

December 17th, 2018



Director Ed Roberson
Bureau of Land Management
Utah State Office
440 West 200 South, Suite 500
Salt Lake City, Utah 84101

RE: Utah Statewide lease sale scoping DOI-BLM-UT-0000-2019-0001-OTHER_NEPA March 2019 Utah Oil and Gas Lease Sale

Submitted via website portal and via email to: eroberso@blm.gov

Dear Director Roberson,

We submit the following scoping comments to the Utah Bureau of Land Management (BLM or “Agency”) state office regarding the potential impacts of leasing offered for the March 2019 competitive oil and gas lease. National Parks Conservation Association (NPCA) represents over 10,000 Utah residents who, along with over 1.3 million members and supporters nationwide, understand the need to preserve and protect our National Park System throughout the country. To that end, we hope that our comments serve an incentive for the Utah BLM to change its leasing process to be more inclusive, as well as inform oil and gas leasing decisions in Utah, protect the vast cultural landscape in and around our national park units, and the gateway communities connected to these special places.

National Parks Conservation Association

The mission of NPCA is to “protect and enhance America’s National Park System for present and future generations.” Founded in 1919, NPCA is the leading citizen voice for the national parks. We are a national nonprofit with headquarters in Washington, DC, and 27 regional and field offices across the country, including our Southwest Regional Office in Salt Lake City.

NPCA supports the principle that oil and gas activities can coexist with protected places such as national parks when the federal government works closely with communities and other stakeholders to thoughtfully plan for development in a way that mitigates,

impacts, and assesses and avoids conflicts. A top priority for our organization is protecting the resources within parks and the larger landscapes, in which they are embedded, and the air and water on which they depend, in order to protect and enhance their ecological and cultural integrity. Poorly planned oil and gas development adjacent to national park units can result in significant impacts to national park resources and values, including sound pollution and adverse impacts to dark night skies, air quality, sensitive ecological systems, wildlife, and water quality and quantity -- as well as the ability for current and future visitors to experience parks “unimpaired,” as intended by the 1916 Organic Act.

NPCA continues to take the position that the BLM is required to conduct an environmental assessment (EA) to lease federal lands for proposed oil and gas development. Where such development would occur near protected lands, BLM is required under the National Environmental Policy Act (NEPA) to take a hard look at potential impacts to National Park Service (NPS) units from the proposed action, including the effects on protected resources and on recreation and tourism. 40 C.F.R. § 1502.16. Concerning protected resources, BLM must at a minimum consider in its environmental analysis the potential adverse effects to the park visitor experience. As BLM is aware, courts have readily overturned agency actions that ignore such effects, as well as those to the viewshed, noise impacts, impacts to dark skies, and so forth. *See, e.g., Grand Canyon Trust v. FAA*, 290 F.3d 339 (D.C. Cir. 2002) (finding that the environmental assessment failed to adequately analyze noise impacts from agency action on Zion National Park).

Further, NEPA requires that the EA must identify any potential conflicts, as well as attempt to measure, quantify, or objectively define what any adverse effects might look like and evaluate whether they are “significant.” *See, e.g., KlamathSiskiyou v. BLM*, 387 F.3d 989, 994 (9th Cir. 2004) (“[g]eneral statements about possible effects and some risk do not constitute a hard look absent a justification regarding why more definitive information could not be provided”) (internal citations omitted). Thus, BLM must actually evaluate how development on the proposed leases would affect the various natural resources within protected lands.

BLM Fails to Provide Sufficient, Meaningful Opportunities for Public Participation

Recent actions by the Department of Interior under Instructional Memorandum (IM) 2018-034¹ have limited or restricted public participation in important public land planning processes, specifically lease sales across the west where public participation is critical. Contrary to any stated goal of efficiency, input from the public is not only foundational to the NEPA process and BLM’s oil and gas leasing policy, but it also assists the agency with conducting a more thorough and effective environmental review process. As you know, a key, overarching purpose of NEPA is to increase public knowledge and participation in agency decision-making. NEPA requires that agencies

¹ <https://www.blm.gov/policy/im-2018-034>

make “diligent efforts to involve the public in preparing and implementing their NEPA procedures.” *See* 40 C.F.R. § 1506.6(a). As such, it is incumbent upon the BLM in Utah to continue to offer, and expand, opportunities for the public to inform BLM decision-making on lands owned by the American people.

Unfortunately, the Utah BLM has eschewed this responsibility and has been extreme in their implementation of IM 034. This is evident in the limited public participation in scoping, elimination or reduced public comment periods on EAs (where prepared), and reduction of protest periods to ten days. The inclusion of 30-day scoping and/or comment periods in this sale is only as result of legally required compliance with a recent federal court decision². This lack of a fair, equitable and inclusive process has fundamentally undercut the public’s ability to participate in oil and gas leasing decisions. NPCA has made every attempt to advocate on behalf of America’s national park interests within the Utah BLM’s oil and gas leasing processes. The most harmful to the public is not the unrealistic timeframes, but the limited access to critical information, hidden from public view when Determination of NEPA Adequacy documents are substituted for Environmental Analysis and public comment periods are removed. Recent lease sale deferrals in New Mexico near Chaco Culture National Historical Park, Carlsbad Caverns National Park and in Colorado near Great Sand Dunes National Park, in part due to lack of inclusion and consultation with tribes, underscores the need for an inclusive process that allows material public participation.

However, since the implementation of IM 034, we have not had complete information to review. This restriction of information, coupled with limited information, has created an unrealistic standard needed to trigger a lease deferral, has created what appears to be an unattainable and absurd veneer of a genuine public process. This use of administrative action to suppress public participation is a contravention of the BLM’s responsibility to better inform the public of leasing decisions that could directly impact them. Compounding this careless process is the disrespect to indigenous peoples and their patrimony that continue to be systemic disenfranchised.

Leases impacting Hovenweep National Monument, Bears Ears National Monument and connected cultural landscape

The BLM had repeatedly failed to conduct necessary analysis regarding the direct, indirect, and cumulative impacts to the resources of Hovenweep National Monument, Bears Ears National Monument and their connected landscapes. In addition, the BLM has dismissed the concerns of a suite of conservation interests and that of the National Park Service regarding potential impacts from development to Hovenweep’s air and water quality, cultural resources, dark night skies, and view shed, among other resources.

² https://www.biologicaldiversity.org/programs/public_lands/energy/dirty_energy_development/oil_and_gas/pdfs/OG-PI-decision.pdf

As we have noted in previous lease sales in the same field office, a robust and comprehensive environmental assessment has not been conducted for lease sales—including an opportunity for the public to review and provide input on the environmental analysis to better assist the BLM in considering the potential effects of its decision—then impacts associated with oil and gas development can only be mitigated in a much more limited way through measures such as stipulations and lease notices. Proximate impacts to the parks must be considered during scoping and thoroughly accounted for before leasing can proceed—particularly if the public will be given no further opportunity to review and comment on environmental analyses.

Based on the limited information available in the Determination of NEPA Adequacy Document (DNA), NPCA has concerns with nominated parcels that lie within the cultural landscape connected Hovenweep National Monument, Bears Ears National Monument and Canyons of the Ancients National Monument. Specifically we have concerns with **parcels 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423 and 424.**

Further, the BLM continues to use a decade-old Resource Management Plan (RMP) to guide oil and gas planning in the Monticello Field Office. The RMP can only implement a limited scope of planning tools to apply to oil and gas proposals and importantly does not account for new cultural and archeological findings. Because the BLM can only use dated lease stipulations and notices specific to the ten-year-old RMP, leasing proposed in the field office cannot adequately reflect the conflicts with latest data, study and proposed oil and gas development. Use of stipulations and unenforceable leases notices, as the key-planning tool from an aging RMP is dilution of planning expertise within the BLM and distortion of the agency's obligation to value multiple use. We recommend the BLM change course and initiate an inclusive, proactive stakeholder planning process that determines where oil and gas can occur without conflicting with national park values and the vast cultural landscape tethered to priceless national parks.

Unfortunately, to date, the Utah BLM has eschewed their responsibilities by failing to conduct needed planning regarding cultural resources, and the only opportunity for national park interests to be represented is within a narrow window of public opportunity embedded in the federal oil and gas leasing process. Adding insult to injury to the restricting public participation is the limited access to key documents needed to adequately analyze impacts to the landscape.

The fact that the public is now in the position of having to defend—with limited or no public comment period—the BLM's own previous conclusions on leasing priorities within the highest concentration of native American cultural sites in the southwest, creates unnecessary uncertainty and puts at risk park resources and values and could potential irreversibly harm irreplaceable cultural sites. Devaluing Native American sites in favor oil and gas development that could harm said sites is an abuse of the BLM's authority and moral to sustain the health, diversity and productivity of the public lands for the use and enjoyment of present and future generations. As such, NPCA strongly

objects to further leasing in the Monticello Field Office, until needed planning is conducted.

BLM Is Required to Take a “Hard Look” at Potential Direct, Indirect, and Cumulative Impacts from the Proposed Action

NPCA continues to be concerned with the cumulative impacts to Dinosaur National Monument. Leasing in the Vernal Field Office of the scale proposed in the March 2019 lease sale will further exacerbate issues in the Uintah Basin, particularly with air quality. And while the BLM notes sections in EA’s in the past accounting for cumulative impacts, there little or no tangible changes to leasing proposed, deferred or mitigated in the Uintah Basin. This lack of meaningful mitigation is alarming, as the BLM is required to take a hard look at a project’s (1) direct impacts, or those impacts that are “caused by the action and occur at the same time and place,” 40 C.F.R. § 1508.8(a); (2) its indirect impacts, or those which are “caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable,” *id.* at § 1508.8(b); and (3) its cumulative impacts, or impacts “which result from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency ... or persons undertakes such other actions,” *id.* at §1508.7. Thus, an agency is required to consider the cumulative effect, synergistically or in the aggregate, of proposed actions in a given area. *See, e.g., Kleppe v. Sierra Club*, 427 U.S. 390, 410 (1976) (stating that “proposals for [...] related actions that will have [a] cumulative or synergistic environmental impact upon a region concurrently pending before an agency must be considered together”); *see also Sierra Club v. Mainella*, 459 F.Supp.2d 76, 107 (D.D.C. 2006) (concluding that the NPS has acted arbitrarily and capriciously in issuing “findings of no significant impact” because the Park Service failed to take a “hard look” at impacts and failed to provide an adequate cumulative impacts analysis that included other existing oil and gas operations in the unit).

NEPA also requires that BLM must consider the “[u]nique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas [and] [t]he degree to which the proposed action affects public health or safety.” 40 C.F.R. § 1508.27(b)(3), (2). Where, as here, reasonably foreseeable development on leased parcels in close proximity to an NPS unit may impair the use and enjoyment of the park, heightened scrutiny of impacts of the development is warranted. Accordingly, BLM should conduct a comprehensive analysis of the potential cumulative impacts of development of all the parcels based on current technologies and the latest science that accounts for cumulative impacts to national park units, particularly near Canyonlands National Park, and Dinosaur and Hovenweep National Monuments, and others in the state.

Further, as part of its mandate under NEPA, BLM must evaluate the “reasonably foreseeable” site-specific impacts of oil and gas leasing prior to making an “irretrievable commitment of resources.” *New Mexico ex rel. Richardson*, 565 F.3d 683, 718 (10th Cir. 2009); *see also Sierra Club v. Hodel*, 848 F.2d 1068, 1093 (10th Cir. 1988) (agencies are to perform hard-look NEPA analysis “before committing themselves irretrievably to a

given course of action so that the action can be shaped to account for environmental values”). Leasing for oil and gas development undoubtedly constitutes an “irretrievable commitment of resources” when BLM issues a lease without reserving the right to later prohibit development. *New Mexico ex rel. Richardson*, 565 F.3d at 718. As part of this “hard look” requirement, courts have found that an agency must “examine the relevant data and articulate a rational connection between the facts found and decision made.” *New Mexico ex rel. Richardson*, 565 F.3d at 713 (internal quotations omitted). Thus, failure to evaluate direct, indirect, and/or cumulative impacts that are “reasonably foreseeable” and to establish a rational connection between the available evidence and BLM’s leasing decisions would violate NEPA’s “hard look” requirement.

Enforcement of Stipulations

NPCA continues to be concerned with the implementation and enforcement of stipulations and lease notifications. Postponing the majority of decisions concerning protections for environmental, cultural, and other resources to the APD stage means that the scope of development will be shaped largely *after* the lease is held by the oil and gas operator and *after* BLM has made an irretrievable commitment of resources.

It is impermissible to wait until the APD stage to conduct this level of analysis, including, among other things, preparing an emissions inventory and quantitatively analyzing the reasonably foreseeable impacts from development of these parcels. Such an approach almost inevitably means that the impacts of each individual development project will be reviewed piecemeal and dismissed or discounted, and the cumulative impact of all the development resulting from the proposed project will never be reviewed. Therefore, we continue to take the position that BLM is required to prepare an EA for this leasing proposal, and that an EA must include an emissions inventory that documents the upper bounds of emissions from all potential development in the aggregate, as is required by NEPA.

Further, as should be obvious, stipulations cannot provide a solution to visual impairments within the viewshed of the park from oil and gas extractive activities flowing from these leases. To put it another way, stipulations cannot solely mitigate the impacts of oil and gas development on a national park unit. This lease sale proposal, like others before it, proposes to use stipulations as a solution to conflicts of viewshed, noise and light pollution but to no or little effect. Together, stipulations and conditions of approval cannot resolve these and other issues that adversely affect national park units. Leasing before the BLM fully understands and accounts for the range of potential impacts from oil and gas extractive activities on or nearby protected lands conflicts with common sense and, as discussed previously, violates NEPA.

Conclusion

In sum, NPCA objects to leasing in areas that overlay and are in conflict with, key cultural sites in Utah. These sites are of immeasurable value to our tribal interests and national park values. A host of interests have repeatedly expressed concerns regarding

leasing in this field office, which have been wholly disregarded. We hope the BLM accounts for the lack of transparency and meaningful consideration of NPCA's and the public's serious concerns regarding leasing in this area. We raise these concerns not as an exercise in civics or to obstruct needed extraction of the public's natural resources, but because of the direct and cumulative impact to national park units in the state of Utah.

For NPCA,

A handwritten signature in cursive script that reads "Jerry Otero".

Jerry Otero
Senior Southwest Energy Program Manager
National Parks Conservation Association