April 12, 2018

Via Email and First Class Mail

U.S. Bureau of Land Management
Colorado State Office
Attn. Gregory Shoop, Acting State Director
2850 Youngfield St.
Lakewood, CO 80215
gshoop@blm.gov

Re: Request for State Director Review, Bill Barrett Riverside Reservoir APD Project, DOI-BLM-CO-F020-2017-0101 EA

Dear Mr. Shoop:

Pursuant to 43 C.F.R. § 3165.3(b), WildEarth Guardians (“Guardians”) formally requests administrative review of the U.S. Bureau of Land Management’s (“BLM’s”) decision to approve the Bill Barrett Riverside Reservoir APD Project (“Bill Barrett APD Project”) in Weld County, Colorado. Keith Berger, the field manager for the Royal Gorge Field Office, approved the project in a Decision Record (“DR”) signed on March 15, 2018 and published that same day. The BLM’s decision is based on an environmental assessment (“EA”), DOI-BLM-CO-F020-2017-0101 EA, and Finding of No Significant Impact (“FONSI”) issued in conjunction with the DR. Exhibit 1, Final EA, FONSI, and DR.¹

As discussed in more depth below, Guardians requests that you reverse and remand the DR, EA, and FONSI for the Bill Barrett APD Project because the BLM’s decision 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 Both the draft and final EAs, as well as the DR and FONSI, are also available online on the BLM’s ePlanning website at: https://eplanning.blm.gov/epl-front-office/eplanning/projectSummary.do?methodName=renderDefaultProjectSummary&projectId=90817.
I. 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 BLM fully protects public lands and resources as it approves the oil and gas industry’s plans to develop publicly-owned minerals in Colorado and across the West. More specifically, Guardians has an interest in ensuring the BLM meaningfully and genuinely takes into account the air, water, and climate implications of its oil and gas permitting decisions, and robustly considers the costs of the release of more greenhouse gases into our atmosphere.

The EPA has declared the Denver Metro and 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 Bill Barrett APD 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 has consistently participated in the available decisionmaking processes surrounding these APDs by submitting comments on the draft EA. Additionally, Guardians has actively participated at the lease sale stage for parcels near the proposed APDs.

This request for review is timely filed pursuant to 43 C.F.R. § 3165.3(b). 43 C.F.R. § 3165.3(b) 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[.]” The BLM posted the draft EA for the Bill Barrett APD Project on January 16, 2018. Exhibit 2, BLM ePlanning Page. Guardians submitted comments on the draft EA to Sharon Sales, project lead, and Keith Berger, field manager, on January 30, 2018. Exhibit 3, Guardians’ Comments on the draft EA; see also EA at 5. The BLM signed and posted on ePlanning the DR for the Bill Barrett APD Project on March 15, 2018. Exhibit 2. Guardians submitted this request on April 12, 2018, 20 business days from March 15, 2018.

II. The BLM’s Approval of the Bill Barrett APD Project Violates FLPMA and the Clean Air Act.

To start, the BLM’s approval of the Bill Barrett APD Project violates the FLPMA and the Clean Air Act. 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

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2 Guardians comments on the draft EA are available online at: https://climatewest.files.wordpress.com/2018/04/2018-1-30-fnl-comments-re-bill-barrett-apds.pdf.

3 For example, on July 10, 2017, Guardians protested the September 2017 competitive oil and gas lease sale with parcels in Weld County. The protest is available at: https://climatewest.files.wordpress.com/2017/07/co-sept-2017-lease-sale-protest1.pdf.
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).

The BLM fulfills this mandate by issuing Resource Management Plans (“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.

The Clean Air Act provides that “[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 air quality implementation plan (“SIP”). 42 U.S.C. § 7506(c)(1). “The assurance of conformity . . . shall be an affirmative responsibility of the head of such . . . agency.” 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,” or 3) “delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.” Id. § 7506(c)(1)(B). This language is broadly applicable.

The Environmental Protection Agency (“EPA”) has designated the Denver Metro and North Front Range area, including part of Weld County where the project is located, as in nonattainment with the 2008 National Ambient Air Quality Standards (“NAAQS”) for ozone. EPA, 8-Hour Ozone (2008) Nonattainment Areas by State/County/Area, https://www3.epa.gov/airquality/greenbook/hnp.html#Ozone_8-hr_2008.Denver (last visited Apr. 11, 2018). Ozone is a compound harmful to human health that is created when volatile organic compounds (“VOCs”) and nitrogen oxides (“NOx”) react with sunlight. EPA, Ozone Pollution, https://www.epa.gov/ozone-pollution, (last visited Apr. 11, 2018). 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 and North Front Range 8-hour Ozone Non-Attainment Area. See Colorado SIP at 5 Colo. Code Regs. § 1001-09 (2017), https://www.sos.state.co.us/CCR/GenerateRulePdf.do?ruleVersionId=7381&fileName=5%20CCR%201001-9.

Pursuant to Clean Air Act regulations and the Colorado SIP, the BLM is prohibited from undertaking any activity in a nonattainment area that does not conform to an applicable SIP. See 40 C.F.R. § 93.150(a); see also Colorado SIP at 5 CCR 1001-09. Thus, for each activity permitted by a federal agency within a nonattainment area, the BLM must complete an “applicability analysis” to determine if a formal conformity determination is needed. 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. See 40 CFR § 93.153(b)(1). Direct emissions are defined as those emissions that are caused or initiated by the

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Federal action and occur at the same time and place as the action and are reasonably foreseeable. *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.*

As BLM notes in the final EA for the Bill Barrett APD Project, “[a]ll of the proposed development will occur within the Denver Metro/North Front Range 8-hour Ozone Non-Attainment Area.” EA at 16. Thus, in its EA, BLM must determine whether the Bill Barrett APD project has direct and indirect emissions of VOCs and NOx that equal or exceed 100 tons/year thereby prompting a formal federal conformity determination. See 40 CFR § 93.153(b)(1).

A. The BLM’s Conformity Applicability Analysis in the EA is Legally Inadequate.

Unfortunately, the BLM’s conformity applicability analysis is not legally adequate. For example, the BLM asserts that emissions from the proposed 58 wells will fall just under the de minimis threshold of 100 tons/year because “[t]he 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), and] [u]nder the General Conformity regulations, emissions sources that are subject to NSR permitting are exempt from the general conformity requirements (40 C.F.R. 193.53(d)(1)).” EA at 17. This assertion, however, lacks any supporting information or analysis.

The Clean Air Act’s general conformity regulations at 40 C.F.R. § 93.153(d)(1) provide that:

> 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).

What this provision means is that if a specific stationary source of emissions 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. While we agree with the BLM that this provision is applicable, it does not appear that the agency has properly applied its provisions in this case.

To begin with, although Guardians appreciates the additional clarity BLM adds to the final EA, it remains unclear what sources of emissions that the BLM has determined are exempted under 40 C.F.R. § 93.153(d)(1). For example, the agency identifies what is included and subject to NSR, “tanks, loadouts, stationary engines, and component losses.” EA, Attachment A, Response to Comment I B. But, the agency still fails fully to identify what sources are *excluded* from NSR permitting. This is problematic because virtually all sources of
VOC and most sources of NOx emissions related to the proposed development are not subject to NSR permitting.

The sources of VOC emissions that would not constitute stationary sources subject to NSR permits include drilling rig exhaust, non-road engine exhaust, loadout emissions, pneumatic controllers (including component losses and pneumatic losses), leaking pipes and equipment, on-road exhaust. Although it is true that Bill Barrett may be required to obtain a permit for its tank emissions and stationary engines (although it is not certain as the EA provides no information or analysis to indicate any tanks and stationary engines would in fact be subject to NSR permits), any permit obtained by Bill Barrett would not specifically apply to VOC emissions from other sources. Indeed, the Colorado Air Pollution Control Division routinely issues NSR permits to oil and gas production facilities, and these permits consistently only apply to tanks and engines. See, e.g., Exhibit 4, Proposed Air Permits for Whiting Oil and Gas Corporation Razor 12H Production Facility, Permits No. 17WE0976, 17WE0977, and 17WE0980. Given this, the total amount of VOC emissions may be much greater than BLM predicts.

Similarly, the sources of NOx emissions identified by the BLM in its EA that would not constitute stationary sources subject to NSR permits are off-road exhaust, drilling rig exhaust, non-road exhaust, process heaters, and on-road exhaust. Although it is again true that Bill Barrett may be required to obtain a permit for stationary engines (although it is not certain as the EA provides no information or analysis to indicate any stationary engines would in fact be subject to NSR permits), any permit obtained by Bill Barrett would not specifically apply to NOx emissions from other sources. Again, 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, e.g., Exhibit 4, Proposed Air Permits for Whiting Oil and Gas Corporation Razor 12H Production Facility, Permits No. 17WE0976, 17WE0977, and 17WE0980.

Further, we are concerned that the BLM has not prepared an accurate analysis of reasonably foreseeable VOC and NOx emissions because the agency’s estimate of emissions includes no estimate of fugitive VOC emissions (including from leaking pipelines and equipment) well completion emissions (including any venting and/or fugitive emissions that result), and emissions from fracking and re-fracking equipment. These emissions sources are identified by the BLM in its most recent Colorado Air Resource Management Modeling Study report. See BLM, “Colorado Air Resource Management Modeling Study, 2025 CAMx Modeling Results for the High, Low and Medium Oil and Gas Development Scenarios” 19-20 (August 2017), https://www.blm.gov/sites/blm.gov/files/documents/files/program_natural%20resources_soil%20air%20water_airco_quicklins_CARMMS2.0.pdf. Although in its response to comments, the BLM did acknowledge the need to include emission from well workovers, the agency did not explain why other categories of emissions were not considered.

The BLM also inappropriately excluded reasonably foreseeable emissions from its estimate of total VOC and NOx emissions. As the agency explains in the EA, for purposes of conformity, the agency only assessed 44% of the total project emissions. See EA at 16. The BLM claims that this analysis is appropriate given its assertion that only 44% of emissions would be linked to the development of federal minerals and thus would be “within the federal
decision space for [the] project.” EA at 16. But, there is no doubt that as a result of BLM’s actions, 58 wells will be approved and drilled and 100% of the projected emissions will be released. Here, the agency is essentially arguing that even though its action will lead to 100% of the projected emissions, it is only required to account for 44% of total emissions. Clean Air Act general conformity rules do not allow agencies to arbitrarily “discount” the emissions their actions lead to. Just as another agency, the Federal Aviation Administration, must account for emissions from all airport activities, including privately-owned jets, the BLM must account for 100% of the emissions that will be caused by its action.

Here, the failure of the BLM to account for 100% of the emissions that would result from its action is a major omission. If 100% of the emissions were accounted for, then total VOC emissions would be 261.925 tons/year and total NOx emissions would be 435.577 tons/year, far above de minimis thresholds.

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<th>44% Assumption</th>
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<td>VOC</td>
<td>115.247</td>
<td>261.925</td>
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<td>NOx</td>
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Further, BLM appears to discount the emissions that will be released from non-federal wells that will result directly from its approval of the project. The definition of reasonably foreseeable emissions includes all “direct and indirect emissions.” 40 C.F.R. § 93.152. While “direct emissions” include all emissions that are caused or initiated by a federal action, indirect emissions include all emissions that are:

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

Id. Here, BLM cannot deny that even where emissions are produced as a result of developing non-federal minerals, such emissions 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 58 APDs and the overall development of the project area would be subject to continuing program responsibility by the BLM via the agency’s ongoing administration and oversight of APD approvals.

In response to this, the BLM argues just that—“[t]he BLM has no particle [sic] control of downstream assets such as pipelines, potential storage and refining facilities, or the non-federal mineral estate that will be developed as part of this project.” EA, Attachment A, Response to Comment I B. But, this is untrue. The BLM could deny the proposed project and the non-federal wells may very well not be drilled, despite the developer’s promise to the contrary. Furthermore, this response simply fails to account for the fact that even where non-federal minerals are developed through non-federal wells, if any federal minerals are extracted, there would be
federal oversight and therefore a duty to ensure conformity for 100% of the emissions related to the exercise of this oversight.

In sum, the BLM’s claim that NOx and VOC emissions would fall below de minimis levels is unsupported in many ways. For the BLM to justify its assertion that general conformity requirements do not apply, the agency must prepare an accurate assessment of all reasonably foreseeable emissions, appropriately distinguish which sources are or are not subject to NSR permitting, and thoroughly account for all sources of emissions that will result, whether directly or indirectly, from the BLM’s approval of the 58 APDs.

B. The NE RMP/FEIS Do Not Provide for Compliance with the Clean Air Act or FLPMA.

Because the EA does not provide for compliance with the Clean Air Act, the BLM must look to the underlying RMP/FEIS for help. Unfortunately, because that document is extremely out-of-date, BLM cannot rely on it and its support for the proposed action necessarily is eliminated.

“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). The applicable land use plan for the proposed action is the Northeast Resource Management Plan (1986) as amended by the Colorado Oil and Gas Final EIS and Record of Decision (1991) (“NE RMP”). See EA at 4. The BLM is in the process of updating its RMP for the Royal Gorge FO but the agency has not yet issued a final decision.

Unfortunately, no provision in the NE RMP ensures compliance with the Clean Air Act’s conformity provisions. Indeed, as the 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. See BLM, Analysis of the Management Situation for the Eastern Colorado Resource Management Plan 278 (June 2015), https://eplanning.blm.gov/epl-front-office/projects/lup/39877/59426/64617/AMS_for_Eastern_CO_RMP.4.pdf. In fact, the NE RMP wrongly provides, contrary to reality, that “[a]ll public lands are in the ‘General (22A) (attainment or unclassified areas) category. . . .” 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. BLM is essentially 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

5 The NE RMP and FEIS and the 1991 Oil and Gas Amendment are available on the BLM’s website at: https://eplanning.blm.gov/epl-front-office/eplanning/docset_view.do?projectId=68393&currentPageId=99527&documentId=88461.

proposed action because it does not provide for compliance with the Clean Air Act’s conformity provisions. See 43 U.S.C. § 1712(c)(8).

Although the BLM is currently in the process of revising the applicable RMP (the new RMP is called the “Eastern Colorado RMP”), this process is not complete. Consequently, the proposed Eastern Colorado RMP also cannot provide for compliance with the Clean Air Act and FLPMA.

Put simply, neither the NE RMP or the proposed Eastern Colorado RMP provide for compliance with the Clean Air Act’s conformity provision. BLM is thus violating 43 U.S.C. § 1712(c)(8) of FLPMA and must postpone 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.

The agency’s Land Use Planning Handbook underscores the BLM’s ability and need to postpone approval of projects where the underlying RMP is incomplete and under revision.

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.


The need to postpone approval of the proposed action is 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.” BLM, Preliminary Alternatives Report Eastern Colorado Resource Management Plan 32 (March 2017), https://eplanning.blm.gov/epl-front-office/projects/lup/39877/98740/119608/ECRMP_PrelimAltsReport.pdf (emphasis added). Approval of 58 wells within the nonattainment area would directly undercut this proposed alternative. The proposed wells will emit approximately 115.247 tons of VOCs and 191.654 tons
of NOx. EA at 16. Although the BLM claims that various factors will reduce this number, as discussed below, this conclusion is suspect, and even if it was not, unless BLM plans to somehow offset the emissions from the project, the BLM would still be allowing a “net increase of pollutants” in the nonattainment area in direct contravention of proposed Alternative D.


BLM argues in response to this, that the underlying RMP does not need to provide for compliance with the Clean Air Act, because the EA itself is provides for compliance through its air analysis. See EA, Attachment A. This argument fails for two reasons. First, this argument assumes that the analysis in the EA meets the Clean Air Act’s conformity requirements. As discussed above, Guardians does not agree that the analysis does this. Second, this assumption violates the plain language of 43 U.S.C. § 1712(c)(8), which outlines a stand-alone requirement that the BLM ensure the RMP complies with the Clean Air Act. This argument also runs contrary to the assumptions of NEPA. BLM has conducted an EA that relies on the RMP. If the RMP is invalid, the EA may not necessarily be able suffice as a stand-alone NEPA document because it cannot demonstrate that the proposed action will not have significant impacts on air quality. Thus, the BLM is required to complete an EIS to address this issue.

In sum, because none of the documents at issue provide for compliance with the Clean Air Act, BLM is violating 43 U.S.C. § 1712(c)(8) of FLPMA and must postpone 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.

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\(^7\) In its rule, the EPA set the primary standard for ozone at .070 parts per million over an 8-hour averaging time. Compliance with the NAAQS is demonstrated when the three-year average of the fourth highest annual 8-hour readings are at 0.070 parts per million or below. The EPA also retained prior ozone NAAQS, including the 2008 ozone NAAQS, which limited ambient concentrations to no more than 0.075 parts per million over an eight-hour period. See 40 C.F.R. § 50.15.
III. The BLM’s Approval of the Bill Barrett APDs Fails to Comply with NEPA.

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. 40 C.F.R. § 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.

A. The BLM Fails to Fully Analyze and Assess the Cumulative Greenhouse Gas Emissions that Would Result from the Project.

While Guardians appreciates the fact that the BLM calculates both the direct and indirect (downstream) greenhouse gas emissions for the project, the BLM fails to assess the cumulative impacts that will result from the release of additional greenhouse gas emissions from the project in conjunction with past, present, and future projects in the area.

“Under NEPA, an EIS must analyze not only the direct impacts of a proposed action, but also the indirect and cumulative impacts ‘of past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other
Wyoming v. U.S. Dep’t of Agric., 661 F.3d 1209, 1251 (10th Cir. 2011) (citing 40 C.F.R. § 1508.7). Cumulative impacts may stem from “individually minor but collectively significant actions taking place over a period of time.” 40 C.F.R. § 1508.7. To determine whether a project will have a “significant” impact on the environment, an agency must consider “[w]hether the action is related to other actions with individually insignificant but cumulatively significant impacts.” Id. § 1508.27(b)(7); see also Kern v. U.S. Bureau of Land Mgmt., 284 F.3d 1062, 1078 (9th Cir. 2002).

Here, BLM estimates that the proposed action will result in approximately 11.4 million metric tons of carbon dioxide equivalent over the project’s life—the equivalent to 2,437,131 passenger vehicles driven for one year. EA at 20; see also EPA, Greenhouse Gas Equivalencies Calculator, [https://www.epa.gov/energy/greenhouse-gas-equivalencies-calculator](https://www.epa.gov/energy/greenhouse-gas-equivalencies-calculator). As the BLM admits, this number is an astounding 25% of Colorado’s downstream emissions for 2015. Id.; see also BLM, 2015 Annual Air Report, Table XIV, [https://www.co.blm.gov/nepa/airreports/AR2015.html](https://www.co.blm.gov/nepa/airreports/AR2015.html). This number underscores the need for BLM to conduct a cumulative impacts analysis for greenhouse gas emissions because it is almost impossible to argue that the project would not be significant by itself, let alone significant within the context of surrounding projects. Unfortunately, the BLM chooses to ignore this possibility by failing to include a full cumulative impacts analysis in the EA for the project.

Instead, BLM relies heavily on the 2015 Annual Air Report to meet its NEPA obligations for cumulative impacts. See, e.g., EA at 21, 48. Although this report contains important data regarding field office and statewide emissions, this report does not analyze the cumulative impacts with respect to the proposed action. For example, the BLM fails to list past, present and reasonably foreseeable future actions in the EA despite the fact that the agency admits that, “Weld County has by far more Oil and Gas wells than any other county in Colorado, with over 22,000 active oil and/or gas wells.” Id. at 48. BLM attempts to explain its lack of analysis by concluding that there is a “comparatively small number of federally owned mineral parcels in the area.” Id. But, the 10th Circuit has held that BLM is required to analyze the cumulative impacts “of past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions.” Wyoming v. U.S. Dep’t of Agric., 661 F.3d 1209, 1251 (10th Cir. 2011). As shown by the map below, there are a significant number of oil and gas wells (red dots) and federally-owned leased mineral parcels (brown squares) surrounding the project area. Clearly, the area is heavily-developed, and industry is likely to drill more wells in the future. Exhibit 5, See, e.g., Apollo Operating LLC, Green Grass 11-561-5 Application Permit to Drill, [http://ogcweblink.state.co.us/results.aspx?id=401320600](http://ogcweblink.state.co.us/results.aspx?id=401320600). BLM cannot ignore the cumulative impacts of the proposed action in the context of development on the ground.

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8 The same argument that applies to the conformity analysis applies to the BLM’s greenhouse gas emissions analysis. If the BLM’s approval of the proposed action is essentially approving 58 wells in total (including non-federal wells), the agency must look at the total emissions from all wells. For greenhouse gases, that number is 25 million tons of CO₂e.
Map obtained from the Colorado Oil and Gas Conservation Commission’s website, https://cogccmap.state.co.us/cogcc_gis_online. Riverside Reservoir, the location of the proposed action, is located at the center of the map.

In response to this, the BLM argues that “[t]he CARMMS analysis (incorporated by Reference) by virtue of its inclusion in the Annual Report provides a full cumulative analysis for the Royal Gorge field office and the entire State of Colorado for both federal and non-federal mineral development.” EA, Attachment A, Response to Comment II A. But, federal courts have held that “[r]egardless of whether an EA or EIS is being prepared, the agency conducting the analysis must consider the ‘cumulative impacts’ of the proposed action.” Colorado Envtl. Coal. v. Office of Legacy Mgmt., 819 F. Supp. 2d 1193, 1212 (D. Colo. 2011) (emphasis added); see also New Mexico ex rel. Richardson v. Bureau of Land Mgmt., 565 F.3d 683, 719, n.45 (10th Cir. 2009) (holding that the BLM was required to analyze the site-specific impacts of the project, including cumulative impacts). Furthermore “[a]n EA’s analysis of cumulative impacts must give a sufficiently detailed catalogue of past, present, and future projects, and provide adequate analysis about how these projects, and differences between the projects, are thought to have impacted the environment.” Te-Moak Tribe v. U.S. Dep’t of Interior, 608 F.3d 592, 603 (2010); see also Klamath-Siskiyou Wildlands Ctr. v. Bureau of Land Mgmt., 387 F.3d 989, 994 (9th Cir. 2004) (“A proper consideration of the cumulative impacts of a project 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.”). Because of the static nature of the CAARMS report, it cannot account for all reasonably foreseeable past, present, and future projects within the project area and nothing in the EA supplements this analysis.
This problem extends beyond the BLM’s greenhouse gas emissions and climate analysis. Indeed, BLM relies on the excuse that federal minerals in the project are limited to conclude that cumulative impacts from the project will be minimal in the “Threatened, Endangered and Sensitive Species” section, EA at 38, the “Wetlands and Riparian” section, EA at 39, the “Aquatic Wildlife” section, EA at 40, the “Wildlife Terrestrial” section, EA at 43, the “Migratory Birds” section, EA at 45, at the general “Cumulative Impacts Summary” section, EA at 48. Thus, BLM’s failure compromises the entire EA for the proposed action.

Finally, the need for a cumulative impacts analysis is further supported by the fact that the underlying RMP/EIS for the project is severely out-of-date. The Ninth Circuit has held that where an EIS fails to include a cumulative impacts analysis, “the scope of the required [cumulative impacts] analysis in the EA is correspondingly increased.” Kern v. U.S. Bureau of Land Mgmt., 284 F.3d 1062, 1078 (9th Cir. 2002). The NE RMP, which the BLM approved in 1986 and amended in 1991, includes only a statistical summary of the cumulative acreage affected by the NE RMP. The 1991 Oil and Gas Amendment of the RMP presents a similar issue. As a result, BLM cannot rely on the NE RMP to remedy the cumulative impacts analysis gap for the proposed action.

IV. Conclusion

Because the BLM fails to comply with FLPMA, the Clean Air Act, and NEPA in its final EA for the proposed action, Guardians requests that the you reverse and remand the DR, EA, and FONSIA for the Bill Barrett APD Project unless and until the agency resolves these issues.

Sincerely,

Rebecca Fischer
Climate Guardian
WildEarth Guardians
2590 Walnut St.
Denver, CO 80205
406-698-1489
rfischer@wildearthguardians.org