



February 17, 2012

Don Simpson, State Director
Bureau of Land Management
5353 Yellowstone Road
P.O. Box 1828
Cheyenne, WY 82003

RE: Request for State Director Review of the Decision Record (DR) and Finding of No Significant Impact (FONSI) for the Scott Well #2 Project

Dear Mr. Simpson,

On behalf of the Wyoming Outdoor Council, Greater Yellowstone Coalition and Dubois residents Elaine Casteel and Ted Waldron, and in accordance with 43 C.F.R. § 3165.3(b), I request state director review of the DR/FONSI for the Scott Well #2 Project (EA: WY-050-EA10-101), Shoshone National Forest, Wind River District and Bureau of Land Management, Lander Field Office in Fremont County, Wyoming.

The Wyoming Outdoor Council is the oldest, independent conservation organization in Wyoming. Since 1967 it has worked to safeguard public lands, wildlife and environmental quality in Wyoming. Founded in 1983, the Greater Yellowstone Coalition is dedicated to protecting the lands, waters and wildlife of the Greater Yellowstone Ecosystem for current and future generations. Ms. Casteel and Mr. Waldron are residents of Dubois who are concerned about impacts to water quality that could result from drilling Scott Well #2. Both have been active participants in the administrative process associated with this proposed well by attending open houses and meetings, submitting comments to the Forest Service, writing letters to the editor of the Dubois Frontier, circulating petitions, and requesting more information from BLM about water quality concerns.

I. The BLM failed to include all relevant subsurface information in the Scott Well #2 EA.

The named organizations and citizens (hereinafter “Appellants”) contend the public was not fully informed of the potential risks drilling of Scott Well #2 could pose to ground and surface water and were not given any details regarding safeguards that BLM would require to protect water resources. The Forest Service and BLM had an obligation pursuant to the National Environmental Policy Act (“NEPA”), 43 U.S.C. § 4321 et seq., to include this relevant information in the joint environmental assessment (“EA”) the agencies prepared—the same EA the BLM references in its DR/FONSI. See January 24, 2012, Finding of No Significant Impact

and Decision Record (Exhibits 1 and 2). Failure to include any information about the Scott Well #2 down-hole drilling proposal (e.g. depth of target formation, casing depth, location and depth of aquifer(s), and types of drilling muds and chemicals that would be used, etc.) and failure to include a robust disclosure and analysis of the project’s potential to impact surface and ground water violated NEPA. Final authorization of the application for permit to drill (“APD”) should not proceed until these errors are remedied.

The Supreme Court recognized that with the passage of NEPA, Congress sought to “prevent or eliminate damage to the environment’ . . . by focusing government and public attention on the environmental effects of proposed agency action.” Marsh v. Oregon Natural Resources Council, 490 U.S. 360, 371 (1989) (citations omitted). “By so focusing agency attention, NEPA ensures that the agency will not act on incomplete information, only to regret its decision after it is too late.” Marsh, 490 U.S. at 371. As such, NEPA requires the Forest Service and BLM to take a “hard look” at the environmental impacts drilling Scott Well #2 could have on ground and surface water. Kleppe v. Sierra Club, 427 U.S. 390, 410, n. 21 (1976). It also requires all relevant information be shared with the public. Without this information the public cannot understand the risks or provide meaningful input to the agencies. Neither of NEPA’s dual purposes—fostering informed agency decision-making and ensuring meaningful public participation—was realized in this situation. See Robertson v. Methow Valley Citizens Council, 490 U.S. 332, 349 (1989) (explaining that NEPA “guarantees that the relevant information will be made available to the larger audience that may also play a role in both the decisionmaking process and the implementation of that decision.”)

1. Procedural History

The Wyoming Outdoor Council and Greater Yellowstone Coalition have been actively involved with this issue since 2009. The extent of this involvement is detailed in the appeal filed with the Forest Service on June 9, 2011. Please see Appeal of the SUPO Authorization for Scott Well #2 at 1-5 (Exhibit 3). Of the four issues we asked the Forest Service to consider in that appeal, one was failure of the agency to include any down-hole information in the EA. In the decision denying our appeal, Supervisor Alexander cited the Appeal Reviewing Officer’s finding that, “It is not the responsibility of the Forest Service to analyze down-hole information.” Recommendation for Scott Well #2 Decision Notice Appeal 11-02-10-0029 at unnumbered p. 7 (Exhibit 4.)

Appellants understand the bifurcation of responsibilities between the Forest Service and BLM when oil and gas operations are proposed on national forest land. We disagree with the assumption, however, that the technical details of subsurface drilling operations are not relevant to the SUPO, as an engineering or mechanical failure, a well blow out, or a chemical spill surely would put ground and surface waters at risk, and potentially human health—resources that are within the purview of the Forest Service.

The Forest Service claimed the entire responsibility for addressing down-hole information lies with the BLM stating, “In accordance with Onshore Oil and Gas Order Number 1, the Forest Service approves the SUPO and the BLM approves the APD. The BLM will issue a separate decision on the approval once the Forest Service’s SUPO decision has gone through the

appeal process.” Recommendation at unnumbered p. 7 (citing Forest Service Decision Notice at 2.) The Recommendation also states, “The SUPO will be part of the APD package that the BLM will receive. Along with the SUPO, a drilling plan will be attached as well. This drilling plan will address many of the appellants’ concerns, such as types of drilling muds, depth of drilling, casing program and cementing.” Id.

Even assuming the Forest Service is correct in its assertion that it had no responsibility to include down-hole drilling information in the EA and that this information has no relevance to its responsibility to safeguard water resources—an assertion Appellants disagree with—the BLM was clearly remiss in not including it in the EA for which it jointly claims responsibility. That the drilling plan might have been attached to BLM’s “APD package” as the Forest Service’s Appeal Reviewing Officer suggested, is not a substitute for including this information within the EA itself. The public should have been able to review all relevant information in the EA and have the opportunity to comment upon it. NEPA requires the BLM to include this information in the only EA it knew would be prepared prior to its authorization of the APD. See 40 C.F.R. §§ 1508.9(a)(1) and (b) (providing that EAs must “provide sufficient evidence and analysis” to determine if impacts are significant and shall provide a discussion of the environmental impacts of the proposed action).

Given the wholesale omission of even the most basic down-hole information and the failure to provide a thorough discussion of surface and ground water resources in the EA, Appellants and other citizens in Dubois were left with numerous relevant questions and concerns. Appellant Ms. Casteel said she and others in Dubois were “very much concerned about the safety of our town water supply and how it could be affected by the drilling.” Email from Ms. Casteel to Lisa McGee, August 4, 2011 (Exhibit 5). She explained, “The wells that furnish our town with water are not that far from the drilling site and we want to be assured that our water is not compromised in any way.” Id.

Appellant Mr. Waldron wrote a letter to the editor of the Dubois Frontier on August 1, 2011 urging fellow citizens to sign a petition that read: “We the undersigned residents of Dubois urge the BLM to see that Scott Well #2 is properly cased to a depth below our lowest town water well. We also urge that the standard industry practice of lowering a camera the length of the casing be used to confirm its integrity.” His letter to the editor is attached as Exhibit 6. Copies of the petition were posted in the Town Hall, The Headwaters Center, The Museum and other “frequented locations in town.” Id. In all, 75 citizens signed the petition, a copy of which is attached as Exhibit 7.

In response to residents’ concerns, the mayor of Dubois, Ms. Twila Blakeman invited representatives from the BLM’s Lander Field Office to a town meeting on August 8, 2011. Roughly 17 people attended this mid-day meeting. The BLM’s Stuart Cerovski and John Kaminsky provided some information in response to questions about aquifer depth, location of drinking water sources from the proposed well, depth of target formation, casing and well bore integrity, risks to the water supply, and they explained why hydraulic fracturing likely wouldn’t be used given the geology of the area. The Dubois Frontier article that summarizes this meeting is attached as Exhibit 8. This information, while useful, fell short of what should have been properly included and thoroughly addressed in the EA.

2. The BLM had a responsibility to provide adequate down-hole information in the Scott Well #2 EA prior to authorizing the APD.

It is not clear whether the BLM considered the August 8, 2011 town meeting a substitute for including important and controversial information in the EA. If so, it was an erroneous assumption. NEPA requires federal agencies contemplating actions that may affect the environment to publish all relevant information in an EA or EIS and to solicit public review and comment.¹ The topics raised during the Dubois town meeting are some of the very topics an environmental assessment is designed to address. Including all relevant information in an EA ensures the entire public—not just 17 people who are able to attend a meeting—will benefit from the information. Even more important, NEPA’s comment opportunity allows citizens to ask questions and raise concerns based on a review of the agencies’ research and analysis. These formal comments may ultimately influence the agencies to require further environmental safeguards.²

In response to their request to BLM to include relevant down-hole information in the EA, Appellants were told by BLM on various occasions that 1) some of the information was proprietary, and 2) this kind of information is never included in NEPA documents—or if it is, then it is only within environmental impact statements, not EAs. Pers. comm. 6/1/11 (noted in Forest Service Appeal at 11) (Exhibit 3). Appellants explained they had no interest in proprietary information, but all aspects of the proposal that posed a risk to public lands, municipal water and human health should be disclosed and analyzed in the EA.

Although BLM addressed some of these topics specific to down-hole operations during the August 8, 2011 town meeting—suggesting this information was largely not proprietary—the BLM never added to or supplemented the EA prior to authorizing the Scott Well #2 APD. Further, contrary to the BLM’s statement that this type of information is not included in environmental assessments, we offer an example of an EA—released the same month as the Scott Well #2 EA—that addressed these very issues in the context of a proposed oil and gas exploration project in Colorado. See U.S. Fish and Wildlife Service. 2011. Environmental Assessment of Proposed Oil and Gas Exploration, Baca National Wildlife Refuge, Saguache County, Colorado, April 2011 (“Baca EA”) (Exhibit 9). Appellants include the following detailed excerpt to illustrate the type of relevant down-hole information that was properly included in the Baca EA and as an example of the kind of information that should have been included in Scott Well #2 EA.

Once the rig is ready, a 17.5-inch-diameter hole will be drilled to approximately 350 feet, at which point a string of 13.38-inch-diameter surface casing would be

¹ See 40 C.F.R. §1500.1(b). “NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken. The information must be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA.” Id. See also 40 C.F.R. §1508.9 (defining an EA as a “public document” that discusses the “environmental impacts of the proposed action”).

² See 40 C.F.R. §1500.1(c). “The NEPA process is intended to help public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment.” Id.

set and cemented from total depth to the surface (Figure 1-4). After the surface casing is set, a blowout preventer (BOP) will be attached to the top of the surface casing. A blowout is an uncontrolled release of subsurface fluids (oil, gas, water) to the surface, which if ignited could cause a dangerous or hazardous fire. Through a system of hydraulically activated valves and manifolds, the BOP is designed to shut the well in and also allow fluid to be pumped into the hole and stop the uncontrolled release of fluids (i.e., to “kill” the well). BOPs are required by COGCC rule, and conditions of the drilling permit approval specify the pressure rating of the BOP, which depends on potential subsurface conditions. COGCC rules also require testing of the BOP before drilling out from the surface casing.

Drilling fluid or mud would be circulated through the drill pipe to the bottom of the hole, through the bit, up the bore of the well, and finally to the surface. When the mud emerges from the hole, it would pass through a series of equipment used to screen and remove drill cuttings (rock chips) and sand-size solids. When the solids have been removed, the mud will be placed into holding tanks and, from the tank, pumped back into the well. The mud would be maintained at a specific weight and viscosity to cool the bit, seal off any porous zones (thereby protecting aquifers or preventing damage to producing zone productivity), control subsurface pressure, lubricate the drill string, clean the bottom of the hole, and bring the drill cuttings to the surface (Moore 1974). There are three common types of drilling fluids: water-based, oil-based, and synthetics. Water-based muds are the most common and are largely made up of water and bentonite, a naturally occurring clay that has special properties used to maintain proper viscosity and other properties over a wide range of drilling conditions. Lexam’s drilling operations will use water-based drilling fluids.

Upon drilling out of the surface casing, the well would be deepened to a depth of approximately 3,000 feet. At that point, a 9.63-inch intermediate casing string (Figure 1-4) would be placed in the hole and cemented in from total depth to the surface in accordance with COGCC rules and the permits to drill. The intermediate casing would be used to protect the deep (confined) and shallow (unconfined) aquifers (actually all usable ground water as it extends from below the deep aquifer to surface) and ensure stability of the hole as the well is deepened to its target depth. To provide additional protection for the aquifers, the 3,000-foot depth for the intermediate string is a permit condition irrespective of surface management issues. The COGCC has authority under Rule 317 to set casing and cementing requirements to protect aquifers. The 3,000-foot depth of the intermediate aquifer protection casing was added as a condition of the drilling permits by the COGCC at the specific request of the Service.

After the intermediate casing is set, the well would be deepened (hole size 8.75 inches to total depth), and prospective zones would be evaluated if encountered while drilling. Rock cores may be obtained depending on data derived during drilling. The expected total depth is approximately 14,000 feet, and once the total

depth is reached, geophysical wire-line well logs would be run. If warranted, formation productivity tests (drill stem tests or wire-line formation tests) would be conducted on prospective zones. Data from logging and testing would support a determination as to the commercial potential of the zone(s) of interest. If the zones are deemed not to be commercially productive, the well would be plugged and abandoned according to COGCC regulations. If tests indicate commercial productivity, 5.5-inch production casing (Figure 1-4) would be run and set according to COGCC rules.

Id. at 39, 42.

In four short paragraphs, the Baca EA offers citizens crucial information about drilling depth, aquifer depth, the extent to which the well will be cased, a description of the blowout preventer, what type of drilling muds will be used (in this case water based muds, rather than oil-based or synthetic) and that holding tanks would be employed to collect the muds (rather than open pits). In contrast, the Scott Well #2 EA offers absolutely no information about the down-hole aspects of the drilling proposal. The utter failure to address an environmentally relevant issue is the quintessential violation of NEPA.

The Baca EA also contains extensive information about surface and ground water in the affected environment portion of the document. See id. at 84-114. There are charts and graphs representing relevant USGS surface water quality data, locations at which baseline surface water sampling was conducted around the project area, results of the baseline surface water samples and patterns of surface water flow data, to name just a few. The Baca EA identifies “two relatively distinct aquifers.” Id. at 93. It includes conceptual representations of relevant hydrologic formations, an illustration of the aquifer system, graphs showing stratigraphic layers in the aquifers, data regarding seasonal and long-term trends of groundwater levels, and baseline data collected to ascertain groundwater quality. Id. at 94-114. In the environmental effects section, the Baca EA draws informed conclusions based on the data obtained that the initial casing proposal would not be sufficient to protect the deeper of the two aquifers. Id. at 168-172. As a result, it required more extensive casing. This is explained in the excerpt below:

The information on the deep confined aquifer indicates that it is not and will not likely be used for water supply because of its degraded water quality and low well yields. Further, ground water flow from that layer into shallower and more commonly used layers is likely to be very slow, except along vertical fractures where ground water flow would increase between layers. However, there is evidence that the bottom of Layer #4 of the deep confined aquifer extends beyond a depth of 3,500 feet in the Baca Graben area (CDWR 2004). If the entire deep aquifer is not cased off, the potential for contaminants to enter the aquifer and migrate into shallower units becomes much higher.

All of this information on the deep confined aquifer suggests that the 3,000-foot intermediate casing, implemented by alternative A, cannot definitively provide protection to the deep confined aquifer. Information on the confined aquifer indicates water does flow upward from deeper to shallower layers. The upward

flow is very slow in most places but can be accelerated where faulting is present; therefore, potential contamination of the deep confined aquifer would present a threat to shallower units sooner or later. In addition, if contamination does make it into the unconfined and confined aquifer Layers #2 and #3, the impact would spread down-gradient toward the valley center based on ground water flow directions beneath the project area.

The Service will require that the aquifer is cased 500 feet beyond the bottom of the Layer #4 of the confined aquifer under protective measure #12, to reduce any risk of contamination to the aquifer from the proposed exploration to negligible and non-significant levels. Current information suggests that the bottom of Layer #4 is at 3,750 feet or greater below the surface. However, an independent professional geologist that is approved by the Service will be required to be present to confirm when the appropriate depth has been reached based on lithographic data collected from drilling logs.

Id. at 172. We emphasize this information was presented in an EA, not an environmental impact statement (EIS).

In contrast, the Scott Well #2 EA offers no useful information about the affected environment as it relates to water resources. It simply identifies three streams in the analysis area: Tappan, Brent and Little Horse Creek and notes that “there are groundwater seeps and springs within the analysis area.” Scott Well #2 EA at 36-7. There are no baseline water quality data included—or any assurance that this will be a definitive requirement—even though the EA mentions, “baseline water quality data may be required prior to ground disturbing activities.” Id. at 13. There are no maps and there is no narrative portion of the EA that discusses the location of the streams or ground water resources in relation to the proposed drilling site.

In the environmental consequences section of the EA, there is no information regarding the protection of water resources that would result from BLM’s casing and operational requirements. In one lone paragraph, the agencies offer a litany of water contamination disasters that could result from the proposal. Id. at 41. Without any support for its startling conclusion, the EA states that design features—features that are barely mentioned let alone analyzed—will “mitigate” these concerns:

[D]rilling and production activities would require the use of chemicals, e.g., diesel fuel, oils and greases, drilling mud. These materials could be actively being [sic] used or could be in on-site storage for future use. Equipment using chemicals and chemicals in storage could leak and be exposed to overland flow or infiltrate and percolate through the soil to the groundwater. Chemicals used during drilling activities could contaminate groundwater resources prior to setting of the well casing. Chemicals used during production activities could contaminate groundwater resources. Surface and sub-surface contamination from drilling and production activities could reach Tappan Creek directly or indirectly. The project design features, such as water quality monitoring and reporting, spill contingency plans and casing within the borehole, allow for control and management of these

activities and the chemicals associated with them, and thus mitigate this concern. Therefore, selection of this alternative would not result in any direct or indirect effects on surface or groundwater purity in the project or analysis area.

Id. at 41-2.

BLM has said it's unlikely, but has not completely ruled out the possibility that Scott Well #2 might involve hydrofracturing, or "fracking." This possibility is not addressed in the EA. Any and all chemicals and constituents that might be used in the drilling and/or fracking process, except trade secrets or confidential business information, should have been included in the EA for public review and comment. The Baca EA for example provides tables that list Potential Oil and Chemical Spill Contaminants and Potential Drilling Waste Contaminants. Baca EA at 45-47, Tables 1-2 and 1-3.

The lack of basic information about water resources, and absolutely no mention whatsoever about subsurface drilling plans, fracking risks and associated chemical constituents, and the down-hole operational safeguards BLM would impose is wholly inadequate to meet NEPA's "hard look" standard. As one court explained, had BLM simply chosen an analytical methodology different than the one Appellants advocated, or come to a conclusion that Appellants didn't agree with, but that was supported with sufficient supporting material, deference would likely have been granted to the agency. Or. Nat. Desert Assoc. v. BLM, 625 F.3d 1092, 1121 (9th Cir. 2010). Instead, the BLM in that case had wholly omitted important information. The court found it could not "defer to a void." Id. Similarly, in reviewing the adequacy of the EA at issue here, the BLM State Office should not and indeed cannot permit or accept a highly relevant void in its NEPA analysis.

3. Conclusion

Wyoming citizens live with the presence of extensive oil and gas development on the public lands we value and sometimes even in our very backyards. Most citizens recognize the important economic contributions oil and gas development brings to our state, but most also believe it can be done better, and extractive processes should not put people's health and safety at risk. Wyoming citizens have learned some hard lessons over the past decade. With tens of thousands of new wells proposed across Wyoming in the coming years, citizens expect agencies with oversight authority to ensure any new drilling authorizations reflect these lessons learned.

For example, well water contamination has been documented in the Pinedale Anticline area and in the towns of Pavillion and Clark, Wyoming. The 2006 well blowout in Clark caused irreparable damage to the community's drinking water supply. This contamination is still not remediated. In addition, while not attributable to a single event or a single operator, it is probable that something occurred in the course of drilling for natural gas in Pinedale and Pavillion that resulted in hydrocarbon and hydrofracturing fluid presence in water wells. Although few agree about how this occurred, no one denies the water sampled now contains toxic substances no reasonable person would feel safe ingesting. Understandably, given the toxicity of the substances at issue and the difficulty (or impossibility) of remediating a contaminated aquifer, any new drilling proposal that could affect drinking water is a frightening prospect for citizens.

To counter any notion that spills, contamination of water resources and other mistakes are extremely rare or isolated, Appellants have included a Feb. 8, 2012 report by Democratic staff of the House Natural Resources Committee entitled, “Drilling Dysfunction, How the Failure to Oversee Drilling on Public Lands Endangers Health and the Environment.” This is attached as Exhibit 10. From documents obtained from the Department of the Interior, the authors of the report found, “There were 2,025 safety and drilling violations issued to 335 companies drilling in seventeen states between February 1998 and February 2011.” Id. at 4. Of these violations, nearly half—a total of 810—occurred in Wyoming. Id. at 22. It is clear from this report that mistakes happen and unfortunately, they are quite common in Wyoming.

Notably, some of the very topics Appellants contend the BLM should have addressed and analyzed in the Scott Well #2 EA comprise the largest percentage of the major environmental violations the report documents:

Of the major environmental or safety violations . . . 87 percent were issued because safeguard systems were not installed or functional. These safeguards were related to drilling mud (used to control the pressure in the well), the flare system (used to eliminate waste gas), cementing and casing (used to isolate water zones) and well control equipment, including blowout preventers.

Id. at 16. Consequently, that a discussion of these safeguards was not included in any section of the EA constitutes an error we ask BLM to remedy.

Appellant Mr. Waldron offered his perspective in a recent email. It is one all of the Appellants share:

From my vantage point the issue is a simple one. Dubois needs to be assured that our three wells will not be compromised. A cursory look at a topo map will make it obvious that any liquids from Scott Well #2 will drain down the Tappan and Burroughs drainages and enter Horse Creek approximately two miles above our three town wells. Horse Creek flows past and feeds our three shallow wells. That they are shallow wells is worthy of note because they are all less than 100 feet deep. Water from Horse Creek has no filtering barrier; it flows into our wells.

[D]ubois has no recourse but to act prior to drilling to protect its interest. I think reasonable people will understand this, even those who are in favor of drilling. The issue is not about supporting or opposing drilling, it is about the right of a community to act to protect its drinking water source.

Email from Ted Waldron to Lisa McGee, Feb. 10, 2012 (Exhibit 11).³ The community cannot ensure its drinking water source is protected without first having access to all relevant

³ In a subsequent email Mr. Waldron urges our inclusion of “a topo map that shows Scott Well #2, the three town wells and Tappan Cr. And Burroughs Cr. Flowing into Horse Creek” in this filing. Email correspondence from Ted Waldron to Lisa McGee, Feb. 10, 2012 (Exhibit 12). He also references a geology book in the Dubois Museum that

information about the resources at risk and the safeguards that BLM can and should require to minimize those risks.

4. Request for relief

As State Director, Appellants ask you to require the Lander Field Office to supplement the Scott Well #2 EA. Any and all relevant down-hole, subsurface, geologic and hydrologic information should be included in the supplement, as well as a thorough discussion of the operational standards to which the company will adhere and any additional safeguards the BLM could require of the company (e.g. more extensive well bore casing/cementing to protect aquifers, monitoring well bore cement integrity with a camera, or holding any cuttings, muds or fluids in contained tanks rather than a lined pit.) It should also disclose and discuss the potential (or unlikelihood) that the well would be fracked. If any information is ultimately deemed proprietary, that should be stated definitively in the EA.

Appellants encourage the BLM to reference the Baca EA as model for the kind of supplemental information that should be included in Scott Well #2 EA. The Shoshone National Forest and the citizens of Dubois are no less deserving of a transparent review and thorough analysis as the Baca National Wildlife Refuge. After BLM provides this information, the public should have an opportunity to review and comment upon it. Based on its review of public comments, Appellants ask BLM to consider, if appropriate, mandating additional safeguards or changes to the proposal that offer greater protections of water resources and human health.

Thank you for considering this request.

Sincerely,

Lisa McGee, Staff Attorney
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937 Sandcherry Way
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And on behalf of:

“illustrates clearly that they will be drilling into and through sandstone, a very porous sediment” that he believes contains important information about the risks to groundwater resources as a result of drilling the well. Id.

Mr. Waldron’s suggested references are important. It is not the responsibility of citizens, however, to provide these to the agency. Appellants ask the BLM to include any and all relevant maps and geologic information in a supplemental EA, which it should have done in the original EA. As one court has stated, “Compliance with NEPA is a primary duty of every federal agency; fulfillment of this vital responsibility should not depend on the vigilance and limited resources of environmental plaintiffs.” Friends of the Clearwater v. Dombeck, 222 F.3d 552, 559 (9th Cir. 2000.)

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