



COLORADO
OIL & GAS
ASSOCIATION
WEST SLOPE



American Petroleum Institute
Colorado

BLM Colorado State Office
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The Colorado Oil & Gas Association, American Petroleum Institute-Colorado, West Slope Colorado Oil & Gas Association, Western Energy Alliance, and The Energy Council (collectively, the “Associations”) appreciate the opportunity to offer scoping comments on the Bureau of Land Management’s (“BLM”) Big Game Habitat Movement Route and Corridor Resource Plan Amendment and associated Environmental Impact Statement (“EIS”), Project DOI-BLM-CO-0000-2022-0003-RMP-EIS. The Associations look forward to continuing to provide comments to BLM as this process advances. We ask BLM to consider and address the following scoping comments:

I. The Associations Encourage BLM to Adopt CPW’s and COGCC’s Approach to Big Game High Priority Habitat.

The Notice of Intent to Amend Colorado Resource Management Plans Regarding Big Game Conservation and Prepare an Associated Environmental Impact Statement (“Notice of Intent”) for this amendment process states, “BLM will consider at least one alternative that would adopt State agency recommendations to avoid and minimize impacts from oil and gas leasing and development to big game high priority habitat.” The Associations support this alternative and believe that BLM should follow Colorado Parks & Wildlife’s (CPW) and the Colorado Oil and Gas Conservation Commission’s (COGCC) approaches to big game high priority habitat for several reasons.

The federal government has traditionally deferred to state regulation of wildlife unless the state fails to provide adequate protection, in which case the federal government can list species under the Endangered Species Act. This deference is reflected in Secretarial Order 3362 (“Secretarial Order”), which provides that the “overarching philosophy” guiding the amendment process should include the “touchstone” of “respect[ing] state authority to manage wildlife, namely elk, deer, and pronghorn” and to “remain focused on state-identified priority migration corridors. . . .” Secretarial Order at 4.

Colorado already has some of the most stringent regulations protecting wildlife migration corridors and habitat. Last year, the State of Colorado spent several months revising its wildlife regulations with respect to oil and gas development, a process which culminated in the COGCC’s issuance of a significantly revised and broadened Rule 1200 Series. These rules, along with another recent COGCC rulemaking in April of 2022 specific to high priority habitat, incorporate CPW’s comprehensive mapping of wildlife habitat and migration corridors. BLM should defer to this comprehensive set of state regulations already in place (and as they may be amended by the state) throughout the amendment and EIS process, including deferring to state decisions regarding how to accomplish mitigation where it is required. For example, if the state approves a mitigation plan whereby an operator will conduct compensatory mitigation or remit a mitigation fee, that decision should be honored and different or duplicative compensatory mitigation actions or remission of mitigation fees should not be required by BLM.

“Consistency” is a goal required by the Secretarial Order, which this rule amendment process implements. *See* Secretarial Order at Sec. 4.d.(3). As BLM acknowledges: “A driver for this amendment is to evaluate land use planning decisions to be consistent with the [COGCC] rulemaking, which adopted new rules [1200 series] regulating the permitting, development, and

operation of oil and gas facilities in wildlife habitat.” Big Game Habitat Movement Route Corridor Resource Management Amendment Public Scoping Brochure (“Scoping Brochure”) at 2. *See also* Notice of Intent at 5 (“The BLM will strive for consistency with plans or policies and programs of other Federal agencies, State and Local governments. . . .”). Consistency is best achieved when there is no conflict between BLM and state rules and guidance. Implementation is difficult for operators and respective state and federal agency staff alike when BLM and state law are inconsistent.

Additionally, comprehensive state regulations already ensure that BLM has a substantial say in how wildlife habitat is managed in Colorado with respect to oil and gas development on federal lands. For example, COGCC Rules 301.f. and 303.a.(6) provide procedures for coordination with federal agency permitting processes. COGCC Rule 306.b.(2).B. requires the Director of the COGCC to consider environmental analyses, stipulations, and conditions of approval conducted pursuant to federal permitting processes prior to recommending additional conditions of approval for an oil and gas development plan. COGCC Rule 314.f.(4).D. mandates that operators consult with appropriate federal agencies when proposing a comprehensive area plan that involves federal surface or mineral estate. *See also Statement of Basis, Specific Statutory Authority, and Purpose New Rules and Amendments to Current Rules of the Colorado Oil and Gas Conservation Commission*, 2 C.C.R. § 404-1 Cause No. 1R, Docket No. 200600155, 800/900/1200 Mission Change, Cumulative Impacts, and Alternative Location Analysis Rulemaking (“1200 Series SBP”) at 175-176 (“The Commission and CPW will continue to work closely with the [BLM] especially with respect to BLM’s plans for development on federally-owned surface. . . . Coordinating with BLM, as a federal land manager, early in the process is important to achieving complementary permitting outcomes, and therefore, consistent with prior

practice, the Commission expects operators to include all permitting agencies in on-site evaluations and identify potential conflicts to both state and federal agencies for joint resolution”). The Associations have no reason to believe—and BLM has provided no data to the contrary—suggesting that the existing process of BLM consulting with COGCC and CPW using CPW big game data in its National Environmental Policy Act (“NEPA”) evaluations is not working.

Of note when considering why BLM should defer to COGCC Rules and the comprehensive mapping CPW generates, the two agencies’ big game data collection and management procedures have evolved and improved over the past two decades. In 2008, the Colorado legislature added wildlife to COGCC’s regulatory authority and, in turn, required CPW to provide consultation and advisory services to COGCC. Pursuant to this authority, COGCC under the 1200 Series is obligated to update its wildlife maps every year, based on CPW’s latest data, which is updated annually on a rotating quadrant (e.g., Southwest Colorado) basis. As the custodian for management of wildlife in Colorado, CPW has already accomplished comprehensive mapping and data collection on wildlife in the state and has over time improved the accuracy and comprehensiveness of its data. As CPW’s *2020 Status Report: Big Game Winter Range and Migration Corridors* (“2020 CPW Report”) states: “In 2002, the method for data capture was updated in an effort to make the process more inclusive and accurate. . . . With guidance from CPW GIS specialists, data is digitized directly by field personnel using a SMART Board (interactive whiteboard) and ESRI’s ArcMap program. CPW personnel are able to update seasonal habitat use maps for each species by viewing the existing GIS data and making edits based on field experience, observations and knowledge of animal movements and locations. The decades of expert, on-the-ground knowledge contributed by CPW field personnel is invaluable.

This institutional knowledge is augmented with other data such as annual winter classification flight data locations and radio/GPS collar data from various studies. Collar data is displayed with the current mapped seasonal ranges to verify, edit and update the SAM maps.” *See* 2020 Status Report at 17.

The state agencies’ legal requirement to update maps annually and ability quickly to respond to changing conditions in Colorado is of increasing importance given the dynamic nature of wildlife mapping due to, among other things, climate change (with the resulting changes in temperature and precipitation in summer and winter ranges), increased wildfire activity, the increasing use of wildlife habitat areas for recreational activity and other uses, and the reintroduction of wolves in certain parts of the state. Indeed, wolves will not be reintroduced to Colorado until late 2023—halfway through this amendment process. But changes due to wolf reintroduction are important because they are anticipated to be particularly acute for the elk and mule deer populations, which can be expected to decline due to wolf predation and changing of habitat to avoid predation (Ripple and Beschta 2004; Mao et al. 2005; Evans et al. 2006 Christianson and Creel 2014; Boyce 2018). Also complicating the situation is the demographic influence of hunting, with hunters selectively harvesting female elk with the highest reproductive potential, which compounds the negative demographic impact of wolf predation (Wright et al. 2006).

In sum, BLM simply does not currently have the capacity to respond to these dynamic issues that will make its amendment soon obsolete.¹ By contrast, state agencies are able to

¹ Additionally, BLM is subject to NEPA which substantially hinders its ability to create a timely and accurate mapping process. The average NEPA process for resource management plan (“RMP”) amendments takes several years, and while some of the RMPs to be amended in this amendment process date as far back as 1986 and have not been subsequently updated, COGCC makes frequent updates. CPW and COGCC are simply better positioned to

adaptively manage big game and thus we strongly encourage BLM to defer to Colorado rules and agencies.

II. The Amendment Should Not Expand the Scope of this Amendment Process.

This amendment and EIS process must conclude in two years pursuant to the settlement agreement in *State of Colorado v. Bureau of Land Management*, 1:21-cv-00129 (D. Colo.). The Notice of Intent refers to the big game species listed in Secretarial Order 3362—specifically elk, mule deer, and pronghorn. *See* Secretarial Order at 2 (“The overarching purpose of the Order is for the Department and its respective bureaus to develop collaborative partnerships with [Western] states to enhance and improve the quality of Rocky Mountain elk (elk), mule deer (deer), and pronghorn antelope (pronghorn) winter range and migration corridor habitat.”).

Some commentators propose that the rulemaking cover other species beyond those listed in the Notice of Intent. But consideration of other species strays from the Secretarial Order giving rise to this amendment process, as well as the Notice of Intent’s focus. Adding new species to the amendment process would also make the already tight two-year timeline difficult to meet. And, finally, it is unnecessary to add additional species because they are generally part of CPW’s mapping process. For example, at the August 3, 2022 public scoping meeting, some public commentators queried whether BLM would update big horn sheep habitat. But doing this is unnecessary if BLM follows COGCC’s mapping, as the CPW map layers used by COGCC

lead high priority habitat land use decisions because their policies and regulations are based on the most recent science and they can engage in rulemakings more quickly without the intense procedural overlay that accompanies NEPA. To be sure, the Associations make no claim that the state data is 100% accurate, 100% of the time. However, the state agencies’ ability to update its mapping more quickly than the BLM is irrefutable such that, as between BLM and COGCC/CPW, the Associations believe following the state’s approach to big game habitat and migration corridors is more protective of big game habitat and migratory corridors.

already include big horn sheep habitat and CPW is anticipated to continue to refine its big horn sheep habitat data over the years, just as it does with other species on a rolling basis.

If BLM does decide to expand the scope of the amendment, it should consider adding management decisions applicable to land uses beyond oil and gas development. This would include renewable energy development, residential and commercial development, and recreational uses in wildlife areas – all of which have been at least as, if not more, impactful on wildlife habitat and corridor migration than oil and gas development. CPW’s 2020 Status Report lists a number of these non-oil and gas development uses impacting the state’s big game winter range and migration corridors, including rapid human population growth, the explosion of recreation activities in habitat areas (particularly on the West Slope), the increasing number of roadways and wildlife-vehicle collisions, logging and timber sales, weather and climate change, coal and uranium mining facilities, and the installation of renewable energy facilities. *See* CPW’s 2020 Status Report at 25-28. The development of renewable resource development in the state merits special focus “due to the federal requirements for fencing around solar panel arrays, the footprint of a solar project typically results in the complete loss of habitat for big game species.” CPW’s 2020 Status Report at 29.

While the Associations believe this amendment and EIS process should be focused on oil and gas energy development to satisfy the strict timing requirements, it should be obvious that many other land uses are just as or more impactful than oil and gas development. While BLM should not expand the scope of this amendment beyond the Notice of Intent, if it does so it should recognize that many other uses other than oil and gas development have a profound impact on wildlife.

III. Density Limitations Should Recognize Impact Minimization and Mitigation Strategies and Not Set Categorical, Absolute Limitations.

The Notice of Intent states BLM “will consider” density limitations as one of its planning alternatives. After weighing a substantial amount of data and party testimony last year, the COGCC implemented density considerations in its recent 1200 Series Rulemaking; the Associations encourage BLM to adopt a similar policy as that which COGCC adopted in COGCC Rule 1202.d. That rule provides in relevant part that when an oil and gas location is proposed such that the density of oil and gas locations in high priority habitat² would exceed one per square mile, that location may only be approved after completion of a CPW-approved wildlife mitigation plan or another CPW approved conservation plan and compensatory mitigation for wildlife. Such plans “must include site-specific measures to address unavoidable adverse indirect impacts to wildlife that occur in these habitats when the development density exceeds one oil and gas location per square mile,” *id.*, and may include “Habitat Conservation Plans for threatened and endangered species, Candidate Conservation Agreements, wildlife plans adopted pursuant to local or federal government regulations, and enrollment in habitat exchanges.” 1200 Series SBP at Attachment 1, p. 3. Of note, the COGCC explicitly designed these wildlife mitigation and conservation plans to be flexible to “encourage coordination with the federal government.” 1200 Series SBP at 179.

No doubt there will be some commentors who ask BLM to adopt stringent and inflexible density caps on oil and gas development in sensitive habitat areas. Similarly, some stakeholders

² “High Priority Habitat” is a defined term under COGCC Rules meaning, “habitat areas identified by Colorado Parks and Wildlife where measures to Avoid, Minimize, and Mitigate Adverse Impacts to wildlife have been identified to protect breeding, nesting, foraging, migrating, or other uses by wildlife. Maps showing, and spatial data identifying, the individual and combined extents of the High Priority Habitats will be provided by CPW and attached to this Rule as Appendix VII. The Commission will provide the maps on its website. The extent of these High Priority Habitat areas is subject to update on a periodic but no more frequent than annual basis and will be modified only through the Commission’s rulemaking process described in Rule 529. Notice of such rulemaking proceeding will be provided by January 15 of each year.” COGCC Rule 100 Series-Definitions.

during the 1200 Series deliberations urged the COGCC to limit all oil and gas development in habitat areas to one oil and gas location per square mile. As BLM should do, the COGCC adopted a more flexible approach, recognizing that high priority habitat is:

“frequently managed by land managers and state wildlife agencies using impact minimization strategies, like co-locating facilities and limiting the density of surface facilities, or implementing surface disturbance caps. Evidence in the administrative record demonstrates that when properly regulated, development can occur within these areas in a manner protective of wildlife populations and their habitat.”

1200 Series SBP at 202 (emphasis added).

The Associations agree with COGCC’s approach insofar as requiring a wildlife mitigation plan or another CPW approved conservation plan and compensatory mitigation for wildlife are more thoughtful and appropriate planning tools than an arbitrary, blanket density limit. BLM should be mindful that the Energy Policy Act of 2005 provides that regulations be “only as restrictive as necessary to protect the resource(s) for which they are applied,” 42 U.S.C. § 15992(b)(3)(C), and recognize that operators are continuously deploying new technologies, best management practices, and undertaking other actions that allow for development to occur in a manner protective of wildlife and their habitat. One operator in the Piceance Basin, for example, recently permitted a new development comprising four pads in big game habitat, and the CPW and BLM both concluded that the operator could successfully avoid and mitigate impacts to big game during the course of its operations. Because oil and gas development may coexist in a protective manner of wildlife and their habitat, absolute density limitations would

frequently be more restrictive than necessary to protect resources, in contravention of the Energy Policy Act of 2005.³

Moreover, strict density limitations should be avoided because they can have the practical effect of precluding mineral development in the limitation area due to the fact that not all basins in Colorado can accommodate horizontal drilling practices. For example, the vast majority of wells drilled in the Piceance Basin are drilled directionally. A strict density limit of one oil and gas location in a certain area could prevent operators in this area from being able to develop the minerals within that geographic unit, to operate economically, or to operate efficiently with as limited a footprint on the land as possible. Additionally, because operators need to locate their wells' support facilities, too, limiting development to one oil and gas location in a certain area may have the unintended consequence of forcing operators to create extremely large pads to accommodate both very large numbers of wells and their support facilities. Currently, through close collaboration with BLM and CPW, many operators employ Centralized Plans of Development ("CPODs"), which allow operators to remotely develop well pads from centralized support pads, e.g., have support facility pads such that each support facility pad services multiple well pads. Strict density limitations could hinder this highly desirable and environmentally

³ COGA notes that BLM personnel mentioned at the BLM regional leadership open house in Grand Junction on August 11, 2022, that BLM was considering applying density and disturbance tools similar to the ones adopted in the Greater Sage Grouse RMP amendment to big game in this amendment. These tools, which include a 3% disturbance cap and 1 development per 640 acres density cap, were developed using science specific to Greater Sage Grouse in Wyoming. Industry requests that, if BLM does not defer to CPW/COGCC, which industry believes is a more protective alternative for wildlife, BLM refrain from using any disturbance or density cap unless they have been developed on a site-specific basis specific to big game habitat using the best available science for big game issues specific to Colorado.

beneficial practice of using CPODs by operators, resulting in an increase in disturbed habitat and a proliferation of duplicative support facility equipment at each individual well pad.

Instead, BLM should adopt a flexible approach such that any planning alternative involving a density limitation would, like COGCC Rule 1202.d., allow for exceedances of the limitation where wildlife experts—CPW and, where applicable, BLM—agree that site-specific minimization and mitigation measures will protect the relevant resources. Such an approach should allow easy coordination with COGCC’s 1200 Series and honor the binding federal directives to engage in an amendment process that promotes “consistency” among the federal government and the state. *See* Scoping Brochure at 2 (“A driver for this amendment is to evaluate land use planning decisions to be consistent with the [COGCC] rulemaking, which adopted new rules [1200 series] regulating the permitting, development, and operation of oil and gas facilities in wildlife habitat.”).

IV. Closing Areas to Oil and Gas Leasing is an Extreme Constraint and Should Not Be an Explored Alternative.

The Notice of Intent states BLM “may consider closure of areas to future oil and gas leasing as part of the plan amendment.” In contrast to density limitations, which the Notice of Intent states BLM “will” consider, consideration of closing areas to future leasing is permissive and should not be a goal of the amendment. The Associations urge BLM not to explore an alternative that would close areas to future leasing. Such an alternative is not required by any of the implementing Secretarial or Executive Orders, the applicable settlement agreement, or any other source of law. For many of the same reasons why strict density limits are inappropriate, so, too, are rigid policies precluding areas from oil and gas leasing. Instead, leases should be evaluated on a site-specific basis, placing stipulations on leases as appropriate, rather than

imposing strict removal of minerals from leasing. Removal is often “more restrictive than necessary,” see 42 U.S.C. § 15992(b)(3)(C), to protect big game high priority habitat.

V. BLM’s Approach to Coordinating with the State and Making Federal Planning Decisions Must Be Informed By the Latest Scientific Literature.

As described above in Section I, the Associations firmly believe that an amendment alternative requiring BLM to defer to state regulations is the alternative that best protects big game habitat in a reasonable manner that is not “more restrictive than necessary.” See 42 U.S.C. § 15992(b)(3)(C). The Associations recognize and agree, however, that BLM is an important partner with the state. See Section I, *supra*. As BLM creates policies that will guide its decision-making and its collaboration and consultation with the state, the Associations emphasize the importance of BLM considering the latest and best available data. We urge BLM to consider the following science-supported issues in particular.

a. The cumulative effects of wolf predation, disease, hunting and other natural and human-caused factors on big game habitat needs to be taken into account in BLM analysis and planning.

As mentioned above, the reintroduction of wolves will affect big game habitat population dynamics and migratory behavior. Compounding this issue is Chronic Wasting Disease (CWD), a disease which is 100% fatal and for which there is no cure. It is persistent in the environment and is spreading across mule deer, elk, and moose populations in Colorado. Based on published peer reviewed scientific research, population declines in deer and elk can be expected as the disease becomes more prevalent and population declines will be severe in coming decades. As CWD spreads, it will contaminate the environment (it is persistent in soil for years and can be taken up by plants, where it can be ingested by herbivores), and it will become endemic (Miller et al. 2008; Monello et al. 2014; Edmunds et al. 2016; Almberg et al. 2011; DeVito et al. 2017; Zabel and Ortega 2017; Mysterud and Edmunds 2019; Galloway et al. 2021). This is a

significant issue that must be acknowledged and addressed in the EIS because population declines in elk and mule deer will occur as CWD infection rates increase over the coming decades, regardless of human activities.

We are concerned that the expected mule deer and elk declines from CWD, as well as impacts from wolf predation and other environmental factors, may be inappropriately attributed to oil and gas development, which, in turn, could potentially result in additional unjustified restrictions on future oil and gas operations. We therefore urge BLM to acknowledge and incorporate into its planning the fact that population numbers fluctuate and habitat use changes over time as both are driven by multiple extrinsic factors (e.g. drought, disease, wildfire, predation, severe weather events, and density dependence) and impacts of human activities (e.g., oil and gas, agricultural, housing, commercial, transportation and water development, as well as the effects of sport hunting on big game demography, behavior and consequent habitat utilization). Management prescriptions should acknowledge and distinguish among impacts associated with these various factors to be effective. Any BLM analysis and proposed alternatives will be rendered obsolete if prepared prior to understanding the full demographic impact of wolf reintroductions, in combination with disease, hunting and other natural and human factors on elk, mule deer and pronghorn in Colorado.

- b. It is imperative BLM uses up-to-date information reflecting the many significant improvements in oil and gas extraction technology, which make adverse impacts to the environment far fewer and less intense than those impacts associated with historic oil and gas development.**

Scientific literature has analyzed effects of oil and gas development for many years. However, many of the older studies and opinions formed from them pre-date the existence of newer and less impactful technologies, more efficient operations, and more stringent environmental regulations that began occurring in the oil and natural gas industry beginning

around 2005 and which continue today. Current practices dramatically reduce surface disturbance, often rely on pipelines to transport water and product, thereby reducing trucking impacts, and reduce emissions across the development and production phases. Other advances in technology and computational geoscience have resulted in shorter drilling and completion times, reducing overall disturbance to wildlife.

These efforts have been coupled with increased awareness and earnest efforts to improve conservation outcomes. As a result, studies that rely on pre-2005 data—as well as studies that combine data from before and after this period (without accounting for these differences in technology, efficiency and regulation)—simply do not accurately reflect the current situation in the field because the impacts from current operations are fewer and less intense than the impacts from the past. In light of the oil and gas industry’s advancements, we urge BLM to rely on only the most recent scientific and commercial data when it is developing alternatives for this amendment process and to seek up-to-date expertise on oil and gas technologies, both above and below ground.

c. The significance of hunting on big game avoidance must be addressed.

It is well-established in the peer-reviewed scientific literature that big game species that are hunted tend to avoid human activity, yet readily tolerate human presence in areas where they have not been hunted (Thurfjell et al. 2017; Goumas et al. 2020; Sergeyev et al. 2020; Zanette and Clinchy 2020). In other words, hunting produces a “landscape of fear” in big game populations, conditioning them to view humans as potential predators and consequently to avoid human activity where they otherwise would not have. BLM should not consider requiring oil and gas operators to provide additional compensatory mitigation for operations when big game avoidance of human activities is the result of hunters creating a landscape of fear. In considering

this issue in its analysis of alternatives, BLM needs to include an analysis of alternatives that includes mitigating the behavioral impacts of hunting on big game.

VI. BLM’s Amendment and EIS Process must address the Socio-Economic Impacts to Local Communities & Special Districts.

Oil and gas development is a major source of revenue for many local governments in Colorado. More sophisticated natural gas production technologies and rising gas prices produced a notable energy boom between 2002 and 2009 for many Colorado local governments, and oil and gas development continues to be a major source of funding for their economies. Indeed, many local governments are now primarily dependent on oil and gas development for necessary revenue.

The ability of this amendment to significantly impact this necessary revenue stream to local governments is substantial, especially if some of the more extreme constraints such as no surface occupancy restrictions are considered. Without careful consideration of BLM’s decisions on local governments, the haphazard imposition of major or even minor constraints on significant areas of leased federal land could devastate local governments’ ability to provide necessary services.

VII. As BLM Acknowledges, This Process Cannot Impair Valid Existing Rights.

BLM’s planning and regulatory authorities are found principally in the Federal Land Policy and Management Act (“FLPMA”). This authority is not unlimited, as BLM has acknowledged by noting that its decisions respecting public lands in Colorado are subject to valid existing rights, and that the RMP amendment will not diminish such valid existing rights. 87 Fed. Reg. 43050, 43051 & 43052 (July 19, 2022). Regardless of what RMP amendments the agency ultimately adopts, the agency’s ability to apply new requirements to existing leases is

limited by the terms of those leases and the requirements of due process. This is a well-acknowledged tenet of public lands law.

“Valid existing rights” language is used hundreds of times in federal public lands law. In fact, BLM’s organic statute includes twelve references to valid existing rights and uses similar language throughout to prevent infringement on private interests. Sometimes the statutes use the precise term “valid existing rights” and sometimes the statute (or other action) uses different language that accomplishes the same end. For example, the FLPMA provisions regarding management of wilderness study areas are made subject to mineral leasing in the manner and degree in which the same was being conducted prior to passage of FLPMA. *See* 43 U.S.C. 1782, Sec. 603 (c). And when a land withdrawal occurs, vested existing rights are unaffected. *Grand Canyon Trust v. Williams*, 98 F.Supp.3d 1044 (Ariz 2015), *aff’d in part and remanded in part*, *Havasupai v. Provencio*, 906 F.3d 1155 (9th Cir. 2018). For these reasons, a Presidential Proclamation for the Upper Missouri River Breaks National Monument (66 Fed. Reg, 7359 (Jan. 17, 2001) was made subject to valid existing rights, as were other presidential proclamations.

The Associations emphasize the importance of vested existing rights as a constraint on whatever the RMP amendments may seek to accomplish on public lands. Resource Management Plan amendments adopted as part of this process cannot materially diminish the lease rights previously acquired from BLM.

A second constraint on BLM’s authority is that “BLM’s regulatory jurisdiction is limited to federal lands (including minerals). Because BLM’s regulatory jurisdiction is so limited, BLM activities that affect non-Federal lands must be carefully examined to ensure that BLM does not exceed its authority.” BLM Instruction Memorandum (IM) 2018-014. In some parts of the state,

including the Denver-Julesburg basin, much of the surface is privately owned while federal (subsurface) mineral resources are scattered throughout the Area.

In cases where a well is located on private surface but may capture both fee and federal minerals – so-called fee/fee/federal situations – “BLM’s jurisdiction extends to surface facilities on entirely non-Federal lands solely to the extent of assuring production accountability for royalties from Federal and Indian oil and gas” *Id.* In those circumstances, the management prescriptions BLM determines are appropriate as RMP amendments to protect large mammals cannot be applied to private surface. Conversely, the Colorado Oil and Gas Conservation Commission 1200 Series would apply so these lands do not escape protections for things like large mammal migration routes or wintering areas. The Associations ask that constraints on BLM’s authority continue to be acknowledged as this process moves forward.

VIII. Conclusion

The Associations are proud of the advancements the oil and natural gas industry have made that allow oil and gas operations to occur in big game habitat in a manner that avoids, minimizes, and mitigates adverse impacts while continuing to produce and provide for the current and future clean energy needs for our nation. We thank BLM for its consideration of these scoping comments.

[signatures continue on following page]

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Attachments (Literature Cited)

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