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Sent via ePlanning Comment Portal and Electronic Mail

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Re: Failure to Solicit and Consider Public Input: Colorado December 2018 Oil & Gas Lease Sale

Dear Mr. Shoop, Ms. Mehlhoff, Ms. Connolly, Mr. Larson, and Mr. Crockett,

I represent conservation organizations concerned about Colorado BLM's failure to adequately solicit and respond to public comments on the environmental impacts of the December 2018 Oil & Gas Lease Sale. We urge Colorado BLM to engage with the public as envisioned by our shared "national charter for protection of the environment," the National Environmental Policy Act. The obligation to obtain and respond to comments is an important part of NEPA's full disclosure responsibilities. *See Price Road Neighborhood Ass'n v. U.S. Dept. of Transportation*, 113 F.3d 1505, 1511 (9th Cir. 1997) ("One of the twin aims of NEPA is active public involvement and access to information."); *see also Colony Federal Savings & Loan Ass'n v. Harris*, 482 F. Supp. 296, 304 (W.D. Pa. 1980) ("[c]itizen participation is a vital ingredient in the success of NEPA").

NEPA regulations require that agencies “shall to the fullest extent possible ... [e]ncourage and facilitate public involvement in the decisions which affect the quality of the human environment.” 40 C.F.R. §1500.2(d). “NEPA procedures must insure that environmental information is available to public officials and *citizens* before decisions are made and before actions are taken ... Accurate scientific analysis, expert agency comments, and *public scrutiny* are essential to implementing NEPA.” 40 C.F.R. §1500.1(b) (emphasis added).

The BLM must “[m]ake diligent efforts to involve the public in preparing and implementing their NEPA procedures.” 40 C.F.R. §1506.6(a). The agency “shall involve environmental agencies, applicants, and the public, to the extent practicable, in preparing assessments required by [40 C.F.R. §] 1508.9(a)(1) [(environmental assessments)].” 40 C.F.R. §1501.4(b); *see also* 46 Fed. Reg. 18,026 (March 23, 1981) (“Forty Most Asked Questions Concerning CEQ’s NEPA Regulations,” answer to question 38: “Section 1506.6 requires agencies to involve the public in implementing their NEPA procedures, and this includes public involvement in the preparation of EAs and FONSI.”).

BLM has failed to adequately involve the public in the December 2018 Oil & Gas Lease Sale NEPA process. **First**, BLM has created multiple obstacles to public involvement by (a) only accepting comments through the ePlanning system, and (b) maintaining a broken comment portal and broken document links during the public comment period. The public comment period ran from August 27, 2018 to September 11, 2018. When we checked on August 31, 2018, the comment portal was not working. Many links to documents referenced in the EA were also not working. When we searched for the Uncompahgre Field Office’s Draft Resource Management Plan and Draft EIS, Unsigned Finding of No Significant Impact, and Reasonable Foreseeable Oil and Gas Development (RFD) scenario, we received this message: “The specified URL cannot be found.” Commenters could not appropriately analyze the EA without being able to read the documents referenced in it. Some of our organizations alerted their members that BLM’s comment portal was not working as of August 31, 2018, and therefore directed people to send their comments directly to Greg Shoop and other Colorado BLM officials. Today, September 11, public comments sent to Mr. Shoop and other Colorado BLM officials are being rejected with the message: “At this time, we need all comments to be submitted through the ePlanning system.” By limiting public comments to the ePlanning portal and maintaining a broken portal for a portion of the public comment period, BLM has frustrated opportunities for public review and comment.

Second, BLM is rebuffing and ignoring substantive comments. Initially, BLM failed even to acknowledge receipt, in its “summary of comments,” of scoping comments submitted by the Town of Paonia, The Western Slope Conservation Center, the Colorado Farm and Food Alliance, Western Slope Slow Food, the Valley Organic Growers Association, the West Elk Winery Association, and dozens of individuals. After being alerted to the omission, BLM admitted to having received the comments, but asserted that it need not address the comments, on the basis that they raised no new issues. In fact, the BLM did not address in the Preliminary EA the concerns raised in the comments about the impact of leasing on local organic agriculture, vineyards, orchards, recreation, and tourism.

BLM's NEPA analysis will be judged largely on the basis of whether the agency has taken a "hard look" at environmental consequences. *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989). Courts have looked skeptically on whether an agency has taken a "hard look" if it fails to respond to comments. *See, e.g., Sierra Club v. U.S. Army Corps of Engineers*, 701 F.2d 1011 (2d Cir. 1983); *Idaho Conservation League v. Guzman*, 766 F. Supp. 2d 1056 (D. Idaho 2011); *Stewart v. Potts*, 126 F. Supp. 2d 428 (S.D. Tex. 2000), *aff'd*, 34 Fed. Appx. 152 (5th Cir. 2002).

The Colorado BLM must do better. We urge Colorado BLM to revisit its commitment to public transparency, involvement, and feedback. BLM should take advantage of, rather than resist, NEPA's role as a springboard for public comment. Within the public comment process is a wealth of information and perspective that will improve the quality of BLM's decision-making. Moreover, BLM's invitation of and consideration of public comment is required by law.

Please do not hesitate to be in touch with us about the matter of public involvement.

Sincerely,

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