October 12, 2012

Via Electronic Mail (letter only) and U.S. Mail (letter and exhibits)

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Re: DOI-BLM-CO-S050-2012-0041 DNA, Application for Permit to Drill for SG Interests I, Ltd., Proposed Natural Gas Well 12-89-7-1

Dear Ms. Sharrow and Ms. Hankins:

Citizens for a Healthy Community (“CHC”) is writing to express our concern with regard to the Bureau of Land Management’s (“BLM”) apparent intent to approve an Application for Permit to Drill (“APD”) on Federal Lease Parcel COC-066704, within the Bull Mountain Unit (COC-067120X), through a Documentation of National Environmental Policy Act Adequacy (“DNA”). This process circumvents the public’s opportunity to participate and comment on environmental impacts, and thwarts NEPA’s twin aims of ensuring that both BLM and the public are fully informed of the environmental consequences of BLM’s actions.

CHC is a grassroots organization formed in 2010 for the purpose of protecting people and their environment from irresponsible oil and gas development in the Delta County region. CHC’s members and supporters include organic farmers, ranchers, vineyard and winery owners, sportsmen, realtors, and other concerned citizens impacted by oil and gas development.

First and foremost, CHC hereby incorporates by reference a series of comments and associated exhibits submitted by the Western Environmental Law Center on behalf of CHC to the BLM

DOI-BLM-CO-S050-2012-0041 DNA, Application for Permit to Drill for SG Interests I, Ltd., Proposed Natural Gas Well 12-89-7-1
Uncompahgre Field Office (“UFO”) regarding oil and gas development in and around the North Fork Valley. These comments are directly relevant and applicable to the present analysis of the 12-89-7 APD, and should accordingly be considered along with CHC’s comments as provided herein. The first set of comments pertain to the now deferred August 2012 Oil and Gas Lease Sale, DOI-BLM-CO-S050-2012-0009 EA, and includes both scoping comments (attached as Exhibit A) and comments on the preliminary Environmental Assessment (“EA”) and Finding of No Significant Impact (“FONSI”) (attached as Exhibit B), submitted February 8, 2012 and April 19, 2012, respectively. In addition, CHC includes comments to BLM regarding the draft EA/FONSI for the proposed Bull Mountain Master Development Plan (“MDP”), submitted April 23, 2012 (attached as Exhibit C). Due to the connected nature of oil and gas activities in the North Fork Valley generally, and the Bull Mountain Unit specifically, the information provided in CHC’s earlier correspondence should likewise inform the present circumstances.

I. Disapproval of the APD

CHC requests that the UFO deny the approval of SG Interests’ APD. Among other concerns, the proposed well pad is located within a Sensitive Wildlife Habitat, Critical Mule Deer Winter Range and, further, the required NEPA analysis has not been conducted.

A. Sensitive Wildlife Habitat

SG Interests’ Form 2A, regarding Federal well pad location 12-89-7#1 (attached as Exhibit 1), as approved by the Colorado Oil and Gas Conservation Commission (“COGCC”), indicates the proposed well pad is located in Sensitive Wildlife Habitat, Critical Mule Deer Winter Range. The Form 2A includes comments from Colorado Parks and Wildlife that express concern over the approval of the location and APD request:

[T]he [Best Management Practices (BMPs)] submitted by the operator do not address the cumulative impacts of increasing well pad density and ancillary facilities (roads, pipelines, compressors, etc.) on the effectiveness wildlife habitats in the area. There is a growing body of evidence that residual unavoidable adverse impacts to wildlife increase dramatically when well pad densities exceed one pad per square mile and road densities exceed 0.5 mile per square mile. These residual adverse impacts to wildlife occur from reduced habitat effectiveness regardless of the use of Timing Limitation Stipulations on drilling activities or other site specific BMPs implemented by the operator to reduce impacts.

The well pad density within SG’s Bull Mountain Unit and the surrounding area is increasing and rapidly approaching a density where BMPs alone will no longer be sufficient to maintain existing wildlife populations in the area. CPW recommends that the operator consider a wildlife mitigation plan for the entire Bull Mountain Unit to address the cumulative impacts to wildlife from the ongoing development of new wells, road, pipelines, compressors, and other ancillary facilities proposed for the Bull Mountain Unit.

COGCC Federal 12-89-7 Form 2A # 400256012, at 6.

DOI-BLM-CO-S050-2012-0041 DNA, Application for Permit to Drill for SG Interests I, Ltd., Proposed Natural Gas Well 12-89-7-1
As a result of concerns regarding wildlife, SG Interests has indicated that it is considering a wildlife mitigation plan as part of its Bull Mountain MDP. Scan No 2034327, LGD Correspondence, 2A#400256012, May 7, 2012 (attached as Exhibit 2). In addition, the BLM UFO has indicated that the Bull Mountain MDP will undergo an Environmental Impact Statement (“EIS”) analysis, pending the publication of a Notice of Intent. Personal communication from Bruce Krickbaum, BLM UFO, August 1, 2012. Furthermore, increased development in the area may have socio-economic impacts on the North Fork Valley, including the Valley’s growing reputation as a tourist destination and as having world-class hunting habitat. Indeed, hunting and fishing are of vital socio-economic importance to the North Fork Valley, supporting 297 jobs in Delta County. Colorado Division of Wildlife (“CDOW”), The Economic Impacts of Hunting, Fishing, and Wildlife Watching in Colorado (2008). The CDOW Report also found that in 2008, direct expenditures in Delta County from fishing and deer, elk and small game hunting were $16.3 million. When the secondary economic impacts and CDOW direct expenditures are added, the total impact was $27.8 million. Given that cumulative impacts analysis is pending through the forthcoming Bull Mountain MDP EIS, and that SG Interests has yet to prepare and implement a wildlife mitigation plan, the BLM UFO should disapprov the subject APD request.

B. Inadequate NEPA Analysis

Existing NEPA analysis regarding this area is woefully out of date. The 1989 BLM Resource Management Plan (“RMP”) has not adequately analyzed the direct, indirect, and cumulative impacts of oil and gas development in the area. For example, the 1987 Oil and Gas Technical Report (“1987 Technical Report”), completed for the RMP, states that “the probability of oil and gas production is so minimal” that “[t]he analysis … will not include spacing requirements or other detailed analysis.” 1987 Technical Report at 11. While these projections are out of touch with the current trends of oil and gas development in the area in general, in particular, the area stretching from the Paonia Reservoir to McClure Pass has become the epicenter of this development and is seeing an even greater concentration of industrial scale oil and gas activity. Even more outrageous is the fact that the RMP did not analyze the impacts associated with horizontal hydraulic fracturing (“fracking”), a modern extraction technique that is currently subject to significant national controversy and debate.

BLM is currently in the process of revising its 1989 RMP for the UFO. The revised RMP will analyze and re-designate, at a foundational planning level, areas where mineral development is appropriate and areas where other resource values and uses – including preservation in a natural condition – is a priority. It would be imprudent to move forward with APD approval before this process is completed. Moreover, NEPA requires that the forthcoming Bull Mountain MDP EIS include, among other things, a cumulative impacts analysis of oil and gas development in the surrounding area. The 12-89-7 APD is located within the Bull Mountain Unit boundary, and in a

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1 On August 1, 2012, CHC staff attended a site visit for SG Interests proposed 11-90-9 multi-well development in the Gunnison National Forest. At the site visit, SG’s Eric Sanford stated that the Bull Mountain MDP would undergo an EIS. CHC staff called Bruce Krickbaum, BLM UFO NEPA Coordinator, to confirm. Bruce confirmed the UFO’s intent to conduct an EIS, and stated that a Notice of Intent would be published shortly, but could take up to many months.

DOI-BLM-CO-S050-2012-0041 DNA, Application for Permit to Drill for SG Interests I, Ltd., Proposed Natural Gas Well 12-89-7-1 p. 3
region where existing development is already causing impacts to wildlife, air quality, and water quality and quantity. As mentioned above, development in the area continues to accelerate, which makes analyzing cumulative impacts difficult. The Bull Mountain EIS should give the BLM additional and critical information on which to base its decision on the 12-89-7 APD.

As we noted in our comments on the August 2012 lease sale preliminary EA/FONSI, NEPA establishes a duty “to stop actions that adversely impact the environment, that limit the choice of alternatives for the EIS, or that constitute an ‘irreversible and irretrievable commitment of resources.’” Conner v. Burford, 848 F.2d 1441, 1446 (9th Cir. 1988). See EA Comments at 3. We have consistently maintained the BLM UFO is required to issue a moratorium on all oil and gas development in the Uncompahgre area for as long as the UFO RMP remains uncompleted.

Furthermore, and as mentioned above, the UFO is about to embark upon a comprehensive impacts analysis of the Bull Mountain MDP, which includes the proposed 12-89-7 well. The BLM’s apparent attempt to approve the 12-89-7 APD through a DNA – while simultaneously indicating that cumulative impacts are so significant that an EIS is warranted on the Bull Mountain MDP – are quite simply irreconcilable positions.

Because the subject APD is located within the Bull Mountain Unit, and within the broader area to be addressed in the pending RMP revision, BLM should deny approval of the APD pending (1) the completion of the revised UFO RMP, and (2) the completion of the Bull Mountain MDP EIS.

II. Documentation of NEPA Adequacy (DNA) Approval is Inappropriate

BLM’s use of a DNA to approve the APD at issue is improper given BLM’s failure to consider the impacts from drilling at either the RMP or lease sale stages. Given the direct and indirect impacts that the 12-89-7 project will have on wildlife, as well as the unanalyzed cumulative impacts resulting from industrial scale oil and gas development in the region, use of a DNA is inappropriate and the BLM should conduct, at a minimum, an EA for the 12-89-7 APD.

BLM may use a DNA when it can document that previously prepared NEPA documents adequately describe the environmental consequences of a newly proposed action. In most cases, a DNA is prepared without additional public involvement activities. However, this action is only appropriate where record documents show that the following conditions are met:

- The proposed action is adequately covered by (i.e., is within the scope of and analyzed in) relevant existing analyses, data, and records; and
- There are no new circumstances, new information, or unanticipated or unanalyzed environmental impacts that warrant new or supplemental analysis.

Department of the Interior, 516 DM 11.6 (2008).

Here, it seems BLM UFO may intend on using its NEPA analysis for the 16-well Gunnison Energy Corporation development (CO-150-2008-35 EA) for its issuance of a DNA on the
12-89-7 APD. In order to issue a DNA on the subject APD, BLM must demonstrate that it has fully met the criteria to issue a DNA. Such criteria include:

- Is the current proposed action substantially the same action (or is a part of that action) as previously analyzed? Is the current proposed action located at a site specifically analyzed in an existing document?
- Is the range of alternatives analyzed in the existing NEPA document(s) appropriate with respect to the current proposed action, given current environmental concerns, interests, and resource values?
- Is the existing analysis valid in light of any new information or circumstances?
- Do the methodology and analytical approach used in the existing NEPA document(s) continue to be appropriate for the current proposed action?
- Are the direct and indirect impacts of the current proposed action substantially unchanged from those identified in the existing NEPA document(s)? Does the existing NEPA document analyze site-specific impacts related to the current proposed action?
- Are the cumulative impacts that would result from implementation of the current proposed action substantially unchanged from those analyzed in the existing NEPA document(s)?
- Are the public involvement and interagency review associated with existing NEPA document(s) adequate for the current proposed action?


BLM’s NEPA Handbook further states: If you answer “yes” to all of the above questions, additional analysis will not be necessary. If you answer “no” to any of the above questions, a new EA or EIS must be prepared (516 DM 11.6) … In general, where the new proposed action has not already been discussed during public involvement for the existing EA or EIS, some additional public involvement for the new proposed action will be necessary.” BLM supra at 23.

Critically, BLM’s NEPA Handbook is expressly discretionary. Thus, even where all conditions are met – which is not the case here – circumstance may be such that a DNA remains inappropriate. See 40 C.F.R. §§ 1502.9, 1508.9. Accordingly, under any scenario, further NEPA analysis is warranted.

As part of the NEPA analysis, the BLM should require the operator to incorporate this well into a comprehensive wildlife mitigation plan for the entire area, including but not limited to the Bull Mountain Unit, to address the cumulative impacts to wildlife from the ongoing development of new wells, roads, and other ancillary facilities. If at the conclusion of BLM’s NEPA process the agency determines that approval of the APD is appropriate, the BLM should nevertheless include a timing limitation as a Condition of Approval to the APD, stipulating that the operator shall refrain from conducting operations during the most vulnerable time for big game animals wintering in the area.

III. Conclusion

For the foregoing reasons, the BLM UFO cannot proceed with the approval of this APD through a DNA. This proposal may result in significant impacts to wildlife, as well as significant
cumulative impacts to myriad resources, including air and water quality. All direct, indirect, and cumulative impacts must be analyzed in an appropriate NEPA document prior to a decision on this proposal.

Please feel free to contact me should you have any questions or wish to discuss this matter further. I look forward to your prompt response to these concerns.

Respectfully submitted,

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cc: Gunnison County Board of County Commissioners (submitted via electronic mail to bocc@gunnisoncounty.org)

Kyle J. Tisdel, Western Environmental Law Center