October 28, 2013

Appeals Deciding Officer  
U.S. Forest Service  
Rocky Mountain Region  
740 Simms Street  
Golden, CO  80401  
appeals-rocky-mountain-regional-office@fs.fed.us  
Submitted electronically

Re: High Country Citizens’ Alliance and Citizens for a Healthy Community Appeal of U.S Forest Service’s Approval of Federal 11-90-9 #3 Surface Use Plan of Operations

Dear Appeals Deciding Officer:

High Country Citizens’ Alliance (“HCCA”) and Citizens for a Healthy Community (“CHC”) submit this appeal regarding the U.S. Forest Service’s (“USFS”) approval of Federal 11-90-9 #3 Well Surface Plan of Operations (hereinafter “DM”) as a categorical exclusion (“CE”) under 36 C.F.R. 220.6(e)(17). HCCA and CHC submitted comments during the scoping period to USFS Paonia Ranger District and therefore have standing to appeal. Both groups also appealed USFS’s previous approval of this well in April 2013. HCCA and CHC request that their appeal be granted for the forgoing reasons and that the project be stayed until proper National Environmental Policy Act (“NEPA”) analysis has been conducted.

HCCA is a non-profit conservation organization in Gunnison County whose members live, work, and recreate in areas surrounding the project’s proposed activities. Citizens for a Healthy is a grassroots community organization that works to protect its members and their environment from irresponsible oil and gas development in the Delta County Region. Accordingly, we are concerned and affected by the development and operation of natural gas wells within this geographic area.

I. USFS’s Approval of the 11-90-9 #3 Well through a Categorical Exclusion is Inappropriate and Cannot be Sustained.

The authority relied upon by the USFS in approving the 11-90-9 #3 well through a CE, 36 C.F.R. 220.6(e)(17), states:

> Approval of a Surface Use Plan of Operations for oil and natural gas exploration and initial development activities, associated with or adjacent to a new oil and/or gas field or area, so long as the approval will not authorize activities in excess of any of the following: (i) One mile of new road construction; (ii) One mile of road reconstruction; (iii) Three miles of individual or co-located pipelines and/or utilities disturbance; and (iv) Four drill sites.

Accordingly, all four of these requirements must be satisfied for this CE to be applicable. Here, the length of the proposed pipeline exceeds the agency’s prescribed regulatory limit, and, therefore, the USFS’s authorization of the 11-90-9 #3 well through a CE is unlawful.

Under the authority of this CE, no more than 3 miles of individual or co-located pipelines can be approved. Here, however, the agency’s decision approves the “installation of approximately 5.5 miles of temporary, surface HDPE poly-pipeline.” DM at 1. This means the total length of pipeline exceeds the
CE’s requirement by at least 2.5 miles. The agency’s regulatory authority makes no distinction between a pipeline that is permanent or temporary in nature. Of course, even a temporary pipeline will result in impacts to surface resource values, which, here, are in excess of the regulatory standard. Consequently, the USFS does not have authority to approve the 11-90-9 #3 well through this CE.

Moreover, USFS fails to mention several critical aspects of the oil and gas development process, each of which may result in additional ground disturbing activity in further exceedance of the regulatory standards. See 36 C.F.R. § 220.6(e)(17). For example, the agency fails to identify how this proposed development would access water necessary for development, or how mineral resources will be transported to market. In the surface use plan of operations (“SUPO”), SG Interests states: “[w]ater and natural gas pipelines will be constructed along the well access road to the existing pipeline from the Federal 10-81-11-90R well.” DM at 11; SUPO at 5. Yet, these water and gas pipelines are not discussed at all in the subject DM, and the agency fails to account for the length of these pipelines when calculating ground disturbance for the project.

Thus, not only does the 5.5 mile pipeline addressed in the DM exceed the regulatory standard for approval through a CE, but additional water and natural gas pipelines – as identified by SG Interests in the SUPO – are not mentioned or accounted for in the agency’s approval of the 11-90-9 #3 well.

The proposed development of the 11-90-9 #3 well exceeds the regulatory standards that guide the applicability of the CE, notably due to exceedances in pipeline length. Accordingly, the USFS is required to stay the proposed development until proper NEPA analysis has been conducted.

II. USFS Planning Documents Are Antiquated, Inadequate, and Unable to Manage the Modern Landscape.

A CE is a category of actions that the agency has determined does not individually or cumulatively have a significant effect on the quality of the human environment, and is based on an agency’s experience with a particular kind of action and its environmental effects. See 40 C.F.R. § 1508.4. When the agency does not know or is uncertain whether significant impacts are expected, the agency should prepare, at a minimum, an EA to determine if there are significant environmental effects. See 40 C.F.R. § 1508.4.

Here, the USFS’s approval of the 11-90-9 #3 under a CE is inappropriate, for the reasons identified above, but also because the most recent background environmental analysis over 20 years old.

The absence of an adequate background environmental analysis demonstrates that USFS is ill-equipped to accurately analyze the direct, indirect, and cumulative impacts that could result from the construction of the proposed well pad, which includes up to five new wells, an access road, pipelines, and assorted industry infrastructure at the site. A NEPA compliant environmental analysis that looks holistically at these impacts is required. Until such analysis is conducted, USFS lacks necessary information regarding the impacts – especially cumulative impacts on wildlife, water, air, recreation, and human health – that NEPA demands.

USFS’s planning documents are seriously outdated and are no longer able to sufficiently guide agency decisionmaking, here. For example, the current Gunnison National Forest Land and Resource Management Plan (“LRMP”) is from 1983, making it over 30 years old, and the associated Oil and Gas Amendment is over 20 years old, from 1993. Moreover, the Bureau of Land Management’s (“BLM”) Resource Management Plan (“RMP”) for the area fares no better, and was last updated in 1989.
Given that the most recent planning document is two decades old, any background NEPA analysis for natural gas development in the area fails to: (1) describe the potential effects of gas development on the North Fork Valley’s resource values; (2) contain sufficient measures to prevent, minimize, and mitigate impacts; or (3) consider current industry technologies. Accordingly, there is no basis for determining that 11-90-9 #3 would not individually or cumulatively have a significant effect on the quality of the human environment. See 40 C.F.R. § 1508.4.

The 30-year old Forest Plan identified the proposed site for the 11-90-9 #3 well as within Management Area 6B, which identifies the area as having an emphasis on livestock grazing. The agency’s Oil and Gas Amendment fails to update this prevailing use, raising serious questions as to whether the area is suitable for mineral development at all, let alone whether it is appropriate for the agency to approve development through a CE and without any NEPA analysis of potential impacts. Undoubtedly, neither document provides the type of hard look analysis at impacts from oil and gas development on the North Fork Valley’s myriad resource values that NEPA demands, and, certainly, fails to account for the pace and scale of development that the area is currently seeing. Moreover, SG Interest’s lease is from 1954, and includes stipulations that are entirely inadequate to protect the wildlife and resource values of the area’s contemporary landscape.

In short, the agency has never analyzed and considered the significance of well development on public lands in the North Fork in the 21st century. Defaulting to a CE when the baseline NEPA analysis is stale, inadequate, and unable to manage the modern landscape is inappropriate, particularly when conditions imposed on the operator reflect a radically different time and approach to resource management on USFS lands.

Notably, the lease contains no stipulations for the protection of certain critical resources, such as timing limitations for elk or any other wildlife species, and, thus, it would be impossible for the agency to approve this development through a CE while also satisfying its multiple use mandate. See, e.g., National Forest Management Act of 1976 (“NFMA”), 16 U.S.C. §§ 1600 et seq.; Multiple-Use, Sustained-Yield Act of 1960 (“MUSY”), 16 U.S.C. §§ 528 et seq. The USFS is required to manage lands in a manner that balances the area’s multiple use values, and, particularly, the area’s renewable surface uses; i.e., recreation (including wilderness), range, timber, watershed, and wildlife and fish. Id.; see also 16 U.S.C. § 1604(e)(1) (requiring that these elements be embodied in Land Resource Management Plans). However, such designated values do not include management for oil and gas resources. Thus, the agency’s elevation of oil and gas development above the area’s other resources – and, remarkably, through a CE and without any NEPA analysis – comes at the expense of the forest’s other values, and is in violation of the Forest Service’s multiple use mandate.

The Council on Environmental Quality (“CEQ”) states:

As a rule of thumb, if the proposal has not been implemented, or if the EIS concerns an ongoing program, EISs that are more than 5 years old should be carefully reexamined to determine if the criteria in Section 1509.2 compel preparation of an EIS supplement. If an agency has made a substantial change in a proposed action that is relevant to environmental concerns, or if there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed . . . impacts, a supplemental EIS must be prepared for an old EIS so that the agency has the best possible information to make any necessary substantive changes in its decisions regarding the proposal.
Using a CE in this instance is wholly inappropriate given the age of the underlying planning documents, the fact that any associated environmental analyses is over 20 years old, and that approval of the 11-90-9 #3 well conflicts with the forest’s other multiple use resources.

In sum, using a CE to approve oil and gas development, here, is inappropriate. The area’s underlying land use planning documents are stale and outdated, and fail to provide sufficient analysis of contemporary conditions to guide agency decisionmaking.

III. USFS’s Decision Violates NEPA.

In addition to USFS’s unlawful approval of this DM by violating the plain language of the CE requirements, numerous potential significant impacts could result from the proposed development, none of which have ever been adequately analyzed by the USFS. The agency must provide a hard look analysis of these potentially significant impacts before the 11-90-9 #3 well is approved.

A. USFS Unlawfully Constrained the Scope of its NEPA Analysis.

Due to the agency’s misguided reliance on a CE in approving this well, the USFS has failed to conduct any hard look analysis of impacts, in violation of NEPA. NEPA imposes “action forcing procedures … requir[ing] that agencies take a hard look at environmental consequences.” Robertson v. Methow Valley Citizens Council, 490 U.S. 332, 350 (1989) (citations omitted) (emphasis added). These “environmental consequences” may be direct, indirect, or cumulative. 40 C.F.R. §§ 1502.16, 1508.7, 1508.8. A cumulative impact – particularly important here – is defined as:

the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

40 C.F.R. § 1508.7. USFS is required to “give a realistic evaluation of the total impacts and cannot isolate a proposed project, viewing it in a vacuum.” Grand Canyon Trust v. F.A.A., 290 F.3d 339, 342 (D.C. Cir. 2002). Moreover, the agency’s cumulative impacts analysis requires “some quantified or detailed information . . . general statements about ‘possible’ effects and ‘some risk’ do not constitute a ‘hard look’ absent a justification regarding why more definitive information could not be provided.” Kern v. United States Bureau of Land Mgmt., 284 F.3d 1062, 1075 (9th Cir. 2002). The USFS must also take a hard look at the environmental effects of oil and gas development before the commencement of any action that will lead to such development. See Pennaco Energy Inc. v. U.S. Dep’t of the Interior, 377 F.3d 1147 (10th Cir. 2004); Connor v. Burford, 848 F.2d 1441 (9th Cir. 1988); Sierra Club v. Peterson, 717 F.2d 1409 (D.C. Cir. 1983).

It has also been recognized that a “comprehensive” impact statement—one that considers numerous pending proposals in one document—may sometimes be appropriate and satisfy the requirements of
NEPA. Kleppe v. Sierra Club, 427 U.S. 390, 96 S.Ct. 2718, 2730 (1976) (“[W]hen several proposals for . . . actions that will have cumulative or synergistic environmental impact upon a region are pending concurrently before an agency, their environmental consequences must be considered together. Only through comprehensive consideration of pending proposals can the agency evaluate different courses of action.”).

Accordingly, USFS must review the impacts from the 11-90-9#3 well, as well as any and all connected actions and cumulative impacts from all past, present, and reasonably foreseeable future actions. At a minimum, such analysis necessarily includes the Bull Mountain Unit Master Development Plan (“MDP”), which is currently undergoing an environmental impact statement (“EIS”) by BLM, as well as surrounding current operations and other proposed development in the area.

The question of whether a project may “significantly” effect the environment is viewed through the prism of “[w]hether an 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.” 40 C.F.R. § 1508.27 (emphasis added).

Thus, when making decisions regarding natural gas development in the North Fork area, and specifically approval of the 11-90-9 #3 well, the USFS cannot ignore the pace and scale of other foreseeable natural gas development in the area, and, particularly, the neighboring Bull Mountain MDP which is being advanced by the same industry proponent, SG Interests. Notably, BLM has already determined that the Bull Mountain MDP may have significant impacts to area resource values, and, thus, is preparing an EIS. In fact, the Bull Mountain MDP is in the same important elk habitat at the 11-90-9 #3 well, and is defined by Colorado Parks and Wildlife (“CPW”) as an elk winter concentration area, as discussed below.

Accordingly, the USFS has two options: it can either prepare an independent analysis of the cumulative significant impacts of the 11-90-9 #3 well; or the USFS can join the EIS already being prepared for by BLM as a cooperating agency to consider the cumulative impacts of development in one document. See 40 C.F.R. § 1508.25(a)(2) (To determined the scope of an EIS, the agency shall consider: “Cumulative actions, which when viewed with other proposed actions have cumulatively significant impacts and should therefore be discussed in the same impact statement.”). As proposed, however, the agency’s approval of the 11-90-9 #3 well through a CE unlawfully isolates the proposed action, viewing it in a vacuum. See Grand Canyon Trust, 290 F.3d at 342.

In additional, the agency must consider “[t]he 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.” 40 C.F.R. § 1508(b)(6). Approving 11-90-9 #3 well through a CE sets an inappropriately low bar for future proposed development in the area. Such precedent violates NEPA and CEQ implementing regulations by allowing the entire leased landscape to be cut up into small component parts, completely avoiding site-specific and cumulative impacts analysis.

Here, the USFS failed to provide analysis regarding the cumulative impacts of this project and other current and foreseeable development in the North Fork area. This is especially problematic, here, given that the area is only recently seeing significant natural gas development and is slated to see tremendous development in the future. At a minimum, the impacts of this proposal, in conjunction with the proposed Bull Mountain MDP and other foreseeable development in the area, needs to be cumulatively analyzed. Without such analysis, USFS’s decision is unsupported and lacks the required hard look that NEPA demands.
B. USFS Unlawfully Segmented Connected Actions

In defining the scope of analysis under NEPA, agencies “shall consider . . . connected actions.” 40 C.F.R. § 1508.25(a)(1). As defined by regulations, actions are connected if they “[c]annot or will not proceed unless other actions are taken previously or simultaneously;” or “[a]re interdependent parts of a larger action and depend on the larger action for their justification.” Id. at § 1508.25(a)(1)(ii), (iii). Agencies may not improperly “segment” projects in order to avoid preparing an EIS; instead, they must consider related actions in a single EIS. Thomas v. Peterson, 753 F.2d 754, 758 (9th Cir. 1985). “Not to require this would permit dividing a project into multiple ‘actions,’ each of which individually has an insignificant environmental impact, but which collectively have a substantial impact.” Id. Where it would be “irrational, or at least unwise” to undertake one action without subsequent actions, the actions are connected. See Save the Yaak Comm. v. Block, 840 F.2d 714, 720 (9th Cir. 1988).

Here, the USFS unlawfully failed to acknowledge how the proposed 11-90-9 #3 well and other proposed natural gas operations in the North Fork are intertwined. For example, the DM states that 11-90-9 #3 well would use “the McIntyre Flowback Pits on the Bull Mountain Unit, located on private land.” DM at 1. These pits are being developed for use within the Bull Mountain Unit, which, as discussed above, is a 150 well MDP that is currently undergoing an EIS. Arguably, the 11-90-9 #3 well would not proceed but for access to the development infrastructure utilized in the Bull Mountain MDP. 40 C.F.R. § 1508.25(a)(1)(ii). However, it is even harder for the USFS to rationalize how the 11-90-9 #3 well is not an “independent part of a larger action.” Id. at § 1508.25(a)(1)(iii). The 11-90-9 #3 well is, at most, two miles away from the Bull Mountain MDP development area and has the same operator, SG Interests.

In addition to the flowback pits, the 11-90-9 #3 well will also, most likely, share additional infrastructure with the Bull Mountain MDP; including pipelines, electricity, roads, and, ultimately, processing facilities. Indeed, such shared infrastructure between the Bull Mountain MDP and the 11-90-9 #3 well would, logically, be to SG Interests’ economic benefit – as the sole industry proponent of both projects – as it would require less time, expense, and resources. The USFS’s failure to account for and identify the obvious relationship between the 11-90-9 #3 well and the Bull Mountain MDP – adjacent projects that share the same industry proponent – as well as additional oil and gas development in the area, are inexcusable and a clear breach of the agency’s regulatory mandate. Such action cannot be maintained.

Moreover, and in addition to foreseeable oil and gas development on federal lands surrounding the agency’s proposed action, here, there is also development taking place on private lands that the agency must consider in their cumulative analysis. In other words, connected actions need not be federal actions to trigger collective review. See Morgan v. Wolter, 728 F.Supp. 1483, 1493 (D.Id. 1989) (providing that the agency must consider, together, private and federal actions that are “links in the same bit of chain”). The USFS cannot ignore non-federal and private actions so a proposal would conveniently fit within a CE, and, therefore, receive a reduced level of environmental analysis. Indeed, case law is quite clear that non-federal and private actions that would not take place but for the occurrence of federal action are connected actions that must be included in the scope of an agency’s NEPA analysis. See e.g., Davis v. Morton, 469 F.2d 593, 594-98 (10th Cir. 1972); Port of Astoria v. Hodel, 595 F.2d 467, 477-78 (9th Cir. 1979).

The purpose of requiring consideration of connected actions is to “prevent agencies from minimizing the potential environmental consequences of a proposed action (and thus short-circuiting NEPA review) by segmenting or isolating an individual action that, by itself, may not have a significant environment impact.” Citizens’ Comm. to Save Our Canyons v. U.S. Forest Serv., 297 F.3d 1012, 1028 (10th Cir. 2002). This requirement also prevents private permit applicants from avoiding NEPA by “submitting a gerrymandered series of permit applications.” Save Our Sonoran, Inc. v. Flowers, 408 F.3d 1113, 1122 (9th Cir. 2005). Here, the agency is in clear violation of its NEPA mandate by failing to consider the
approval of the 11-90-9 #3 well in connection with other area development, and, particularly, the Bull Mountain MDP. The agency’s segmented approach – approving an individual APD through a CE while ignoring directly adjacent development by the same industry proponent that is currently undergoing an EIS – is in evident violation of the USFS’s NEPA mandate and cannot be maintained.

C. **The USFS Has Failed To Consider Potentially Significant Impacts to Wildlife.**


The current DM removed any acknowledgment of negative wildlife impacts despite the agency’s earlier decision discussing wildlife impacts and the myriad concerns of the approved development. See DM I at Appendix B. Nothing about this proposal has changed; yet, any discussion of impacts has been effectively erased. This is highly problematic given that the previous approval noted:

> Gas development is a long term disturbance; pad locations and access roads can be expected to be on the ground for decades. Therefore, proper placement of these facilities on the landscape is crucial for balancing land management goals.

_Id, at Appendix B, B-8. Moreover, “[a]ll location and access roads are located within a Big Game Winter Concentration Area.”_ Id. This decision also noted that “the majority of the area is already negatively impacted by existing conditions.” _Id, at B-9. However, this does not alleviate USFS of its NEPA requirements. If anything, this highlights the importance of proper NEPA analysis so USFS may determine and implement measures to minimize, mitigate, and prevent further negative impacts.

During the scoping period, CPW raised several concerns regarding the 11-90-9 #3 well, including:

> The location is on a south facing slope that is utilized by wintering big game animals. . . . 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 site specific BMPs implemented by the operator to reduce impacts. The well pad density within this 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 incorporating 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.**
CPW is concerned that the proposed location will unnecessarily fragment wildlife habitat and exacerbate functional habitat loss due to the additional habitat loss, and long-term human disturbance associated with drilling, production, and maintenance of this facility.

Id. (emphasis added). CPW recommended that a comprehensive wildlife mitigation plan be developed to address cumulative impacts from all of SG Interests’ proposed development in the area, including the Bull Mountain Unit and surrounding areas. Id. Otherwise, CPW stated that an alternative site location should be selected to avoid and minimize unnecessary site-specific impacts on wintering game. Id.

Given that an alternative site for the well was not chosen, and that there has been no site-specific or cumulative NEPA analysis, the USFS, at the very least, needs to wait for a finalized ready-to-implement wildlife mitigation plan. Failure to do so underscores USFS’s failure to comply with NEPA’s impacts analysis requirements, as discussed above.

This failure is not cured by USFS’s condition of approval (“COA”) for big game, which states: “no heavy construction or drilling operations will be allowed from March 1-April 30, unless specifically authorized by the Paonia District Ranger after consultation with Colorado Parks & Wildlife regarding the presence/absence of big game in that area.” DM at 26. We echo the sentiment raised in our previous appeals, as incorporated by reference hereto, that the COA is insufficient because it does not address increased well density cumulative impacts, and, thus, fails to address the impacts on wildlife, wildlife viewing, and the robust hunting economy.

Other species that also stand to be affected are: mule deer, black bear, northern leopard frog, Canada lynx, moose, Colorado River cutthroat trout, turkey, and mountain lions. As of yet, however, no comprehensive analysis has been undertaken to address these potential impacts, as required by NEPA. The proposed site is also near a healthy, large size-class aspen grove that appears to have a cavern or nest for purple martin, a GMUG sensitive species. All these species contribute to the health and vitality of the North Fork’s varied ecosystem, and 11-90-9 #3 well could result in the direct loss of animals and habitat. Combined with the planned build-up of natural gas throughout the area, cumulative impacts could prove disastrous for the diverse wildlife, and must be fully analyzed in a comprehensive NEPA analysis before approval of the 11-90-9 #3 well can be given.

D. The USFS has failed to consider water quality and quantity impacts.

NEPA’s direct, indirect, and cumulative impacts analysis, discussed above, also requires the USFS to analyze the potential impacts to water quality and quantity from the proposal, for both surface and subsurface waters. While the well pad would be located approximately 550 to 600 feet from a waterbody, the road and pipelines connecting to the existing collection system will be located closer to Little Henderson Creek. DM I at B-2; DM at 9; SUPO at 2. The USFS must consider what impacts the approval would have on water quality and quantity, and, yet, has failed to do so.

This is especially important given the company that proposed the 11-90-9 #3, SG Interests, has a history of spills and leaks. Since January 23, 2002, SGI has reported thirteen spills in Gunnison and La Plata Counties. See Colorado Oil and Gas Conservation Commission, COGIS Inspection/Incident Inquiry, available at: http://cogcc.state.co.us/ (last visited October 24, 2013). The most recent reported spill in Gunnison County was 159 barrels of produced water. This spill was only 250 feet away from wetlands, 165 feet from livestock, and 300 feet from the nearest surface water. On November 10, 2006, SG Interests’ Falcon Seaboard 12-1 well spilled 13 barrels of hydraulic fracturing water from an overflowing
tank, caused by human error. *No barrels were recovered.* Id. On April 18, 2004, lube oil leaked from equipment at an SG Interests well in La Plata County. Id. “Heavy rains and a plugged drainage ditch approximately 150 yards from the well pad caused water to flow across the well pad where oil leaking from equipment was mixed. Water flowed off the pad across pasture toward Pine River.” Id. *Surface water was impacted and the distance from the surface water to the well pad was 300 feet.* Id. On April 6, 2004, 550 barrels of water were spilled from an SG Interests well in La Plata County. Id. *Surface water was impacted,* and the cause was human error. Id. On September 8, 2003, 25 barrels were spilled from an SG Interests well in La Plata County, *impacting surface waters and only 15 barrels were recovered.* Id. The cause in this instance was a “faulty weld in a polypine line.” Id. On January 20, 2012, at an SG Interests facility in La Plata County, 60 barrels of water were released because of a frozen check valve. The distance to the nearest surface water was 300 feet. Id. According to the spill report, “approximately 10-20 barrels spread across the ground and five barrels flowed into a nearby stock pond. The water on the ground either soaked in or was frozen.” Id.

The above incident reports indicate that SG Interests has serious problems with spills and leaks, some of which have affected water bodies. The USFS has failed to account for these notable accidents, and needs to include analysis of stipulations, conditions, and best management practices to minimize the possibility of water pollution from its approval of this proposal.

IV. Conclusion

In sum, the USFS has unlawfully approved the 11-90-9 #3 well through a CE; both due to a direct violation of plain language regulatory standards for surface impacts, as well as due to violations of the agency’s obligations under federal law, including NEPA and CEQ regulatory requirements. Accordingly, HCCA’s and CHC’s administrative appeal should be granted and the project should be stayed until appropriate NEPA analysis, including a comprehensive hard look at cumulative impacts, has been conducted.

Sincerely,

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