

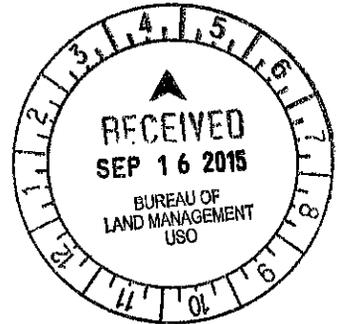


southern
utah
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HAND DELIVERED (Attachments provided on accompanying CD)

September 16, 2015

Jenna Whitlock
Utah State Director (Acting)
Bureau of Land Management
440 West 200 South, Suite 500
Salt Lake City, UT 84101-1345



RE: Protest of the Bureau of Land Management, Green River District's Notice of Competitive Oil and Gas Lease Sale to be Held on November 17, 2015

Dear Director Whitlock,

In accordance with 43 C.F.R. §§ 4.450-2 and 3120, the Grand Canyon Trust, Natural Resources Defense Council, Southern Utah Wilderness Alliance, The Wilderness Society, and Utah Chapter of the Sierra Club (collectively, "SUWA") hereby timely protest the November 17, 2015, offering, in Salt Lake City, Utah, of the following eighteen oil and gas lease parcels in the Bureau of Land Management, Green River District ("BLM"):

UTU-91312 (Parcel 65); UTU-91313 (Parcel 66); UTU-91316 (Parcel 71); UTU-91317 (Parcel 86); UTU-91318 (Parcel 87); UTU-91319 (Parcel 89); UTU-91320 (Parcel 90); UTU-91321 (Parcel 91); UTU-91322 (Parcel 92); UTU-91323 (Parcel 93); UTU-91324 (Parcel 94); UTU-91325 (Parcel 95); UTU-91326 (Parcel 96); UTU-91327 (Parcel 97); UTU-91328 (Parcel 98); UTU-91329 (Parcel 100); UTU-91330 (Parcel 101); UTU-91341 (Parcel 210).

As explained below, BLM's decision to sell these parcels violates the National Environmental Policy Act ("NEPA"), 42 U.S.C. §§ 4321 *et seq.*; the Federal Land Policy and Management Act ("FLPMA"), 43 U.S.C. §§ 1701 *et seq.*; the National Historic Preservation Act ("NHPA"), 16 U.S.C. §§ 470(a) *et seq.*; the Administrative Procedures Act ("APA"), 5 U.S.C. §§ 551-559, 701-706, and the regulations and policies that implement these laws.

SUWA requests that BLM withdraw these eighteen lease parcels from sale until the agency has fully complied with all federal laws, regulations, and executive orders discussed herein. Alternatively, the agency could attach unconditional no surface occupancy ("NSO") stipulations to each respective parcel and proceed with the sale of these parcels.

I. Leasing is the Point of Irretrievable Commitment of Resources

It is critical that BLM undertake satisfactory NEPA analysis before issuing these oil and gas leases as subsequent approvals by BLM will not be able to completely eliminate potential environmental impacts. Unfortunately, BLM has not fully analyzed potential irreversible and irretrievable impacts that could flow from its leasing decision. The sale of leases without nonwaivable, NSO stipulations represents a full and irretrievable commitment of resources. BLM cannot make such a commitment without adequate analysis:

BLM regulations, the courts and [Interior Board of Land Appeals (“IBLA”)] precedent proceed under the notion that the issuance of a lease without an NSO stipulation conveys to the lessee an interest and a right so secure that full NEPA review must be conducted prior to the decision to lease.

Southern Utah Wilderness Alliance, 159 IBLA 220, 241 (2003) (citing *Friends of the Southeast’s Future v. Morrison*, 153 F.3d 1059, 1063 (9th Cir. 1998) (additional citations omitted); *see also Pennaco Energy, Inc. v. U.S. Dep’t of the Interior*, 377 F.3d 1147, 1159-61 (10th Cir. 2004); *Union Oil Co.*, 102 IBLA 187, 189 (1988) (citing *Sierra Club v. Peterson*, 717 F.2d 1409, 1412 (D.C. Cir. 1983)); *Conner v. Burford*, 848 F.2d 1441, 1448-51 (9th Cir. 1988) (holding that the selling of leases containing “no surface occupancy” stipulations did not require preparation of an environmental impact statement, but that an environmental impact statement was required before the selling of leases without “no surface occupancy” stipulations); *Peterson*, 717 F.2d at 1414 (same). Thus, in *Southern Utah Wilderness Alliance*, the IBLA explained that

[t]he courts have held that the Department must prepare an EIS before it may decide to issue such “non-NSO” oil and gas leases. The reason, according to the Ninth Circuit, is that a “non-NSO” lease “does not reserve to the government the absolute right to prevent all surface disturbing activities” and thus its issuance constitutes “an irreversible commitment of resources” under Section 102 of NEPA.

159 IBLA at 241 (citing *Conner*, 848 F.2d at 1448-51); *see also Union Oil*, 102 IBLA at 192-93 (same).

As the IBLA has recognized, “[i]f BLM has not retained the authority to preclude *all* surface disturbance activity, then the decision to lease is itself the point of ‘irreversible, irretrievable commitment of resources’ mandating the preparation of an [environmental impact statement (EIS)].” *Union Oil*, 102 IBLA at 189 (quoting *Peterson*, 717 F.2d at 1412) (emphasis added); *see also Southern Utah Wilderness Alliance*, 159 IBLA at 241-43 (same); *Sierra Club, Oregon Chapter*, 87 IBLA 1, 5 (1985) (because issuance of non-NSO oil and gas leases constitutes an irreversible commitment of resources, BLM cannot defer preparation of an EIS unless it either retains authority to preclude development or issues the leases as NSO).

BLM itself identifies lease issuance as the point of irretrievable commitment:

[t]he BLM has a statutory responsibility under NEPA to analyze and document the direct, indirect and cumulative impacts of past, present and reasonably foreseeable future actions resulting from Federally authorized fluid minerals activities. *By law, these impacts must be analyzed before the agency makes an irreversible commitment. In the fluid minerals program, this commitment occurs at the point of lease issuance.*

BLM Handbook on Planning for Fluid Minerals Resources, Chapter (H-1624-1), at I.B.2 (1990) (emphasis added);¹ *see S. Utah Wilderness Alliance v. Norton*, 457 F. Supp. 2d 1253, 1256 (D. Utah 2006). Therefore, it is critical that BLM analyze all reasonable, foreseeable potential impacts of oil and gas development on these leases now rather than wait until a later date. BLM has not performed the requisite analysis for all relevant resources at the leasing stage. As explained below, this failure may have irreversible negative impacts on numerous values including, but not limited to, cultural resource, climate change, lands with wilderness characteristics (“LWC”), air quality, and water quality.

II. BLM Failed to Respond to Substantive Issues Raised in Comments

The BLM failed to respond to substantive issues raised by SUWA. Under NEPA, BLM is required to “respond to substantive issues raised in comments.” *Utahns for Better Transp. v. U.S. Dept. of Transp.*, 305 F.3d 1152, 1165 (10th Cir. 2002) (citing 40 C.F.R. § 1503.4(a)). This obligation “is more than a technical requirement.” *Id.* It is an essential component of NEPA’s hard look obligation as it demonstrates whether the agency considered “the salient problems” and “engaged in reasoned decision-making.” *Greater Boston Television Corp. v. F.C.C.*, 444 F.2d 841, 851 (D.C. Cir. 1970); *see also Utahns for Better Transp.*, 305 F.3d at 1163 (federal agencies must “adequately consider[] and disclose[] the environmental impacts of its actions”).

Furthermore, under the APA it is a “fundamental tenet of administrative law” that federal agencies respond adequately to all significant comments. *See Natural Res. Def. Council v. EPA*, 859 F.2d 156, 188 (D.C. Cir. 1988). “[T]he opportunity to comment is meaningless unless the agency responds to significant points raised by the public.” *ACLU v. FCC*, 823 F.2d 1554, 1581 (D.C. Cir. 1987) (citing *Alabama Power Co. v. Costle*, 636 F.2d 323, 384 (D.C. Cir. 1979)). A comment is “significant” when “if true, [it] raise[s] points relevant to the agency’s decision and which, if adopted, would require a change in an agency’s proposed [action].” *Home Box Office v. FCC*, 567 F.2d 9, 35, n.58 (D.C. Cir. 1977). An agency’s failure to respond to comments “demonstrates that the agency’s decision was not based on a consideration of the relevant factors.” *Sierra Club v. EPA*, 353 F.3d 976, 986 (D.C. Cir. 2004); *see also NRDC v. EPA*, 859 F.2d at 188 (“The fundamental purpose of the response requirement is, of course, to show that the agency has indeed considered all significant points articulated by the public.”).

¹ A lessee is granted the “exclusive right to drill for, mine, extract, remove and dispose of all the oil and gas [in the lease parcel] together with the right to build and maintain necessary improvements thereupon for the term indicated below, subject to renewal or extension in accordance with the appropriate leasing authority.” BLM Form 3100; *see also* 43 C.F.R. § 3110.1-2 (surface use rights).

Council on Environmental Quality (“CEQ”) regulations make clear that “public scrutiny [is] essential to implementing NEPA.” 40 C.F.R. § 1500.1(b). This means federal agencies must “[e]ncourage and facilitate public involvement in decisions which affect the quality of the human environment,” *id.* § 1500.2(d), and “are under an obligation to follow their own regulations, procedures, and precedents, or provide a rational explanation for their departure.” *Utahns for Better Transp.*, 305 F.3d at 1165.

In the present case, SUWA submitted detailed and substantive comments that were arbitrarily ignored by BLM, without any rationale provided. First, the BLM Price field office did not respond to *any* of SUWA’s comments regarding air quality. In fact, there is *no* response to our comments about this important issue. *Compare* BLM, Environmental Assessment, DOI-BLM-UT-G021-2015-0031-EA, November 2015 Oil and Gas Lease Sale, Appendix E at 47-56 (Aug. 2015) (“Price EA”), *with* SUWA, Comments on November 2015 Oil and Gas Lease Sale, DOI-BLM-UT-G021-2015-0031-EA at 1-2 (July 13, 2015) (providing comments prepared by Megan Williams, an air quality expert) (“SUWA Comments on Price EA”) (attached). Similarly, the BLM Vernal field office *only* responded to SUWA’s statement that BLM cannot authorize leasing when it will contribute to continued future exceedances of federal air quality standards, and completely ignored the many issues raised by SUWA’s air quality expert, Megan Williams. *Compare* BLM, Environmental Assessment, November 2015 Lease Sale, DOI-BLM-UT-G010-2015-089-EA, Appendix E at 98 (Nov. 2015) (“Vernal EA”), *with* SUWA, Comments On Environmental Assessment, November 2015 Lease Sale, DOI-BLM-UT-G010-2015-089-EA at 1-2 (July 13, 2015) (“SUWA Comments on Vernal EA”) (attached).

Furthermore, in regards to other issues raised by SUWA, BLM arbitrarily responded to specific subparts but ignored many significant issues. The specific examples of BLM’s failure to respond to SUWA’s concerns will be discussed in detail in each respective section. *See infra*. BLM’s failure to respond to these substantive comments falls well short of satisfying its hard look requirement under NEPA and is arbitrary and capricious. *See Utahns for Better Transp.*, 305 F.3d at 1165; *Citizens’ Committee to Save Our Canyons v. Krueger*, 513 F.3d 1169, 1179 (10th Cir. 2008). BLM has not fulfilled its obligation to “inform the public that it has considered environmental concerns in its decision-making process.” *Citizens’ Committee to Save Our Canyons*, 513 F.3d at 1178. SUWA therefore re-submits and incorporates our comments and all referenced attachments thereto as part of this formal protest. The leases at issue *cannot* be offered, sold or issued until BLM complies with its obligations under NEPA and the APA. *See, e.g.*, 40 C.F.R. § 1503.4(a).

III. BLM Has Failed to Sufficiently Analyze Cultural Resources in Violation of the National Historic Preservation Act and NEPA

a. The NHPA and Its Implementing Regulations Require BLM to Consider the Adverse Impacts of Its Undertakings on Archeological Resources

Congress enacted the NHPA in 1966 to implement a broad national policy encouraging the preservation and protection of America’s historic and cultural resources. *See* 16 U.S.C. §§ 470(b), 470-1. The heart of the NHPA is Section 106, which prohibits federal agencies from approving any federal “undertaking” unless the agency takes into account the effects of the undertaking on historic properties that are included in or eligible for inclusion in the National

Register of Historic Places. 16 U.S.C. §§ 470f, 470w(7); *see also Pueblo of Sandia v. United States*, 50 F.3d 856, 859 (10th Cir. 1995). Section 106 is a “stop, look, and listen provision” that requires federal agencies to consider the effects of their actions and programs on historic properties and sacred sites before implementation. *Muckleshoot Indian Tribe v. U.S. Forest Serv.*, 177 F.3d 800, 805 (9th Cir. 1999); *see also Valley Cmty. Pres. Comm’n v. Mineta*, 373 F.3d 1078, 1085 (10th Cir. 2004).

To adequately “take into account” the impacts on archeological resources, all federal agencies must comply with binding Section 106 regulations established by the Advisory Council on Historic Preservation (Advisory Council).² Under these regulations, the first step in the Section 106 process is for an agency to determine whether the “proposed [f]ederal action is an undertaking as defined in [Section] 800.16(y).” 36 C.F.R. § 800.3(a). Undertakings include any permit or approval authorizing use of federal lands. *Id.* § 800.16(y). If the proposed action is an undertaking, the agency must determine “whether it is a type of activity that has the potential to cause effects on historic properties.” *Id.* § 800.3(a). An effect is defined broadly to include direct and indirect adverse effects that might alter the characteristics that make a cultural site eligible for listing in the National Register of Historic Places. *See id.* § 800.16(i); 65 Fed. Reg. 77,698, 77,712 (Dec. 12, 2000).

The agency next “[d]etermine[s] and document[s] the area of potential effects” and then “[r]eview[s] existing information on historic properties within [that] area.” 36 C.F.R. § 800.4(a)(1)-(2). “Based on the information gathered, . . . the agency . . . shall take the steps necessary to identify historic properties within the area of potential effects.” *Id.* § 800.4(b). “The agency shall make a reasonable and good faith effort to carry out appropriate identification efforts.” *Id.* § 800.4(b)(1).

If the undertaking is a type of activity with the potential to affect historic properties then the agency must determine whether in fact those properties “may be affected” by the particular undertaking at hand. *Id.* § 800.4(d)(2).³ Having identified the historic properties that may be affected, the agency considers whether the effect will be adverse, using the broad criteria and examples set forth in section 800.5(a)(1). Adverse effects include the “[p]hysical destruction of or damage to all or part of the property.” *Id.* § 800.5(a)(2)(i). If the agency concludes that the

² The Advisory Council, the independent federal agency created by Congress to implement and enforce the NHPA, has exclusive authority to determine the methods for compliance with the NHPA’s requirements. *See Nat’l Ctr. for Pres. Law v. Landrieu*, 496 F. Supp. 716, 742 (D.S.C. 1980), *aff’d per curiam*, 635 F.2d 324 (4th Cir. 1980); *CTIA-Wireless Ass’n v. F.C.C.*, 466 F.3d 105, 115 (D.C. Cir. 2006) (“[T]he Advisory Council regulations command substantial judicial deference.”) (quotations and citations omitted). The Advisory Council’s regulations “govern the implementation of Section 106” for all federal agencies. *Nat’l Ctr. for Pres. Law*, 496 F. Supp. at 742; *see also Nat’l Trust for Historic Pres. v. U.S. Army Corps of Eng’rs*, 552 F. Supp. 784, 790-91 (S.D. Ohio 1982).

³ The agency may also determine that there are no historic properties present or there are historic properties present but the undertaking will have no effect upon them, at which point it consults with the State Historic Preservation Officer and notifies relevant Native American tribes of its conclusion. *Id.* § 800.4(d)(1).

undertaking's effects do not meet the "adverse effects" criteria, it is to document that conclusion and propose a finding of "no adverse effects." *Id.* § 800.5(b), (d)(1). "The agency official should seek the concurrence of any Indian tribe . . . that has made known to the agency official that it attaches religious and cultural significance to a historic property subject" to a no adverse effect finding. *Id.* § 800.5(c)(2)(iii).

If, however, the agency concludes that there *may be* an adverse effect, it engages the public and consults further with the state historic preservation officer, Native American tribes, and the Advisory Council in an effort to resolve the adverse effects. *Id.* §§ 800.5(d)(2), 800.6.

b. Consulting Party Review of this Undertaking

Southern Utah Wilderness Alliance is a consulting party for these undertakings: the Price field Office and Vernal field office November 2015 oil and gas lease sale. *See* Letter from Steven Rigby, PFO to SUWA (Sept. 2, 2015) (attached) and Letter from Michelle Brown, VFO to David Garbett, SUWA (Aug. 19, 2015) (attached).

In its letter to SUWA, the Price field office stated that the Alliance "will have 30 days to review the [draft Existing Information and Intensive Literature Review for the 2015 Oil & Gas Lease Sale] report and provide comment to the BLM PFO." Rigby Letter. Accordingly, SUWA has until October 2, 2015 to complete its review and provide comment, and, if necessary, advise BLM if any disagreement with the Price field office's determination of effects for the lease sale, and/or to supplement this protest with regard to NHPA issues and the Price field office.

In its August 19, 2015 letter to the Alliance, the Vernal field office provided a summary of a Literature Review of each of the lease parcels, noted that "no formal determination of effect has been made," and requested that the Alliance provide its comments and feedback to the Vernal field office's archaeologist, David Grant, before September 8, 2015. Brown Letter at unpaginated 1, 4. On August 21, the date the Alliance received Ms. Brown's letter, Stephen Bloch, the Alliance's legal director, emailed Mr. Grant and requested several items that were referenced in Ms. Brown's letter, but not included, as well as additional time to review those materials and submit his comments. *See* Email from Stephen Bloch, SUWA to David Grant, VFO (Aug. 21, 2015) (attached). Subsequent emails and telephone conversations between Ms. Brown, Mr. Grant and Mr. Bloch confirmed that the Vernal field office would be producing the requested information to the Alliance along with a sufficient window of time to review these materials. *See, e.g.,* Email from Stephen Bloch, SUWA to Michelle Brown, VFO (Sept. 10, 2015) (attached); Personal Communication between Michelle Brown, VFO and Stephen Bloch, SUWA (Sept. 10, 2015) (confirming that materials would be produced and that the Alliance would have additional time to review and respond); Email from David Grant, VFO to Stephen Bloch and Landon Newell, SUWA (Sept. 11, 2015) (attached). As of September 16, 2015, the Vernal field office has not provided the requested additional materials. Accordingly, SUWA has additional time to complete its review and provide comment, and, if necessary, advise BLM if

any disagreement with the Vernal field office's determination of effects for the lease sale,⁴ and/or to supplement this protest with regard to NHPA issues and the Vernal field office. SUWA notes that the Hopi Tribe has formally requested in multiple letters to the Price and Vernal field offices that it disagrees with BLM's 'no adverse effects' determination and has requested that the BLM defer leasing these parcels. SUWA incorporates the Hopi Tribes comments and objections. Pursuant to 36 C.F.R. § 800.5(c)(2)(i) the Price and Vernal field offices must either work with the Hopi Tribe to resolve its disagreements or seek review by the Advisory Council on Historic Preservation. Should BLM elect to seek Council review, it must notify the Alliance of that decision, make available all materials provided to the Council, and afford the Alliance and the larger public an opportunity to review and comment on that information. *See* 36 C.F.R. § 800.5(c)(2)(i).

c. BLM Has Failed to Take A Hard Look at the Project's Effects to Cultural Resources

BLM acknowledges that there has not been a complete inventory of the proposed lease parcels, though it admits that cultural resource sites have been identified within the parcels. Price EA at 24-29; Vernal EA at 19-22. BLM does not explain why additional inventories were not conducted. *See id.* BLM also fails to discuss what type of direct or indirect effects oil and gas development may have to the cultural sites located in these parcels. This information should have been included in the final EAs. *See* SUWA Comments on Price field office November Lease Sale at 2-4; SUWA Comments on Vernal field office November Lease Sale at 2-4. The EA's current cursory treatment of this important resource in the ID Team Checklist and short cultural resource sections does not comply with NEPA's hard look mandate. *See* BLM Handbook on Planning for Fluid Minerals Resources, Chapter (H-1624-1), at I.B.2 (1988) (emphasis added);⁵ *see S. Utah Wilderness Alliance v. Norton*, 457 F. Supp. 2d 1253, 1256 (D. Utah 2006).

Because the time has not expired for the Alliance to review the Price field offices materials and because the Vernal field office has not yet provided SUWA with certain requested materials, SUWA reserves the right to supplement this section of its Protest.

⁴ SUWA notes that while Manager Brown's August 19, 2015 letter to the Alliance states that the Vernal field office has not made a "formal determination" of effects with regard to the November 2015 oil and gas lease sale, on May 18, 2015 the Utah State Historic Preservation Office stated in a letter to the Vernal field office that SHPO is "not able to concur with you[r] determination of 'No Adverse Effect.'" Letter from Lori Hunsaker, SHPO to Stephanie Howard, VFO (May 18, 2015) (attached).

⁵ A lessee is granted the "exclusive right to drill for, mine, extract, remove and dispose of all the oil and gas [in the lease parcel] together with the right to build and maintain necessary improvements thereupon for the term indicated below, subject to renewal or extension in accordance with the appropriate leasing authority." BLM Form 3100; *see also* 43 C.F.R. § 3110.1-2 (surface use rights) (BLM may only require mitigation to the extent it does not require relocation of proposed operations by greater than 200 meters or prohibit new surface disturbance for longer than 60 days in any given lease year).

IV. Climate Change

The Price and Vernal EAs failed to take a hard look at the direct, indirect, and cumulative impact on local, regional, and national climate change from leasing the protested parcels. NEPA requires that foreseeable effects of proposed actions, including climate change, be disclosed and evaluated. *See, e.g., WildEarth Guardians v. United States Forest Service*, -- F.Supp.3d --, 2015 WL 4886082 at *21 (Aug. 17, 2015); *High Country Conservation Advocates v. United States Forest Service*, 52 F.Supp.3d 1174, 1190 (D. Colo. 2014) (citing 40 C.F.R. § 1508.8(b)). These effects fall “squarely within the realm of NEPA.” CEQ, Revised Draft Guidance for Greenhouse Gas Emissions and Climate Change Impacts at 22 (“CEQ Climate Change Guidance”) (attached).

BLM cannot merely estimate the approximate greenhouse gas (“GHG”) emissions associated with a particular project proposal. It must also consider the *effects* of such emissions. *See, e.g.,* 40 § 1508.8(b). Here, BLM failed to undertake this critical second step.

[GHG] were estimated for the lease sale using a generic calculator to predict potential future emissions of GHG’s. The GHG *emissions estimates* were disclosed in the EA. *No further analysis is either required or possible to assign an impacts [sic] to these estimates, as there are no tools or methodology available to do so.*

Vernal EA, Appendix E at 99 (emphasis added). For its part, the BLM Price field office claims to have qualitatively analyzed “the environmental effects of climate change and their socioeconomic consequences” but no such analysis can be found in the relevant EA. *Compare* Price EA, Appendix E at 48, *with* Price EA at 39-42. It is acknowledged that *no* quantitative analysis was done because, allegedly, “it is currently not feasible to speculate about the net impacts to climate that might result from leasing and any future oil and gas development operations on the proposed lease parcels.” *Id.*, Appendix E at 49; *see also id.*, Appendix C at 8 (“The BLM does not have the ability to associate a BLM action’s contribution to climate change with impacts in any particular area. The technology to be able to do so is not yet available.”).

The BLM’s reasoning is arbitrary and capricious. First, Under NEPA, BLM must disclose the estimated GHG emissions *and* their foreseeable impacts (or effects) to climate change. 40 C.F.R. § 1508.8(b) (“Effects includes ecological (such as the effects on . . . the components, structures, and functioning of affected ecosystems) . . . economic, social, or health, whether direct, indirect, or cumulative.”); *id.* § 1508.7 (cumulative impact analysis); CEQ Climate Change Guidance at 3 (must consider GHG emissions and their effects). NEPA requires BLM to do more than consider – at most – only half of an environmental issue. Rather, BLM must analyze the entire issue to ensure that the information provided is of “high quality” and “foster[s] excellent action.” 40 C.F.R. §§ 1500.1(b), (c).

The CEQ’s recently updated draft guidance for climate change reinforces and adds to this long-standing obligation under NEPA.

When assessing the potential significance of the climate change impacts of their proposed actions, agencies should consider both context and intensity, as they do for all other impacts.

CEQ Climate Change Guidance at 10 (citing 40 C.F.R. §§ 1508.27(a), (b)). This assessment “should take into account both the short- and long-term effects . . . based on what the agency determines is the life of a project and the duration of the generation of emissions.” *Id.* at 12. This obligation is also recognized by the courts which have soundly rejected the approach taken by BLM in this instance. *See, e.g., High Country Conserv. Advocates*, 52 F.Supp.3d at 1190 (federal agency must analyze both the potential GHG emissions and their effect).

Second, there are “widely available” GHG estimation tools that are “in broad use not only in the Federal sector, but also in the private sector, by state and local governments, and globally.” CEQ Climate Change Guidance at 15. “These widely available tools address GHG emissions, including emissions from fossil fuel combustion and other activities.” *Id.* Thus, BLM’s conclusion to the contrary – that no such tools exist – is unsupportable and contradicted by the evidence. *See, e.g., Vernal EA* at 32-33 (“The lack of scientific models that predict climate change on regional or local level prohibits the quantification of potential future impacts of decisions made at the local level.”); *Price EA* at 52 (“it is not technically feasible to know with any certainty the net impacts to climate due to global emissions, let alone regional or local emissions.”). Importantly, it is a conclusion and argument that has been soundly rejected by courts in the Tenth Circuit. *See, e.g., High Country Conserv. Advocates v. U.S. Forest Service*, 52 F.Supp.3d 1174, 1190 (D. Colo. 2014); *Dine Citizens Against Ruining Our Environment v. U.S. Office of Surface Mining, Reclamation and Enforcement*, 2015 WL 996605 at *8-9; *WildEarth Guardians v. U.S. Office of Surface Mining, Reclamation and Enforcement*, 2015 WL 2207834 *15.

In *High Country Conserv. Advocates*, the court held that the U.S. Forest Service and BLM had violated NEPA when they provided GHG emission estimates but failed to analyze the impact to the environment from such emissions. 52 F.Supp.3d at 1191. The agencies could not merely “quantify[] the amount of emissions relative to state and national emissions and giv[e] general discussions to the impacts of global climate change,” but were required to analyze the second half of the issue by “discuss[ing] the impacts caused by these emissions.” *Id.* at 1190. The agencies had violated the law by failing to utilize an available emissions calculation tool – the social cost of carbon – which is designed to quantify a project’s contribution to costs associated with climate change. *Id.* The court rejected the argument that the social cost of carbon tool is limited to rulemaking procedures, noting that “the EPA has expressed support for its use in other contexts.” *Id.* At a minimum, NEPA’s hard look mandate requires “a hard look at whether this tool, however imprecise it might be, would contribute to a more informed assessment of the impacts than if it were simply ignored.” *Id.* at 1193. In short, the court rejected the exact approach taken by BLM in the present case. *See, e.g., Price EA* at 52; *id.*, Appendix E at 49 (“it is currently not feasible to speculate about the net impacts to climate that might result from leasing and any future oil and gas development operations on the proposed lease parcels.”); *Vernal EA* at 32-33; *Vernal EA*, Appendix E at 99 (alleging that it is not “possible to assign an impacts [sic] to these estimates, as there are no tools or methodology available to do so”).

Finally, NEPA requires more than a mere statement that GHG emissions from a particular project proposal represent a small fraction of local, regional, or national GHG emissions and are thus “immaterial,” because such a statement “is not helpful to the decisionmaker or the public.” CEQ Climate Change Guidance at 6, n.11; *see also High Country Conserv. Advocates*, 52 F.Supp.3d at 1190 (federal agency cannot merely “quantify[] the amount of emissions relative to state and national emissions and giv[e] general discussion to the impacts of global climate change” without also “discuss[ing] the impacts cause by these emissions”). “[T]he statement that emissions from a [proposed action] represents only a small fraction of global emissions is more a statement about the nature of the climate change challenge, and is *not* an appropriate basis for deciding whether to consider climate change impacts under NEPA.” CEQ Climate Change Guidance at 9 (emphasis added). That is, however, exactly what BLM has done in the present case. *See, e.g., Vernal EA* at 43 (“Drilling and development activities . . . are anticipated to release a negligible amount of [GHG] into the local airshed, resulting in a negligible cumulative impact.”); *Price EA* at 52 (“When compared to regional emissions inventories, the amounts of ozone precursors emitted from the Proposed Action are not expected to have a measurable contribution or effect on regional ozone formation.”).

V. The Social Cost of Carbon

The lease sale EAs failed to take a hard look at the social cost of carbon. NEPA requires the BLM to analyze the impacts of a proposed action including “ecological . . . economic, social, [and] health, whether direct, indirect, or cumulative.” 40 C.F.R. § 1508.8(b). This long-standing obligation under NEPA includes the social cost of carbon, as noted by CEQ and the courts. *See, e.g., CEQ Climate Change Guidance* at 16 (“Monetizing costs and benefits . . . is not a new requirement”); *High Country Conserv. Advocates*, 52 F.Supp.3d at 1189-90.

BLM concluded – improperly – that it has no legal obligation to consider the social cost of carbon. *See Vernal EA*, Appendix E at 99 (“The estimation of social cost of carbon at the leasing stage is neither possible nor required by current CEQ or BLM guidance.”); *Price EA*, Appendix E at 51 (same). Furthermore, BLM argues that the obligation exists, if at all, only when it is engaged in the rulemaking process. *Price EA*, Appendix E at 51. These conclusions are arbitrary and capricious.

As a primary matter, BLM *is* required legally to consider the social cost of carbon regardless of whether BLM is engaged in the rulemaking process, because GHG emissions have an indirect and cumulative impact on the economy, society, and human health. *See* 40 C.F.R. § 1508.8(b); *High Country Conserv. Advocates*, 52 F.Supp.3d at 1189-90 (“The agencies [which included BLM] do not dispute that they are required to analyze the indirect effects of GHG emissions”). The social cost of carbon formula “was expressly designed to assist agencies in cost-benefit analysis.” *High Country Conserv. Advocates*, 52 F.Supp.3d at 1190.

BLM *cannot* consider only the benefits of a proposed action while ignoring its associated costs. *High Country Conserv. Advocates*, 52 F.Supp.3d at 1191. While NEPA may not require a cost-benefit analysis, “it [is] nonetheless arbitrary and capricious to quantify the *benefits* of the [proposed action] and then explain that a similar analysis of the *costs* [is] impossible when such an analysis [is] in fact possible.” *Id.* (emphases in original). However, this is exactly what BLM

has done in the present case. *See, e.g.*, Price EA at 2 (listing the economic benefits of the proposed action only), *id.* at 39-42, 52 (no discussion on or use of the social cost of carbon formula); Vernal EA, Appendix E at 99 (“The estimation of social cost of carbon at the leasing stage is neither possible nor required.”).

Second, BLM has the information and data necessary to allow, at a minimum, for an approximation of GHG emissions. *See, e.g.*, Price EA at 40, Tbl. 4.1 (Anticipated Emissions); Vernal EA at 32, Tbl. 4.1 (Anticipated Emissions). BLM also has the ability to calculate the approximate cost to society of the anticipated emissions using anyone of the “widely available” tools designed specifically for such a task. *See, e.g.*, CEQ Climate Change Guidance at 15 (“These widely available tools address GHG emissions, including emissions from fossil fuel combustion and other activities.”).

Furthermore, quantitative analysis of the *effects* of the potential GHG emissions is also required in the present case because the proposed action will result in the release of more than 25,000 metric tons of CO_{2-e} emissions – the threshold level established by CEQ which triggers the need to analyze such effects. *See* CEQ Climate Change Guidance at 18; Price EA at 52 (proposed action may “release 66,552.34 Metric Tons of CO_{2(e)}”). This threshold allows BLM “to focus [its] attention on proposed projects with potentially large GHG emissions.” CEQ Climate Change Guidance at 18. It is *not* a substitute for BLM’s determination of significance under NEPA, rather, “[t]he ultimate determination of significance remains subject to agency practice for the consideration of context and intensity, as set forth in the CEQ Regulations.” *Id.* at 19. BLM, however, did not analyze the effects of the estimated GHG emissions and thus, it “effectively zeroed out the costs in its quantitative analysis,” which is unlawful. *High Country Conserv. Advocates*, 52 F.Supp.3d at 1192 (citing *Ctr. for Biological Diversity v. Nat’l Highway Traffic Safety Admin.*, 538 F.3d 1172, 1217 (9th Cir. 2008); *Border Power Plant Working Grp. V. U.S. Dep’t of Energy*, 260 F.Supp.2d 997, 1028-29 (S.D. Cal. 2003)).

VI. IM 2010-117

a. BLM Failed to Consider an Appropriate Range of Alternatives as Required by NEPA and IM 2010-117

The BLM failed to consider an appropriate range of alternatives as required by NEPA and relevant national policy and guidance. *See e.g.*, 42 U.S.C. § 4332(2)(E); 40 C.F.R. § 1501.2(c); Instruction Memorandum No. 2010-117, *Oil and Gas, Planning, and National Environmental Policy Act (NEPA)*, (May 17, 2010) (“IM 2010-117”) (attached). IM 2010-117 built upon the long-standing obligation under NEPA to analyze appropriate alternatives by requiring BLM to consider *at least* three alternatives when leasing parcels in areas that contain “unresolved resource conflicts,” such as lands with wilderness characteristics (“LWC”).

The EA *will* analyze [1] a no action alternative (no leasing), [2] a proposed leasing action (lease the parcel(s) in conformance with the land use plan), *and* [3] any alternatives to the proposed action that may address unresolved resource conflicts.

IM 2010-117 § III.E (emphases added).

“Unresolved resource conflicts” include lands with wilderness characteristics (“LWC”) that were not designated for the protection or management of such values in the relevant RMP. *Id.* § III.C.4. A third alternative *must* be considered even when the lease parcel(s) are in an area designated as “open” for oil and gas leasing in the relevant RMP. *See id.* § I.A (“While an RMP may designate land as ‘open’ to possible leasing, such a designation *does not mandate leasing.*”) (emphasis added); *Id.* § Policy/Action (“There is no presumed preference for oil and gas development over other uses.”). While the leasing of parcels must conform to the existing RMPs that alone is not the end of the inquiry: BLM must also “evaluate whether oil and gas management decisions identified in the RMP (including lease stipulations) are still appropriate and provide adequate protection of resource values.” IM. 2010-117 § III.C.2. The existing management plans may be inadequate due to changed circumstances, requiring that information be updated or the plans amended and/or revised. *Id.* § I.A.

In the present case, the protested parcels overlap with BLM-identified LWCs, including the Limestone Cliffs, Mussentuchit Badlands, Molen Reef, Rock Canyon, and Upper Muddy Creek areas in the Price field office, and the Bitter Creek, Desolation Canyon, and Hideout Canyon (Cripple Cowboy) areas in the Vernal field office. *See* Price EA at 23-24; Vernal EA at 23. The management of these areas is “unresolved” as determined by IM 2010-117, FLPMA Section 201, and BLM’s wilderness inventory guidance manual. *See* IM 2010-117 § III.C.2; 43 U.S.C. § 1711(a) (“[BLM] shall prepare and maintain on a continuing basis an inventory of all public lands and their resources and other values.”); BLM, 6310 – Conduction Wilderness Characteristics Inventory on BLM Lands (Public) § 6310.06.A (March 15, 2012) (same) (“BLM Manual 6310”) (attached).

Despite all this, BLM considered only the proposed action and no action alternatives. *See* Price EA at 8; Vernal EA at 9. The EAs did not need to follow the directives in IM 2010-117, allegedly, because (1) such compliance was not required by BLM’s “multiple use” mandate, (2) the RMPs conclusively resolved the issue when they designated the land at issue as “open” for oil and gas leasing, and (3) no updated lease stipulations or notices are necessary or needed. *See* Price EA, Appendix E at 51-52; Vernal EA, Appendix E at 99. These conclusions are arbitrary and capricious.

First, BLM *is* required to follow the directives in IM 2010-117. *See, e.g., Cotton Petroleum Corp. v. U.S. Dept of Interior*, 870 F.2d 1515, 1526 (10th Cir. 1989) (“An administrative agency must explain its departure from prior norms (guidelines).”). NEPA requires consideration of appropriate alternatives, *see* 42 U.S.C. § 4332(2)(E), and IM 2010-117 broadened this requirement to include consideration of “alternatives to the proposed action that may address unresolved resource conflicts,” such as not leasing in LWC. IM 2010-117 § III.E; *see also Bales Ranch, Inc. et al.*, 151 IBLA 353, 363 (2000) (“Consideration of alternatives ensures that the decisionmaker has before him and takes into proper account all possible approaches to a particular project.”) (internal quotations omitted).⁶

⁶ The BLM Vernal field office improperly claims that it satisfied its obligations under 2010-117 by considering the no action alternative. *See* Vernal EA, Appendix E at 99. This overlooks the

Second, the RMPs by necessity must be able to evolve and adapt to respond to new information and changed circumstances as they arise, as recognized by FLPMA. *See, e.g.*, 43 U.S.C. § 1711(a) (“[BLM] shall prepare and maintain *on a continuing basis* an inventory of all public lands and their resource and other values.”) (emphasis added). “This inventory shall be kept current so as to reflect changes in conditions and to identify new and emerging resource and other values.” *Id.*; *see also* IM 2010-117 § III.C.3 (“Field offices will review parcels in light of the most current national and local program-specific guidance to determine the availability of parcels for leasing and/or applicable stipulations.”). In fact, IM 2010-117 was issued in response to BLM’s highly controversial and publicly criticized (and successfully challenged) 2008 decision to lease parcels in and near environmentally sensitive areas including Arches National Park and numerous LWCs. *See, e.g.*, BLM, Final BLM Review of 77 Oil and Gas Lease Parcels Offered in BLM-Utah’s December 2008 Lease Sale (Oct. 7, 2009); BLM, BLM Releases Report on Utah Oil and Gas Leases (Oct. 8, 2009), http://www.blm.gov/wo/st/en/info/newsroom/2009/october/blm_releases_report.html. In other words, IM 2010-117 recognized that the existing RMPs – including those at issue here – had shortchanged Utah’s remarkable wild lands and thus, the decisions made therein should be reconsidered and “do[] not mandate leasing.” IM 2010-117 § I.A. BLM continues to shortchange Utah’s wild lands when it claims improperly that the decisions made in the 2008 RMPs are immutable.

Furthermore, BLM has recognized that determinations made in its Utah RMPs may no longer be adequate and *can* be updated in light of changed circumstances, updated policies, and new information. *See, e.g.*, BLM, Utah Greater Sage-Grouse Proposed Land Use Plan Amendment and Final Environmental Impact Statement 1-4 (June 2015) (land use plan amendments are needed due to the inadequacy of regulatory mechanisms)⁷; BLM, Master Leasing Plan and Draft Resource Management Plan Amendments / Draft Environmental Impact Statement for the Moab and Monticello Field Offices 1-2 to -13 (Aug. 2015) (RMP amendment needed due to changing circumstances, updated policies, and new information).⁸ This includes determinations made regarding the management and protection of LWCs, such as those at issue in the present case. *See* BLM Manual § 6310.1.A (“wilderness characteristics may have changed over time, and an area that was once determined to lack wilderness characteristics may now possess them.”). Therefore, these factors must be considered before the protested parcels can be offered for competitive leasing. IM 2010-117 § III.C.2.

requirement to consider the proposed action and no action alternatives *as well as* “any alternatives to the proposed action that may address unresolved resource conflicts.” IM 2010-117 § III.E.

⁷ The draft Greater Sage-Grouse LUPA is available at http://www.blm.gov/ut/st/en/prog/planning/SG_RMP_rev/FEIS.html (last updated June 29, 2015).

⁸ The draft Moab MLP is available at <http://www.blm.gov/ut/st/en/fo/moab/MLP/deis.html> (last updated Aug. 24, 2015).

b. BLM Failed to Coordinate and/or Consult with Stakeholders that may be Affected by their Leasing Decision

The Price and Vernal field office's failed to "coordinate and/or consult on the parcel review and NEPA analysis with stakeholders that may be affected by [their] leasing decision." IM 2010-117 § III.C.6. Affected stakeholders include adjacent BLM field offices since they "manag[e] shared landscapes, such as airsheds, viewsheds, watersheds, and soundscapes." *Id.*

Parcels 086, 089, 093, 095, 097, 098, 100, and 101, in the Price field office are located *immediately* adjacent to the eastern edge of the BLM Richfield field office boundary. *See* MAP_Boundary-Viewshed-ACEC (attached).⁹ Parcels 071, 087, 090-092, 094, and 096-097 are located "close" (*i.e.*, a few miles) to this same boundary. Similarly, Parcels 065 and 066 in the Vernal field office are "close" to the Colorado BLM White River field office's western boundary. These neighboring field offices were not consulted.

The BLM Price field office admits that it failed to consult with the Richfield field office but, allegedly, did not need to do so because "[t]he closet parcels to the Richfield field office are approximately 6 miles away." Price EA, Appendix E at 53. Similarly, the BLM Vernal field office determined – on its own – that the shared landscapes managed by both it and the Colorado BLM White River field office would not be impacted. *See* Vernal EA, Appendix E at 99. BLM reasoning is arbitrary and wrong.

First, the BLM Richfield field office boundary has more than one edge. Its northern boundary which overlaps with Capitol Reef National Park is approximately six miles from the most southern protested parcel (Parcel 101). *See* MAP_Boundary-Viewshed-ACEC. However, the *eastern* edge of the Richfield field office boundary in Sevier County is *immediately* adjacent to eight parcels – 086, 089, 093, 095, 097, 098, 100, and 101. *Id.* The remaining protested parcels in this area are only a few miles to the east. *Id.* (Parcels 071, 087, 090-092, 094, and 096-097). The Price field office is required to coordinate and/or consult with the Richfield field office regarding *all* of these parcels. *See* IM 2010-117 § III.C.6 ("field offices *will* coordinate and/or consult on the parcel review and NEPA analysis with stakeholders that *may* be affected by the BLM's leasing decisions.") (emphases added); *see also* MAP_Boundary-Viewshed-ACEC. Its reasoning for not doing so is clearly arbitrary.

Second, the Vernal field office cannot unilaterally conclude that potentially affected stakeholders and the shared landscapes under their collective management will not be impacted; rather, that conclusion must be reached through coordination and/or consultation with other stakeholders, such as the BLM White River field office. *See* IM 2010-117 § III.C.6. The objective of this provision of IM 2010-117 is to achieve more – not less – "coordination and communication in managing shared landscapes." *Id.*; *but see* Vernal EA at 51 Tbl. 5.1 (list of persons, agencies, and organizations consulted); *id.*, Appendix E at 99 (the BLM White River field office was "not notified or consulted"). Therefore, the decision to not consult with its neighboring field office was arbitrary and in direct conflict with the agency's guidance and policies.

⁹ A slightly different version of this map was provided to the BLM Price field office as an attachment to SUWA's comments on the draft EA. The revised map more clearly distinguishes the relevant BLM field office boundaries and added the Sand Cove ACEC.

VII. The BLM Failed to Ensure Protection of Relevant and Important Values Identified in the Potential Bitter Creek / P.R. Springs and Bitter Creek and Mussentuchit Badlands ACECs

The EAs failed to ensure protection of the BLM-identified relevant and important values in the potential Bitter Creek / P.R. Springs and Bitter Creek and Mussentuchit Badlands areas of critical environmental concern (“ACECs”).

ACECs are defined as “areas within the public lands where special management attention is required . . . to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources or other natural systems or processes.” 43 U.S.C. § 1702(a). A potential ACEC must have: (1) “relevance,” meaning it possesses “a significant historic, cultural, or scenic value [or] a fish or wildlife resource or other natural system or process,” and (2) “importance,” meaning the relevant values, resources, or processes have “substantial significance.” 43 C.F.R. § 1610.7-2(a). Once BLM has identified areas which contain relevant and important values within the planning area, it must ensure their protection, either through special management (by designating an area as an ACEC), *see* 43 U.S.C. § 1702(a), or through standard management prescriptions.

Furthermore, due to BLM’s continuing obligation to monitor the RMPs effectiveness, the potential ACECs at issue here are “unresolved resource conflicts,” requiring BLM to analyze an alternative in which the relevant protested parcels are not offered. *Id.* § III.E. BLM failed to consider such an alternative. *See* Price EA at 8; Vernal EA at 9. This failure violates FLPMA and IM 2010-117 for the same reasons discussed *supra* (*see* Section VI.a).

The Mussentuchit Badlands ACEC was identified by BLM as a potential ACEC in the Price RMP due to its relevant and important cultural resource values, “wealth of fossils” and distinct geology. *See* Price RMP at 3-90, 3-93; *id.* Map 2-48. The ACEC’s relevant values include “significant geological features,” such as “igneous lava dikes and other volcanic intrusions, “prehistoric quarrying areas [that] are important for the study of local prehistoric economies, and the stone material is distinctive enough to be studied as part of regional trading systems,” extensive lithic scatter sites, and significant fossils.” Price RMP, Appendix L at L-18. BLM noted that the “[I]ack of vegetation in the area makes these [cultural and paleontological] resources very visible and vulnerable.” *Id.* The area’s important values include substantial fossil resources that are appreciated on a national level and igneous lava dikes and fins which are unique within the Colorado Plateau region of Utah. *Id.* With regard to cultural resources, BLM acknowledged that

The archaeological sites represent an exceptional opportunity for scientific study of prehistoric regional trade. These chert beds were an important regional resource. Quarrying and processing the material took place on site, and the chert was traded over a wide area. The quarry sites are unique in that they provide a unique opportunity to study the chert trade over wide areas, and they are not closely associated with habitation and foraging areas and are in a relatively inhospitable area.

Id. at L-18 to -19.

The Bitter Creek / P.R. Springs and Bitter Creek ACECs were identified as potential ACECs in the Vernal RMP due to their relevant and important values. *See* Vernal RMP at 3-89. Their relevant values include the “[e]xistence of an old growth forest, significant cultural and historic resources, important watershed, and critical ecosystem for wildlife and migratory birds.” *Id.* Their important values are recognized to be “fragile, sensitive, rare, irreplaceable, exemplary, and unique,” and include an “[a]ncient (over 1,200 years) pinyon forest,” including the Utah champion pinyon which is “irreplaceable.” *Id.*; *id.*, Appendix G at G-3 They also include “[t]he most extensive wetland in the multi-state Book Cliffs due to uniquely perched water table” which is “a critical ecosystem for migratory birds and wide variety of wildlife.” *Id.* at 3-89.

The EAs do not even mention the potential ACECs at issue and thus, provide no analysis or record evidence that their identified relevant and important values will be protected. *See* Price EA at 29-30, 47, 55; Vernal EA at 22, 33-34, 43-44. This violates FLPMA which requires BLM to continually ensure that standard management prescriptions (*e.g.*, lease stipulations and notices) will protect such identified values, even if the ACECs were not “designated” in the relevant RMPs. *See* 43 U.S.C. § 1702(a). The Price and Vernal RMPs did not designate these areas as ACECs because, in large part, BLM took the position that standard management prescriptions and existing laws, regulations, and policies, would adequately protect identified relevant and important values. *See* Price RMP at 4-362;¹⁰ Vernal RMP at 4-428. The effectiveness of these decisions, however, must be continually monitored.

As with LWCs, the decision to “designate” (or not designate) an ACEC in a RMP is *not* the end of the matter. Rather, BLM must “evaluate whether oil and gas management decisions identified in the RMP (including lease stipulations) are still appropriate and provide adequate protection of resource values.” IM 2010-117 § III.C.2. “If the lease stipulations do not provide adequate resource protection, it may be necessary to develop new lease stipulations or revise existing ones.” *Id.* Similarly, BLM must also continually analyze whether “[i]n undeveloped areas [such as the potential ACECs at issue], non-mineral resource values are greater than potential mineral development.” *Id.* § III.C.4. At all times, “there is no presumed preference for oil and gas development over other uses.” *Id.* § Policy/Action.

Thus, BLM has a *continuing* obligation which did not end with the approval of the Price and Vernal RMP/RODs to ensure appropriate stipulations and notices are attached to new leases *and* to determine the significance of non-mineral resource values. *See* 43 U.S.C. § 1711(a) (“[BLM] shall prepare and maintain on a *continuing* basis an inventory of all public lands and their resource and other values . . . giving *priority to [ACECs].*”) (emphases added); IM 2010-117 § I.A. (“Through RMP effectiveness monitoring and periodic RMP evaluations, [BLM] will

¹⁰ With regard to the potential Mussentuchit Badlands ACEC, the Price RMP followed BLM’s illegal “lease first, think later” approach and simply noted that while this area’s archaeological sites are “unique” and provide an “exceptional opportunity” for scientific study, that protection was not appropriate because later studied could, potentially, mitigate damage to these resources. Price RMP at 4-362.

examine resource management decisions to determine whether the RMPs adequately protect important resource values in light of changing circumstances, updated policies, and new information.”); *cf.* BLM, Manual 1613 – Areas of Critical Environmental Concern § 1613.6 (Sept. 29, 1988) (“Followup monitoring is also essential for ensuring the protection of ACEC values and resources.”) (attached). However, BLM arbitrarily concluded that it has no such obligation. *See, e.g.*, Price EA, Appendix E at 53; Vernal EA, Appendix E at 100 (“[The Bitter Creek / P.R. Springs and Bitter Creek ACECs] were not carried forward in the Vernal RMP ROD, so there is no requirement to protect those areas as designations.”). This conclusion violates FLPMA and IM 2010-117. BLM cannot offer and sell these leases until it considers, and if appropriate, reaffirms that the identified relevant and important values in the potential Mussentuchit Badlands ACEC and Bitter Creek / P.R. Springs ACEC and Bitter Creek ACEC will be protected by only standard management prescriptions. If BLM concludes that this is not the case, then the leases may not be offered and BLM should initiate a plan amendment to formally designate these ACECs.

VIII. The EAs Failed to Ensure the Continued Protection of the Outstanding Remarkable Values Present in Bitter Creek and Ninemile Creek

The EAs failed to ensure the continued protection of the outstandingly remarkable values identified by BLM for Bitter Creek and Ninemile Creek, as required by FLPMA, IM 2010-117, and BLM’s wild and scenic river guidance manual. As noted *supra*, FLPMA requires BLM to prepare and maintain “on a continuing basis” an inventory of all public lands and their resources and other values. 43 U.S.C. § 1711(a). IM 2010-117 builds upon this requirement by requiring BLM – in preparation for an oil and gas lease sale – to “examine resource management decisions to determine whether the RMPs adequately protect important resource values in light of changing circumstances, updated policies, and new information.” Building even further upon this requirement, recently released guidance instructs BLM to “[m]onitor the effectiveness of management decisions for . . . rivers identified as eligible or suitable by the BLM.” BLM, Manual 6400 – Wild and Scenic Rivers – Policy and Program Direction for Identification, Evaluation, Planning, and Management (Public) § 6400.1.6.9 (July 13, 2012) (“BLM Manual 6400”) (attached); *see also* 43 C.F.R. 1610.4-9.

Furthermore, due to BLM’s continuing obligation to monitor the RMPs effectiveness, Bitter Creek and Ninemile Creek are “unresolved resource conflicts,” requiring BLM to analyze an alternative in which the relevant protested parcels are not offered. *Id.* § III.E. BLM failed to consider such an alternative. *See* Price EA at 8; Vernal EA at 9. This failure violates FLPMA and IM 2010-117 for the same reasons discussed *supra* (*see* Section VI.a).

In the present case, BLM acknowledges that it has *not* monitored the effectiveness of the standard management practices established in the Vernal RMP/ROD to protect eligible river segments that were not brought forward as suitable, because, allegedly, it has no such obligation. *See* Vernal EA, Appendix E at 100 (“These eligible WSRs [*i.e.*, Bitter Creek and Ninemile Creek] were not carried forward in the Vernal RMP ROD as suitable, so there is no requirement to protect those areas as designations.”). This conclusion is arbitrary.

As with LWCs and ACECs, the decision made in the RMP/ROD to not carry these rivers forward as “suitable” is *not* the end of the matter. Rather, BLM must continually monitor the effectiveness of such a decision. *See, e.g.*, BLM Manual § 6400.1.6.9. Bitter Creek and Ninemile Creek were determined eligible for inclusion into the National Wild and Scenic River System. Vernal RMP, Appendix C at C-7 to C-8. Bitter Creek possesses outstanding remarkable values including fish, wildlife/habitat, cultural, historic and recreational. *Id.* at C-8 to C-9. Similarly, Ninemile Creek possesses outstandingly remarkable scenic and cultural values. *Id.* at C-10. BLM committed to protect these identified values through standard management practices. *See* Vernal RMP at 4-438 (standard management prescriptions “would still afford protection to the river corridor, free-flowing water, and river values”). The effectiveness of these management practices must be monitored. If it is determined that they “do not provide adequate resource protection, it may be necessary to develop new lease stipulations or revise existing ones.” IM 2010-117 § III.C.2.

There is record evidence that standard management protections established in the Vernal RMP/ROD have *not* provided adequate protection for Bitter Creek and Ninemile Creek. On March 27, 2015, the Utah Department of Environmental Quality, Division of Water Quality (“DWQ”), submitted its revised 2012-2014 Integrated Report on the condition of Utah’s rivers, streams, lakes, and wetlands to the EPA for final approval/disapproval. *See* DWQ, Monitoring and Reporting, <http://www.deq.utah.gov/ProgramsServices/programs/water/wqmanagement/assessment/current/roct.htm> (last updated Sept. 15, 2015). The Integrated Report is required by Sections 303 and 305 of the Clean Water Act. *See* 33 U.S.C. §§ 1313, 1315. The Integrated Report listed – for the first time – the “Bitter Creek Upper” (Assessment ID Unit: UT14050007-005) as an impaired stream due to temperature and total dissolved solids (“TDS”). *See* DWQ, Integrated Report, Chapter 5: 303(d) List of Rivers and Streams 152 (excerpts attached). This encompasses the section of Bitter Creek at issue here. *Id.* Similarly, Ninemile Creek (Assessment ID Unit: UT14060005-003) – which includes the segment at issue – was listed as impaired in 2010 due to temperature. *See* EPA, 2010 Waterbody Report for Ninemile Creek, http://ofmpub.epa.gov/tmdl_waters10/attains_waterbody.control?p_list_id=&p_au_id=UT1406005-003_00&p_cycle=2010&p_state=UT (last updated Sept. 16, 2015). The listing of these waterways on Utah’s 303(d) list in 2010 and 2014 (*i.e.*, *after* the Vernal RMP/ROD) is evidence that the standard management protections were not adequate or effective. Thus, BLM must determine whether to develop new lease stipulations or revise existing ones.

REQUEST FOR RELIEF

SUWA respectfully requests the following appropriate relief: (1) the withdrawal of the eighteen protested parcels from the November 17, 2015, Competitive Oil and Gas Lease Sale until such time as BLM has complied with NEPA, FLPMA, the NHPA, the APA, and the manuals and instruction memorandum discussed herein, or in the alternative, (2) the withdrawal of the eighteen protested parcels until such time as the BLM attaches unconditional no surface occupancy stipulations to each protested parcel.

This protest is brought by and through the undersigned on behalf of SUWA. The members and staff of SUWA reside, work, recreate, or regularly visit the areas to be impacted by the proposed

lease sale and therefore have an interest in, and will be adversely affected and impacted by, the proposed action.

DATED: September 16, 2015



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