



October 9, 2016

Ms. Jacque Buchanan, Acting Regional Forester
U.S. Forest Service, Rocky Mountain Region
740 Simms Street
Golden, CO 80401
Via Email: jabuchanan@fs.fed.us

**Re: Supplemental Comments of High Country Conservation Advocates *et al.* on
Proposal to Reinstate North Fork Coal Mining Area Exception to the Colorado
Roadless Rule (FS Project #46470)**

Dear Acting Regional Forester Buchanan:

On behalf of High Country Conservation Advocates, Sierra Club, WildEarth Guardians, *et al.*, Earthjustice provides the following comments to supplement those provided to the Forest Service on January 15, 2016 concerning the proposed rule to reinstate the North Fork Valley coal mining area exception to the Colorado Roadless Rule (“coal mine exception”). We request that the Forest Service consider these comments and include them in the record on that rulemaking.

This letter addresses three new assessments regarding climate change and Obama administration policies that should inform the Forest Service’s assessment of the proposed coal mine exception. Each of these reports demonstrate that approving the proposed coal mine exception would undermine our national climate objectives and conflict with the international commitments our country made as part of the historic United Nations Framework Convention on Climate Change conference in Paris in December 2015 (hereafter “Paris Agreement”). These reports thus provide additional support for choosing the “no action” alternative and rejecting the coal mine exception.

Making matters even more urgent is the fact that deeper greenhouse gas emission cuts than those agreed to in Paris will be required to prevent significant climate harms. As President Obama acknowledged last week:

the Paris Agreement alone will not solve the climate crisis. Even if we meet every target embodied in the agreement, we’ll only get to part of where we need to go.

Thus, every step taken in the direction of combusting more fossil fuels – as the coal mine exception would do – or even locking in the status quo of fossil fuel combustion, is a step in the wrong direction.¹

¹ The White House, Office of the Press Secretary, Remarks by the President on the Paris Agreement (Oct. 5, 2016), attached as Ex. 1, and available at <https://www.whitehouse.gov/the-press-office/2016/10/05/remarks-president-paris-agreement> (last viewed Oct. 9, 2016).

The first of the three new reports, entitled “The Sky’s Limit” published in September 2016 by Oil Change International, calculates how much fossil fuel can be burned under a carbon budget that will enable the U.S. and the rest of the world to avoid the most catastrophic impacts of climate change, as measured by the necessary emission reductions set in the Paris Agreement.²

The second, an article in the peer-reviewed scientific journal *Nature Climate Change*, concludes that existing federal policies and finalized regulations are insufficient to meet the nation’s greenhouse gas reduction commitments adopted in the Paris Agreement.³

The third, a report by the White House Council of Economic Advisors, confirms that current policies proposed and implemented by the Obama administration, including the currently-stayed Clean Power Plan, are insufficient to achieve the U.S.’s greenhouse gas reduction commitments agreed to as part of the Paris conference.⁴

Oil Change International’s “The Sky’s Limit” report notes that in approving the Paris Agreement on climate change, governments, including that of the United States, agreed to limit global average temperature rise to below 2°C, and to strive to limit such rise to 1.5°C. The report identifies the global carbon budget needed to reach those goals and concludes that “[t]he oil, gas, and coal in already-producing fields and mines are more than we can afford to burn while keeping likely warming below 2°C,” and that “[t]he oil and gas alone [in already producing fields] are more than we can afford for a medium chance of keeping to 1.5°C.”⁵ The report further concluded that “at current rates of emissions, the carbon budget for a likely chance of limiting warming to 2°C will be fully exhausted by 2037, and by 2025 for a medium chance at 1.5°C.”⁶ This dramatic finding underscores the urgent need to take immediate and sweeping steps to reduce greenhouse gas emissions. Merely ten more years of status quo emissions would entirely exhaust the total amount of carbon dioxide we can emit – forever – and still have even a “medium chance (50%)” of limiting global temperatures to the internationally-agreed upon 1.5°C increase above pre-industrial times.⁷ Thus, decisions that purport to merely extend the status quo

² Oil Change International, *The Sky’s Limit: Why The Paris Climate Goals Require A Managed Decline Of Fossil Fuel Production* (Sep. 2016), attached as Ex. 2, and available at http://priceofoil.org/content/uploads/2016/09/OCI_the_skys_limit_2016_FINAL_2.pdf (last viewed Oct. 9, 2016), hereafter “The Sky’s Limit report.”

³ Jeffrey B. Greenblatt and Max Wei, *Assessment of the climate commitments and additional mitigation policies of the United States*, *Nature Climate Change* (Sep. 26, 2016), attached as Ex. 3, hereafter “Nature Climate Change report.”

⁴ White House Council of Economic Advisors, *The Economic Record of the Obama Administration: Addressing Climate Change* (Sep. 2016), attached as Ex. 4, available at https://www.whitehouse.gov/sites/default/files/page/files/20160921_record_climate_energy_cea.pdf (last viewed Oct. 9, 2016), hereafter “CEA report”.

⁵ The Sky’s Limit report at ES-6.

⁶ *Id.* at 13.

⁷ *Id.* at 12-13.

for greenhouse gas emissions would in reality drive us dangerously close to expensive and destructive temperature increases. As one commentator has put it, the “The Sky’s Limit” report means that “[i]f we are serious about what we said in Paris, then no more exploring for new fossil fuels. No new mines, wells, or fossil fuel infrastructure. And rapid, managed decline in existing fossil fuels.”⁸

The Forest Service’s proposed coal mine exception, the effect of which would be to allow Arch Coal and potentially other companies to conduct new coal exploration, acquire new leases, and to expand the life of the West Elk coal mine for additional decades, thus would undercut the nation’s national commitments to prevent the worst impacts of climate change at a time when meeting those commitments requires prompt decisive action to limit new fossil fuel development.

Nature Climate Change’s recent article, entitled “Assessing the climate commitments and additional mitigation policies of the United States,” models the greenhouse gas impacts of the Clean Power Plan and other federal policies in order to assist policymakers as the U.S. strives to meet the Paris Agreement’s climate targets.⁹ The article explains that to achieve those emission reduction targets, the U.S. and other countries established “intended nationally determined contributions” (“INDCs”). In addition to setting a greenhouse gas reduction target of 26-28% below 2005 levels by 2025, the U.S. INDC outlined specific steps for achieving those reductions, including existing and planned policies addressing light- and heavy-duty vehicles, appliance and equipment standards, building codes, electricity generation, and methane emissions, among others.¹⁰ The Nature Climate Change article provides a thorough accounting of existing and proposed federal policies (including those noted in the U.S. INDC), uses updated methane emissions estimates to reflect current scientific understanding, and estimates greenhouse gas savings and uncertainty ranges for each policy.¹¹ This study concludes that even if all existing Obama Administration policies aimed at reducing climate pollution are implemented, additional reductions are very likely required to reduce U.S. greenhouse gas emissions to the 2025 INDC target of 26-28% below 2005 levels.¹² This is at least the second study to conclude that current administration policies and proposals are likely insufficient to achieve the 2025 INDC targets.¹³

⁸ David Roberts, “No country on Earth is taking the 2 degree climate target seriously,” VOX (Oct. 4, 2016), attached as Ex. 5, and available at <http://www.vox.com/2016/10/4/13118594/2-degrees-no-more-fossil-fuels> (last viewed Oct. 9, 2016).

⁹ Nature Climate Change report at 1.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* at 3.

¹³ See Doug Vine, Center for Climate and Energy Solutions, Achieving the United States’ Intended Nationally Determined Contribution (July 2016),), available at <http://www.c2es.org/docUploads/achieving-us-indc.pdf> (last visited Oct. 9, 2016). The undersigned submitted this report to you on August 5, 2016.

Even the most optimistic view of the many scenarios modeled by the article's authors indicates that achieving targeted emissions levels requires full and timely implementation of all proposed policies and favorable assumptions for all parameters.¹⁴ A more likely scenario is that implementing existing policies (including the now stayed Clean Power Plan) would create an emissions gap (the amount needed to bring expected emissions down to 26-28% of 2005 levels by 2025) of 551 to 1,805 MtCO₂e, or 8.7% to 24.4% of 2005 emission levels.¹⁵ This means, essentially, that the U.S. must implement policies that reduce greenhouse gas emissions over and above every currently proposed Obama Administration policy. Adopting a policy that moves the nation in the opposite direction – as the coal mine exception does by increasing the greenhouse gas emissions by an additional 131 million tons over the life of the rule – will make the job of achieving the U.S.'s INDCs even more difficult.

Finally, the findings in Nature Climate Change are reinforced by the Obama administration's own findings in the Council of Economic Advisors ("CEA") recent report entitled "The Economic Record of the Obama Administration: Addressing Climate Change."¹⁶ CEA's report assesses how Obama administration policies line up with the administration's future emission reduction targets, including those in the Paris Agreement. The CEA concludes that even full, timely implementation of every Obama Administration policy aimed at reducing carbon pollution (including the Clean Power Plan and others that have not yet been implemented) still requires optimistic assumptions for carbon sequestration by land sinks in order to reduce U.S. greenhouse gas emissions 22%-27% of 2005 levels.¹⁷ Thus, even the administration's own projections, based on an admittedly optimistic set of assumptions, could still fall short of the Paris Agreement commitment to reduce emissions to 26-28% of 2005 levels by 2025.

The Forest Service's proposed coal mine exception would undermine not only the nation's greenhouse gas reduction targets, but also national commitment to clean energy development. The CEA report describes this administration's long-standing and substantial investments in renewable energy encouraged by federal policies that promote research, development, and deployment of renewables such as wind and solar technologies.¹⁸ These policies include, for example, investments in renewables as part of the American Recovery and Reinvestment Act, extending tax credits for renewables in 2015, and programs that guarantee loans and provide cash grants for renewable projects.¹⁹ The Obama administration has set a goal to approve 20,000 megawatts of renewable energy production capacity on public lands by 2020 and committed to bring one gigawatt of solar energy to low and moderate income families by that same year.²⁰

¹⁴ *Id.* at 2.

¹⁵ *Id.*

¹⁶ CEA report at 47-51.

¹⁷ *Id.* at 49.

¹⁸ *Id.* at 16.

¹⁹ *Id.* at 16-17.

²⁰ *Id.* at 17.

The coal mine exception would – by the Forest Service’s own admission – keep 40,000 gigawatts of renewable energy out of the U.S. marketplace by subsidizing coal consumption.²¹

All three of these reports provide additional evidence that the Forest Service should reject the proposed coal mine exception because that proposal conflicts with our national commitment to reduce greenhouse gas emissions made as part of the historic Paris Agreement in December 2015, and makes the worst impacts of climate change more likely. At a minimum, these reports, each released in September 2016, provide new evidence that the coal mine exception will conflict with United States’ obligations to address climate change per the Paris Agreement, a conflict that must be disclosed and explained to the public pursuant to the National Environmental Policy Act and Executive Order 12,866.²²

Thank you for your attention to this matter. If you have any questions about the issues raised in this letter, please call me at 303-996-9622.

Sincerely,



Edward B. Zukoski, Staff Attorney

Attorneys for High Country Conservation Advocates *et al.*

cc: The Hon. Tom Vilsack, Secretary, U.S. Department of Agriculture
Mr. Robert Bonnie, Under Secretary, U.S. Department of Agriculture
Mr. Tom Tidwell, Chief, U.S. Forest Service
Mr. Neil Kornze, Director, Bureau of Land Management
Mr. Jim Laity, Chief, Natural Resources and Environment Branch, Office of Information and Regulatory Affairs

²¹ Forest Service, Rulemaking for Colorado Roadless Areas, Supplemental Draft Environmental Impact Statement (Nov. 2015) at 96 (Table 3-19) and 97.

²² See 40 C.F.R. § 1506.2(d) (EISs must discuss inconsistencies with state law); 40 C.F.R. § 1508.27(b)(10) (when examining whether actions are “significant” within the meaning of NEPA, agencies must consider whether the action “threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.”); Executive Order 12,866 (Sep. 30, 1993), Sec. 1(b)(10) (“[e]ach agency shall avoid regulations that are inconsistent [or] incompatible” with the regulations of any other agency); *id.* at Sec. 2(b) (the Office of Management and Budget must “ensure ... that decisions made by one agency do not conflict with the policies or actions taken or planned by another agency.”); *id.* at 6(b) (“The Administrator of OIRA [Office of Information and Regulatory Affairs] shall provide meaningful guidance and oversight so that each agency’s regulatory actions are consistent with applicable law, the President’s priorities, and the principles set forth in this Executive order and do not conflict with the policies or actions of another agency.”).

Mr. Brian Ferebee, Associate Deputy Chief for the National Forest System, U.S. Forest Service

Mr. Scott Armentrout, Supervisor, GMUG National Forest

Mr. Bob Randall, Exec. Dir., Dep't of Natural Resources, State of Colorado

Mr. Shaun McGrath, Administrator, EPA Region VIII

Ms. Barb Sharrow, Field Manager, Uncompahgre Field Office, BLM

Mr. Lonny R. Bagley, Deputy State Director, Colorado State Office, BLM

TABLE OF EXHIBITS

- Exhibit 1. The White House, Office of the Press Secretary, Remarks by the President on the Paris Agreement (Oct. 5, 2016).
- Exhibit 2. Oil Change International, The Sky's Limit: Why The Paris Climate Goals Require A Managed Decline Of Fossil Fuel Production (Sep. 2016).
- Exhibit 3. Jeffrey B. Greenblatt and Max Wei, Assessment of the climate commitments and additional mitigation policies of the United States, Nature Climate Change (Sep. 26, 2016).
- Exhibit 4. White House Council of Economic Advisors, The Economic Record of the Obama Administration: Addressing Climate Change (Sep. 2016).
- Exhibit 5. David Roberts, "No country on Earth is taking the 2 degree climate target seriously," VOX (Oct. 4, 2016).