Via certified mail and email

U.S. Bureau of Land Management
Colorado State Office
Attn. Jamie Connell, State Director
2850 Youngfield St.
Lakewood, CO 80215
jconnell@blm.gov


Dear State Director Connell:

Pursuant to 43 C.F.R. § 3165.3(b), WildEarth Guardians (“Guardians”) formally requests your administrative review of the Bureau of Land Management’s (“BLM’s”) decision to approve the Great Western Operating Company Baseline Brant APDs Project (“Great Western APDs Project” or “the project”). The project would allow for the drilling, completion, and operation of 38 oil and gas wells on private surface into private and federal minerals within the Denver Metro-North Front Range 8-hour Ozone Non-Attainment Area and the Royal Gorge Field Office (“Royal Gorge FO”) in Weld County, Colorado. BLM’s decision to approve the project is based on an environmental assessment (“EA”), DOI-BLM-CO-F020-2019-0010-EA, and Finding of No Significant Impact (“FONSI”) issued in conjunction with the Decision Record.1

As discussed in more depth below, Guardians requests that you reverse the Royal Gorge FO’s approval of the project and remand the EA and FONSI because BLM’s decision fails to address timely comments submitted by Guardians and fails to comply with federal environmental laws including the Clean Air Act, 42 U.S.C. §§ 7401–7671q, the Federal Land Policy and Management Act (“FLPMA”), 43 U.S.C. §§ 1701–1787, the National Environmental Policy Act of 1976 (“NEPA”), 42 U.S.C. §§ 4321–4370h, and NEPA regulations promulgated thereunder by the White House Council on Environmental Quality (“CEQ”), 40 C.F.R. § 1500, et seq.

1 All of these documents are available on BLM’s ePlanning website at: https://eplanning.blm.gov/epl-front-office/eplanning/projectSummary.do?methodName=renderDefaultProjectSummary&projectId=117952.
STATEMENT OF STANDING

WildEarth Guardians is a nonprofit environmental advocacy organization dedicated to protecting the wildlife, wild places, wild rivers, and health of the American West. On behalf of our members, Guardians has an interest in ensuring the Colorado BLM fully protects public lands and resources as it conveys the right for the oil and gas industry to develop publicly-owned minerals. Specifically, Guardians has an interest in ensuring the BLM meaningfully and genuinely takes into account the air quality and climate implications of its oil and gas decisions, including properly conducting a conformity analysis under the Clean Air Act and objectively and robustly weighing the costs and benefits of authorizing the release of more greenhouse gas emissions that are known to contribute to global warming.

The Environmental Protection Agency (“EPA”) has declared the Denver Metro-North Front Range region as in nonattainment with federal ozone standards. Guardians has members and supporters who live, work, and recreate in the nonattainment area. The Great Western APDs Project would increase the number of oil and gas wells in the area, thereby exacerbating the ozone problem and harming Guardians’ interest in clean air. The wells would also add additional greenhouse gases to the atmosphere, thereby contributing to climate change and adversely affecting Guardians’ interests.

Guardians participated in the available decisionmaking process for the Great Western APDs Project by submitting comments on the project description. Exhibit 1, WildEarth Guardians’ Dec. 3, 2018 Comments on the Project Description; Exhibit 2, Email from Guardians to James Pike and Keith Berger.

This request for review is timely filed pursuant to 43 C.F.R. § 3165.3(b), which requires submission of a request for State Director Review “within 20 business days of the date such notice of violation or assessment or instruction, order, or decision was received or considered to have been received[.]” Specifically, BLM posted the draft EA description on November 29, 2018. Exhibit 3, BLM ePlanning Page for the Great Western APDs Project. Guardians submitted comments on the description via email to James Pike, project lead, and Keith Berger, field manager, on December 3, 2018. See Exhibits 1 & 2. BLM posted the final DR, EA, and a FONSI on ePlanning on December 21, 2019. See Exhibit 3. Guardians submitted this request on January 23, 2019—20 business days from December 21, 2018.

Notably, although Guardians’ request is timely, because of the ongoing federal government shutdown, it is unclear whether there is anyone available at the BLM Colorado State Office to receive Guardians’ request. Guardians also cannot discuss this matter with BLM officials. As a result, Guardians reserves the right to supplement this request with additional information that may come to light after the shutdown ends.
LEGAL BACKGROUND

I. The Clean Air Act

The Clean Air Act requires EPA to set National Ambient Air Quality Standards (“NAAQS”) to protect public health and welfare. 42 U.S.C. § 7409. After EPA designates NAAQS, states then develop State Implementation Plans (“SIPs”) in order to implement, maintain, and enforce the NAAQS. Id. § 7410(a)(1).

Federal agency actions must comply with SIPs. Specifically, under the Act’s “general conformity rules” “[n]o department, agency, or instrumentality of the Federal Government shall engage in, support in any way or provide financial assistance for, license or permit, or approve, any activity” that does not conform to an approved state SIP. 42 U.S.C. § 7506(c)(1). “The assurance of conformity . . . shall be an affirmative responsibility of the head of such . . . agency.” Id. Thus, federal agency actions must not 1) “cause or contribute to any new violation of any [air quality] standard,” 2) “increase the frequency or severity of any existing violation of any standard in any area,” 3) or “delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.” Id. § 7506(c)(1)(B).

EPA has designated parts of the Denver Metro-North Front Range area, including part of Adams County where the project is located, as in nonattainment with both the 2008 and 2015 NAAQS for ozone. Ozone is a compound harmful to human health that is created when volatile organic compounds (“VOCs”) and nitrogen oxides (“NOx”) react with sunlight. As a result of EPA’s designation, the State of Colorado has enacted a SIP which includes provisions to control ozone formation within the Denver Metro-North Front Range 8-hour Ozone Non-Attainment Area. Thus, for each activity permitted by a federal agency within the Denver Metro-North Front Range ozone nonattainment area, BLM must complete an “applicability analysis” to determine if a formal conformity determination is needed. See 40 C.F.R. § 93.152 (defining applicability analysis).

In a moderate nonattainment area, any activity which has direct and indirect emissions of VOCs or NOx that equal or exceed 100 tons/year requires a formal conformity determination. Id.

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6 EPA designated the Denver Metro-North Front Range 8-hour Non-attainment Area as in moderate nonattainment with the 2008 standards on May 4, 2016. Determinations of Attainment by the Attainment Date, Extensions of the
§ 93.153(b)(1). Direct emissions are defined as those emissions that are caused or initiated by the Federal action and occur at the same time and place as the action. Id. § 93.152. Indirect emissions are defined as those emissions that are caused by the Federal action, but may occur later in time or distance, and are reasonably foreseeable, and which the Federal agency can practically control and will maintain control over. Id.

Notwithstanding these provisions, EPA’s conformity regulations exempt “[t]he portion of an action that includes major or minor new or modified stationary sources that require a permit under the New Source Review (NSR) program (Section 110(a)(2)(c) and Section 173 of the [Clean Air] Act) or the [Clean Air Act’s] prevention of significant deterioration program (title I, part C of the Act).” Id. § 93.153(d)(1). EPA has interpreted this exemption narrowly. See EPA, Determining Conformity of General Federal Actions to State or Federal Implementation Plans, 58 Fed. Reg. 63,214, 63,232 (Nov. 30, 1993) (explaining in response to question requesting broadening of the NSR exemption that “an air quality analysis is not adequate by itself to justify an exemption from the conformity rules since it does not sure that actions would be prohibited, as necessary to prevent a NAAQS violation”).

EPA’s general conformity provisions require federal agencies to involve the public in their conformity decisions. Specifically, “[u]pon request by any person regarding a specific Federal action, a Federal agency must make available, subject to the limitation in paragraph (e) of this section, for review its draft conformity determination under § 93.154 with supporting materials which describe the analytical methods and conclusions relied upon in making the applicability analysis and draft conformity determination.” Id. § 93.156(a).

II. The Federal Land Planning and Management Act

BLM must also ensure that its proposed action complies with FLPMA and the current Resource Management Plan (“RMP”) in place. According to BLM, “[l]and use planning forms the basis of, and is essential to, everything that the [BLM] does in caring for America’s public lands.” Resource Management Planning Final Rule, 81 Fed. Reg. 89,580 (Dec. 12, 2016), https://www.gpo.gov/fdsys/pkg/FR-2016-12-12/pdf/2016-28724.pdf. The duty to develop land use plans stems from FLPMA, which requires that “[t]he Secretary [of the Interior] shall, with public involvement and consistent with the terms and conditions of this Act, develop, maintain, and, when appropriate, revise land use plans which provide by tracts or areas for the use of the public lands.” 43 U.S.C. § 1712(a).

BLM fulfills this mandate by issuing RMPs for each BLM field office or resource area. “In the development and revision of land use plans,” BLM is required to “provide for compliance with applicable pollution control laws, including State and Federal air, water, noise, or other pollution standards.” 43 U.S.C. § 1712(c)(8). Thus, BLM, through its RMP process, is required to comply with the Clean Air Act.

FLPMA also requires meaningful public participation in public lands management decisions. 43 U.S.C. § 1739(e). Specifically, “the Secretary [of Interior] shall establish procedures, including public hearings where appropriate, to give the Federal, State, and local governments and the public adequate notice and an opportunity to comment upon the formulation of standards and criteria for, and to participate in, the preparation and execution of plans and programs for, and the management of, the public lands.” Id. (emphasis added).

III. The National Environmental Policy Act.

NEPA is our “basic national charter for protection of the environment.” 40 C.F.R. § 1500.1(a). The law requires federal agencies to fully consider the environmental implications of their actions, taking into account “high quality” information, “accurate scientific analysis,” “expert agency comments,” and “public scrutiny,” prior to making decisions. Id. § 1500.1(b). This consideration is meant to “foster excellent action,” resulting in decisions that are well informed and that “protect, restore, and enhance the environment.” Id. § 1500.1(c).

To fulfill the goals of NEPA, federal agencies are required to analyze the “effects,” or impacts, of their actions to the human environment prior to undertaking their actions. Id. § 1502.16(d). To this end, the agency must analyze the “direct,” “indirect,” and “cumulative” effects of its actions, and assess their significance. Id. §§ 1502.16(a), (b), and (d). Direct effects include all impacts that are “caused by the action and occur at the same time and place.” Id. § 1508.8(a). Indirect effects are “caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable.” Id. § 1508.8(b). Cumulative effects include the impacts of all past, present, and reasonably foreseeable actions, regardless of what entity or entities undertake the actions. Id. § 1508.7.

An agency may prepare an environmental assessment (“EA”) to analyze the effects of its actions and assess the significance of impacts. See id. § 1508.9; see also 43 C.F.R. § 46.300. Where effects are significant, an agency must prepare an Environmental Impact Statement (“EIS”). See 40 C.F.R. § 1502.3. Where significant impacts are not significant, an agency may issue a Finding of No Significant Impact (“FONSI”) and implement its action. See id. § 1508.13; see also 43 C.F.R. § 46.325(2).

Within an EA or EIS, the scope of the analysis must include “[c]umulative actions” and “[s]imilar actions.” 40 C.F.R. §§ 1508.25(a)(2) and (3). Cumulative actions include action that, “when viewed with other proposed actions have cumulatively significant impacts and should therefore be discussed in the same impact statement.” Id. § 1508.25(a)(2). Similar actions include actions that, “when viewed with other reasonably foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their environmental consequences together.” Id. § 1508.25(a)(3). Key indicators of similarities between actions include “common timing or geography.” Id.
ARGUMENT

I. BLM’s Approval of the Great Western APDs Project Without Consideration of Guardians’ Comments Violates Public Participation Requirements in the Clean Air Act, FLPMA, and NEPA.

As noted above, Guardians submitted comments on BLM’s project description well before BLM issued a final decision. See Exhibits 1 & 2. Despite this, BLM failed to address Guardians’ comments or otherwise adjust its final EA in order to demonstrate that it considered these concerns. Thus, because BLM has failed to take Guardians’ comments into account, BLM’s decision to approve the Great Western APDs Project is invalid.

The Clean Air Act, FLPMA, and NEPA all include provisions providing for public participation before decisions are made. The Clean Air Act conformity provisions require public scrutiny of an agency’s decision before a conformity analysis is approved. See 40 C.F.R. § 93.156. FLPMA requires public participation in the implementation of land use decisions, such as APD decisions. See 43 U.S.C. § 1739(e). NEPA also requires meaningful public participation before decisions are made. 40 C.F.R. § 1500.1(b). Clearly, Congress meant for the public to have meaningful opportunities to provide input and otherwise engage federal agencies before decisions occur. It is also clear that these provisions were included for a purpose—to better agency decisions with on-the-ground input.

Unfortunately, here, BLM seems to have forgotten this purpose. Indeed, BLM entirely ignores Guardians’ comments. For example, BLM’s EA does not including any information indicating that it received public comments. And, two of the issues flagged by Guardians in its comments (conformity and greenhouse gas emissions) are included in the EA under “issues not analyzed in detail.” BLM, EA Great Western Operating Company Baseline Brant APDs Project, DOI-BLM-CO-F—201-0010 EA at 4–6.⁷ Guardians provided substantive, timely comments, and BLM must at a minimum indicate that it considered these in order to meet its public participation requirements under the Clean Air Act, FLPMA, and NEPA.

II. BLM Failure to Disclose Its Applicability Analysis Violates the Clean Air Act and NEPA.

On similar note, because all of the proposed development approved through the Great Western APDs Project will occur within the Denver Metro-North Front Range 8-hour Ozone Non-attainment Area, see EA at 2, BLM was required to complete an “applicability analysis” to determine whether the project’s direct and indirect emissions of VOCs and NOx exceed 100 tons/year thereby prompting a formal federal conformity determination. 40 C.F.R. § 93.153(b)(1). Yet, although BLM notes in the EA that it completed such an analysis, EA at 6, BLM does not include this analysis in its final EA or otherwise disclose it.

BLM’s failure to disclose its applicability analysis despite Guardians’ comments discussing conformity in depth is concerning as well as illegal. First, the Clean Air Act requires disclosure of this analysis. See 40 C.F.R. § 93.156 (providing that an agency must disclose a conformity analysis and the underlying applicability analysis if requested). With its substantive comments, Guardians flagged conformity as an important issue. This put BLM on notice, and triggered a requirement to disclose its applicability analysis. Indeed, without the applicability analysis, the public has no way to determine whether the agency’s proposed actions are in compliance with the Clean Air Act. This approach is unacceptable, because, as discussed in more depth below, BLM has conducted incorrect applicability analyses in the past.

Second, NEPA requires such a disclosure in order to allow for meaningful public participation. See 40 C.F.R. § 1500.1(b) (“Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA.”). Where BLM has not provided the calculations upon which its decision to approve a project relies, the public has no way to weigh whether the agency’s decision was appropriate. Thus, disclosure of this information was required.

III. BLM Has Unlawfully Expanded the New Source Review Provision Exemption.

In addition, although Guardians does not have the applicability analysis to determine whether BLM corrected applied conformity regulations, based on past actions, BLM has likely unlawfully expanded the New Source Review (“NSR”) permitting exemption. See, e.g., BLM, Bill Barrett Corporation Riverside Reservoir APD Project, DOI-BLM-CO-F020-2017-0101-EA at 17 (2018) (hereinafter “Bill Barrett APD EA”); BLM, Mallard Exploration LLC Wigeon Blue Teal Shoveler Green Teal Pintail Cinnamon Teal APDs Project, DOI-BLM-CO-F020-2019-0004-EA at 24–25 (2018). But, based on the plain language of EPA’s conformity regulations and Colorado’s SIP, as well as the EPA’s interpretation of these regulations, BLM’s approach is incorrect.

As noted above, the general conformity regulations exempt emissions from sources required to have NSR permits from an applicability assessment. Specifically, 40 C.F.R. § 93.153(d)(1) provides:

Notwithstanding the other requirements of this subpart, a conformity determination is not required for the following Federal actions (or portion thereof): (1) The portion of an action that includes major or minor new or modified stationary sources that require a permit under the new source review (NSR) program (Section 110(a)(2)(c) and Section 173 of the Act) or the prevention of significant deterioration program (title I, part C of the Act).

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What this provision means is that if a specific stationary source of emissions is required to be permitted and is permitted pursuant to a state air permitting program approved under Section 110(a)(2)(c) of the Clean Air Act or Section 173 of the Act, or otherwise subject to PSD permitting under Part C of Title I of the Clean Air Act, it is not subject to general conformity requirements.

In the past, BLM has failed to clearly articulate which sources it has excluded under this exemption. See, e.g., Bill Barrett APD EA at 17 (“The proposed project includes emissions sources that would be subject to new Source Review (NSR) permitting from the Colorado Department of Public Health and Environment (CDPHE). . . . These sources have been excluded from BLM’s General Conformity applicability analysis for the proposed project.”). This is problematic because virtually all sources of VOCs and most sources of NOx emissions related to the proposed development are not subject to NSR permitting. For example, VOC emissions from non-stationary sources include drilling rig exhaust, non-road engine exhaust, loadout emissions, pneumatic controllers (including component losses and pneumatic losses), leaking pipes and equipment, and on-road exhaust are not included in this exemption. Indeed, the Colorado Air Pollution Control Division routinely issues NSR permits to oil and gas production facilities which only apply to tanks and engines, not the sources listed above. See generally Exhibit 4, Colorado Air Pollution Control Division, Draft Construction Permit for Extraction Oil & Gas, Leonard Production Facility, Weld County. Given this, the total amount of VOC emissions may be much greater than BLM predicts.

Similar reasoning applies to NOx emissions from non-stationary sources, which include off-road exhaust, drilling rig exhaust, non-road exhaust, process heaters, and on-road exhaust. The Colorado Air Pollution Control Division routinely issues NSR permits to oil and gas production facilities and these permits consistently only apply to engines. See generally Exhibit 4.

Finally, BLM must ensure that any analysis of VOC and NOx emissions include fugitive emissions from leaking pipelines, equipment, and evaporation of VOCs from drill cuttings; well completion emissions, including any venting and/or fugitive emissions that result; and emissions from fracking and re-fracking equipment, well workover equipment, and blowdown venting. BLM must also assess emissions from all reasonably foreseeable development associated with approval of the APDs, including emissions from construction and well pad development as well as emissions from pipeline construction, operation, and maintenance.

IV. BLM Likely Fails to Assess Emissions from the Federal Action as Whole.

BLM has also likely failed to account for all emissions resulting from its proposed action—the approval of 38 wells. In the past, BLM has only assessed a percentage of emissions based on the percentage for the federal mineral estate. See, e.g., Bill Barrett APD EA at 16 (“For the purposes of analysis, the BLM assumes that 44% of the resulting emissions are within the federal decision space for this project and this average is applied uniformly to each well (on an

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10 Available online at: https://www.colorado.gov/pacific/sites/default/files/AP_ExtractionOil%26GasIncLeonardProductionFacilityWeldCounty_Perm.pdf.
annual basis) since actual drilling times and location sequences are subject to change based on
the operator’s needs.”). Here, BLM hinted in the project description that it will use a similar
approach. See Project Description at 0, 1. Language in the final EA confirms this. EA at 4.
(noting that “maximum potential cumulative air quality concentrations will be the same for both
Alternatives due to the very small fraction (~ 1%) of Federal minerals associated with the
Proposed Action (99% of the Proposed Action is expected to be developed regardless) and the
temporal nature of construction / development related emissions generating activities”).

However, the definition of reasonably foreseeable emissions includes all “direct and
indirect emissions.” 40 C.F.R. § 93.152 (emphasis added). Direct emissions include all emissions
that are caused or initiated by a federal action. Indirect emissions include all emissions that are:

1. Caused or initiated by the federal action, but occur at a different time or place as the
action;
2. Reasonably foreseeable;
3. Practically controllable by the BLM; and
4. Are subject to continuing program responsibility by the BLM.

Id. Here, the agency cannot deny emissions produced as a result of developing non-federal
minerals, would, at a minimum, be considered indirect emissions as they would be caused or
initiated by BLM’s action, would be reasonably foreseeable, would be practically controllable by
the BLM by virtue of the agency’s authority to impose Conditions of Approval upon all 38
APDs, and would be subject to continuing program responsibility by the BLM via the agency’s
ongoing administration and oversight of APD approvals. Thus, BLM must analyze emissions
from all 38 APDs and not some percentage thereof.

V. **BLM Must Update the Underlying RMP in Compliance with FLPMA Before
Moving Forward with the Proposed APDs.**

BLM must also update the underlying RMP in order to ensure compliance with FLPMA.

Here, the applicable land use plan is the Northeast Resource Management Plan (1986) as
amended by the Colorado Oil and Gas Final EIS and Record of Decision (1991) (“NE RMP”).
BLM is in the process of updating its RMP for the Royal Gorge FO but the agency has not yet
issued a final decision or document.\(^{11}\) Unfortunately, nothing in this document ensures
compliance with the Clean Air Act’s conformity provisions or otherwise assesses BLM’s
compliance with the 2008 and 2015 ozone standards. Indeed, as BLM admits in its analysis of
the current management plans within the Royal Gorge FO, the NE RMP does not include any
current planning decision with regards to air resources.\(^{12}\) In fact, the NE RMP incorrectly states
that “[a]ll public lands are in the ‘General (22A) (attainment or unclassified areas) category. . . .”

\(^{11}\) Notice of Intent to Prepare the Eastern Colorado Resource Management Plan and an Associated Environmental Impact Statement for the Royal Gorge Field Office, Colorado, 80 Fed. Reg. 31,063 (June 1, 2015),

\(^{12}\) See BLM, Analysis of the Management Situation for the Eastern Colorado Resource Management Plan 278 (June 2015),
NE RMP at 18. Furthermore, the BLM admits in its analysis of the RMP that it “must comply with the Clean Air Act General Conformity (40 C.F.R. § 93.153(b)) requirements for actions taking place within any area designated as either nonattainment . . . within the RGFO boundaries.” Id. In essence, BLM is acknowledging that the “current” NE RMP fails to ensure compliance with federal conformity requirements in violation of FLPMA’s mandate. As a result, the existing NE RMP cannot support approval of the proposed action because it does not provide for compliance with the Clean Air Act’s conformity provisions.

The need to postpone approval of the proposed action is also underscored by a quick review of the proposed alternatives for the proposed Eastern Colorado RMP. BLM is considering an alternative, Alternative D (Human Ecoregion), which proposes that “[i]n areas designated as nonattainment or maintenance for the Colorado or National Ambient Air Quality Standards, the RGFO will require, where determined technically feasible by implementation-level analysis of the action(s), no net increase of the pollutant(s) or its precursors above baseline levels.” There is no doubt that approving 38 wells within the nonattainment area would directly undercut this proposed alternative, especially because BLM has no way of knowing how this project will cumulatively impact air quality in the area, without knowledge of surrounding projects.

Finally, the agency’s Land Use Planning Handbook underscores that BLM has the discretion to postpone approval of projects where the underlying RMP is incomplete and under revision. It provides:

During the amendment or revision process, the BLM should review all proposed implementation actions through the NEPA process to determine whether approval of a proposed action would harm resource values so as to limit the choice of reasonable alternative actions relative to the land use plan decisions being reexamined. Even though the current land use plan may allow an action, the BLM manager has the discretion to defer or modify proposed implementation-level actions and require appropriate conditions of approval, stipulations, relocations, or redesigns to reduce the effect of the action on the values being considered through the amendment or revision process. The appropriate modification to the proposed action is subject to valid existing rights and program-specific regulations. A decision to temporarily defer an action could be made where a different land use or allocation is currently being considered in the preferred alternative of a draft or proposed RMP revision or amendment.  

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13 Available on BLM’s website at: https://eplanning.blm.gov/epl-front-office/eplanning/docset_view.do?projectId=68393&currentPageId=99527&documentId=88461. The final EIS and the Oil and Gas Amendment to the NE RMP are also available at this link.


In sum, because the existing NE RMP does not provide for compliance with the Clean Air Act and BLM’s EA for the APDs fails to correct this, BLM is violating 43 U.S.C. § 1712(c)(8) of FLPMA and must reverse the approval of any projects within the Denver Metro-North Front Range 8-hour Ozone Nonattainment Area until a RMP which provides for compliance with the Clean Air Act’s conformity provision is complete.

VI. BLM Fails to Analyze and Assess the Direct, Indirect, and Cumulative Greenhouse Gas Emissions and the Impacts that Would Result from the Project in Compliance with NEPA.

Finally, BLM fails to analyze and assess the direct, indirect, and cumulative greenhouse gas emissions and impacts that would result from the project as required by NEPA.

Climate change has been intensively studied and acknowledged at the global, national, and regional scales. Climate change is being fueled by the human-caused release of greenhouse gas emissions (“GHG”), in particular carbon dioxide and methane. Carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride are recognized as the key greenhouse gases contributing to climate change. In 2009, the Environmental Protection Agency (“EPA”) found that these “six greenhouse gases taken in combination endanger both the public health and the public welfare of current and future generations.”\(^\text{16}\) The D.C. Circuit has upheld this decision as supported by the vast body of scientific evidence on the subject. See Coal. for Responsible Regulation, Inc. v. EPA., 684 F.3d 102, 120-22 (D.C. Cir. 2012).

The Intergovernmental Panel on Climate Change (“IPCC”) is a Nobel Prize-winning scientific body within the United Nations that reviews and assesses the most recent scientific, technical, and socio-economic information relevant to our understanding of climate change. In one of its more recent reports to policymakers in 2014, the IPCC provided a summary of our understanding of human-caused climate change. IPCC AR5, Summary for Policymakers (Mar. 2014).\(^\text{17}\) Among other things, the IPCC stated:

- Human influence on the climate system is clear, and recent anthropogenic emissions of greenhouse gases are the highest in history. Recent climate changes have had widespread impacts on human and natural systems.
- Warming of the climate system is unequivocal, and since the 1950s, many of the observed changes are unprecedented over decades to millennia. The atmosphere and ocean have warmed, the amounts of snow and ice have diminished, and sea level has risen.
- Anthropogenic greenhouse gas emissions have increased since the pre-industrial era, driven largely by economic and population growth, and are now higher than ever.


This has led to atmospheric concentrations of carbon dioxide, methane, and nitrous oxide that are unprecedented in at least the last 800,000 years. Their effects, together with those of other anthropogenic drivers, have been detected throughout the climate system and are extremely likely to have been the dominant cause of the observed warming since the mid-20th century.

- In recent decades, changes in climate have caused impacts on natural and human systems on all continents and across the oceans. Impacts are due to observed climate change, irrespective of its cause, indicating the sensitivity of natural and human systems to changing climate.

- Continued emission of greenhouse gases will cause further warming and long-lasting changes in all components of the climate system, increasing the likelihood of severe, pervasive, and irreversible impacts for people and ecosystems. Limiting climate change would require substantial and sustained reductions in greenhouse gas emissions which, together with adaptation, can limit climate change risks.

- Surface temperature is projected to rise over the 21st century under all assessed emission scenarios. It is very likely that heat waves will occur more often and last longer, and that extreme precipitation events will become more intense and frequent in many regions. The ocean will continue to warm and acidify, and global mean sea level will continue to rise.

Id. at 2–10.

In October 2018, IPCC expounded on its findings in a special report (hereinafter IPCC SP15”), noting that the differences between 1.5°C warming and 2.0°C warming are significant and that rapid transition away from fossil fuels is needed if we are to limit the impacts of climate change. IPCC SR 15, Global Warming of 1.5°: Summary for Policy Makers (Oct. 2018). Specifically, the IPCC found:

- Human activities are estimated to have caused approximately 1.0°C of global warming above pre-industrial levels, with a likely range of 0.8°C to 1.2°C. Global warming is likely to reach 1.5°C between 2030 and 2052 if it continues to increase at the current rate.

- Warming from anthropogenic emissions from the pre-industrial period to the present will persist for centuries to millennia and will continue to cause further long-term changes in the climate system, such as sea level rise, with associated impacts but these emissions alone are unlikely to cause global warming of 1.5°C.

- Climate models project robust differences in regional climate characteristics between present-day and global warming of 1.5°C, and between 1.5°C and 2°C. These differences include increases in: mean temperature in most land and ocean regions,

hot extremes in most inhabited regions, heavy precipitation in several regions, and the probability of drought and precipitation deficits in some regions.

- On land, impacts on biodiversity and ecosystems, including species loss and extinction, are projected to be lower at 1.5°C of global warming compared to 2°C. Limiting global warming to 1.5°C compared to 2°C is projected to lower the impacts on terrestrial, freshwater, and coastal ecosystems and to retain more of their services to humans.

- Climate-related risks to health, livelihoods, food security, water supply, human security, and economic growth are projected to increase with global warming of 1.5°C and increase further with 2°C.

- Pathways limiting global warming to 1.5°C with no or limited overshoot would require rapid and far-reaching transitions in energy, land, urban and infrastructure (including transport and buildings), and industrial systems. These systems transitions are unprecedented in terms of scale, but not necessarily in terms of speed, and imply deep emissions reductions in all sectors, a wide portfolio of mitigation options and a significant upscaling of investments in those options.

*Id.* at SPM-4 to SPM-21.

With particular regard to the Southwest Region—which includes Colorado, New Mexico, Utah, Arizona, Nevada, and California—the recently released second volume of the National Climate Assessment included in the following overview:

- Water for people and nature in the Southwest has declined during droughts, due in part to human-caused climate change. Intensifying droughts and occasional large floods, combined with critical water demands from a growing population, deteriorating infrastructure, and groundwater depletion, suggest the need for flexible water management techniques that address changing risks over time, balancing declining supplies with greater demands.

- The integrity of Southwest forests and other ecosystems and their ability to provide natural habitat, clean water, and economic livelihoods have declined as a result of recent droughts and wildfire due in part to human-caused climate change. Greenhouse gas emissions reductions, fire management, and other actions can help reduce future vulnerabilities of ecosystems and human well-being.

- The ability of hydropower and fossil fuel electricity generation to meet growing energy use in the Southwest is decreasing as a result of drought and rising temperatures. Many renewable energy sources offer increased electricity reliability, lower water intensity of energy generation, reduced greenhouse gas emissions, and new economic opportunities.
• Food production in the Southwest is vulnerable to water shortages. Increased drought, heat waves, and reduction of winter chill hours can harm crops and livestock; exacerbate competition for water among agriculture, energy generation, and municipal uses; and increase future food insecurity.

• Heat-associated deaths and illnesses, vulnerabilities to chronic disease, and other health risks to people in the Southwest result from increases in extreme heat, poor air quality, and conditions that foster pathogen growth and spread. Improving public health systems, community infrastructure, and personal health can reduce serious health risks under future climate change.


The Council on Environmental Quality (“CEQ”) has provided guidance on how federal agencies should address climate change in their NEPA analyses through its Final Guidance for Federal Departments and Agencies on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in National Environmental Policy Act Reviews (hereafter, “Final Climate Guidance”).20 The Final Guidance applies to all proposed federal agency actions, “including land and resource management actions.”21 In its Final Guidance, the CEQ recognized that:

Climate change results from the incremental addition of GHG emissions from millions of individual sources, which collectively have a large impact on a global scale. CEQ recognizes that the totality of climate change impacts is not

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21 Id. at 9.
attributable to any single action, but are exacerbated by a series of actions including actions taken pursuant to decisions of the Federal Government.

Therefore, a statement that emissions from a proposed Federal action represent only a small fraction of global emissions is essentially a statement about the nature of the climate change challenge, and is not an appropriate basis for deciding whether or to what extent to consider climate change impacts under NEPA. Moreover, these comparisons are also not an appropriate method for characterizing the potential impacts associated with a proposed action and its alternatives and mitigations because this approach does not reveal anything beyond the nature of the climate change challenge itself: the fact that diverse individual sources of emissions each make a relatively small addition to global atmospheric GHG concentrations that collectively have a large impact. 22

Although the Trump Administration has since revoked the CEQ’s August 2016 Climate Guidance 23 and BLM revoked IM No. 2017-003 regarding the Guidance on October 24, 2017, BLM is still bound by the CEQ’s NEPA regulations and existing case law applying these documents. See Sierra Club v. Fed. Energy Regulatory Comm’n, 867 F.3d 1357, 1374 (D.C. Cir. 2017); San Juan Citizens All. v. U.S. Bureau of Land Mgmt., No. 16-CV-376-MCA-JHR, 2018 WL 2994406, at *10, n.5 (D.N.M. June 14, 2018) (finding the CEQ Guidance to be persuasive, despite its revocation).

The Royal Gorge FO has quantified direct and indirect greenhouse gas emissions at the APD stage in past projects. See, e.g., Bill Barrett APD EA at 20. But, for some unexplained reason, the agency fails to make this same assessment for the Great Western APDs Project. Instead, BLM concludes, without supporting information, that

There would be no net change in Global GHG emissions inventories (i.e. no additional Climate impact) associated with the Proposed Action versus the No-Action as the very small amount of additional minerals (Federal action for this Project) associated with the Proposed Action would be developed / offset regardless and the decision to not authorize the Federal minerals development for the Proposed Action would not have an effect on a larger scale energy demand and supply profile (a permanent shift in a large scale [U.S., Global] energy demand and supply profile would be needed in order to have a significant effect on oil and gas related Global GHG emissions inventory levels).

EA at 6-7. As noted above, “a statement that emissions from a proposed Federal action represent only a small fraction of global emissions is essentially a statement about the nature of the climate change challenge, and is not an appropriate basis for deciding whether or to what extent to consider climate change impacts under NEPA.” Instead, BLM must quantify emissions and use available tools such as the social cost of carbon,

22 Id. at 10–11.

carbon budgeting, and a range NEPA alternatives to assess the significance of the project. Without this supporting information, BLM’s statement regarding impacts from GHG emissions is conclusory and arbitrary. See, e.g., San Juan Citizens All. v. United States Bureau of Land Mgmt., 326 F. Supp. 3d 1227, 1244 (D.N.M. 2018) (holding that BLM’s failure to estimate the amount of greenhouse gas emissions which will result from consumption of the oil and gas produced as a result of development of wells on the leased areas was arbitrary). Thus, it must be reversed.

VII. Conclusion

Because the BLM fails to comply with the Clean Air Act, FLPMA, and NEPA in its final EA for the proposed action, Guardians requests that you reverse the Royal Gorge FO’s decision and remand the EA and FONSI for the Great Western APDs Project back to the agency for further analysis.

Sincerely,

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