AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

Agenda Item: Ratification of North Fork Mancos Master Dev. Plan

Action Requested: Other Ratification of SUPO Objections

Parties to the Agreement:

Term Begins: **Term Ends:** **Grant Contract #:**

Summary:

Board Review and Ratification of Objections to "Surface Use Plan of Operations and Approvals Associated with North Fork Mancos Master Development Plan for Oil and Gas Exploration and Development Decision Notice"

Fiscal Impact:

Submitted by: Lauren Hibbard **Submitter's Email Address:** lhibbard@gunnisoncounty.org

Finance Review: ○ Required ◉ Not Required

Comments:

Reviewed by: Discharge Date:

County Attorney Review: ◉ Required ○ Not Required

Comments:
ok db 10/30/19

Reveiwed by: GUNCOUNTY1\dBaumgarten Discharge Date: 10/30/2019 Certificate of Insurance Required

Yes ○ No ◉

County Manager Review:

Comments:

Reveiwed by: GUNCOUNTY1\mbirnie Discharge Date: 10/31/2019

◉ Consent Agenda ○ Regular Agenda ○ Worksession Time Allotted: 0

Agenda Date: 11/5/2019

Revised April 2015

OFFICE OF THE GUNNISON COUNTY ATTORNEY
David Baumgarten – County Attorney
Matthew R. Hoyt – Deputy County Attorney

September 30, 2019

Tamara Whittington, Reviewing Officer
U.S.D.A. Forest Service
Rocky Mountain Region
1617 Cole Blvd. Building 17
Golden, CO 80401

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Fax: 303.275.5134

Re: Objections to "Surface Use Plan of Operations Approvals Associated with North Fork Mancos Master Development Plan for Oil and Gas Exploration and Development Decision Notice."

The Gunnison County Board of County Commissioners ("Gunnison County") has reviewed the "Surface Use Plan of Operations Approvals Associated with North Fork Mancos Master Development Plan for Oil and Gas Exploration and Development Decision Notice." ("Decision Notice" or "NFMMDP") and respectfully submits the following objections.

As required by 36 C.F.R. § 218.8, the Objector's name and address is:

Gunnison County Board of County Commissioners
200 E. Virginia Avenue
Gunnison, Colorado 81230

Attention: David Baumgarten, County Attorney
(phone) 970.641.5300
(email) dbaumgarten@gunnisoncounty.org

As noted on the Decision Notice, Gunnison County filed written comments initially on March 21, 2017 and then on April 1, 2019 during public review of the Revised Preliminary EA.

Gunnison County's overarching objection is to the Agencies' wholesale noncompliance with NEPA. After stating that overarching objection below, the format of the other Gunnison County objections is to identify in column left Gunnison County's filed written comments, to identify in column middle the U.S. Forest Service / BLM response to Gunnison County's written comments, and in column right, by discrete aspects of the proposed project, to state how Gunnison County believes the environmental analysis or Decision Notice specifically violates

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law, regulation or policy, and to suggest remedies that would resolve the objection. By using this this format, Gunnison County demonstrates the connection between Gunnison County's prior specific written comments on each discrete issue and the content of Gunnison County's objections.

The overarching Objection of Gunnison County is the failure of the Agencies to comply with NEPA. Gunnison County noted in its April 1, 2019 filing:

"Gunnison County's intent in providing these comments is to foster full compliance with NEPA. NEPA is the "basic national charter for protection of the environment" and its "procedures must ensure that environmental information is available to public officials and citizens before decisions are made and before actions are taken." 40 CFR § 1500.1. Gunnison County is mindful that Congress enacted NEPA to ensure that all federal agencies consider the environmental impacts of their actions to prevent or eliminate damage to the environment. Marsh v. Oregon National Resource Council, 490 U.S. 360, 371 (1989); see 42 U.S.C. §4321.

Under NEPA, federal agencies must "include in every recommendation…affecting the quality of the human environment, a detailed statement by the responsible official on…" the environmental impact of the proposed action and alternatives to the proposed action. 42 U.S.C. § 4332 (c)(i)-(iii). Gunnison County recognizes that such a report may be an Environmental Assessment ("EA") or a more thorough Environmental Impact Statement ("EIS"). In either event, the purpose is to ensure that the federal agency, in reaching its decision will have available, and will carefully consider, detailed information concerning potentially significant environmental impacts.

An agencies NEPA compliance will be reviewed to see whether it is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." New Mexico ex rel. Richardson v. Bureau of Land Mgmt., 565 F. 3d 683, 704 (10th Cir. 2009) (quoting 5 U.S.C. § 706(2)(a)). The agency action is arbitrary and capricious if the agency:

> (1) entirely failed to consider an important aspect of the problem, (2) offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise, (3) failed to base its decision on consideration of the relevant factors, or (4) made a clear error of judgment.

Id. (quoting Utah Envtl. Long. V. Troyer, 479 F. 3d 1269, 1280 (10th Cir. 2007)) (quotations omitted)."

Gunnison County joins with other objectors to note that:

The Agencies' decision-making, including the Final EA and FONSI, violates law, regulation, or policy in numerous ways, including:

- The agencies failed to prepare an environmental impact statement, even though this project is a major federal action significantly affecting the quality of the human environment. 42 U.S.C. § 4332(2)(C); 40 C.F.R. § 1502.4; 40 C.F.R. § 1508.3.

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- The agencies failed to put forth a "convincing statement of reasons" that explains why the project will impact the environment no more than insignificantly. *Ocean Advoc. v. U.S. Army Corps of Engrs*., 402 F.3d 846, 864 (9th Cir. 2005).
- The agencies failed to take a hard look at the direct, indirect, and cumulative impacts of oil and gas development. Specifically, the agencies failed to take a hard look at increased truck traffic; at hydraulic fracturing and associated water quantity and quality concerns; at seismic impacts; at potential tributary water from coalbed methane wells; and at the risk of exempt rural gas-gathering pipelines. *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989); 40 C.F.R. §§ 1502.16, 1508.7, 1508.8, 1508.27.
- The agencies failed to analyze all reasonable alternatives. 40 C.F.R. § 1502.14.

An environmental impact statement ("EIS") should be prepared for the NFMMDP. An EIS is required when a major federal action "significantly affects the quality of the human environment." 42 U.S.C. § 4332(2)(C); 40 C.F.R. § 1502.4. A federal action "affects" the environment when it "will or *may* have an effect" on the environment. 40 C.F.R. § 1508.3 (emphasis added); *Airport Neighbors Alliance v. U.S.*, 90 F.3d 426, 429 (10th Cir. 1996) ("If the agency determines that its proposed action *may* 'significantly affect' the environment, the agency must prepare a detailed statement on the environmental impact of the proposed action in the form of an EIS.") (emphasis added). Similarly, according to the Ninth Circuit:

We have held that an EIS *must* be prepared if 'substantial questions are raised as to whether a project ... *may* cause significant degradation to some human environmental factor.' To trigger this requirement a 'plaintiff need not show that significant effects *will in fact occur*,' [but instead] raising 'substantial questions whether a project may have a significant effect' is sufficient.

Idaho Sporting Cong. v. Thomas, 137 F.3d 1146, 1149-50 (9th Cir. 1998) (citations omitted) (emphasis original). Especially in light of direct, indirect, and cumulative water quantity and quality impacts resulting from the change in fracking method from nitrogen foam to slickwater, the agencies must prepare an EIS.

The significance of a proposed action, and therefore whether an EIS is required, is based on the project's context and intensity. 40 C.F.R. § 1508.27. Context "means that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality." *Id.* § 1508.27(a). Intensity "refers to the severity of impact," and is determined by weighing ten factors, including "[1] [t]he degree to which the proposed action affects public health or safety," "[2] [u]nique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas," "[3] [t]he degree to which the effects on the quality of the human environment are likely to be highly controversial," "[4] [t]he degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks[,]" and "[5] [w]hether the action is related to other actions with individually insignificant but cumulatively significant impacts." *Id.* § 1508.27(b)(2)–(5), (7).

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The first intensity factor under NEPA is "the degree to which the proposed action affects public health and safety." The proposed action, which would allow for the use of multi-stage hydraulic fracturing coupled with horizontal drilling ("fracking") has the potential to impact public health and safety. The EA is dismissive of the many public health impacts of slickwater fracking (detailed in our previous comments), including water quality impacts, and concludes that "the many protections required by the BLM/Forest Service and COGCC minimize risks to water quality and human health in connection with the use of HF technology." FEA at 92. The agencies come to this conclusion even though the project will generate significantly more contaminated frack water than previously envisioned. The agencies should prepare an EIS based on the substantial record evidence that slickwater fracking may be putting groundwater at risk.

Relatedly, the second and third intensity factors under NEPA require consideration of the degree to which impacts are highly controversial and the degree to which impacts are highly uncertain or involve unique and unknown risks. Fracking is highly controversial, based on the possibility of significant environmental degradation, public outcry, and potential threats to health and safety. *See Center for Biological Diversity v. U.S. Bureau of Land Management*, 937 F. Supp. 2d at 1140 (N.D. Cal. 2013), 1157-58.

Critically, the Forest Service's FONSI has failed to "put forth a convincing statement of reasons' that explains why the project will impact the environment no more than insignificantly. This account proves crucial to evaluating whether the [agency] took the requisite 'hard look.'" *Ocean Advoc. v. U.S. Army Corps of Engrs*., 402 F.3d 846, 864 (9th Cir. 2005). Nowhere in the FEA or FONSI does there exist a convincing statement explaining the insignificance of impacts from this project. Instead, the agencies' statements are dismissive and conclusory. *See, e.g.,* FONSI at 2 ("The proposed action would result in a minimal or unmeasurable increase in risk to public health and safety."). If the agencies proceed in their refusal to perform an EIS, they must provide a detailed accounting of each NEPA significance factor, as provided in 40 C.F.R. § 1508.27, explaining why the project will impact the environment no more than insignificantly.

Under NEPA, agencies "must analyze not only the direct impacts of the 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 actions.'" *Wyoming v. U.S. Dept. of Agriculture*, 661 F.3d 1209, 1251 (10th Cir. 2011) (citing *Colorado Environmental Coalition v. Dombeck*, 185 F.3d 1162, 1176 (10th Cir. 1999) (quoting 40 C.F.R. § 1508.7)); *see also* 40 C.F.R. § 1508.25 (c) (stating that the "scope" of an EIS includes consideration of "cumulative" impacts). Where "several actions have a cumulative ... environmental effect, this consequence must be considered in an EIS." *Neighbors of Cuddy Mountain v. U.S. Forest Service*, 137 F.3d 1372, 1378 (9th Cir. 1998) (citing *City of Tenakee Springs v. Clough*, 915 F.2d 1308, 1312 (9th Cir. 1990)); *see also* 40 C.F.R. § 1508.25(a) (stating that the "scope" of an EIS includes consideration of "connected actions"). The purpose of this requirement is to prevent agencies from dividing one project into multiple individual actions "each of which individually has an insignificant

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environmental impact, but which collectively have a substantial impact." *Thomas v. Peterson*, 753 F.2d 754, 758 (9th Cir.1985).

Failure to include cumulative impacts of *all* the leasing and permitting decisions "impermissibly subjects the decision-making process contemplated by NEPA to 'the tyranny of small decisions.'" *Kern v. BLM*, 284 F.3d 1062, 1078 (9th Cir. 2002); *see also NRDC*, 865 F.2d at 297-298. Indeed, the Supreme Court has held that, under NEPA, an agency not only has a duty to consider cumulative impacts, but also a separate duty, applicable here, to consider those impacts in a single NEPA process:

> proposals for ... related actions that will have cumulative or synergistic environmental impact upon a region concurrently pending before an agency must be considered together. Only through comprehensive consideration of pending proposals can the agency evaluate the different courses of action.

Kleppe v. Sierra Club, 427 U.S. 390, 410, 96 S.Ct. 2718, 2730, 49 L.Ed.2d 576 (1976). In the present case, the proposed NFMMDP comes within the context of broader proposed and ongoing oil and gas development in the area of the North Fork Valley. Cumulatively, this development will have a significant impact on water quantity and quality in the North Fork Valley. Moreover, given the proximity of the NFMMDP to other area development, it is also likely that other extraction infrastructure, such as roads, power lines, evaporation ponds, pipelines, may be shared. If so, these are connected, as well as cumulative, actions—currently segmented, improperly, into separate decision-making processes—and must be considered under a single comprehensive EIS. 40 C.F.R. §§ 1508.25(a)(1), (2).

Although a comprehensive, programmatic EIS is currently being prepared through the revision of the UFO RMP, and the GMUG is also presently engaged in LRMP revision, those processes have not yet been completed, and therefore the agency is still operating under its stale plans. Given the magnitude of the proposal, Gunnison County similarly suggests that the NEPA evaluative process must consider the UFO RMP and not be concluded until that document is finalized.

NEPA requires that, until an agency issues a Record of Decision for a pending NEPA document, "no action concerning the proposal shall be taken which would: (1) have an adverse environmental impact; or (2) limit the choice of reasonable alternatives." 40 C.F.R. § 1506.1(a)(1), (2). NEPA prohibits agencies from making an "irreversible and irretrievable commitment of resources." 40 C.F.R. §§ 1502.2(f); *Conner v. Burford*, 848 F.2d 1441, 1446 (9th Cir. 1986); *see also Pacific Rivers Council v. Thomas*, 30 F.3d 1050, 1056-57 (9th Cir. 1994), *cert. denied*, 115 S. Ct. 1793 (1995) (interpreting identical language in ESA). "The purpose of an EIS is to apprise decisionmakers of the disruptive environmental effects that may flow from their decisions at a time when they 'retain[] a maximum range of options.'" *Conner*, 848 F.2d at 1446. Taking actions in the interim which could limit those options undermines the purpose and effectiveness of the NEPA process.

BLM defends its choice to prepare an EA, stating: "[T]he agencies have chosen to prepare an EA to analyze the Proposed Action based on the location, scale, intensity, and duration of the

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project, the use of technologies widely and successfully applied in the oil and gas industry, and the extensive BLM/Forest Service and State of Colorado protections for surface and subsurface resources and human health." Final EA, Appendix K at 100. Yet, other than general statements, BLM offers no defense of its failure to prepare an EIS, and fails to adequately evaluate its choice within the context of NEPA significance factors. 40 C.F.R. § 1508.27. Notably, this failure comes despite the agency's recognition of uncertainty concerning the significance of cumulative impacts: "The nature of potential subsequent development in or near the NFMMDP area remains uncertain as GELLC continues to evaluate how best to design future projects." FEA at 11. In addition, the anticipated size and scale of the NFMMDP as originally proposed to the BLM and USFS by GELLC is on par with the adjacent Bull Mountain MDP, which did undergo an EIS. Documents obtained through a Freedom of Information Act reveal that a second phase 104-well development was sufficiently sketched out to be reasonably foreseeable, yet the BLM advanced a piecemeal approach to the environmental analysis, which is exactly what the NEPA requirement on cumulative impacts is intended to avoid.

To remedy this error, the Agencies must prepare an EIS or provide a convincing statement of reasons that details why the project will impact the environment no more than insignificantly.

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ISSUE #1 RAISED BY GUNNISON COUNTY	US FOREST SERVICE / BLM RESPONSE	OBJECTION
<u>Oil and Gas Operations; Gunnison County Regulatory Authority.</u> In its correspondence dated March 21, 2017 Gunnison County noted: "The Board (of County Commissioners of Gunnison County) itself regulates the development of oil and gas resources in Gunnison County, together with the Federal and State governments, with the intent to provide a framework for the responsible exploration and production of oil and gas resources on a manner that conserves other natural resources, that is sensitive to surrounding land uses, and that mitigates adverse impacts to, and protects the public health, safety, welfare and the environment of Gunnison County."	The Decision Notice does not mention, recognize or consider the existence and validity of Gunnison County's regulatory authority and regulatory regime regarding the subject matter of the Decision Notice.	Gunnison County has adopted the Gunnison County *Regulations for Oil and Gas Operations* and regulates the development of such resources on public and private lands within Gunnison County. Pursuant to long standing and settled case law, Gunnison County has the authority to regulate oil and gas operations. The NFMMDP does not mention or acknowledge the existence of Gunnison County *Regulations for Oil and Gas Operations (the "Regulations")* nor does it state that the proposed activities in the NFMMDP shall comply with the Gunnison County *Regulations.* Specifically, neither Sections 1.4: *Authorities* nor 1.6: *Conformance with Applicable Land Use Plans* of the NFMMDP EA mention the *Regulations* nor Gunnison County's authority to regulate oil and gas operations. Some of the proposed activities in the NFMMDP are currently in the county permit review process, other activities have already been permitted, and some activities have not been permitted at all. Activities that have submitted an Oil and Gas permit application but have not yet been issued a County Oil and Gas permit: • Freshwater pipeline that will carry

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		water from the North Fork of the Gunnison River near Somerset to the Iron Point project area. The public comment period recently ended and public comments included concern from Somerset residents about the potential impacts to their water supply. The applicant has submitted a response to those concerns and County staff is evaluating that response (OG-19-00004). • Federal 30-4 well recompletion. An updated agreement between the County and Gunnison Energy, LLC is required for road maintenance (OG-19-00005). Activities for which a County permit has been issued (this list may not be comprehensive but attempts to include the activities identified in the NFMMDP): • Expansion of the Trail Gulch Unit 1090 #30 Well Pad to allowing up to six wells (OG-19-00003) • Hotchkiss Water Storage Facility (OG-11-00005) • Spadafora Well Pads (multiple permits)

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		• Henderson Well Pad (OG-16-00002) • Sheep Bull Connector Pipeline (OG-10-00007) The Agencies did not adequately address this issue. The remedy is to expressly acknowledge the legal efficacy of the Gunnison County Regulations, to ensure that the federal analysis includes consideration of the Gunnison County Regulations, and to require compliance with these Gunnison County Regulations.

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ISSUE #2 RAISED BY GUNNISON COUNTY	US FOREST SERVICE / BLM RESPONSE	OBJECTION
Colorado Senate Bill 19-181	The Decision Notes states: "Issues raised in objections must be based on previously submitted and timely, specific written comments regarding the proposed project on activity and attributed to the objection, unless the issue is based on new information that arose after the opportunities for comment on the Preliminary EA." (Emphasis added).	The comment period on the Preliminary EA ended March 28, 2019. Colorado SB 19-181 was not signed into law until April 16, 2019. Therefore, Colorado SB 19-181 is "new information that arose after the opportunities for comment on the Preliminary EA." In conjunction with the previous objection #1 that the Decision Notice does not adequately address Gunnison County's existing regulatory authority and permit review actions regarding oil and gas operations, the Decision Notice is objected to because it does not consider whatsoever Colorado SB 19-181. The remedy is to expressly acknowledge the legal efficacy of Colorado SB 19-181 as an additional foundation for Gunnison County's regulation of the subject matter of the Decision Notice.

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ISSUE #3 RAISED BY GUNNISON COUNTY	US FOREST SERVICE / BLM RESPONSE	OBJECTION
<u>Project Description—Development Workforce</u> Gunnison County raised the issue that, during development, the project workforce would be approximately 122 for a single well; the number of development workers working at any one time would be approximately 47. GELLC expects that 57% of the development workers would be "local" (that is, residents of Gunnison or Delta Counties) and the remaining 47% would be "non-local". Drilling crews are expected to stay on-site from May through November. Completion pad workers would be present for "a shorter duration" beginning in late summer. Gunnison County has adopted land use and other review and permitting requirements with which the subject proposal must comply. The Draft EA does not acknowledge the efficacy of these requirements or the relationship of these requirements to the subject NEPA analysis. Indeed, the Draft EA seems to purport that the County requirements have no effect on activity on Federal lands; for instance, the Draft EA states, regarding workforce housing, the following: "Well-pad workers would be accommodated	(The Decision Notice does not address this issue).	The Decision Notice does not address this issue; nor the socio-economic-environmental consequences of a significant "non-local" workforce. The remedy is to expressly recognize and appropriately analyze this issue.

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within the project areas in an estimated eight trailers. If located on National Forest System lands, this may require a special use permit, while trailers on private lands would be subject to County regulations." Draft EA, p. 28. This lack of recognition of Gunnison County authority is a deficiency in the Draft EA.		

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ISSUE #4 RAISED BY GUNNISON COUNTY	US FOREST SERVICE / BLM RESPONSE	OBJECTION
<u>Project Description—Roads</u> Gunnison County raised the issue that the proposal includes use of up to 26 miles of existing roads and up to 4.2 miles of upgraded or new administrative access roads. Total initial surface disturbances associated with the project would be approximately 35.9 acres on federal lands and 10.2 acres on private lands. Of these totals, 14.5 acres on federal lands and 2.9 acres on private lands would remain undisturbed over the long-term, until final reclamation of the pads.	The Decision Notice states: "My decision does not exclude the public's use of the project area on public roads or trails. While road construction/reconstruction is occurring, which also occurs regardless of project, there may be slight traffic delays. *USE OF NFS LANDS FOR PROJECT ACCESS INSTEAD OF PRIVATE* My decision includes the use of NFS lands for access (NFMMDP FEA Option 2) to the Federal 1190#20 well pad and accessing the location via private land (NFMMDP FEA Option 1). I am approving both access routes because of uncertainty in the agreement with the private landowner. While GELLC and the private land owner have diligently been trying to negotiate access and have been largely successful, there is a third-party conservation easement on the private land that has not been resolved on whether or not access is consistent with the other entity's interests. If this third-party issue can be resolved, approximately 2.3 miles of access-related disturbance can be avoided."	The Decision Notice does not adequately analyze the socio-economic-environmental consequences of the use of existing or new roads. The remedy is to expressly recognize and appropriately analyze this issue.

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ISSUE #5 RAISED BY GUNNISON COUNTY	US FOREST SERVICE / BLM RESPONSE	OBJECTION
Project Description—Water Since publication of a Preliminary EA in May 2018, GELLC has modified its proposal to use the "slickwater" method of hydraulic fracturing; based on the depth and length of horizontal well bores to access the Mancos shale, and the geologic characteristics of that formation, GELLC has concluded that the initially proposed method of hydraulic fracturing (the nitrogen foam method) would be infeasible. This modification would result in increased water requirements from the initially estimated 30,000 barrels (3.9 acre-feet) per well to the currently estimated 500,000 barrels (64.4 acre-feet) per well for completions. For all uses, including drilling, completions, and ongoing dust abatement, the increased per-well water consumption is estimated to increase from 44,535 barrels (5.8 acre-feet) to 522,520 barrels (67.3 acre-feet) per well. Approximately 83% of the total water would be first-use fresh water from surface sources. Annual use of fresh water in the first year would be approximately 278.7 acre-feet; annual consumption is estimated at 336.7 acre-feet during the first year. Annual use of fresh water in the	WATER RESOURCES The Decision Notices states: "Effects on surface water from construction related sediment loading, spills of chemicals or produced hydrocarbons have been disclosed and minimized to the extent practicable with the application of Best Management Practices, Conditions of Approval and compliance requirements of law, regulation and policy. See also NFMMDP FEA Sections 2.2, 3.14, 3.18, 3.19, 3.20 and Appendix B. Fracking, a physical process to break the rock formation so that hydrocarbons can be released, has been expressed as a concern on groundwater resources. The application of Best Management Practices, Conditions of Approval and compliance requirements of law, regulation and policy also serve to minimize impacts to the extent practicable. The chemicals used in the process have been disclosed in the NFMMDP FEA, Appendix A. BLM's engineering review of the wellbore portion of the APD examines the rock formations and reviews the integrity of the design of the wellbore to further help prevent contamination of groundwater resources from drilling, completion and production, reclamation	The Decision Notice does not consider or analyze the physical or legal availability (or not) of the water proposed to be used, the environmental consequences of the slickwater method, or the consequences of the "first-use" of the enormous quantities of water proposed on the immediate environment or the lower reaches of the North Fork of the Gunnison River. The remedy is to expressly recognize and appropriately analyze the issue.

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second year would be approximately 334.5 acre-feet; annual consumption is estimated to be 404.1 acre-feet during the second year, when six wells are planned. Existing water sources—primarily the Hotchkiss Water Treatment Facility, GELLC's water right facility for the Elk Creek Mine (Oxbow Mining), and produced water from GELLC's coalbed methane wells—would be sufficient to meet 90% of the proposed water requirements. To make up the difference during the first two years, GELLC proposes to truck 34 acre-feet of water acquired from the City of Delta via State Highway 92 and 133 to a turn off into the project area on a private road north of Paonia Reservoir. Once inside the project area, the water would be transferred into GELLC's existing pipeline system. GELLC is actively pursuing <u>but as yet has not</u> secured additional water sources and storage facilities to eliminate the need for truck haulage in the third and fourth years; during those years there is a 368.5-acre-foot annual shortfall. <u>Nitrogen-Foam Method/Slickwater Method.</u> Certain issues associated with the change from the initially proposed nitrogen foam/gel method to the currently proposed slickwater method require further analysis regarding the necessity,	phases of development. This review is done for every federal APD." Due to a change in the fracking methodology to slick water, additional water would be needed. Use of water (water depletions) tributary to the Colorado River could affect endangered fish. A reduction in the maximum number of wells drilled per year has been included in the NFMMDP FEA to address water depletions consistent with BLM's Programmatic Biological Opinion (PBO) for these down river fishes to ensure species survival. Water sources have been identified as it pertains to this issue. My decision is consistent with the requirements of the USFWS's PBO. Annual water use reporting is required. Native fish species could be affected during construction of well pads, gathering pipelines, and access roads that cross or pass near streams and other water features (see NFMMDP FEA Section 3.18, 3.20). Construction could increase sedimentation downstream, or could alter aquatic habitats. Accidental release of hazardous materials (diesel fuel, lubricants, and herbicides) in aquatic habitats could also have potential effects downstream. Implementation of GELLC's stormwater plan and stormwater Best Management Practices would minimize impacts to native fish."	

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efficacy and consequences of that change of method. Because significant consequences cascade from that change to the slickwater method, a preliminary issue that requires further analysis, beyond what is in the Draft EA, is whether the original nitrogen foam/gel method remains available as an alternative to be considered. While the Draft EA, at p. 20, recognizes that GELLC itself made a decision that use of nitrogen foam is “unfeasible”, the Draft EA does not include its own analysis—as an alternative or otherwise—about the feasibility of such use. This does not fulfill the requirements NEPA imposes. The decision—unexamined in the Draft EA—raises further issues also not sufficiently examined in the Decision Notice including: -Whereas the nitrogen foam method would use 5.8 acre-feet of water per well, the slickwater method will require 67.3 acre-feet per well. -The slickwater method—as opposed to the nitrogen foam method—will require sand as a proppant. -The water necessary to accomplish the slickwater method will be obtained from both tributary and non-tributary sources.		

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At least as currently proposed, in each of years 3 and 4 of the project, there is a 368.5 acre-foot shortfall in the water supply. This as-yet-to-be secured water does not appear to be available from tributary sources because of the 2017 U.S. Fish and Wildlife Service Programmatic Biological Opinion safeguarding endangered fish species; this Opinion effectively limits the total amount of North Fork water that can be withdrawn for energy development; current development is reaching those limits. -The revised fracking method requires 34 acre-feet of water to be trucked from the City of Delta (which supply of water itself is yet to be secure). -The consequences of withdrawing significant amounts of water from the hydrologic cycle in the North Fork Valley.		

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ISSUE #6 RAISED BY GUNNISON COUNTY	US FOREST SERVICE / BLM RESPONSE	OBJECTION
<u>Project Description—Proppant</u> The currently proposed method of completion would also require the delivery of sand, used as a "proppant" to help keep the fractures open and facilitate the release of natural gas into the well bores. Delivery of sand would utilize haul trucks travelling on State Highway 133 from a railroad located at the Elk Creek Mine to the intersections of Gunnison County Road 265, and from there to pads being completed. Truck haulage of sand is proposed to occur on 50 to 60 days per year in late summer and fall, and would result in 47 roundtrips per day on haul days.	(The Decision Notice does not address this issue).	The Decision Notice does not address this issue. The remedy is to expressly recognize and appropriately analyze this issue.

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ISSUE #7 RAISED BY GUNNISON COUNTY	US FOREST SERVICE / BLM RESPONSE	OBJECTION
<u>Project Description—Water Source</u> To meet the current estimates for fresh water needed for the first 2 years of development, existing sources would be supplemented, as noted above, by trucking 34 acre-feet of municipal water from the City of Delta along a segment of US 50 and then on State Highway 92 and State Highway 133 to a turn off north of Paonia Reservoir. At that point, the water would be transferred into GELLC's existing pipeline system. Trucking of water would occur on 50 to 60 days of late summer and fall, and would result in approximately 42 roundtrips per day across 24 hours on haul days. The Draft EA notes, at p. 33 that peak project related development traffic would increase traffic on Gunnison County Road 265 by 87% (from 140 one-way trips per day to 262 one-way trips per day) compared to 2016 traffic levels.	(The Decision Notice does not address this issue.)	The agencies did not adequately address the impacts, or mitigation of the those impacts, to public roads. The remedy is to expressly recognize and appropriately analyze this issue.

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ISSUE #8 RAISED BY GUNNISON COUNTY	US FOREST SERVICE / BLM RESPONSE	OBJECTION
<u>AIR QUALITY</u> Gunnison County noted on its April 1, 2019 correspondence the need to analyze impacts on air quality that may occur outside of the project boundary and its immediate environs including but not limited to air pollution.	*"AIR QUALITY* The air quality analysis conducted for the NFMMDP FEA shows that cumulative ambient air quality concentrations in the project area would continue to meet standards (National Ambient Air Quality Standards [NAAQS]/Colorado Ambient Air Quality Standards [CAAQS]) for the maximum drilling scenario of 6 new wells per year. The project-specific modeled concentration contributions (modeled impacts associated with project emissions sources only) of NO2, SO2, PM10, and PM2.5 at Class I and sensitive Class II areas are well below the Prevention of Significant Deterioration (PSD) increments (acceptable levels of air pollutant concentration increases for new sources developed in a specific area since an established baseline year in order to meet NAAQS/CAAQS). Model predicted visibility impacts at Class I and sensitive Class II areas are below visibility threshold values. One of the primary concerns for the Air Quality Related Values (AQRVs) impacts analysis was how NOx emissions would impact nitrogen deposition levels at high altitude lakes in the Maroon Bells-	The agencies did not adequately address this issue outside the project boundary and its immediate environs. The remedy is to expressly recognize and appropriately analyze this issue.

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	Snowmass Wilderness. Nitrogen deposition impacts are predicted to be well below deposition analysis thresholds for Class I and sensitive Class II areas in the region, including sensitive lakes in Maroon Bells. Results in NFMMDP FEA Appendix D indicate that no significant impacts, whether from the project or cumulatively, are expected from nitrogen deposition. Technical responses on the modelling comments can be found in NFMMDP FEA Appendix K. *GREENHOUSE GASES* Numerous commenters have expressed concerns about greenhouse gases (GHGs) and climate change caused by the development and production of fossil fuels. GHGs have been estimated/quantified for construction, production and downstream combustion. This has been placed into context at various scales. Climate change has also been considered. No significance level has been established in law, regulation or policy for GHGs associated with this project. The NFMMDP FEA's inclusion of this information is so that I, and my BLM counterpart, can make an informed decision about these common multiple-use activities and demonstrate that these have, in fact, been considered. See FEA Sections 3.2, 4.2.2 and Appendices D and K."	

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ISSUE #9 RAISED BY GUNNISON COUNTY	US FOREST SERVICE / BLM RESPONSE	OBJECTION
The Gunnison County Scoping Comments requested that: Certain general locational and timing principles be included in the Agencies' analysis to include: -Location of well pads and other facilities in close proximity to existing well pads, pipelines and infrastructure. -Drilling multiple wells from as few pads as possible. -Incrementally sequencing or incrementally stepping into new development areas to limit the impacts—including "sprawl" and mobilization and de—mobilization. -Separating development areas to avoid multiple, simultaneous operations occurring at one time—in the same area—using same roads, etc. -Attention to "assimilative capacity" regarding other essential characteristics: water, air, wildlife, visibility, noise, recreation, timber, agriculture, seasonal and other cyclical constraints. -Geography, topography, soils, rainfall and slopes may require individualized site approaches to avoid and minimize consequences.	The issues raised, one by one, and cumulatively, by Gunnison County regarding locational and timing principles were not directly or adequately addressed by the agencies.	The agencies did not adequately address this issue. The remedy is to expressly recognize and appropriately analyze this issue.

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-Employ non-traditional methodologies when appropriate. -Impacts cross jurisdictional lines.		
ISSUE #10 RAISED BY GUNNISON COUNTY	**US FOREST SERVICE / BLM RESPONSE**	**OBJECTION**
<u>Frack Fluid "Tracers"</u> Gunnison County also requested that consideration be given to requiring "tracers" in frack fluids that could identify frack fluids in the environment. Gunnison County stated: "Some fear that frack fluid chemicals could contaminate nearby water supplies if the chemicals are accidentally spilled, or released into drinking water aquifers or onto the surface accidentally. It is possible to identify the presence of frack fluid in spilled or discharged flow-back by tracing synthetic organic compounds that are added to the fluid before it is injected down a well. But the proprietary nature of the chemicals, combined with their instability in the environment has limited the usefulness of such tracers. Gunnison County urges that BLM rigorously explore the current state and availability of non-toxic frack fluid tracers with regard to this proposal—particularly in light of the high, headwaters nature of the proposal, and the proximity of both downstream drinking water supplies and agriculture."	*"WATER RESOURCES* Effects on surface water from construction related sediment loading, spills of chemicals or produced hydrocarbons have been disclosed and minimized to the extent practicable with the application of Best Management Practices, Conditions of Approval and compliance requirements of law, regulation and policy. See also NFMMDP FEA Sections 2.2, 3.14, 3.18, 3.19, 3.20 and Appendix B. Fracking, a physical process to break the rock formation so that hydrocarbons can be released, has been expressed as a concern on groundwater resources. The application of Best Management Practices, Conditions of Approval and compliance requirements of law, regulation and policy also serve to minimize impacts to the extent practicable. The chemicals used in the process have been disclosed in the NFMMDP FEA, Appendix A. BLM's engineering review of the wellbore portion of the APD examines the rock	The agencies do not address at all the issue of frack fluid tracers. The remedy is to expressly recognize and appropriately analyze this issue.

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	formations and reviews the integrity of the design of the wellbore to further help prevent contamination of groundwater resources from drilling, completion and production, reclamation phases of development. This review is done for every federal APD. Due to a change in the fracking methodology to slick water, additional water would be needed. Use of water (water depletions) tributary to the Colorado River could affect endangered fish. A reduction in the maximum number of wells drilled per year has been included in the NFMMDP FEA to address water depletions consistent with BLM's Programmatic Biological Opinion (PBO) for these down river fishes to ensure species survival. Water sources have been identified as it pertains to this issue. My decision is consistent with the requirements of the USFWS's PBO. Annual water use reporting is required."	

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ISSUE #11 RAISED BY GUNNISON COUNTY	US FOREST SERVICE / BLM RESPONSE	OBJECTION
<u>Inadequate Analysis of Lifespan of Project and Assimilative and Carrying Capacity of the North Fork.</u> Gunnison County noted in its April 1, 2019 correspondence that Gunnison County is significantly concerned that the proposal was not analyzed regarding the entirety of the project over its full 30 year operational lifespan, together with both the "assimilative capacity" and "carrying capacity" of the North Fork of the Gunnison River area. Such analyses must include not only the subject proposal but also the subject proposal superimposed on existing projects and reasonably anticipated projects. In particular, Gunnison County requested that the proposal be analyzed regarding both "assimilative capacity" and "carrying capacity" of the North Fork of the Gunnison River area; and that such analyses include not only the subject proposal – but also the subject proposal superimposed on existing projects and reasonably anticipated projects. Gunnison County suggested that the "assimilative capacity" refers to the capacity of the affected ambient environment to accept	(The Agencies did not analyze this issue.)	The agencies did not adequately address this issue. The remedy is to expressly recognize and appropriately analyze this issue.

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and dissipate pollutants, discharges and other determinantal consequences of the proposed action without exceeding environmental and social limits. Gunnison County suggested that the "carrying capacity" refers to the ability of the ambient environment to support the proposed project without exceeding environmental and social limits. That is, the size, pace and location of the project (and its components) should be constrained by the detrimental consequences it produces and that assimilative capacity of the affected ambient environment. It is not adequate to satisfy NEPA that the analysis be avoided with a conclusory statement, at p. 11 of the Draft Revised Preliminary Assessment, that "(t)he nature of potential subsequent development in or near the NFMMDP area remains uncertain as GELLC continues to evaluate how best to design future projects" and at p. 11, that "In addition, what constitutes 'full field development' for an MDP area, unit, or other group of leases changes over time, due to continuing advances in geologic knowledge and in drilling and completion technologies, and the influences of economics the regulatory framework and global politics."		

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It also is not adequate to satisfy NEPA to avoid such current analysis with a conclusion, on p. 11 and 12, that "…if GELLC submits one or more additional proposals, the agencies will provide appropriate NEPA review, and new NEPA documents would include a cumulative impact analysis that considers projects that have been implemented, projects approved by not implemented, and proposed projects that are considered reasonably foreseeable." (Emphasis added.) Rather than postpone a cumulative impact analysis, NEPA requires Federal agencies to consider the cumulative effects of proposals under their current review. Cumulative effects are defined in the CEQ regulation 40 CFR § 1508.7 as "the impact on the environment that results from the incremental impact of the action when added to other past, present and reasonably foreseeable actions." "Significance" in terms of requiring heightened environmental analysis cannot be avoided by terming an action temporary or breaking it down into smaller component parts. Not to put too fine a point on it, if as the Draft EA concedes, such analysis could be performed in the indefinite future, it can and should be performed now in the		

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present analysis. Gunnison County will not request conduct of an Environmental Impact Statement for the sake of process alone. But Gunnison County requests that, in addition to the cascade of issues that flow from the choice of the slickwater method, it is imperative that the issues above, together with the following two issues be given further analysis: -The cumulative effects of this project and the surrounding reasonable foreseeable development. -The ongoing BLM Resource Management Plan revision process and the Forest Service Revision Plan Process		

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ISSUE #12 RAISED BY GUNNISON COUNTY	US FOREST SERVICE / BLM RESPONSE	OBJECTION
<u>Phased Development Alternative.</u> Gunnison County noted that the decision to eliminate from further analysis a "phased development alternative" be reconsidered. As the Draft EA states on p. 30; "The BLM/Forest Service often work with an operator to achieve the result (that only one area would be drilled at a time as a way to keep the rest of the area undisturbed that year)." As noted in Gunnison County's March 21, 2017 correspondence, the Draft EA should have included consideration of: -Incrementally sequencing or incrementally stepping into new development areas to limit the impacts—including "sprawl" and mobilization and de—mobilization. -Separating development areas to avoid multiple, simultaneous operations occurring at one time—in the same area—using same roads, etc. -Attention to "assimilative capacity" regarding other essential characteristics: water, air, wildlife, visibility, noise, recreation, timber, agriculture, seasonal and other cyclical constraints. -The Draft EA does not include such analysis.	The Decision Notice does not address a "phasing development alternative."	The agencies did not adequately address this issue. The remedy is to expressly recognize and appropriately analyze this issue.

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ISSUE #13 RAISED BY GUNNISON COUNTY	US FOREST SERVICE / BLM RESPONSE	OBJECTION
Recreation. Gunnison County noted that the Draft EA, at p. 52, concluded that "(d)irect impacts to recreation opportunities, experiences, and setting characteristics would result from increased vehicle traffic on area roads, occasional road closures, and increased noise and human presence associated with construction, drilling and production. These impacts would diminish scenic qualities, decrease naturalness, and further limit opportunities for solitude. Dispersed recreation uses such as biking, hunting, camping, and wildlife viewing, where relative quiet and separation from other human activity is sought as essential to the experience, would also be affected. Displacement of game species resulting from drilling and production would alter hunting opportunities in the area." These adverse consequences to the recreation environment are considerable; however, neither alternatives nor mitigation nor avoidance were adequately analyzed in the Draft EA.	The Agencies did not address directly this issue.	The agencies did not adequately address this issue. The remedy is to expressly recognize and appropriately analyze this issue.

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ISSUE #14 RAISED BY GUNNISON COUNTY	US FOREST SERVICE / BLM RESPONSE	OBJECTION
<u>Socio-Economic Impacts/Quality of Life.</u> The Draft EA notes at p. 54, "(i)n 2008 and 2010, the BLM UFO met with residents of the North Fork Valley as part of its preparation of a new Uncompahgre Basin RMP. At that time, valley residents cited a small community feeling, slower pace of life, and an outdoor lifestyle as aspects of living in the valley that were important to them. Local community leaders stressed the importance of moderate controlled growth and maintaining a healthy environment and watershed protections." These considerations, while significant, were not attended to—as components of cumulative impacts or otherwise—in the Draft EA.	*DECISION RATIONALE* I have considered the opportunity to achieve more-efficient management of federal resources by jointly working with BLM on the approval of these SUPOs/APDs. I have considered the needs of State and local residents and their economies, maintained multiple-use values, implemented Forest Plan direction while accommodating development of existing leases. *ORGANIC FARMING AND AGRICULTURE* There are no lands defined as prime or unique farmlands (7 CFR 657) within the project area. COAs, Spill Prevention, Control, and Countermeasures (SPCC) Plan contribute to protecting farmland, vineyards and other lands downstream of the project area or within areas where products are transported. Oil and gas development in the North Fork Valley has occurred concurrently with farming. See also NFMMDP FEA Sections 2.2, 3.13, 3.14, 3.18, 3.19, and Appendix B.	The agencies did not adequately address this issue. The remedy is to expressly recognize and appropriately analyze this issue.

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ISSUE #15 RAISED BY GUNNISON COUNTY	US FOREST SERVICE / BLM RESPONSE	OBJECTION
Gunnison County Requirements. Gunnison County has adopted land use and other review and permitting requirements with which the subject proposal must comply. The Draft EA does not acknowledge the efficacy of these requirements or the relationship of these requirements to the subject NEPA analysis. Indeed, the Draft EA seems to purport that the County requirements have no effect on activity on Federal lands; for instance, the Draft EA states, regarding workforce housing, the following: "Well-pad workers would be accommodated within the project areas in an estimated eight trailers. If located on National Forest System lands, this may require a special use permit, while trailers on private lands would be subject to County regulations." Draft EA, p. 28. Gunnison County noted that this lack of recognition of Gunnison County authority is a deficiency in the Draft EA.	As noted above, the agencies do not recognize Gunnison County's regulatory authority on federal lands.	The agencies did not adequately address this issue. In particularly, the agencies did not address the inter-relationship of federal, state and local regulatory authority (some of which local authority is of "statewide interest"). These authorities are subject to an existing and extended intergovernmental agreement. The remedy is to expressly recognize and appropriately analyze this issue.

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ISSUE #16 RAISED BY GUNNISON COUNTY	US FOREST SERVICE / BLM RESPONSE	OBJECTION
Gunnison County noted in its April 1, 2019 correspondence that: The United States District Court for the District of Colorado, on March 27, 2019, issued a Memorandum Opinion and Order in Citizens For A Healthy Community, et al. v. United States Bureau of Land Management et al., Civil Case No. 1:17-cv-02519-LTB-GPD (the "Order"). The Order is instructive. The Order states among other reasoning and findings: • "While NEPA 'does not require agencies to analyze the environmental consequences of alternatives it has in good faith rejected as too remote, speculative, or impractical or ineffective,' it does require the development of 'information sufficient to permit a reasoned choice of alternatives as far as environmental aspects are concerned.'" Id., citing New Mexico, 565 F .3d at 708 (quoting Colo. Envtl. Coal. v. Dombeck, 185 F.3d 1162, 1174 (10th Cir. 1999).	The agencies have not responded to the instructive direction provided in Citizens for a Healthy Community, et al. v. United States Bureau of Land Management.	The agencies did not adequately address this issue. The remedy is to expressly recognize and appropriately analyze this issue.

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• In an EIS or EA, federal agencies must consider the direct, indirect, and cumulative predicted impacts of a proposed action. New Mexico, 565 F.3d at 703 (citing 42 U.S.C. § 4332(2)(C); 40 C.F.R. pt. 1502 & §§ 1508.11, 1508.25(c)); Hillsdale Envtl. Loss Prevention, Inc. v. US. Army Corps of Engineers, 702 F.3d 1156, 1166 (10th Cir. 2012). "The significance of an impact is determined by the action's context and its intensity." Hillsdale, 702 F.3d at 1166 (citing Middle Rio Grande Conservancy Dist. v. Norton, 294 F.3d 1220, 1224 (10th Cir. 2002)). "Applicable regulations require agencies to consider ten factors when assessing intensity, including the proposed action's effects on public health, the unique characteristics of the geographic area, the uncertainty of potential effects, and the degree of controversy surrounding the effects on the human environment." Id. (citing 40 C.F.R. § 1508.27(b)). • As such, Defendants acted in an arbitrary and capricious manner		

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and violated NEPA by not taking a hard look at the foreseeable indirect effects resulting from the combustion of oil and gas in the EIS and EA. • "Cumulative impact is 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." 40 C.F.R. § 1508.7. "Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time." Id. • The impacts to consider include ecological, aesthetic, historic, cultural, economic, social, or health considerations. Wyo. v. U.S. Dept of Agric., 661 F.3d at 1251 (explaining that the scope of an EIS includes cumulative impacts, and thus the considerations of direct and indirect effects apply similarly to cumulative effects); *see* 40 C.F.R. §§ 1508.7, 1508.8, 1508.25.		

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Gunnison County requests that the issues identified in this correspondence be adequately addressed pursuant to NEPA.		

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Thank you for your consideration,

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