

July 15, 2016

Bureau of Land Management
Vernal Field Office
Attn: Stephanie Howard
170 South 500 East
Vernal, Utah 84078

Submitted electronically to: blm_ut_vernal_comments@blm.gov

Re: Comments to Draft Environmental Assessment, November 2016 Oil and Gas Lease Sale, DOI-BLM-UT-G010-2016-033-EA

Dear Ms. Howard:

This letter contains comments to the U.S. Department of the Interior Bureau of Land Management (“BLM”) Environmental Assessment for the November 2016 Competitive Oil and Gas Lease Sale, DOI-BLM-UT-G010-2016-033-EA (the “Draft EA”). As discussed herein, the Draft EA is deficient for failure to include an alternative analyzing the effects of leasing all of the parcels nominated for the November 2016 oil and gas lease sale and arbitrarily “deferring” the vast majority of the nominated lease parcels without performing any analysis under the National Environmental Policy Act (“NEPA”). We request that the Draft EA be revised to include an alternative evaluating the leasing of all of publicly nominated parcels that are legally available for leasing.

I. Background

A. The Expression of Interest and Nomination of Parcels

Parsons Behle & Latimer represents a number of clients that are actively engaged in environmentally responsible exploration and production of oil and natural gas resources in the Uinta Basin, Utah. On behalf of these clients, on December 30, 2015, the undersigned submitted an expression of interest for the November 2016 Green River District Office oil and gas lease

sale (the “EOI”).¹ The EOI nominated 70,160 acres, all of which are identified as “open” for leasing under the governing Vernal Field Office Resource Management Plan and its amendments (collectively, the “VFO RMP”). In response to the EOI, on March 17, 2016, BLM notified the undersigned that approximately 17,000 of the nominated acres could not be offered for lease either because (1) they are currently under lease to third parties and the primary terms of these leases will not expire until after BLM has completed the Draft EA; (2) the United States Forest Service (“USFS”) is the surface management agency and USFS concurrence is required before the parcels can be offered for lease; or (3) additional surface owner information is required.² As such, BLM informed us that these approximately 17,000 acres would not be analyzed for leasing in the Draft EA.

When the Draft EA was released in June of 2016, not only were the previously identified 17,000 acres not included in the Draft EA, but BLM performed no analysis on leasing an additional approximately 45,000 acres identified in the EOI, containing 50 parcels. *See* Draft EA Appendix D (Deferred Parcels). According to Appendix D of the Draft EA, of these 50 parcels, 31 parcels were deferred for the following reason:

At her discretion, the BLM Utah Acting State Director determined that it was appropriate to defer [these] parcel[s] in the November 2016 oil and gas lease sale. This deferral was made consistent with the BLM’s sage-grouse conservation plans and strategy, which direct the BLM to prioritize oil and gas leasing and development in a manner that minimizes resource conflicts in order to protect important habitat and reduce development time and costs.

An additional 10 parcels were deferred because of the presence of white-tailed prairie dog colonies; 6 parcels were deferred because of “unfinished wilderness inventory”; 1 was deferred because of the presence of yellow-billed cuckoo, 1 was deferred for “recreation”; and 1 was deferred for “State Director Discretion” with no reason stated. *See* Draft EA Appendix D. In

¹ The EOI was submitted by Nora R. Pincus under letterhead of Welborn Sullivan Meck & Tooley, P.C. and is identified on the BLM’s Expression of Interest webpage as a submission of Welborn Sullivan Meck & Tooley.

²We acknowledge that BLM has a policy of requiring complete surface owner information and not considering parcels currently under lease in its lease sale analysis. We do not object to BLM’s decision not to analyze nominated parcels for these reasons. Similarly, we understand and acknowledge that under the Memorandum of Understanding between the USFS and BLM regarding management of fluid minerals underlying lands within the National Forest System, the USFS must provide concurrence to leasing. We have previously requested that BLM seek such concurrence from the USFS and include these parcels in the environmental assessment for the next Green River District Office oil and gas lease sale, currently scheduled for November 2017.

total, of the 72,160 acres nominated in the EOI, BLM only analyzed offering a total of 8,150 acres in the Draft EA.

In addition to the parcel nominations submitted by the undersigned, other parties nominated additional lands that were similarly not analyzed for leasing in the Draft EA. According to the Draft EA, a total of 102 parcels were nominated, covering approximately 100,000 acres, but the Draft EA contained only two alternatives: the no-action alternative, under which no parcels would be offered, and the preferred alternative, which considered the effects of leasing only 28 parcels covering approximately 12,000 acres. The draft EA states:

The [Vernal Field Office (“VFO”)] reviewed those 102 preliminary parcels, and deferred 74 full parcels and 5 partial parcels from consideration for the November 2016 lease sale on account of issues related to white-tailed prairie dog habitat; Sage Grouse habitat, Yellow-billed Cuckoo habitat, pending wilderness inventories and recreation concerns.

See Draft EA § 1.3. In addition, according to Appendix D to the Draft EA, 14 parcels were “deferred” from consideration because of “State Director Discretion,” with no additional information provided.³

Thus, the only substantive alternative contained in the Draft evaluated the leasing of less than 30% of the publicly nominated parcels, performing no analysis on the vast majority of the nominated parcels.

B. The Deferred Parcels are “Open” for Leasing under the VFO RMP

Each of the parcels nominated by the undersigned are legally “open” for oil and gas leasing under the VFO RMP, either with standard stipulations, controlled surface use/timing stipulations or major constraints. In selecting the lands for inclusion within the EOI, our clients expended considerable resources identifying lands that are “open” for leasing under the VFO RMP and conform to the RMP’s requirements for leasing, and screening out parcels that contain potential resource conflicts. For example, our clients were careful to ensure that none of the nominated lands embrace Areas of Critical Environmental Concern, Wilderness Study Areas, Wild and Scenic Rivers or Special Management Areas or designated critical habitat for species listed under

³ We also note that, while not discussed in the Draft EA, BLM did not consider leasing any lands within the National Forest System in the Draft EA. While we do not know how many third parties also nominated lands within the National Forest System, the undersigned nominated 18 parcels, consisting of 11,520 acres.

the Endangered Species Act.⁴ Indeed, as shown in Exhibit D to the Draft EA, *none* of the 74 parcels that BLM failed to analyze in the Draft EA are closed to oil and gas leasing under the VFO RMP.

II. The Draft EA Should Have Included an Alternative Analyzing all Parcels Legally Open for Leasing

The National Environmental Policy Act, 42 U.S.C. §§ 4321-4370 (“NEPA”) was enacted to ensure that federal agencies take a “hard look” at the environmental consequences of proposed actions, including analyzing a reasonable range of alternatives. Federal regulations refer to the NEPA alternatives analysis as “the heart” of the NEPA document, and state that the alternatives “should present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decision-maker and the public.” 40 C.F.R. 1502.14. These alternatives should, among other things, “rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated” and “include reasonable alternatives.” *Id.*

While the agency’s duty to consider alternatives in preparing an environmental assessment is a lower duty than its duty to consider alternatives in preparing environmental impact statements, *Utah Environmental Congress v. Bosworth*, 285 F.Supp.2d 1257 (D. Utah 2003)(rev’d on other grounds), agencies must still consider an adequate range of alternatives in environmental assessments. *See e.g., Montana Wilderness Ass’n v. Fry*, 310 F. Supp. 1127 (D. Mont. 2004); *Soda Mountain Wilderness Council v. Norton*, 424 F. Supp.2d 1241 (E. D. Cal. 2006). Indeed, under 40 C.F.R. § 1508.9 (b), which governs environmental assessments, environmental assessments must “include a brief discussion . . . of alternatives as required by section 102(2)(E) [42 U.S.C. § 4332]”, which in turn requires that action agencies “study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources.” 42 U.S.C. § 4332(E).

In explaining the importance of an adequate range of alternatives in an environmental assessment, courts have stated “the touchstone of NEPA compliance is whether an EA’s

⁴ While we did not nominate any lands with designated critical habitat, we note that the mere existence of critical habitat on a proposed parcel would not justify BLM’s decision not to lease this parcel. There is no statute, regulation or BLM policy that prevents the leasing of parcels that contain critical habitat and there are numerous management options available to BLM to conserve this habitat. Indeed, through the application of BLM’s compensatory mitigation requirements, critical habitat can in some cases be enhanced to achieve a “net gain,” both on lease and off-lease.

selection and discussion of alternatives fosters informed decision-making and informed public participation.” *Fry*, 310 F. Supp.2d at 1144 (internal quotations omitted); *see also California v. Block*, 690 F.2d 753, 767 (9th Cir. 1982). While the agency preparing an environmental assessment does not have to consider every possible alternative, it must consider “a reasonable range sufficient to inform the public and the agency of the possible alternative options which could be selected.” *Soda Mountain Wilderness Council*, 424 F.Supp.2d at 1264. When considering what constitutes a “reasonable range of alternatives” under an environmental assessment, the “reasonable range of alternatives should be just that, a range of reasonable actions which might meet the goals of the agency” *Id.* Said another way, the “reasonable range of alternatives” must be developed with reference to the purpose and need of the proposed action. *See, e.g., Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 196 (D.C. Cir. 1991). Thus, in determining an appropriate range of alternatives “the agency should take into account the needs and goals of the parties involved in the application Perhaps more importantly, an agency should always consider the views of Congress, expressed, to the extent the agency can determine them, in the agency’s authorization to act, as well as other congressional directives.” *Id.*

Here, the Draft EA § 1.4, statement of purpose and need provides:

The need for the sale is to respond to the public’s lease nomination requests. Offering parcels for competitive oil and gas leasing provides for the orderly development of fluid mineral resources under BLM’s jurisdiction in a manner consistent with multiple use management and environmental consideration for the resources that may be present. The purpose of the lease sale review process is to ensure that adequate provisions are included in the lease terms, notices and stipulations to protect public health and safety, ensure the project conforms with the land use plan, and ensure full compliance with the objectives of NEPA and other federal environmental laws and regulations designed to protect the environment, and comply with the BLM’s multiple use management for public lands. The sale and development of oil and gas leases is needed to meet the energy needs of the United States public. The BLM is required by law to review areas that have been nominated for oil and gas leasing. Oil and gas leasing is a principal use of the public lands as identified in Section 102(a)(12), 103(1) of the Federal Land Policy and Management Act of 1976 (FLPMA), and it is conducted to meet requirements of the Mineral Leasing Act of 1920, as amended, the Mining and Minerals Policy Act of 1970, and the Federal Onshore Oil and Gas Leasing Reform Act of 1987 (Reform Act).

Accordingly, in determining which alternatives to consider in the Draft EA, BLM must consider a reasonable range of alternatives that (1) responds to the public's lease parcel nominations; (2) furthers the BLM's multiple use-mandate; (3) ensures adequate protections are put in place to protect public health and safety and the environment; (4) ensures compliance with the governing land use plan; and (5) meets the requirements of the Federal Land Policy and Management Act ("FLPMA") and the Mineral Leasing Act.

BLM's decision to evaluate only a no-action alternative and an alternative that considered leasing fewer than 30% of the publicly nominated parcels, the vast majority—if not all—of which are legally available for leasing, does not meet BLM's stated purpose and need for the Draft EA. The decision not to analyze the effects of offering these 74 parcels prevented the public (and BLM) from engaging in the kind of "informed decision-making and informed public participation" that NEPA requires. *See Fry*, 310 F. Supp.2d at 1144. Cryptically, the Draft EA at § 2.1 states:

This environmental assessment focuses on the Proposed Action and No Action alternatives. Other alternatives were not considered in detail because the issues identified during scoping did not indicate a need for additional alternatives or mitigation beyond those contained in the Proposed Action.

While it may be true that scoping comments submitted via the BLM e-planning NEPA Register did not specifically state that BLM should consider additional alternatives, by virtue of the numerous expressions of interest BLM received for the November 2016 sale, BLM was by any standard aware of the public's interest in the 74 parcels that were not analyzed in the Draft EA. Indeed, as set forth in the Draft EA's statement of purpose and need, the public's nominations of specific lease parcels are the basis of the BLM's need prepare the EA. Therefore, it is wholly without basis for BLM to state that it had no "indication [of] a need for additional alternatives." Rather than consider an alternative that was consistent with the public's nomination of specific parcels, BLM ignored the majority of these nominations, choosing instead to present the public with a range of alternatives that was "pre-screened" by the BLM, wherein without a public process, BLM made closed-door determinations about which lands to include in the alternatives analysis.

Further, § 1.3 of the Draft EA states that in developing the EA, after receiving a list of lands nominated and legally available for leasing, the Vernal Field Office "reviews new information that has become available" and "assesses any circumstances that have changed to determine what level of analysis is required." While we are unclear what to make of these opaque statements,

any “assessment of new information” or “circumstances that have changed” should be undertaken in the context of the NEPA document itself after full consideration and analysis. “Assessment of new information” and “circumstances that have changed” are precisely the kind of matters that should be discussed in a NEPA document, not “screened-out” with no justification.

Not only is BLM’s limited alternatives analysis contrary to NEPA’s requirements that federal actions affecting the environment be made only after appropriate analysis, but it does not serve the purpose and need stated in the Draft EA. First, the Draft EA’s analysis of only 30% of publicly nominated parcels does not “respond to the public’s lease parcel nominations.” Draft EA § 1.4. Neither can it be said that the Draft EA’s consideration of only the proposed alternative and the no-action alternative “ensures compliance with the governing land use plan.” Rather, this action largely ignores the governing VFO RMP and its amendments, with BLM making *ad hoc* determinations about which parcels will be evaluated without regard to the terms of the VFO RMP. Section 202 of FLPMA, 43 U.S.C. § 1711, requires that management decisions be guided by the governing RMP. This general mandate is refined in BLM Instruction Memorandum 2004-110, which makes clear that “all Field Offices are expected to follow their respective approved land use plans in offering for sale parcels with expressions of interest,” and “fluid mineral leasing allocation decisions are made at the planning stage.”

Significantly, not only does BLM’s decision to not evaluate over 70% of the nominated parcels fail to advance BLM’s multiple-use management regulations, but it is contrary to the requirements of FLPMA, the Mineral Leasing Act and other federal statutes. As outlined by FLPMA and recognized in the Draft EA’s statement of purpose and need, oil and gas leasing is a principal use of public lands. 43 U.S.C. § 1701(a)(12). FLPMA’s policy statement clearly sets out that it is the policy of the United States that “the public lands be managed in a manner which recognizes the Nation’s need for domestic sources of minerals . . . including implementation of the Mining and Minerals Policy Act of 1970,” an Act which, as to public lands, calls on the federal government to “foster and encourage private enterprise in . . . the development of domestic mineral resources.” 30 U.S.C. § 21a. Congress reaffirmed this commitment to responsible energy development on public lands with the passage of the Energy Policy Act of 2005, 42 U.S.C. §§ 15921-15928, which aimed to streamline the oil and gas leasing and permitting process on federal public lands. Accordingly, Congress has made clear numerous times that BLM must take its multiple use mandate seriously and, when appropriate under the governing land use plan, prioritize energy development on public lands. These are precisely the kind of “congressional directives” to which the Court in *Busey* was referring when it outlined the considerations agencies must apply when identifying an adequate range of alternatives.

While we recognize that the Mineral Leasing Act provides BLM with discretion as to which parcels to offer for lease, this discretion is not boundless and must be exercised in accordance with governing law and cannot be arbitrary and capricious. Here, at the very least, the VFO RMP should be the baseline for determining whether publicly nominated parcels should be analyzed in a pre-lease sale environmental assessment. This principle was directly articulated by the Interior Board of Land Appeals in *Marathon Oil Co.*, 139 I.B.L.A. 347 (1997), where the Board remanded BLM's decision not to perform a site-specific analysis of deferred parcels prior to a sale when the governing RMP identified the parcels as available for leasing. ("What is missing in this matter is any site-specific analysis as to the particular parcels involved herein. . . BLM enjoys considerable discretion to depart from its RMP in any specific case, and it may well be able to justify excluding these parcels from leasing for environmental purposes, but it has not yet done so on a case-by-case basis. In these circumstances, it is appropriate . . . to remand the matter to BLM for further consideration . . . including preparation of site-specific analyses concerning the parcels it has determined are not available for leasing.")⁵

III. The Reasons Stated for the Deferrals do not Justify BLM's Failure to Analyze the Nominated Parcels

While not analyzed in the Draft EA, Appendix D to the Draft EA identifies the 74 "deferred" parcels and sets forth the "reason for deferral." As discussed above, none of these "reasons for deferral" are grounded in federal statutes, regulations or the governing land use plan. Instead, with the exception of the 14 parcels deferred for "State Director Discretion" for which no explanation is provided, these "reasons for deferral" provide only minimal explanation for BLM's decision not to perform a site-specific analysis of these parcels. In each case, none of the stated "reasons for deferral" justify BLM's decision not to include an alternative in the Draft EA analyzing the leasing of these parcels.

⁵We also note an inconsistency in Section 2.2 of the Draft EA, which identifies four parcels analyzed in the Draft EA and states that these parcels "are within existing Oil and Gas Units, and surrounded by existing Oil and Gas leases. Proposals to develop these leases would be done in accordance with Unit Agreement Terms." Many of the parcels identified in the EOI submitted by the undersigned are also located directly adjacent to producing oil and gas leases. The proximity of these parcels to areas currently under lease, and the economies of scale and potentially lessened intensity of surface disturbance that accompany development adjacent parcels, are the reasons that our clients identified these parcels. Therefore, we do not understand why BLM considered it meaningful that the four parcels identified in Section 2.2 of the Draft EA are adjacent to existing leases, but failed to apply the same standard to similarly situated parcels nominated in the EOI.

A. Deferrals Related to Sage Grouse

BLM did not analyze 31 of the parcels nominated by the undersigned in the Draft EA because of sage grouse, and a total of 34 parcels were deferred and not analyzed in the Draft EA for this reason. BLM issued its long-awaited Record of Decision implementing a sage grouse-specific Land Use Plan Amendment applicable to the VFO RMP (“Sage Grouse LUPA”) in September 2015. Many of these 34 parcels have been nominated by the public for leasing at the 2013, 2014 and 2015 Green River District oil and gas lease sales. However, BLM deferred these parcels from consideration for these prior sales, stating that it could not lease the parcels until the Sage Grouse LUPA was completed. Indeed, the Final Environmental Assessment for the November 2014 Green River District Oil and Gas Lease Sale, DOI-BLM-UT-G010-2014-093-EA (June 2014) contains the following response to a publicly submitted comment:

[T]he BLM is in the middle of preparing a programmatic EIS to determine management for sage grouse. The issuance of leases and requirement of lease stipulations in priority habitat is a part of the programmatic EIS proposal, so it is appropriate to defer leasing in priority habitat until the programmatic EIS is completed. The decision to defer a leasing decision on lands within preliminary priority habitat for greater sage-grouse until the BLM Utah sage-grouse EIS is complete is consistent with the discretion provided for by BLM WO-IM-2012-043, Greater Sage-Grouse Interim Management Policies and Procedure.

See p. 112, BLM response to comment PLPCO-01 (emphasis added).

Because the Sage Grouse LUPA has now been completed and implemented, consistent with BLM’s position regarding prior deferrals, BLM should lease these parcels consistent with the LUPA, or, at the very least, *evaluate* their leasing consistent with the Sage Grouse LUPA. As stated in our EOI, the Utah State Offices’ continued deferral of certain parcels in the Uinta Basin that are “open” to leasing under the VFRO RMP amounts to de facto land use planning, in violation of FLPMA public process requirements.

The Sage Grouse LUPA contains designations for priority habitat management areas, which are open to oil and gas leasing subject to no-surface occupancy restrictions, and general habitat management areas, which are open to leasing subject to existing planning decisions. Notably, the Sage Grouse LUPA contains *no* management directives regarding leasing of areas that are not within either priority or general habitat management areas. Under the Sage Grouse LUPA, BLM is to “allow exploration for all minerals . . . within mapped occupied [sage grouse] habitat areas that are not closed to leasing.” Sage Grouse LUPA § 2.2.6. The Sage Grouse LUPA states that

priority will be given to leasing and development of fluid minerals outside of priority and general habitat, but, with the exception of a small amount of acreage not at issue here, general habitat areas are open to leasing subject to management actions outlined in LUPA. *Id.* Indeed, under the Sage Grouse LUPA over 75% of general habitat areas are open to leasing subject to standard stipulations (238,700 acres) or subject to timing and controlled surface use stipulations (294,200 acres). Of the remaining 25% of general habitat, 133,400 acres are not yet mapped, with only 28,400 acres closed to leasing and 32,700 acres open to leasing subject to no surface occupancy restrictions. Thus, under the Sage Grouse LUPA the vast majority of general habitat areas are open to leasing.

While several of the EOI-nominated parcels are within general habitat management areas, *none* of the EOI-nominated parcels are within priority habitat management areas. Indeed, several of the parcels BLM deferred because of sage grouse are not within *any* sage grouse habitat management areas and, in several cases, these parcels are located many miles from either priority or general habitat management areas. Of the parcels that are within general habitat areas, under the Sage Grouse LUPA, all of these parcels are open to leasing. Because BLM performed no analysis of these parcels in the Draft EA, the public is left with no information concerning why BLM deferred these parcels or whether this decision is consistent with the Sage Grouse LUPA. Instead of performing no evaluation, BLM should have considered an alternative that evaluated each of these parcels for consistency with the Sage Grouse LUPA, analyzing whether, and with what appropriate stipulations, these parcels could be offered.

B. Deferrals Related to ESA Listed Species Habitat

According to Appendix D to the Draft EA, BLM elected to defer 24 parcels because of the presence of white-tailed prairie dog colonies or yellow-billed cuckoo habitat. Neither the VFO RMP nor any other statute, regulation or BLM policy contains any authority either requiring or justifying BLM's failure to analyze nominated lease parcels because of the presence of ESA-listed species or their habitat, whether designated as critical habitat or otherwise.

Consistent with BLM's multiple use mandate, any resource conflicts related to the presence of ESA-listed species or their habitat could be addressed through lease stipulations and site-specific conditions of approval. Indeed, BLM has numerous management options available that will allow leasing of these parcels to go forward while still providing adequate protections for the species. These options include limitations on surface disturbance, requiring setbacks or timing and/or seasonal limitations that will prevent disturbance during specified timeframes. In fact, as to areas with important white-tailed prairie dog complexes, rather than closing the areas to oil

and gas leasing, the RMP provides that habitat would be protected by “limiting OHV travel to designated routes, and limiting surface disturbance associated with oil and gas leasing through controlled surface use.” *See* VFO RMP at 11, 39-40. Similarly, while the western yellow-billed cuckoo is not discussed in the RMP, any conflicts associated with the presence of cuckoo habitat could be addressed through a site-specific condition of approval requiring compliance with the Fish and Wildlife Service’s standardized yellow-billed cuckoo conservation and mitigation measures or through a blanket leasehold stipulation.

Rather than declining to perform *any* analysis in the Draft EA of these 24 nominated parcels because they contain habitat for ESA-listed species, and consistent with the dictates of NEPA, BLM should have included an alternative in the Draft EA that evaluates the effects of leasing these parcels. This alternative would have allowed the public and BLM to understand whether application of appropriate restrictions could successfully mitigate any impacts to white-tailed prairie dog or western yellow-billed cuckoo habitat.

C. Parcels Deferred for No Stated Reason or Ongoing Wilderness Inventories

According to Appendix D, 14 of the nominated parcels were deferred because of “State Director Discretion,” with no additional information provided. As discussed above, while BLM retains some discretion as to lease issuance under the Mineral Leasing Act, this completely opaque determination cannot be used to justify BLM’s failure to evaluate the offering of these parcels. While numerous statutes and regulatory regimes commit actions to agency discretion, this discretion cannot be arbitrary and capricious and must have some rational support. *See, e.g., Citizens to Preserve Overton Park v. Volpe*, 401 U.S. 402, 415 (1971); *Motor Vehicle Manufacturing Ass’n v. State Farm*, 463 U.S. 29, 43 (1985) (agency “must examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made”).

Finally, 6 parcels were deferred or partially deferred from analysis either because of “unfinished wilderness inventories” or because they are “in [the] Currant Canyon inventory.” Section 201 of FLPMA requires that BLM maintain a current inventory of land under its jurisdiction and identify within that inventory lands with wilderness characteristics. BLM refers to these areas as “lands with wilderness characteristics” or “LWCs.” Under the VFO RMP, non-wilderness study area LWCs are broken into two categories: (1) those that are to be managed to “protect, preserve and maintain” wilderness characteristics, including closing the lands to oil and gas leasing; and (2) those that have no such management proscriptions. While we do not know the precise location of the Currant Canyon inventory and the Currant Canyon inventory is not discussed in

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the VFO RMP, it is our understanding that these lands are within the category of lands with no management prescriptions, falling within VFO RMP Management Decisions WC-1 and WC-2. Similarly, as to the parcels deferred because of “unfinished wilderness inventories,” the simple fact that BLM has not completed performing wilderness inventories of these lands does not justify BLM’s refusal to perform any analysis of the effects of leasing these lands.

Instead of performing *no* analysis of these parcels, BLM should analyze the effects of leasing both the un-inventoried parcels and the parcels within the Currant Canyon inventory in order to evaluate the effects of leasing these parcels subject to the constraints and stipulations outlined in the VFO RMP and federal statutes and regulations. This would be consistent with Department of Interior Secretarial Order 3310, *Protecting Wilderness Characteristics on Lands Managed by the Bureau of Land Management*, which requires the protection of the wilderness characteristics of “inventoried” lands.⁶ Here, as to the Currant Canyon inventoried lands, the Draft EA should analyze whether protection of wilderness characteristics is possible while still offering these parcels for oil and gas leasing. This could be accomplished by application of the management proscriptions contained in the VFO RMP, including application of no-surface occupancy restrictions. Had BLM performed this analysis, it would have discovered that all 6 parcels nominated by the undersigned that were deferred because of wilderness are directly adjacent to existing oil and gas leases. Thus, it is likely that at least some of these parcels could be developed with no surface disturbance or effect to wilderness characteristics.

IV. Conclusion

For the reasons stated in this letter, we ask that BLM revise the Draft EA to include an alternative that considers leasing each of the nominated parcels that are legally open for leasing.

Sincerely,

PARSONS BEHLE & LATIMER

/s/ Nora R. Pincus
Nora R. Pincus
Of Counsel

NRP:

⁶ We note that it is questionable whether BLM can apply Secretarial Order 3310 to lands that have not been inventoried or identified as containing wilderness characteristics.