



# United States Department of the Interior



BUREAU OF LAND MANAGEMENT  
Utah State Office  
440 West 200 South, Suite 500  
Salt Lake City, UT 84101-1345  
<http://www.blm.gov/utah>

In Reply Refer  
To:  
3100 (UT-  
922000)

February 8, 2019

CERTIFIED MAIL – ELECTRONIC SIGNATURE  
REQUESTED  
91 7199 9991 7038 2306 3251

## DECISION

Stephen H. M. Bloch :  
Landon Newell : Protest to the Inclusion of 67 Parcels  
Laura Peterson : in the December 11, 2018  
425 East 100 South : Competitive Oil and Gas Lease Sale  
Southern Utah Wilderness Alliance et. al. :  
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 in the Green River (69 parcels) and Canyon Country (34 parcels) Districts that the BLM intended to offer for oil and gas leasing at a competitive lease sale scheduled for December 11, 2018 (December 2018 Lease Sale). The inclusion in the lease sale of the Green River District parcels was reviewed for conformance with the National Environmental Policy Act (NEPA) by analysis that was documented in the Environmental Assessment (EA) number DOI-BLM-UT-G010-2018-0044-EA prepared by the Vernal Field Office. 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, Sierra Club, Western Watersheds Project, WildEarth Guardians, Green River Action Network, Living Rivers & Colorado Riverkeeper, Waterkeeper Alliance, Center for Biological Diversity, and Natural Resources Defense Council (collectively SUWA) jointly submitted a protest to the inclusion in the sale of the following 67 parcels located on public lands administered by the BLM's Vernal Field Office:

Parcel Number	Serial Number	Parcel Number	Serial Number
UT1218-098	(UTU93645)	UT1218-105	(UTU93646)

<b>Parcel Number</b>	<b>Serial Number</b>	<b>Parcel Number</b>	<b>Serial Number</b>
UT1218-114	(UTU93647)	UT1218-116	(UTU93648)
UT1218-120	(UTU93649)	UT1218-125	(UTU93650)
UT1218-128	UTU93651)	UT1218-137	(UTU93652)
UT1218-140	(UTU93653)	UT1218-147	(UTU93654)
UT1218-150	(UTU93655)	UT1218-152	(UTU93656)
UT1218-153	(UTU93657)	UT1218-154	(UTU93658)
UT1218-155	(UTU93659)	UT1218-156	(UTU93660)
UT1218-157	(UTU93661)	UT1218-158	(UTU93662)
UT1218-159	(UTU93663)	UT1218-160	(UTU93664)
UT1218-161	(UTU93665)	UT1218-163	(UTU93666)
UT1218-166	(UTU93667)	UT1218-180	(UTU93668)
UT1218-181	(UTU93669)	UT1218-182	(UTU93670)
UT1218-183	(UTU93671)	UT1218-184	(UTU93672)
UT1218-185	(UTU93673)	UT1218-187	(UTU93674)
UT1218-188	(UTU93675)	UT1218-189	(UTU93676)
UT1218-190	(UTU93677)	UT1218-191	(UTU93678)
UT1218-192	(UTU93679)	UT1218-193	(UTU93680)
UT1218-194	(UTU93681)	UT1218-195	(UTU93682)
UT1218-196	(UTU93683)	UT1218-209	(UTU93684)
UT1218-210	(UTU96385)	UT1218-215	(UTU96386)
UT1218-219	(UTU96387)	UT1218-220	(UTU96388)
UT1218-221	(UTU96389)	UT1218-222	(UTU96390)
UT1218-223	(UTU96391)	UT1218-224	(UTU96392)
UT1218-225	(UTU96393)	UT1218-233	(UTU96394)
UT1218-234	(UTU96395)	UT1218-235	(UTU96396)
UT1218-236	(UTU96397)	UT1218-237	(UTU96398)
UT1218-238	(UTU96399)	UT1218-265	(UTU93716)
UT1218-267	(UTU93717)	UT1218-288	(UTU93718)
UT1218-294	(UTU93719)	UT1218-297	(UTU93720) <sup>1</sup>
UT1218-313	(UTU93725)	UT1218-350	(UTU93736)
UT1218-352	(UTU93737)	UT1218-353	(UTU93738)
UT1218-354	(UTU93739)	UT1218-355	(UTU93740)
UT1218-357	(UTU93741)		

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

#### Decision

43 C.F.R. § 3120.1-3 allows for protests to the inclusion of specific parcels listed in a NCLS. SUWA protests the BLM's inclusion of the above 67 parcels, claiming the BLM did not comply with the National Environmental Policy Act (NEPA), the Federal Land Policy and Management Act, the National Historic Preservation Act, the Administrative Procedures Act, the Clean Air Act, the Mineral Leasing Act, and the Endangered Species Act in determining to include the protested parcels in the December 2018 Lease Sale.

<sup>1</sup> This parcel is in the Moab field Office boundary, but was included in the Vernal Field Office EA

The protest contentions are discussed below.

**Protest Contention #1: The 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 the BLM's December 2018 leasing process is fundamentally compromised by the unlawful provisions of IM 2018-034, the BLM must defer all parcels in the December 2018 lease sale (See protest pages 2-5).

Protest Response #1 The 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 67 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 – Leasing is the Point of Irretrievable Commitment of Resources (See protest pages 5-6).**

Protest Response #2 – Protest comment noted. If the leases are issued and development is proposed, the methods of development, equipment used, and operator committed measures are unknown at this leasing stage. Although the lease does convey a right to the lessee to develop, said development must be conducted in compliance with all laws and regulations, including applicable state and federal regulations.

**Protest Contention #3 – The BLM Failed to Analyze a Reasonable Range of Alternatives including 1) Leasing only outside of BLM-identified lands with wilderness characteristics (LWC), 2) applying “No-surface occupancy” stipulations on BLM-identified LWC, and 3) requiring phased development ensuring lessees first explore and develop leases on lands outside of BLM-identified LWC, The BLM's Rejections of SUWA's Proposed Alternatives was Arbitrary and Capricious (See protest pages 7-10).**

Protest Response #3 - First, in the protest letter SUWA seems to confuse a “no leasing” alternative with a “defer leasing” alternative. SUWA argues that the 1980 Environmental Assessment Record is not applicable, however, that document contained the Vernal Field Office's consideration of a true “no leasing” alternative, in which no lands would be offered for lease. By contrast, the No Action alternative in the Vernal December 2018 EA is a “defer leasing” alternative where the nominated parcels would not be offered for lease at this time pending additional information or a plan amendment. Because the Vernal RMP makes the determination that these lands are available for leasing subject to a range of constraints, the BLM cannot refuse to lease the lands without first completing a plan amendment allowing such course of action. Therefore, if SUWA is proposing a “no leasing” alternative for parcels with wilderness characteristics, such an alternative would not be in conformance with the Vernal RMP, and is outside of the scope of the EA's purpose and need statement, which is to respond to leasing nominations. This has been clarified in the EA.

Second, the BLM infers that SUWA is proposing a “defer leasing” alternative for parcels with wilderness characteristics. This alternative was considered in the EA, but it was not analyzed in detail because it is substantially similar to the analyzed alternatives (*See BLM NEPA Handbook H-1790-1 section 6.6.3*). Since the possible leasing of 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 covered 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. This has been clarified in the EA.

NEPA requires the BLM to “study, develop, and describe appropriate alternatives to recommended courses of action in any proposal that involves unresolved conflicts concerning alternative uses of available resources . . . .” 42 U.S.C. § 4332(2) (E). The BLM's NEPA Handbook clarifies that the BLM only “must analyze those alternatives necessary to permit a reasoned choice.” Handbook H-1790, p. 49 citing 40 C.F.R. § 1502.14.

SUWA asserts that the BLM's rationale for rejecting its other suggested alternatives, “no-surface occupancy,” “controlled surface use”, and “phased development leasing” was arbitrary and capricious because they would accomplish the purpose and need of the lease sale. However, the BLM properly did not consider such proposed alternatives in detail because the proposed alternatives would require additional stipulations that are not available under the governing RMPs. Therefore, SUWA's proposed alternatives are neither reasonable nor feasible.<sup>2</sup>

In sum, the Proposed Action and No Action alternatives analyzed in the Vernal December 2018 EA provided adequate analysis for the BLM to make an informed decision. No other alternatives are required by NEPA.

**Protest Contention #4 – The BLM Failed to Take a Hard Look at Direct, Indirect, and Cumulative Impacts to Air Quality as Summarized in the Megan Williams Comment Letter (See protest pages 11-12 and Attachment) dated Nov. 2, 2018.**

Protest Response #4 -

**SUBMISSION I.D.: Vernal– Megan Williams**

**NOTE:** Some of the comments contained in the December 2018 protest letter were previously provided by Ms. Williams in her December 2017 protest letter. Unique comments or comments where the responses have changed due to new circumstances are numbered and addressed below. For the duplicated comments, the BLM reviewed both the comments and the BLM's previous responses, which are contained in the December 2017 Lease Sale's EA at Appendix G.<sup>3</sup> The BLM has identified no changed circumstances that would affect the responses previously published, therefore those comments are not repeated here, but the reader is referred instead to the noted section of the previous publication. Duplicated comments are as follows:

---

<sup>2</sup> SUWA attached a white paper by Ken Kreckel analyzing the “Feasibility of Utilizing a Phased Development to the Horse Bench Natural Gas Development” project to support its argument that the BLM could consider a phased development of the Price and Richfield parcels. The Kreckel paper discussed the technical feasibility of phased development, but failed to support concluding that the BLM could legally require it in the absence of stipulations attached to the leases mandating such development. Two of the examples provided, Roan Plateau and Fortification Creek, involved RMP amendments, and the third, the Gasco Natural Gas Development Plan, was not phased development.

<sup>3</sup> A copy of Appendix G is available at: <https://go.usa.gov/xN9Gu> (last visited Feb. 1, 2019).

- Alternative regarding air quality impacts and compliance with the CAA: *See* December 2017 lease sale Appendix G Megan Williams Comment Response numbers 1 and 2.
- Comment requesting detailed air quality dispersion modeling for impacts on NAAQS, air quality degradation, and visibility: *See* December 2017 lease sale Appendix G Megan Williams Comment Response number 3.
- Comment regarding reasonably foreseeable development scenarios for oil and gas and tar sands and oil shale: *See* December 2017 lease sale Appendix G Megan Williams Comment Response number 4.
- Comment regarding RMP goals and objectives and monitoring and mitigation requirements: *See* December 2017 lease sale Appendix G Megan Williams Comment Response number 5.
- Comment regarding NAAQS pollutant levels and project contribution to exceedances: *See* December 2017 lease sale Appendix G Megan Williams Comment Response number 6.
- Comment on the importance of VOC controls: *See* December 2017 lease sale Appendix G Megan Williams Comment Response number 8.
- Comment requesting offsetting development emissions: *See* December 2017 lease sale Appendix G Megan Williams Comment Response number 10.
- Comment regarding recent monitored NO<sub>2</sub> concentrations compared to reported background 1-hour average concentrations: *See* December 2017 lease sale Appendix G Megan Williams Comment Response number 11.
- Comment regarding recent monitored PM<sub>2/5</sub> concentrations compared to reported background 24-hour average concentrations: *See* December 2017 lease sale Appendix G Megan Williams Comment Response number 12.
- Comment regarding visibility impacts in Class I areas: *See* December 2017 lease sale Appendix G Megan Williams Comment Response number 13.
- Comment regarding the reasonably foreseeable development compared to the maximum development scenario and limitation of development: *See* December 2017 lease sale Appendix G Megan Williams Comment Response number 14.
- Comment regarding inventory assumptions and potential underestimation of emissions or missed sources and limitation of emissions: *See* December 2017 lease sale Appendix G Megan Williams Comment Response number 15.
- Comment regarding VOC emission estimate and potential underestimation of emissions due to operator error: *See* December 2017 lease sale Appendix G Megan Williams Comment Response number 16.
- Comment regarding lease stipulations and notices which rely on control efficiency but the effectiveness of the control is not considered: *See*

December 2017 lease sale Appendix G Megan Williams Comment Response number 17.

- Comment on the cumulative AP impacts to the exposed population particularly when new wells are proposed in proximity to existing uncontrolled or less controlled wells: *See* December 2017 lease sale Appendix G Megan Williams Comment Response number 18.
- Comment on the ARMS prediction of ozone and PM2.5 impacts and potential underestimation of impacts: *See* December 2017 lease sale Appendix G Megan Williams Comment Response number 20.
- Comment on the significance of the incremental impacts of the project to ozone and PM2.5 when added to the existing and proposed sources: *See* December 2017 lease sale Appendix G Megan Williams Comment Response number 21.
- Comment on the increment consumption and the lack of a PSD (Prevention of Significant Deterioration) determination: *See* December 2017 lease sale Appendix G Megan Williams Comment Response number 22.
- Comment on mitigation measures for reducing impacts from methane: *See* December 2017 lease sale Appendix G Megan Williams Comment Response numbers 22, 23, and 24.
- Comment requesting an emission mitigation alternative: *See* December 2017 lease sale Appendix G Megan Williams Comment Response number 26.
- Comment requesting implementation of the ARMS ozone-related mitigation measures: *See* December 2017 lease sale Appendix G Megan Williams Comment Response number 28.
- Comment regarding tier IV engines: *See* December 2017 lease sale Appendix G Megan Williams Comment Response numbers 29 and 30.
- Comment regarding leak detection and repair: *See* December 2017 lease sale Appendix G Megan Williams Comment Response number 25.
- Comment regarding ozone episode response measures: *See* December 2017 lease sale Appendix G Megan Williams Comment Response number 35.
- Comment regarding emission offsets by a 1.2 to 1 ratio: *See* December 2017 lease sale Appendix G Megan Williams Comment Response number 36.

**COMMENT 1: The BLM must include a comprehensive analysis of cumulative effects, including effects of the proposed actions along with all past, present and reasonably foreseeable future actions on the affected environment.**

RESPONSE: The Final EIS underlying the 2008 RMP is the primary document in terms of identifying potential cumulative impacts within the planning area (*see* the Final EIS section 4.23), as supplemented by the Air Resources Management

Strategy (ARMS) Report 2014, and the Colorado Plateau Rapid Ecoregional Assessment. Resources of specific concern and analyses of potential impacts to them from oil and gas leasing and development can be found in the following:

- Air quality, including the recent nonattainment designation for ozone – ARMS Impact Report 2014, and this EA section 4.3.2.
- Climate change and greenhouse gas emissions – ARMS Impact Report 2014, the Colorado Plateau Rapid Ecoregional Assessment 2010, and this EA section 4.3.2 and 4.3.5.

Please note that each resource's cumulative impact analysis in section 4.3 defines the cumulative impact for both geographic and temporal boundaries for that resource, and the past, present, and reasonably foreseeable actions for the chosen area.

The Vernal Proposed RMP Final EIS (section 4.1.2) explains the assumptions and methodology for minerals development that was used to determine the impacts to the resources of concern. The Mineral Potential Report (Vernal RMP, Appendix A) projected oil and gas activity over 15 years by development area regardless of surface or mineral ownership. The Vernal December 2018 EA also contains a cumulative impact analysis specific to this proposed action in its section 4.3, which addresses past, present, and reasonably foreseeable actions as well as geographic scope and timing associated with those impacts.

**COMMENT 2: In its analysis of impacts from the proposed leasing, the BLM should consider that significant impacts can occur at the 24-hour PM<sub>2.5</sub> concentrations as low as 30µg/m<sup>3</sup>. The BLM has a duty, independent of the Clean Air Act (CAA), to protect health and the environment regardless of EPA's current standard.**

RESPONSE: In section 4.2.1 of the EA, the BLM analyzed air pollutant concentrations with respect to established health standards and reported anticipated concentrations from oil and gas development. For criteria air pollutants, health standards are established by the EPA and known as the National Ambient Air Quality Standards (NAAQS). The CAA requires periodic review of the science upon which the standards are based and the standards themselves. State regulatory agencies may also establish air pollutant standards. As a rigorous scientific assessment is undertaken when developing State and National standards, it would be arbitrary for the BLM to set a significance threshold below the NAAQS in its NEPA analysis. Additionally, the BLM has reported anticipated pollutant concentrations in the EA regardless of concentration standards.

**COMMENT 3: The BLM relies on the Monument Butte Oil and Gas Development Project Final EIS Alternative A modeling analysis for the leasing EA. The Monument Butte analysis only assessed construction and development impacts from PM emissions (i.e., there is no assessment of NO<sub>x</sub> impacts from construction and development activities.)**

RESPONSE: The commenter incorrectly states that the Monument Butte Final EIS, which is incorporated by reference in section 4.2.1 of the leasing EA, only

analyzed construction and development impacts from PM emissions. In the Monument Butte EIS, the BLM evaluated the following criteria pollutants: PM<sub>10</sub>, PM<sub>2.5</sub>, NO<sub>2</sub>, SO<sub>2</sub>, CO, and VOC. *See* Final EIS Table 4.2.1.1.1-1; Appendix B Table 4-1 (quantifies the emissions for these pollutants for Development (which includes construction, drilling, and completion), Production (well operation), and Infrastructure)). Impacts for the phase (Development, Production, or Infrastructure) that had the highest emissions were then presented in the EIS as representative of the maximum impact expected. Emissions of PM were highest during construction and development, while the highest emission phase for the other pollutants was estimated to occur during the operations and infrastructure phase of the project, i.e. impacts from NO<sub>x</sub> emissions are lower during the construction and development phase than during the operations phase.

**COMMENT 4: The modeling results from the Monument Butte EIS are based on certain operating scenarios and assumptions and the BLM must ensure that the modeling parameters reflect similar operating conditions to what would occur under the leasing alternatives in the EA.**

RESPONSE: Specific development plans are not available for the lease parcels, so the BLM is unable to predict the exact development methods and resulting emissions. Instead, the BLM relies on the Monument Butte EIS to provide the decision maker and public an estimate of emissions based on numbers from the most recent model of past projects in the basin. The emissions estimates in the EA are for informational purposes only, and are not intended to represent emissions for future development activities, or create emission caps. All parcels that are developed are under notice that additional air analysis may be needed at the site-specific stage.

**COMMENT 5: With the large number of lease parcels in the ozone nonattainment area, the EA must contain enforceable VOC and NO<sub>x</sub> mitigation measures to ensure the proposed lease development will not contribute to adverse ozone impacts. The BLM should also mitigate PM, HAPs, Ozone, and Climate Change (GHG).**

RESPONSE: No emissions come from leasing, which is an administrative action. It is reasonable to assume that indirect emissions will occur as lease parcels are developed. However, at this time, there are no plans of development and specific emissions sources, durations, amounts, or locations are unknown. The need for specific mitigation measures will be identified at the project stage when details are known about emission sources, durations, amounts, and locations. In addition, projects with emissions in non-attainment areas above de minimus levels are already required to show mitigation or offsets as part of Clean Air Act general conformity requirements. The stipulations and lease notices attached to each parcel and current state and federal laws and regulations are sufficient to provide for minimization of impacts from future development that may result from the leasing action. *See* also December 2017 lease sale Appendix G Megan Williams Comment Response numbers 11-13, 16, 18, 30, 31, and 32.

**COMMENT 6: The BLM should complete an analysis of all increment consuming and increment expanding sources in the area. At a minimum, the BLM should**

**report on how much increment has already been consumed in the affected area so that it can make a reasonable assessment of whether the proposed action will contribute to more deterioration of air quality than is allowed under the CAA.**

RESPONSE: A Prevention of Significant Deterioration (PSD) increment consumption review is for permitting purposes in attainment areas. Leasing has no direct emissions and is not subject to permitting requirements. The State of Utah DEQ and EPA are responsible for PSD review in the Uinta Basin. The BLM does not evaluate PSD increment consumption for regulatory purposes, only for informational and disclosure purposes. A PSD review was done for the Monument Butte FEIS which is included by reference into the leasing EA. Potential impacts are much less than the PSD increments. New development has not been proposed as part of the lease sale. A reasonably foreseeable development scenario was prepared for this EA to disclose the nature of any future development impacts. The scenario does not guarantee that development will be proposed or approved. The BLM believes its current air quality analysis represents the potential impacts of the Proposed Action, including reasonably foreseeable development. Should the parcels be leased and developed in the future, a site-specific analysis will be completed as part of the required NEPA review and that will address the increase in emissions including the regulatory requirements at the time development is proposed, as well as mitigation measures which may be required to ensure compliance with ambient air quality standards and the CAA.

**COMMENT 7: There are no estimates of the potential downstream GHG emissions from the transmission and storage of the oil and gas produced. The BLM should include estimates of emissions from these downstream emissions in the EA.**

RESPONSE: Discussion of downstream GHG emissions is located in section 4.2.5.2 of the EA. Emissions from transmission and storage of produced oil and gas is included as part of the annual emissions for the operation of a single well.

**COMMENT 8: In the EA, the BLM presents a low 100-year global warming potential (GWP) for methane (100-year GWP of 28). The BLM must revise the EA to reflect updated data on the GWP and must consider the 20-year GWP for methane since shorter timeframes more accurately reflect the climate-forcing impacts of methane emissions.**

RESPONSE: According to the IPCC, GWPs typically have an uncertainty of  $\pm 35$  percent. Greenhouse Gas GWPs have been developed for several GHGs over different time horizons including 20 year, 100 year, and 500 year horizons. The choice of emission metric and time horizon depends on the type of application and policy context; hence, no single metric is optimal for all policy goals. The 100-year GWP (GWP100) was adopted by the United Nations Framework Convention on Climate Change (UNFCCC) and its Kyoto Protocol and is now used widely as the default metric. In addition, the EPA uses the 100 year time horizon in its Inventory of U.S. Greenhouse Gas Emissions and Sinks report, GHG Reporting Rule requirements under 40 CFR Part 98 Subpart A, and uses the GWPs and time horizon consistent with the IPCC Fifth Assessment Report in its

science communications. In this EA, the BLM uses GWPs and time horizon consistent with EPA to reflect the current state of science for GHG emission calculations associated with the proposed action. The BLM also uses GWPs without carbon feedback (28 for methane) to be consistent with the EPA and UNFCCC.

The BLM took a hard look at GHG emissions and climate change in that the EA by including estimates of emissions that may result if a lessee decides to drill for oil and gas and construct ground disturbing infrastructure. The BLM also disclosed climate change predictions for the region. These estimates were derived from published guidelines on estimating GHG emissions, existing data sources, and the BLM's knowledge of oil and gas operations. *See* sections 4.2.5 and 4.3.5 of the EA. The BLM provided estimates for low, typical, and high GHG emissions per year, and the BLM acknowledges that the expected emissions may "range from zero to an indeterminate amount based on realized production rates, control technology, and physical characteristics of any oil produced." In addition, the BLM incorporated the data from the 2010 Colorado Plateau Rapid Eco-Regional Assessment, which projected climate change in the region due to development. The project's incremental contribution to cumulative climate change is its GHG emissions as disclosed. The calculations in Section 4.2.4 of total GWP included direct and indirect emissions of methane. It is reasonable for the BLM to use the 100-year GWP instead of the 20-year GWP because the 20-year GWP is the primary measure of the relative impact of different GHGs used in the EPA's Greenhouse Gas Reporting Program. The draft EA mistakenly described the downstream emissions as CO<sub>2</sub>. Rather, they are actually emissions expressed in CO<sub>2</sub>e<sup>4</sup> and were generated using the EPA's equivalencies factors for a barrel of oil and mcf of natural gas. This mistake has been corrected in the EA. Calculating GHG emissions with this method provides a slightly more conservative estimate than calculating combustion emissions of each individual gas. This has also been clarified in the EA. The BLM's emission numbers did account for "leaks", but in the data sources behind the analysis (the Monument Butte emissions inventory and the ARMS emissions inventory) leaks are called "fugitives." The EA language has been clarified to explain that actual assessments of future development cannot be made due to variations in techniques and equipment; however, quantitative estimates of full life cycle direct and indirect emissions were made and included in the EA.

**COMMENT 9: The BLM must include adequate plans to protect air quality in the area as part of this EA. Include additional mitigation to reduce NOx pollution (tier 4 engines, phased drilling, engines with lower NOx emission rate), mitigation to reduce particulate matter pollution (minimize traffic, dust control measures, tier 2 or better engines), and mitigation to address HAPs, Ozone, and climate change (flaring, compressors, LDAR).**

RESPONSE: *See* Response to Megan Williams's comment 5.

---

<sup>4</sup> CO<sub>2</sub> equivalents – a metric to express the impact of each different greenhouse gas in terms of the amount of CO<sub>2</sub> making it possible to express greenhouse gases as a single number.

**COMMENT 10: Since parcels in this lease sale are inside the ozone nonattainment area, an Adaptive Management Strategy / Ozone Action Plan should apply to development of these parcels until implementation plan requirements are established for attaining and maintaining the NAAQS.**

RESPONSE: The BLM is not required to adopt adaptive management or ozone/episode action plans due to a nonattainment designation, and the BLM has chosen to not adopt such a plan as part of the December 2018 Lease Sale. If the Uinta Basin does not achieve a clean data determination by the attainment date and the airshed is reclassified as moderate nonattainment, state and federal implementation plans will be developed. Implementation plans at that time would require reasonably available control technology (RACT) and reasonably available control measures (RACM) which will likely include mandatory actions during ozone episodes. The BLM is currently participating in the Uinta Basin Ozone Working Group (UBOWG), which is a collaborative forum to facilitate attainment of the ozone standard in the Uinta Basin. The BLM encourages operators to follow best management practices including emission reduction measures identified by UBOWG and voluntary seasonal ozone controls identified by Utah Division of Environmental Quality. The stipulations and lease notices attached to each parcel as well as current state and federal laws and regulations are sufficient to provide for minimization of impacts from future development that may result from the proposed leasing action.

**Protest Contention #5 – The BLM Failed to Take a Hard Look at GHG Emission Impacts to Climate Change (See protest pages 12-15).**

Protest Response #5 - An EA must take a hard look at the direct, indirect, and cumulative impacts of a proposed action. 40 C.F.R. § 1508.9(b); NEPA Handbook H-1790, p. 55, 81. The Tenth Circuit has held that the “hard look” test under NEPA is satisfied if “the BLM considers generally the potential environmental effects of its actions before issuing a lease and reserves a more detailed environmental analysis until a [site-specific] drilling proposal is made. . . .” *Pennaco Energy, Inc. v. U.S. Dep’t of the Interior*, 266 F.Supp.2d 1323,1326 (D.Wyo. 2003), overruled on other grounds by *Pennaco Energy, Inc. v. U.S. Dep’t of the Interior*, 377 F.3d 1147 (citing *Park County Res. Council, Inc. v. U.S. Dep’t of Agric.*, 817 F.2d 609, 624 (10th Cir. 1987)), overruled on other grounds by *Vill. Of Los Ranchos de Albuquerque v. Marsh*, 956 F.2d 970 (10th Cir.1992)).

SUWA contends: “BLM’s explanation for why it cannot calculate GHG emissions and/or analyze potential impacts to climate change have been solidly and repeatedly rejected by federal courts.” This statement is unsubstantiated. SUWA provides no reference for its assertion that the BLM explained “why it cannot calculate GHG emissions” and in fact, the BLM unequivocally did calculate them in Section 4.2.6.2 of the Vernal December 2018 EA.

SUWA points to several court decisions that found that NEPA requires GHG emissions to be disclosed, but none of the decisions held that an agency must, in the absence of any reliable scientific modeling, attempt to correlate a possible increase in the amount of GHGs due to direct and downstream combustion from hydrocarbon extraction into a quantifiable change in climate. The EA also included methane in its discussion of GHG emissions and climate change impacts (Section 3.3.5 and 4.2.6.2).

The calculations in Section 4.2.6 of total Greenhouse Gas Warming Potential (GWP) included direct and indirect emissions of methane. However, SUWA contends that the “BLM obscures the global warming potential of methane emissions by omitting their impact over the short-term (20 years).” (SUWA at 13). It is reasonable for the BLM to use the 100-year GWP instead of the 20-year GWP because in the United States this is the primary measure of the relative impact of different GHGs. The EA erroneously described the downstream emissions as CO<sub>2</sub>. They are actually emissions expressed in CO<sub>2</sub>e, and were generated using the EPA’s equivalency factors for a barrel of oil and mcf of natural gas. Calculating GHG emissions with this method provides a slightly more conservative estimate than calculating combustion emissions of each individual gas. This has been clarified in the EA. The BLM’s emission numbers did account for “leaks”, but in the data sources behind the analysis (the Monument Butte emissions inventory and the ARMS emissions inventory) leaks are called “fugitives”. The EA language has been clarified to explain that actual assessments of future development cannot be made due to variations in techniques and equipment, however quantitative estimates of full life cycle direct and indirect emissions were made and included in the EA.

In regards to SUWA’s assertion that the BLM’s cumulative impact analysis is inadequate, SUWA alleges that the BLM failed to make a connection between climate impacts and oil and gas development. However in section 4.3.6, past, present, and reasonably foreseeable actions were identified as energy development among others and the temperature and climate change for the area was predicted by incorporating the Colorado Plateau Rapid Ecoregional Assessment findings into the cumulative impact analysis. The BLM’s cumulative effects for GHG and climate change have been expanded to cumulatively quantify GHG emissions.

**Protest Contention #6 – The BLM Failed to Take a Hard Look at Impacts to the White River Natural Area to parcels 152, 153, 154, and 155 (See protest pages 16).**

Protest Response #6 – SUWA contends the BLM failed to analyze potential indirect and cumulative impacts to the White River Natural Area from parcels 152, 153, 154, and 155. It then alleges that the sights and sounds immediately outside the Natural Area would impact its naturalness and opportunities for solitude. However, the nature of a natural area is that the wilderness characteristics exist within its boundary, and roads or other development may exist adjacent to the boundary without adversely impacting the findings of naturalness and solitude. See BLM Manual 6310 Wilderness Inventory Manual section C.2.a.2.b.iii which states: “Outside Human Impacts. Human impacts outside the area will not normally be considered in assessing naturalness of an area. If, however, a major outside impact exists, it should be noted in the overall inventory area description and evaluated for its direct effects on the area.” As documented in the 2007 inventory of the White River area, oil and gas leases and development existed outside of the BLM Natural Area at the time of the inventory. The development was noted in the EA and determined to not impact the appearance of naturalness or other characteristics due to the terrain of the area. Therefore, no additional impacts, direct or indirect, are anticipated from activities outside the Natural Area boundary.

**Protest Contention #7 – The BLM Failed to Take a Hard Look at Impacts to Water Quality including: impacts to Bitter Creek Lower which is listed as impaired under the Clean Water Act (CWA) section 303(d) as impaired due to boron, selenium, temperature, and Total Dissolved Solids (TDS) (near parcels 157, 158, 160, and 288).**

**and Evacuation Creek which is impaired due to boron, selenium, temperature, and TDS (near parcels 219, 225, and 250) (See protest pages 16-17).**

Protest Response #7 – SUWA contends that the BLM did not provide information on impacts to groundwater or the impaired watersheds of lower Bitter Creek or Evacuation Creek from Hydraulic Fracturing or development. As explained in the I.D. Team Checklist (Appendix E), “EPA stated in the draft June 2015, Assessment of the Potential Impacts of Hydraulic Fracturing for Oil and Gas on Drinking Water Resources<sup>5</sup> (EPA Draft, ES-23), that ‘We did not find evidence that these mechanisms have led to widespread, systemic impacts on drinking water resources in the United States...The number of identified cases where drinking water resources were impacted are small relative to the number of hydraulically fractured wells ...There is insufficient pre- and post-hydraulic fracturing data on the quality of drinking water resources. This inhibits a determination of the frequency of impacts. Other limiting factors include the presence of other causes of contamination, the short duration of existing studies, and inaccessible information related to hydraulic fracturing activities. There is not sufficient evidence to support the contention that hydraulic fracturing negatively impacts ground water to an unacceptable degree...The potential impacts to surface and/or ground water from hydraulic fracturing activities has not been shown to reach a level requiring detailed analysis.’ See EPA Draft at ES-23.”

The EA has been revised and acknowledges that the CWA 303(d) listing which includes Lower Bitter Creek and Evacuation Creek were considered when making this the I.D. Team Checklist determination of impacts, and are not anticipated to be impacted by this leasing decision because this leasing decision does not authorize surface disturbing activity and any analysis of site specific impacts would be conducted if a lease is issued and a site specific plan of development is submitted. In addition, lease notices and stipulations regarding water quality were attached to all parcels. Application of Stipulation 123 and Notices 53 and 128 to each of the leases on federal surface would be adequate for the leasing stage to disclose potential future restrictions and to facilitate the reduction of potential impacts to surface waters and riparian areas upon receipt of a site specific APD through application of avoidance buffers and BMPs. See Appendix A, B, and E. Therefore, in the I.D. Team Checklist, these specialists found that potential impacts to water quality did not rise to a level that would require detailed analysis. Please note that Stipulation 123 was identified on a parcel specific basis in Appendix B, but was overlooked in the EA’s streams and riparian sections of Appendix E’s checklist. The checklist has been updated with the information.

**Protest Contention #8 – The BLM's Treatment of Cultural Resources Violated the National Historic Preservation Act (NHPA) and the BLM's No Adverse Effect Determination is Unsupported and the BLM Failed to take a Hard Look at Impacts to Cultural Resources (See protest pages 17-21).**

Protest Response #8 - In its Protest, SUWA contends that the BLM’s treatment of cultural resources violated both NHPA and NEPA. First, with respect to its alleged NHPA violation, SUWA claims that as of November 5, 2018, been provided with a revised cultural resources report. The revised report was published on the Vernal EA ePlanning page at <http://go.usa.gov/xPPkMon> on November 9, 2018.

SUWA argues that the BLM’s no adverse determination is arbitrary because it is unsupported

<sup>5</sup> <http://cfpub.epa.gov/ncea/hfstudy/recordisplay.cfm?deid=244651>

by the record. SUWA's NEPA arguments similarly takes issue with the BLM's review of cultural resources in the EA, claiming the BLM failed to take the requisite hard look at these impacts. Contrary to SUWA's NHPA and NEPA challenges concerning cultural resources, the record shows that the BLM followed the law and each of these steps are outlined in its cultural resources report which is published on the Vernal EA ePlanning page noted above. For instance, the BLM:

1. Initiated consultation on July 10, 2018 as required under 36 C.F.R. § 800.3, *Initiation of the section 106 process*
2. Completed 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),
3. Completed consultation for the Area of Potential Effect found in 36 C.F.R. § 800.4 *Identification of historic properties*, which is formally documented in the BLM's cultural resource report,
4. Completed 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 the 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 the 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 determined that each of these 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 the BLM's finding of "no adverse effect". The SHPO concurred with the BLM's finding on October 25, 2018.

In summary, the BLM complied with Section 106 of the National Historic Preservation Act and SUWA's implications are factually incorrect.

Regarding the BLM's finding of "no adverse effect", SUWA argues that the "BLM provides no support for its claim that each parcel within the Vernal 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...ground clearing...[and] industrial equipment in a largely pristine setting [that] can adversely affect a sites setting feeling and association." SUWA at 19.

The BLM's incorporation of the Reasonably Foreseeable Development (RFD) scenario for oil and gas development listed in the *Mineral Potential Report for the Vernal Planning Area, Vernal Field Office Record of Decision and Approved Resource Management Plan* (2002) for every single parcel, illustrates the 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 Vernal Field Office is a total of 5 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, the BLM's finding of no adverse effect was supported by:

1. The knowledge of qualified federal archaeologists who meet the Office of Personnel and Management Standards for GS-0193 series archaeologist. The 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 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 this information. 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 Vernal Field Office. This document is a summary and analysis of all recorded cultural resources within the Vernal 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 on this comprehensive identification effort the BLM determined that disturbance associated the foreseeable development identified in the EA (Appendix F) could occur within each of the parcels with no adverse effects or adverse impacts to historic properties and cultural resources.

The BLM's finding is neither arbitrary nor capricious. In a letter dated July 26, 2017 regarding in the December 2017 Lease Sale for the adjacent Price Field Office, 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 the BLM's finding of no adverse effect, including the consideration of indirect and cumulative effects.

SUWA also argues that the BLM does not discuss potential impacts from increased visitation, sound or visual impacts to cultural sites. When assessing the potential impacts to cultural resources the BLM considered the topographic complexity, known site types, potential site density, the reasonably foreseeable development scenario, and the heights of future oil and gas facilities. Based on the types of cultural resource sites, many of which are lithic scatters and historic trash scatters that are common in these parcels, the BLM covered all aspects of indirect effects. In addition, the RFD defined in the cultural resource report includes the "total expected area of disturbance for a single well pad and encompasses the total expected surface disturbance from access, pad and well construction and use, and associated infrastructure (emphasis added).

SUWA states that the BLM cannot avoid its "hard look" obligation by referencing future NEPA and lease notices. SUWA's assertion ignores the procedures the BLM completed for the cultural resource report. The BLM patterned its NEPA "hard look" and NHPA reasonable and good faith identification based on the Advisory Council for Historic Preservation's (ACHP) document titled Meeting the "Reasonable and Good Faith" Identification Standards in Section 106 Review, found at: [https://www.achp.gov/sites/default/files/guidance/2018-05/reasonable\\_good\\_faith\\_identification.pdf](https://www.achp.gov/sites/default/files/guidance/2018-05/reasonable_good_faith_identification.pdf). This document outlines the steps to determine when a reasonable and good faith identification effort has been met. The ACHP states: Prior to beginning the identification stage in the Section 106 process, the regulations (at 36 C.F.R. § 800.4) require the federal agency to do the following:

- Determine and document the APE [Area of Potential Effect] in order to define where the agency will look for historic properties that may be directly or indirectly affected by the undertaking;
- Review existing information on known and potential historic properties within the APE, so the agency will have current data on what can be expected, or may be encountered, within the APE;
- Seek information from others who may have knowledge of historic properties in the area. This includes the State Historic Preservation Officer (SHPO)/Tribal Historic Preservation Officer (THPO) and, as appropriate, Indian tribes or Native Hawaiian organizations who may have concerns about historic properties of religious and cultural significance to them within the APE.

The BLM's cultural resource report documents how the agency followed this guidance which leads to a "hard look" in NEPA. Furthermore, the BLM's identification efforts that are described in the cultural resource report for the December 2018 lease sale undertaking are consistent with the direction provided in multiple Interior Board of Land Appeals (IBLA) decisions/orders, including Mandan, Hidatsa, and Arikara Nation, 164 IBLA 343 (2005), and

Southern Utah Wilderness Alliance, IBLA 2008-264 (2009).

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 the 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.

SUWA argues that “BLM makes no attempt to discuss or assess potential impacts to cultural resources either in the EA or the Cultural Report.” NEPA requires that the BLM’s “effects analysis must demonstrate that the BLM took a ‘hard look’ at the impacts of the action.” NEPA Handbook H-1790-1, p. 55.” SUWA also claims that “BLM did not analyze potential impacts to all cultural resources” (*See* protest page 21). Instead it focused on historic properties that are eligible for listing in the National Register of Historic Places. These assertions are incorrect. The BLM’s cultural resource report discusses **all** cultural resources (prehistoric and historic) that have been recorded regardless of their eligibility. For example, the cultural resource report quantifies the number of surveys that have been conducted, the number of sites found within the parcel and within ½ mile of the parcel, and the number of sites eligible or not eligible for the National Register of Historic Places. The types of eligible and non-eligible prehistoric sites that were identified within the APE include subsistence, settlement, technology and culture. The types of eligible and non-eligible historic sites include sites associated with agriculture, transportation, settlement, and industry. The BLM analyzed impacts to all these sites from exploration/development that may result from the lease sale. The BLM determined that leasing will not result in surface disturbance, and any future development would be subject to additional site specific NEPA analysis, and NHPA consultation as appropriate, before any development permits would be approved for issued leases. The BLM retains authority under the National Historic Preservation Act and NEPA, and a mandate under FLPMA, to protect cultural resources.

**Protest Contention #9 –The BLM has not completed the necessary analysis for leasing within the Vernal<sup>6</sup> and Cisco Desert<sup>7</sup> Master Leasing Plan (MLP) areas (See protest pages 21-23).**

---

<sup>6</sup> Parcel 297

<sup>7</sup> Parcels 114, 116, 137, 140, 158, 159, 160, 161, 163, 166, 182, 183, 184, 185, 187, 188, 189, 190, 191, 193, 194, 195, 196, 215, 219, 220, 222, 223, 224, 225, 237, 238, 353, 354, 355, 357

Protest Response #9 - SUWA argues that the two draft MLPs found “unresolved conflicts” and “significant new information” that required consideration in an MLP. However, both MLPs were identified for consideration by the previous administration due to the amount of unleased land and expressions of drilling interest within their boundaries. Specifically the Cisco MLP November 2010 document states:

There does not appear to be any new information or changed circumstances in the proposed areas since the RMP was completed. However, the State Director proposes to exercise his discretion to take a closer look at the area and recommends that an MLP be prepared for the internally proposed area delineated on the attached maps... the area has existing leases and there has been industry interest (expressions of interest - EOIs) in the past several years. There are active leases and producing gas and oil wells concentrated in several portions of the area, along with accompanying infrastructure. Other portions of the area have fewer active leases and little production...there is no new information or changed circumstances including air quality from that analyzed in the 2008 RMP.

The Vernal MLP November 2010 document states:

Utah BLM recommendation for a Vernal MLP has been delineated to maximize unleased areas and include suspended and sold-but-not-issued protested parcels... by and large, the issues identified in the external proposals are addressed in the 2008 Vernal RMP...The area contains several leases that were [deferred, pending, or] suspended...The Utah BLM is working with stakeholders and EPA to develop and air resource management strategy which will address the emerging air quality issues in the Uinta Basin. That effort will continue independent of MLP efforts but would be incorporated into the Vernal MLP.

The BLM did not commit to indefinitely deferring leasing within the MLP boundaries. The current administration has decided to discontinue the MLPs of the previous administration. The Vernal RMP conducted a cumulative (field-office-wide) leasing analysis and the Vernal RMP Record of Decision made decisions about where and how leasing is appropriate. The BLM is obligated to consider leasing parcels nominated by the public, and is currently analyzing parcels both within and without the MLP boundaries to determine if offering them for lease would be appropriate. To that end, the BLM prepared an EA to evaluate the proposed leases in the December 2018 Lease Sale. The EA contains the latest information on Air Quality, including incorporating the information obtained through the air resource management strategy mentioned in the Vernal MLP November 2010 document. The Vernal leasing EA has addressed each parcel’s impacts to lands with wilderness characteristics, wildlife, cultural and historic resources. If the field office determines through this EA that current lease stipulations do not provide adequate protection of resources, FLPMA provides the authority to defer leasing of specific parcels until appropriate plan amendment(s) can be completed to provide additional protective stipulations or to close the area for leasing.

**Protest Contention #10 –The BLM failed to address Impacts to Listed, Candidate, and Sensitive Species and BLM sensitive species (Greater sage-grouse), clay reed-mustard, shrubby reed-mustard, Uinta Basin hookless cactus, Pariette cactus, Ute-ladies-tresses,**

**Grahams's beardtongue, White River beardtongue, list and candidate species<sup>8</sup>, Colorado River endangered Fish<sup>9</sup> (See protest pages 23-34)<sup>10</sup>.**

Protest Response #10 – SUWA contends the BLM failed to request the US Fish and Wildlife Service (USFWS) to advise it whether any listed or proposed species may be present in parcels, and prepare a biological assessment for those species other than the two candidate beardtongues. SUWA contends that no indication is given whether USFWS has concurred that the RMP Biological Opinion covers this EA, and that the Biological Opinion conditions its findings of no jeopardy on the requirement that all site-specific projects designed under the RMP would be subject to consultation requirements under Section 7 of the Endangered Species Act. SUWA contends that the BLM did not properly determine with a reasonable likelihood that the entire action would not jeopardize listed species or adversely modify critical habitat.

On July 2, 2018, the BLM sent a list of parcels and GIS files to USFWS for its review of the parcels that were to be included in the December 2018 lease sale. On July 26, 2018, the USFWS provided responses to the BLM that identified which species needed to be considered for each parcel. In addition, for species that were already addressed in the 2008 RMP programmatic consultation (Canada lynx, Black-footed ferret, Mexican spotted owl, Colorado River Endangered fish, Clay reed-mustard, Shrubby reed-mustard, Pariette cactus, Uinta Basin hookless cactus, and Ute ladies'-tresses), the BLM emailed the USFWS a coordination document on October 11, 2018 to inform them of the species the BLM identified as potentially occurring in each parcel and the lease stipulations and notices that would be attached to them. After discussion with the USFWS about the species and after making changes to the list, the BLM received a final email back from the USFWS on November 16, 2018, agreeing that the list of species was correct, the lease notices and stipulations were appropriate to provide conservation and protection measures for the species, and that potential impacts from the proposed lease sale would not exceed the impacts analyzed in the programmatic consultation. Finally, because the 2008 programmatic consultation did not include the yellow-billed cuckoo, the BLM reinitiated informal consultation with USFWS on November 20, 2018 to add this species to the programmatic consultation and to conference on the two penstemon species. The BLM received a stamped letter of concurrence from the USFWS for that informal consultation dated November 28, 2018. In both of these communications with the USFWS, the BLM determined that the proposed lease sale may affect, but would not likely adversely affect T&E species and would not jeopardize the two proposed penstemon or adversely modify proposed critical habitat. This determination was based on the application of the conservation and protection measures in the lease notices and stipulations. The BLM also stated that it would enter into additional consultation with the USFWS at the APD stage if the proposed site-specific actions could impact the species and that additional protection measures could be added at that time in the Conditions of Approval. The USFWS agreed with the BLM's determinations and the plan for additional consultation as needed at the APD stage.

SUWA contends that the leasing of federal lands is a discretionary action that has the

<sup>8</sup> Parcels 114, 116, 137, 140, 182, 183, 184, 185, 209, 215, 219, 220, 222, 223, 235

<sup>9</sup> Parcels 152, 233, 153, 154, 155, 210, 234

<sup>10</sup> SUWA fails to specify which parcel it is protesting is affected by the alleged infirmity for Greater sage-grouse, clay reed-mustard, shrubby reed-mustard, Uinta Basin hookless cactus, Pariette cactus, and Ute-ladies-tresses. It is not the BLM's obligation to determine which alleged error applies to which parcel.

potential to adversely affect sensitive species including but not limited to Graham's Beardtongue, White River beardtongue, golden eagle, and bald eagle. Deferring an analysis of the potential effects of selling oil and gas leases to the APD stage is entirely inconsistent with the requirements of Manual 6840. Furthermore, Manual 6840 requires the BLM to conserve these species and their habitats, and minimize or eliminate threats.

Although a lease sale does not authorize ground disturbing activity, the EA prepared in connection with the December 2018 Oil and Gas Lease Sale recognizes that there is a reasonable expectation that these actions will occur in the future. The EA potential direct and indirect impacts from a future development scenario to Sensitive wildlife in section 4.2.8 and to Sensitive plants in 4.2.10 and cumulative impacts in section 4.3.9 for wildlife and 4.3.11 for plants. The EA identifies conservation measures to protect these species and their habitats and minimizing or eliminating threats through protection and avoidance measures prescribed in the lease notices and stipulations, which notify the purchaser of restrictions that may be applied to the parcels for each species. It is not possible to analyze impacts from site-specific actions until they are proposed in the APD. The BLM will conduct additional analysis at that time and apply appropriate protection measures and restrictions through the Conditions of Approval as needed. Graham's beardtongue and White River beardtongue are currently considered species proposed for federal listing and were addressed in the Threatened and Endangered plant sections of the EA (4.2.11 and 4.3.12) and were conferenced on with USFWS (see above).

SUWA contends that due to potential habitat loss and fragmentation, the appropriate scale for determining threats to sensitive plants and animals from oil and gas development, hydrofracturing, and climate change is a holistic review, not an APD specific or lease-sale review. The larger scale would facilitate the Manual 6840 requirement to develop species- or ecosystem-specific conservation strategies or conservation measures.

Range-wide, large-scale conservation strategies and conservation measures are developed on a species-specific basis for sensitive species through conservation agreements or conservation plans. The strategies and measures developed in these documents are incorporated into resource management plans and then into planning efforts. Management Decisions SSS-1 and SSS-2 in Vernal's 2008 RMP (p. 143) state that the BLM will implement specific goals and objectives of all recovery plans, conservation plans and strategies, and activity level plans. The 6840 policy directs the BLM "In the absence of conservation strategies, (to) incorporate best management practices, standard operating procedures, conservation measures, and design criteria to mitigate specific threats to Bureau sensitive species during the planning of activities and projects." (6840 policy, .2[C] [8]) Lease notices and stipulations have been developed for specific species or in general that incorporate these conservation and protection measures. Sections 3.3.7 and 4.2.8 in the December 2018 Vernal Field Office EA list the lease notices and stipulations that will be attached to each parcel for Sensitive wildlife and section 4.2.10 lists the notices and stipulations that will be attached for Sensitive plants. Also see Appendix A of the EA, which lists the parcels and lease stipulations and notices. The implementation of the conservation, protection, and avoidance measures described in the lease notices and stipulations fulfills the requirements in the Manual 6840 to conserve species and protect their habitats.

SUWA contends that under the ESA, an analysis of the effects of an action must consider actions that are interrelated or interdependent. This contention thus implies that the BLM

should consider the effects of oil and gas extraction activities at the lease sale stage.

The BLM analyzed potential direct and indirect effects of oil and gas exploration and extraction that could result from leasing the parcels on T&E plants in 4.2.11 and cumulative effects in 4.3.12. The BLM considered potential impacts to T&E wildlife in the ID Team Checklist in Appendix E of the EA (pp. 18-19).

SUWA contends that the beardtongue lease notices do not retain the BLM's authority to prohibit surface occupancy in beardtongue habitat, and the ability to enforce them is questionable.

The USFWS and the BLM jointly developed the lease notices for Graham's and White River beardtongues and determined the protection, minimization, and avoidance measures were adequate to conserve these species. The measures do not include no surface occupancy in beardtongue habitat, but include project design features to minimize impacts to suitable habitat. Areas of occupied habitat require more restrictive protection measures, including 300-foot buffers between disturbance activities and plants, and seasonal restrictions during blooming and seed production periods. Both lease notice 90 and 134 include the statement that "Additional site-specific measures may also be employed to avoid or minimize effects to the species. These additional measures will be developed and implemented in consultation with the U.S. Fish and Wildlife Service to ensure continued conservation of the species." In addition to these two lease notices, the standard Endangered Species Act stipulation per Handbook H-3120-1 is attached to all parcels. This stipulation gives the BLM authority to relocate proposed operations from occupied habitat as needed or require modifications to or disapprove proposed activity that is likely to result in jeopardy to the continued existence of a proposed or listed threatened or endangered species or result in the destruction or adverse modification of a designated or proposed critical habitat.

SUWA contends that the EA does not address substantial new information regarding the inadequacy of the beardtongue Conservation Agreement, which was invalidated by the District Court of Colorado. The EA improperly relies on the Conservation Agreement: it fails to take a hard look at the four Agreement objectives, it does not meet the Agreement's management strategy or minimize or mitigate the direct, indirect, and cumulative impacts to the species, it does not assure that the surface disturbance thresholds will be followed, and the act of leasing violates the Agreement's objective of increasing populations.

SUWA contends that the EA did not directly address the court case filed against the USFWS and DOI regarding Graham's and White River beardtongues. However, it treats them in Table 3-9 in Section 3.3.10 of the EA according to their current status as federally proposed species, which was an outcome of the court case. The USFWS is currently evaluating the two penstemons to decide if they warrant listing. In the meantime, the USFWS supports the BLM continuing to manage these species under the existing Conservation Agreement until it is amended. The BLM and USFWS are two of the partners of the Conservation Agreement and participants on the conservation team that are responsible for making modifications to the Conservation Agreement as needed. Lease notices 90 and 134 will be attached to parcels containing suitable habitat and/or populations of Graham's or White River beardtongue. These lease notices were developed by the BLM and the USFWS to incorporate adequate protection, minimization, and avoidance measures to protect the species and their habitats from potential impacts of the proposed action and to meet the conservation measures in the Conservation Agreement. Specifically, lease notice 134 states "Additional measures to avoid

or minimize effects to the species may be developed and implemented in consultation with the U.S. Fish and Wildlife Service between the lease sale stage and lease development stage to ensure continued conservation of the species.” (Appendix B, UT-LN-134, p. 46). The EA also states (4.2.11.2, p. 49) that “Specific mitigation and disturbance caps would be applicable to parcels within the Conservation Areas established by the Conservation Agreement and Strategy for Graham’s Beardtongue [*Penstemon grahamii*] and White River Beardtongue [*P. scariosus* var. *albifluvis*] SWCA 2014).”

SUWA contends that the EA does not address oil and gas development, road construction and maintenance, invasive weeds, off-road vehicles, habitat fragmentation, and climate change, all of which was identified as threats to the beardtongue habitats and survival, and which may result from this leasing action.

The EA analyzes potential direct and indirect impacts of the proposed lease sale and future exploration and development on Graham’s and White River beardtongues in Sections 4.2.11 and cumulative impacts in Section 4.3.12. Additional site-specific analysis will be completed when the lessee applies for a permit to drill and identifies the exact locations and nature of the exploration and development disturbance.

SUWA contends all proposed sale parcels have the potential to jeopardize the four Colorado River endangered fish species (bonytail chub, Colorado pikeminnow, humpback chub, and razorback sucker) through water depletions from drilling and hydraulic fracturing SUWA contends that parcels 152, 153, 154, 155, 210, 233, and 234, which are adjacent to designated critical habitat for Colorado pikeminnow and razorback sucker, will result in adverse effects to listed fish and their critical habitat. SUWA contends that the BLM must initiate consultation since new information regarding Recovery Program progress indicate that Colorado pikeminnow are in decline due to reduced stream flows from climate change and due to mercury concentrations, both of which are exacerbated by water withdrawals. SUWA contends that the adverse effects from spills and contamination to Colorado River fish must be considered.

The BLM attached lease notice T&E-03 Endangered Fish of the Upper Colorado River Drainage Basin to all of the parcels on lands managed by the Vernal Field Office in the December 2018 lease sale. The BLM acknowledges that potential adverse effects to critical habitat from water depletions may occur in future exploration or development of the leases. The BLM determined that:

The Vernal Field office has a programmatic agreement with the USFWS that states water depletion projects less than 100-acre feet is likely to adversely affect the four endangered fish, however the USFWS service believes the recovery program for these species will adequately address the effects. It is estimated that 3-acre feet of water would be needed for the drilling and completion of 1 well. Not all water sources are considered to be depleting from the Green River Basin. [T]he impacts and total depletion will be analyzed in the APD stage....Impacts to habitat and water quality for all fish species are adequately addressed in the Surface Water Quality, and the Steams, Riparian, Wetlands, Floodplains sections of this document. Detailed analysis is not required. *See* the EA’s Interdisciplinary Team Checklist in Appendix E of the EA, pages 14-15.

For the reasons set forth above, I have determined that offering the 67 protested parcels at the December 2018 Lease Sale was in compliance with all applicable laws, regulations, and

policies. Consequently, SUWA's protest concerning the 67 protested parcels 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 Vernal Field Office (UTG01000)