500-1 508. (See 40CFR§1501.7.) BLM Tres Rios Field Office actions must be in such compliance. Scoping done for the project must be commensurate with the significance of the action and clearly delineate a reasonable range of alternatives, which has not been done for this action.

When the Tres Rios Field Office begins proper scoping of the proposed February 2014 Oil and Gas Lease, please contact all the undersigned organizations. We will participate actively as your office complies with NEPA. Also, due to the significant amount of controversy that undoubtedly will surround this project, we believe it is imperative that the BLM bring in Cooperating Agencies for the NEPA document, including the U.S Environmental Protection Agency, Colorado Department of Public Health and Environment, Colorado Parks and Wildlife, and the U.S. Fish and Wildlife Service as soon as possible.

PROPOSED LEASING STIPULATIONS

It is not clear where the Proposed Stipulations (Scoping_Stips.pdf) are described or on what they are based. We have looked at the 1985 RMP, the 1991 Amendment, and the **Draft** San Juan Public Lands RMP / LMP and have not found stipulations numbered as in the scoping document, nor that seem to match with the stipulations listed. Since it is unclear whether the Proposed Stipulations for the proposed lease parcels are based on the 1985 RMP and 1991 Amendment, or the soon to be completed RMP, the public's ability to comment on the Proposed Stipulations is severely curtailed.

It is inappropriate and indefensible to lease with stipulations from the older documents.

Three examples of the complete lack of clarity on the stipulations are:

- SJ-03 Dolores River Canyon NSO: There is no map of where the NSO stipulation applies. The mapping of the Dolores River Canyon NSO area must be informed by the on-going community discussions of a potential NCA. Without a presentation of where the stipulation applies, the inclusion is meaningless.

- SJ-08 desert bighorn sheep timing limitations are likewise not mapped, nor are the actual timing limitations explained. The desert bighorn sheep limitations must be informed by the on-going Colorado Parks and Wildlife (CPW) studies of bighorn activity in the area of many of the leases. Until it is demonstrated that BLM has consulted with and incorporated information from CPW the proposed stipulation is meaningless.
- CO-31 protection of sensitive plant and animal species. The sensitive plant and animal species limitations must be based on the most up-to-date information, not on 1985 or 1991 information, especially given the importance of the many species dependent upon the soils found within many of the lease parcels.

The Proposed Leasing Stipulations (No Surface Occupancy; timing Limitation; Controlled Surface Use) represent an incomplete list of issues that need to be addressed early in the process. Impacts associated with stimulation/hydraulic fracturing, flaring, water, air and geology are also "highly uncertain" and involve "unknown risks." The more we can obviate the need for speculation by insuring that available data are gathered and analyzed prior to the implementation of the proposed action, the better all are served.

Other Issues That Must be Fully Analyzed in the Environmental Analysis:

- 1) Impact on all Threatened, Endangered and Sensitive Species:
 - a) Native fish species
 - b) Desert bighorn sheep
 - c) Sensitive plant species, including those dependent upon gypsum soils
- 2) Traffic impacts: All the lease parcels are only accessed by primitive roads
- 3) Water impacts:
 - a) Water quality: All the parcels include lands which should a spill or leak of drilling, fracturing, or produced fluids occur there could be impacts to the Dolores River.
 - b) Water quantity: The BLM must analyze and divulge the amounts and sources for all water that would be utilized for drilling, fracturing, dust suppression and other uses.
- 4) Air impacts, including impacts on climate.

BLM is empowered and obligated pursuant to the Federal Land Policy and Management Act and the Mineral Leasing Act (MLA) to ensure that oil and gas lease decisions conserve natural Resources and do not degrade public lands. 43 U.S.C. § 1732(b); 30 U.S.C. § 225; 30 U.S.C. § 187. As part of those duties, BLM is required to consider and ameliorate greenhouse gas pollution, and in particular methane waste. *Id.* Secretarial Order 3226 (January 19, 2001). Preventing GHG pollution and waste is particularly important in the natural gas context, where there is an absence of meaningful lifecycle analysis of the GHG pollution emitted by the production, processing, transmission, distribution, and combustion of natural gas. Although natural gas is often touted as a 'cleaner' alternative to dirty coal, recent evidence indicates that this may not, in fact be the case – and, at the least, indicates that we must first take immediate, common sense action to reduce GHG pollution from natural gas before it can be safely relied on as an effective tool to transition to a clean energy economy. Considering alternatives to prevent or abate these emissions, in particular through enforceable stipulations attached to the leases, is therefore reasonable and prudent. There are many proven technologies and practices already available to reduce significantly the methane

emissions from oil and gas operations. These technologies also offer opportunities for significant cost-savings from recovered methane gas. Indeed, reducing methane emissions is important not only to better protect the climate, but also to prevent waste of the oil and gas resource itself and the potential loss of economic value, including royalties. Moreover, not only can implementation of these technologies help reduce methane waste and spur economic benefit, it also promises to allay some of the harmful health effects that have come as a consequence of the oil and gas industry boom. BLM can also help prevent climate change degradation to public lands by promoting ecological resiliency and adaptability and reducing external anthropogenic environmental stresses.

5) Recreation impacts, including impacts on the Dolores River and a potential NCA.

CONCLUSION

The proposed lease sale must be deferred until an up-to-date RMP has been released, publicly vetted, and adopted by the BLM. The proposed lease sale should be deferred until the community processes of the Dolores River Dialogue and Lower Dolores Working Group have been finalized. The proposed lease sale must be deferred until a Master Leasing Plan is developed. The proposed lease sale must only proceed with a full EIS due to the lack of relevant and up-to-date analysis of the area.

We appreciate the opportunity to submit these comments in its effort to continue meaningful involvement with proposed and actual mineral development on federal lands in the San Juan Basin.

Sincerely,



Dan Randolph
Executive Director
San Juan Citizens Alliance
10221 /2 Main Ave.
Durango, CO 81301
(970) 259-3583
dan@sanjuancitizens.org

Hilary Cooper
Executive Director
Sheep Mountain Alliance
PO Box 389
Telluride, CO 81435
970-728-3729
hilary@sheepmountainalliance.org

Nada Culver
Director and Senior Counsel, BLM Action Center
The Wilderness Society
1660 Wynkoop Street, Suite 850
Denver, CO 80202
303-650-5818 Ext. 117
nada_culver@twc.org

Bruce Baizel
Director
Energy Program, Oil & Gas Accountability Project
Earthworks
970-259-3353
bruce@earthworksaction.org

Jay Loschert
Program Coordinator
Dolores River Boating Advocates PO Box 1173
Dolores, CO 81323
970-799-1475

cc:
Megan Anderson
Western Environmental Law Center
208 Paseo del Pueblo Sur, Unit 602
Taos, NM 87571
575.613.4195