



United States Department of the Interior



BUREAU OF LAND MANAGEMENT
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In Reply Refer To:
3100 (UT922000)

February 8, 2019

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DECISION

Stephen H. M. Bloch :
Laura Peterson :
Landon Newell : Protest to the Inclusion of 15
Southern Utah Wilderness Alliance et. al. : Parcels in the December 11, 2018
425 East 100 South : Competitive Oil and Gas Lease Sale
Salt Lake City, UT 84111 :

Protest Dismissed

On October 25, 2018, the Bureau of Land Management (BLM) Utah State Office posted a Notice of Competitive Oil and Gas Lease Sale (NCLS) that identified 105 parcels the BLM intended to offer for oil and gas leasing at a competitive lease sale to be held on December 11, 2018 (December 2018 Lease Sale).¹ The NCLS also provided formal notice of a 10-day public protest period for the December 2018 Lease Sale, which ended on November 5, 2018. By letter received on November 5, 2018, the Southern Utah Wilderness Alliance, The Wilderness Society, Western Watersheds Project, Center for Biological Diversity, WildEarth Guardians, Waterkeeper Alliance, Green River Action Network, and Living Rivers & Colorado Riverkeeper (collectively SUWA) jointly submitted a timely protest to the inclusion in the sale of the following 15 parcels² located on public lands administered by the BLM’s Monticello Field Office (DOI-BLM-UT-Y020-2018-0058-DNA):

UTU93721 (UT1218-300)	UTU93724 (UT1218-303)	UTU93732 (UT1218-328)
UTU93722 (UT1218-301)	UTU93730 (UT1218-326)	UTU93733 (UT1218-329)
UTT93723 (UT1218-302)	UTU93731 (UT1218-327)	UTU93734 (UT1218-330)

¹ 19 of the 105 parcels are located within the Monticello Field Office.

² SUWA also included in the list of “parcels” protested two “sold but not issued” (SNI) leases that were included in the DNA as having been found to have been adequately analyzed in the referenced NEPA documents and potentially, after an official decision to that effect is signed, could be issued. These two SNI leases were not included in the NCLS and were not part of the December 2018 Lease Sale, and thus cannot be protested.

UTU93735 (UT1218-333)
 UTU93743 (UT1218-361)

UTU93744 (UT1218-362)
 UTU93745 (UT1218-363)

UTU93746 (UT1218-364)
 UTU93747 (UT1218-365).

For the reasons set forth below, the protest is dismissed:

Protest Contention 1: BLM Failed to Provide Meaningful Opportunity for Public Participation under NEPA and FLPMA...Because the entire process of identifying, reviewing, and offering oil and gas lease sales for BLM's December 2018 leasing process is fundamentally compromised by the unlawful provisions of IM 2018-034, BLM must defer all parcels in the December 2018 lease sale

Protest Response 1: BLM acknowledges the District of Idaho's preliminary injunction (PI) of portions of BLM IM 2018-034 as it applies to all potential lease parcels in sage grouse habitat management areas. However, since the PI is not a final order and the parcels at issue in the protest are outside of such areas, the public comment period associated with the NCLS remains unchanged under IM 2018-034, and thus, there was no need to defer parcels from the December 2018 Lease Sale.

Protest Contention 2: BLM's Treatment of Cultural Resources Violated the National Historic Preservation Act (NHPA)...BLM Failed to Make a Reasonable and Good Faith Effort to Identify Cultural Resources... BLM's No Adverse Effect Determination is Unsupported and Arbitrary...BLM's standard Cultural Stipulation is discretionary and only protects resources on the lease, not within the APE of resources off the lease.

Protest Response 2: In this Protest Contention, SUWA quotes and paraphrases Section 106 of the NHPA and its implementing regulations found at 36 C.F.R. Part 800. The copying of these references is informative to the reader; however the reference to these regulations appears intended to imply that they were not followed. This implication is factually incorrect. BLM's compliance with these regulations is shown in detail in BLM's cultural resource report and listed in the NEPA documentation. As described in BLM's cultural resource report, BLM met the NHPA requirements through:

1. Completion of the consultation process outlined 36 C.F.R. § 800.2 – *Participants in the Section 106 Process*. Which included consultation with Tribes, local governments, federal agencies, the State Historic Preservation Officer (SHPO), and numerous environmental groups (including SUWA),
2. BLM's declaration of the undertaking in 36 C.F.R. § 800.3 *Initiation of the section 106 process*, as listed in BLM's cultural resource report,
3. Completing consultation for the Area of Potential Effect found in 36 C.F.R. § 800.4 *Identification of historic properties*, which is formally documented in BLM's cultural resource report,
4. Completion of good faith and reasonable identification effort which meets the parameters listed in 36 C.F.R. § 800.4 *Identification of historic properties and* which follows the guidance within the Advisory Council on Historic Preservation's document titled *Meeting the "Reasonable and Good Faith" Identification Standards in Section 106 Review*, all of which is found in BLM's cultural resource report,

5. The application of 36 C.F.R. § 800.5 – *Assessment of adverse effects* to the undertaking by analyzing each oil and gas lease parcel through a reasonably foreseeable development scenario, which is documented in BLM’s cultural resource report and,
6. After completing the consultation process and analyzing the known cultural resource information, development and use potential, environmental setting, and protective oil and gas lease stipulations for cultural resources, the BLM found that each of the subject oil and gas lease parcels could be leased without adverse effects to historic properties. The BLM then wrote a letter to the Utah State Historic Preservation Office (SHPO) with BLM’s finding of “no adverse effect”. The SHPO concurred with BLM’s finding on October 25, 2018.

In summary, BLM fully complied with Section 106 of the National Historic Preservation Act with respect to the protest parcels.

The BLM conducted a reasonable and good faith effort to identify historic properties in connection with the December 2018 Lease Sale as the process is described in 36 C.F.R. § 800.4(b) (1). The regulation sets out several factors an agency must consider in determining what is a “reasonable and good faith effort” to identify historic properties. “The agency official shall take into account past planning, research and studies, the magnitude and nature of the undertaking and the degree of Federal involvement, the nature and extent of potential effects on historic properties, and the likely nature and location of historic properties within the area of potential effects.” 36 C.F.R. § 800.4(b) (1). The Secretary of the Interior’s standards and guidelines for identification provide further guidance on this subject. The agency official should also consider other applicable professional, state, tribal, and local laws, standards, and guidelines. The regulations note that a reasonable and good faith effort may consist of or include “background research, consultation, oral history interviews, sample field investigation, and field survey.” 36 C.F.R. § 800.4(b) (1). The Interior Board of Land Appeals (IBLA) has upheld the BLM’s use of a literature review to meet the reasonable and good faith identification effort at the lease sale stage.

Regarding BLM’s finding of “no adverse effect”, SUWA argues that the “BLM provides no support for its claim that each parcel within the Monticello Field office can accommodate reasonably foreseeable development. The agency simply claims that direct impacts can be avoided by “judicious well placement” and visual and auditory effects can be avoided based on topographic variation and design features...This ignores the fact that oil and gas drilling is an industrial activity with [g]round clearing [and] industrial equipment in a largely pristine setting [that] can adversely affect a sites setting feeling and association.”

BLM’s incorporation of the Reasonably Foreseeable Development (RFD) scenario for oil and gas development listed in the *Reasonably Foreseeable Development Scenario [RFD] for Oil and Gas for the Monticello Field Office* (2005) and the *Reasonably Foreseeable Development Scenario [RFD] for Oil and Gas in the Moab Master Leasing Plan Area, Canyon Country District* (2012) for every single parcel, illustrates BLM analysis and understanding that the leasing of these parcels may, although not guaranteed, lead to oil and gas development and use. The RFD for the Monticello Field Office is a total of 9.6 and 8.2 acres. This RFD includes the industrial nature and use of oil and gas development including the construction of well pads, access roads and ancillary facilities. In addition to the use of the RFD in the report, BLM’s finding of no adverse effect was supported through:

1. The knowledge of qualified federal archaeologists who meet the Office of Personnel and Management Standards for GS-0193 series archaeologist. BLM archaeologist who worked on this analysis and cultural resource report have years of experience in the region and years of experience redesigning federal undertakings including oil and gas projects to avoid adverse effects to historic properties,
2. A thorough parcel-by-parcel analysis of impacts and effects that took into account parcel size, topography, surface use restrictions, and location, along with potential cultural resource site density, and existing site locations and survey information from Class III – Intensive Pedestrian Survey (Class III) reports. The information from hundreds of Class III survey reports was included in the 2018 Cultural Resources Report for the December 2018 lease sale. In addition to this information and analysis, the BLM consulted with and sought additional information from thirteen Native American Tribes, the SHPO, and consulting parties.
3. Incorporation of the recently completed existing Class I – Existing Information Inventory for the Monticello Field Office. This document is a summary and analysis of all recorded cultural resources within the Monticello Field Office, and information gathered through consultation, and
4. Following the Advisory Council on Historic Preservation’s (ACHP) *Section 106 Regulations Section-by-Section Questions and Answers Synopsis* which states that only in rare circumstances will “reasonably foreseeable” will not have the same meaning in NHPA and NEPA.

Based this comprehensive identification effort the BLM determined that disturbance associated the foreseeable development identified in.

BLM’s finding is neither arbitrary nor capricious. In a letter dated July 26, 2017 regarding the parcels on lands managed by the BLM’s Price Field Office in the December 2017 Lease Sale, the Utah State Historic Preservation Office stated:

As a final point: in the experience of the UT-SHPO oil and gas development in Utah has led to relatively few adverse effects. Since 1997 the UT-SHPO has reviewed over 400 adverse effect determinations from dozens of agencies.

During this period, the UT-SHPO has not concurred with any adverse effect call from oil and gas leasing activity, and only five from specific federal oil and gas development projects (excluding transmission pipelines). Oil and gas development represents less than 1.5% of all adverse effects in the last 20 years.

In this same period there are records of 9,533 oil and gas wells developed on federal lands, which is illustrative that even with an impressive number of wells and other improvements (roads, staging areas, etc.) the number of adverse effects from development are dramatically low (less than 0.01%).

To put these numbers into perspective, over 1 million acres of federal, state, tribal, and private lands have been archaeologically inventoried and nearly 14,000 archaeological sites have been documented within Utah’s oil fields, as defined by the Utah Division of Oil, Gas, and Mining. With these significant numbers of sites and acres inventoried, the incredibly low number of adverse effects to historic properties is equally notable.

The Utah State Historic Preservation Office's letter which documents the few adverse effects related to oil and gas development in Utah for 20 years, supports BLM's finding of no-adverse effect, including the consideration of indirect and cumulative effects.

Although prior to offering a parcel for lease, the BLM evaluates whether resource conflicts would preclude *any* development of it, through lease stipulations and notices, the BLM informs a potential lessee of potential conflicts that may constrain, possibly majorly constrain, development. The Cultural Resource Protection Stipulation, informs lessees that cultural resources are protected by Federal Statute, and there is a risk that development of any lease would be highly constrained if warranted. SUWA contends that the wording of the stipulation "BLM *may* require modification to exploration and development proposals" means that it is optional to protect historic properties. (SUWA p. 10) This is a misapprehension of the stipulation, which is meant to be interpreted as BLM *will* require modification to exploration and development proposals *if* historic properties requiring protection may be affected. SUWA also contends this stipulation only protects resources on the lease surface to which it is attached, and not off-lease resources within the APE of cultural resources off the lease. However, the cultural resource stipulation (as well as the Threatened and Endangered Species stipulation) is not derived from the RMP but from statute. It is not an RMP decision that protects cultural resources, it is the NHPA and other statutes listed in the stipulation. Compliance with the statutes is not discretionary, regardless whether the historic properties affected are located on or off the surface of the lease.

Protest Contention 3: BLM Cannot Rely on a Determination of NEPA Adequacy. BLM's Past Use of DNAs Demonstrates the Inappropriateness of Its Use of the Lease Sale DNA

Protest Response 3: SUWA relies on four recent uses of DNAs to argue that BLM may only rely on DNAs to re-authorize or slightly modify the same action analyzed in the existing documentation, or to "authorize a step-down version of a project previously analyzed and authorized in a site-specific NEPA document." See SUWA at 10-11. However, BLM disagrees with SUWA's interpretation of how and when BLM may rely on a DNA. Here, BLM determined through this DNA that the December 2018 Lease Sale involves elements similar to both the geography and resource conditions analyzed in the respective NEPA reviews underlying the 2008 Moab RMP (BLM-UT-PL-07-004-1610), 2016 Moab MLP (DOI-BLM-UT-Y010-2012-0107-EIS), and the Canyon Country District March 2018 EA (DOI-BLM-UT-Y010-2017-0240-EA) and that further NEPA analysis is unwarranted (BLM Manual Part 516 Chapter 11.6).

Protest Contention 4: San Juan Master Plan (MLP). Leasing of 14 parcels within the boundaries of the identified MLP cannot take place because BLM did not develop or implement a landscape level cultural resource inventory strategy for the Montezuma Creek Watershed...BLM has not evaluated new information of concerning lands with wilderness characteristics, nor evaluated impacts of the proposed leases on Hovenweep National Monument.

Protest Response 4: SUWA quotes the May 29, 2015 memorandum from the Utah State Director to the BLM Assistant Director, Minerals and Realty Management (Memo) as stating "BLM –Utah has been provided substantial new information from a wide variety of public lands

stakeholders. The new information necessitates' further planning and analysis." This is a misrepresentation of the actual content of the Memo, which actually stated: "BLM –Utah has been provided substantial new information for a wide variety of public lands stakeholders. The new information necessitates revising the planning are boundary for the MLP." SUWA has not provided any explicit statements from BLM finding it "necessary" that a new planning effort must be complete prior to offering leases within the San Juan MLP boundaries, as it contends on page 14 of its protest. New information requires *consideration* that may require new analysis, but considering that new information does not necessarily require a Land Use Plan amendment. Information provided in 2015 of previously undocumented cultural sites is incorporated into the Cultural resource database and used in compiling Cultural resource reports for recent leasing actions. New Wilderness Characteristic inventory information is considered to determine if previously unidentified lands with wilderness characteristics exist. Resources such as Night Skies that were not considered in the most recently prepared RMP can be (and were, in the March 2018 EA) ³ considered in NEPA documents not tied to a planning effort. Nor is a

³ SUWA states on page 16 "BLM has also not evaluated impacts of the proposed leases on Hovenweep's National Monument's night skies (and notably, made the novel and unsupported claim in the March lease sale EA that such an evaluation is no longer necessary). BLM, Final EA for the March 2018 Competitive Oil and Gas Lease Sale at App. E-4. There is no reasoned explanation provided for this sudden reversal of opinion, and no discussion of the potential impact of the proposed leases in conjunction with other reasonably foreseeable activities..." BLM did supply a reasoned explanation for its decision as follows:

The BLM determined that detailed analysis of the effect of night skies from oil and gas development was not necessary. The fact that parks in the region have been certified as dark sky parks does not in itself mean that "the potential for significant impact to the natural lightscape is high."

Although development at the two largest oil fields in the United State (the Bakken Shale in North Dakota and the Permian Basin in Texas <http://insideenergy.org/2015/10/22/oil-and-gas-development-dims-starry-skies/>) have resulted in impacts to night skies in the surrounding areas, there's no indication that San Juan County will experience anywhere near the level of development as those fields. The Mancos Shale deposit that could be exploited through new fracking techniques does not extend into San Juan County, and although the area around the Monument is rated as having a high potential for oil and gas development, there is no reason to think that the reasonably foreseeable development (RFD) projected in the 2008 RMP is not still valid. A RFD based on the 2008 RMP was generated specifically for the parcels analyzed in the EA. That RFD extrapolates out to the potential of eleven wells that would be drilled over all the parcels analyzed over 10 years. One well a year would be drilled that could potentially impact night skies. The maximum impact would occur during the drilling stage, which would last from two to three weeks. Since drilling is a 24-hour activity, there must be sufficient lighting for the crew to work safely, and the lights, or the glow from the lights, may be visible from the monument. After drilling is complete, the well site typically has no lighting, however, highly productive oil wells sometimes have temporary 24-hour staffing. Since the closest any one well would be located to the Hovenweep is 5000 meters, the effect on star gazing would be negligible.

Gas flaring operations can affect dark sky conditions, particularly if high volumes of gas are being flared. However, high volumes of gas generally warrant pipeline construction to enable gas sales (rather than flaring). Generally, gas flaring should be limited to temporary gas pipeline service disruptions and the flaring of low volume of gas the capture of which is sub-economic. In these instances flare pits can be designed to minimize fugitive light; however, due to gas surging, gas impurities and other flow rate variability, there is not a practical way to eliminate fugitive light.

If a sizeable strike is made that would result in the drilling of enough wells to have a potential significant impact, a field development EA or EIS would be prepared, at which time impacts to night skies can be more thoroughly evaluated to determine what Conditions of Approval should be added to development actions to preserve night skies. Until then, lease notice 125 is being added to all lease parcels to inform

planning effort needed to protect the “broader cultural resource landscape” of the Alkali Ridge National Historic Landmark and ACEC. The NHPA provides sufficient protections to cultural resources, regardless of any afforded in an RMP (see protest response 2).

SUWA has not identified which of the 14 parcels within the proposed MLP boundary may be in the Montezuma Creek watershed, which intersect areas that may have wilderness characteristics, and which might impact the Hovenweep National Monument. Therefore, unless these issues are brought forward elsewhere in the protest, BLM will consider the protest point for each of the 14 solely to be their location within the MLP boundary, and not the potential indirect impacts on these resources from any parcel or parcels.

Protest Contention 5: The Monticello RMP, Moab MLP and March 2018 EA did not Analyze all of the Site-Specific Direct, Indirect, and Cumulative Impacts of the Issuance and Development of the Protest Parcels....BLM cannot rely on those documents for impact analysis for 1: Air Quality and GHG emissions, 2: Alkali Ridge Areas of Critical Environmental Concern or 3: Cultural Resources because the requisite site-specific analysis was never prepared. 4: BLM cannot rely upon these documents to fulfill its obligations to analyze cumulative impacts.

Protest Response 5: First SUWA contends that the analysis in the documents upon which a DNA relies must be site specific. However, SUWA fails to contend that geography or resource conditions of the three protested parcels are sufficiently different from the geography and resource conditions analyzed in previous NEPA documents concerning making certain BLM-managed lands available for oil and gas leasing and/or the possible inclusions of parcels in lease sales such that additional new NEPA analysis is warranted.

Prior to determining whether new air quality and GHG emissions impacts analysis are necessary, BLM resource specialists review each lease parcel to determine any resource conflicts that may occur if a particular parcel is developed. This review includes calculating potential emissions (including GHG emissions) based on the location of the parcels. Based on this review, BLM’s air specialist properly determined that the existing NEPA analyses underlying the Monticello RMP, Moab MLP, and the March 2018 EA would not differ in any meaningful way from a new analysis for the new possible leasing and, as a result, BLM properly used a DNA rather than preparing a new EA.

Previously, SUWA protested the inclusion of 24 parcels of the 29 parcels analyzed in the March 2018 EA into the March 2018 Utah NCLS. SUWA now wishes to incorporate Protest into the current protest in order to bolster its contention that the DNA cannot rely on previous NEPA documents for the air quality and greenhouse gas analyses. In its response to SUWA’s previous protest, BLM identified the pertinent protest points as 4, 5, 6, 7 and 8, and dismissed all of them providing four pages of rationale (pages 7-10) for doing so. SUWA has not refuted BLM’s rationale for dismissal, so BLM is not revisiting SUWA’s previous protest.

potential lessees that all actions that might impact the night skies of the monuments and other sensitive resources may be subject to requirements to reduce those impacts.

SUWA also states that BLM cannot delay its NEPA analysis to the APD stage, since BLM must analyze impacts prior to the irrevocable commitment of resources, i.e. lease issuance. BLM has provided adequate analysis to offer the lease parcels. Regardless of the perception of “irrevocable commitment” the current, standard lease terms included on every lease plainly require that any action on the lease parcel must be in compliance with the law, including the Clean Air Act. Should the more accurate or up-to-date analysis at the APD stage reveal that violation of any environmental statutes would occur, approval of development would be withheld until the conflict is rectified.

Second, Alkali Ridge ACEC: SUWA brought up a similar contention in its protest of the March 2018 Lease Sale EA. That response is copied below:

SUWA contends that “BLM has recognized that decisions made in the Monticello RMP, including lease stipulations, may not adequately protect the relevant and important values in the designated ACECs and those management decisions need to be revisited prior to issuance of new oil and gas leases such as the Protested Parcels.” (Protest at 29). SUWA relies on the May 29, 2015 Utah State Director Memorandum revising the Glen Canyon MLP to the San Juan River MLP as the document that supports its contention. However, the Memorandum made no assessments of the adequacy of the protective measures of the Monticello RMP. Instead, it found that preparing an MLP with the requisite NEPA document would be warranted in order to address issues and impacts beyond the analysis conducted in the RMP EIS. However, subsequent review required by Executive Order 13783 and Secretarial Order 3354 found that MLPs create duplicative NEPA review, and that the issues and impacts that would have been addressed in the MLP NEPA analysis can be addressed in EAs and DNAs.

Third: SUWA points to a perceived deficiency in the Cultural Resources report,⁴ then states that it “does not satisfy NEPA’s hard look requirement. The Cultural Resources report is not meant to satisfy NEPA’s requirement, but those of the NHPA. To determine if NEPA’s hard look requirement has been met, one must review the NEPA documents listed in Section C. of the DNA. After reviewing the relevant NEPA documents, BLM determined that it previously took the “hard look” at potential impacts to cultural resources from the December 2018 Lease Sale.

SUWA asserts in its protest that BLM only analyzed impacts to cultural resources eligible for listing in the National Register of Historic Places (SUWA at 18). However, Section 3.3.2 of the March 2018 EA states:

“From the records review, a total of 1346 sites have been recorded within these parcels. A total of 984 have been determined to be eligible to the National Register of Historic Places. The parcels analyzed here include such archaeologically rich areas as Recapture Canyon, Mustang Mesa, Alkali Ridge, and Montezuma Creek. The types of eligible and non-eligible prehistoric sites that are present include Ancestral Puebloan habitation sites, structures (habitation, field houses, granaries, etc.), storage features, rubble features, and artifact

⁴ SUWA asserts that “BLM makes no attempt to discuss or assess potential impacts to cultural resources in the Cultural Report. The Cultural Report simply states that judicious well placement and design features would mitigate any potential adverse effects – without ever discussing what the potential impacts to cultural resources may be.”

scatters; short term camps; limited activity areas; petroglyphs and pictographs; and artifact scatters. The types of eligible and non-eligible historic sites include structures, roads and trails, potential segments of the Old Spanish Trail, Navajo sweat houses and hogans, and artifact scatters. (EA at 21). The EA goes on to say: “Reasonably foreseeable development resulting from leasing within the proposed area has the potential to impact cultural resources, both directly and indirectly. Potential direct effects are physical disturbance of a site from the construction of a well pad, associated access roads, or associated infrastructure (e.g., pipelines).

“Given the types of cultural resources known and expected in the area, potential indirect effects include changes to the landscape which result in impacts to a site’s setting, feeling, or association; increased rock art exposure to dust resulting from increased traffic on roads; visual impacts to sensitive rock art sites or to elements of the Old Spanish Trail; and the potential to increase public access, potentially leading to increased vandalism and looting.”

BLM resource specialists determined that the scope of impacts to cultural resources in and adjacent to the parcels included in the December 2018 Lease Sale DNA is within those disclosed in the March 2018 EA, and that the analysis in the EA is adequate to support leasing those parcels.

Fourth, in regards to cumulative impacts, the Monticello RMP EIS, Moab MLP EIS and the March 2018 EA all include cumulative impact analyses that thoroughly consider such potential cumulative impacts to air quality, wilderness caliber lands and cultural resources from oil and gas leasing and development. Those analyses anticipated the level of potential development that may occur from leasing all lands open to leasing in the Monticello Field Office, and BLM resource specialists properly determined that those analyses sufficiently covered the potential cumulative impacts from the leasing of the parcels considered for inclusion in the December 2018 Lease Sale.

Protest Contention 6: The BLM Violated NEPA’s Alternatives Requirement...the Lease Sale is Neither a Feature of, Nor Similar to an Alternative Analyzed in the NEPA Documents upon which the BLM relies...The Range of Alternatives BLM Considered in the Monticello RMP, Moab MLP and March 2018 EA are inapposite with Respect to the Proposed Lease Sale.

Protest Response 6: SUWA contends that “the alternatives analyzed in a land use plan and the alternatives analyzed in an oil and gas lease sale are fundamentally different. The alternatives developed for the Monticello RMP informed BLM’s decision regarding how to allocate resources across 1.8 million acres of federal public land. *See* Monticello FEIS ES-1. It is a 30,000 foot level of analysis offering no insight into specific resource conflicts at the lease sale stage.” SUWA at 21. SUWA’s contention is patently incorrect. In preparing a Resource Management Plan, the BLM does not randomly assign oil and gas stipulations. Instead, as exemplified by Map 18 in Appendix A of the Monticello RMP, six categories of leasing stipulations were designated during the planning process: (1) Standard; (2) Closed; (3) No Surface Occupancy; (4) Timing; (5) Controlled Surface Use (CSU); and (6) CSU/Timing. The categories were determined by site-specific analysis in the underlying FEIS. The decision to lease parcels in any of the areas

designated as open to leasing under the RMP is based on one or more alternatives considered in the FEIS.

Second, SUWA contends that the DNA cannot rely on the RMP FEIS's alternatives analysis because the RMP's purpose and need statement is broader than the decision to make certain parcels available for a lease sale. SUWA's contention is flawed because the possible inclusion of the protested parcels in the December 2018 Lease Sale is simply an implementation of the RMP decision, based in part on the alternatives analysis in the FEIS, that the relevant lands are suitable for oil and gas leasing.

Third, SUWA contends that the alternatives analysis in the March 2018 EA was not sufficient because BLM analyzed only the "lease all parcels" and "lease no parcels" alternatives, but failed to analyze any other alternatives between those two supposed extremes. SUWA has raised similar comments in several previous protests including protests for the December 2017 and March 2018 lease sales involving parcels on lands managed by the Vernal Field Office December 2017 lease sale (DOI-BLM-UT-G010-2017-0028-EA), the Price Field Office December 2017 lease sale (DOI-BLM-UT-G020-2017-0030-EA), and the Canyon County District March 2018 EA (DOI-BLM-UT-Y010-2017-0240-EA), as well as the Salt Lake Field Office September 2018 lease sale (DOI-BLM-UT-W010-2018-0018-EA), and the Price/Richfield September 2018 lease sale (DOI-BLM-UT-0000-2018-0001-EA). BLM's response to this contention in all these protests is: Since each parcel is an independent, though similar, action the BLM at the end of the EA process could choose to either lease or defer any parcel in the EA's decision record – the BLM is not limited to selecting only the Proposed Action or only the No Action Alternatives because of the independent utility of each parcel. As such the Interior Board of Land Appeals ruled in *Biodiversity Conservation Alliance et al.*, 183 IBLA 97, 124 (2013) ruled that an intermediary alternative is not necessary.

Protest Contention 7: BLM did not respond to or consider SUWA's Suggested Alternatives

Protest Response 7: SUWA also asserts that BLM violated NEPA by not responding to the three proposed alternatives SUWA raised during the scoping process. SUWA argues that such alternatives are consistent with the lease sale's purpose and need of holding the quarterly lease sale, are technically and economically feasible, and less impactful to resources than the two alternatives BLM did analyze. The BLM is not required to respond to scoping comments. BLM prepares a scoping report and determines if the comments raise issues that would determine what level of NEPA compliance document is required. SUWA's proposed alternatives were not considered because they had previously been dismissed since they would require additional stipulations that are not currently allowed under the governing RMP.

For the reasons set forth above, I have determined that offering the 15 protested parcels at the December 2018 Lease Sale was in compliance with all applicable laws, regulations, and policies. Accordingly, SUWA's protest to the inclusion of the 15 parcels in the December 2018 Lease Sale is dismissed.

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 C.F.R. Part 4 and the enclosed Form 1842-

1. If an appeal is taken, the notice of appeal must be filed in this office (at the above address) within 30 days from receipt of this decision. The appellant has the burden of showing that the decision appealed from is in error.

If you wish to file a petition for a stay, pursuant to 43 C.F.R. § 4.21, during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal. A petition for a stay must show sufficient justification based on the standards listed below. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulations, a petition for a stay of a decision pending appeal shall be evaluated based on the following standards:

1. The relative harm to the parties if the stay is granted or denied,
2. The likelihood of the appellant's success on the merits,
3. The likelihood of immediate and irreparable harm if the stay is not granted, and
4. Whether the public interest favors granting the stay.

Copies of the notice of appeal, petition for stay, and statement of reasons also must be submitted to the other parties named in this decision and to the Office of the Solicitor, Intermountain Region, 125 South State Street, Suite 6201, Salt Lake City, Utah 84138, at the same time the original documents are filed in this office.

If you have any further questions, please contact Sheri Wysong of this office at (801) 539-4067.

Sincerely,

/S/ Kent Hoffman

Kent Hoffman
Deputy State Director,
Division of Lands and Minerals

Enclosure

cc:
Office of the Solicitor, Intermountain Region,
BLM Monticello Field Office (UTY02)