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July 15, 2016

**Re: Rocky Mountain Wild Comments for November 2016 Utah BLM Lease Sale**

The following are the lands and wildlife comments from Rocky Mountain Wild on the Utah BLM's November 2016 Lease Sale EA. For many years, the BLM has prioritized oil and gas leasing and development over other multiple uses such as wildlife, wilderness quality lands, watersheds, public health and public recreation. It is time for the BLM to restore some balance among resource uses in Utah, and render extractive industries more compatible with maintaining healthy ecosystems and public enjoyment of the land. Generally speaking, we would support a modified version of the BLM Preferred Alternative adjusted to address our concerns.

BLM attaches a number of stipulations and relies upon them to reduce impacts to sensitive wildlife resources without ever analyzing the effectiveness of these stipulations. Many of these stipulations are known to be ineffective. See attachment 1 for a list of parcels being offered for sale by the BLM, totaling 137,576 acres. Additionally, oil and gas activities in the proposed lease area have been ongoing for decades, causing irreversible damage to the lands and its wildlife. Please see attachment 2 containing a GIS screen showing the dramatic increase of oil and gas activities in Uinta and Duchesne Counties over the past decades. Most notably, the greater sage-grouse, Uinta hookless cactus, Pariette cactus, and Graham's penstemon have been adversely affected by the ongoing oil and gas activity in the area. The fact that the BLM now plans to lease even more parcels in this area, totaling 137, 576 acres in size, is not consistent with the BLM's multiple use mandate. The BLM is tasked with not causing unnecessary or undue degradation to the land (43 C.F.R. § 3809). Leasing these parcels in this already sensitive area would certainly do just that. Due to these concerns, we find that any stipulations so far proposed are not adequate for the proposed parcels, that the BLM has not sufficiently addressed alternatives to the proposed action, and we request all parcels within Uinta and Duchesne Counties be deferred.

**I. Protesting Party:**

Rocky Mountain Wild is a non-profit environmental organization based in Denver and Durango, Colorado, that works to conserve and recover the native species and ecosystems of the West using the best available science. RMW was formed in July 2011 by the merging of two organizations, Center for Native Ecosystems ("CNE") and Colorado Wild, and is the legal successor to both parties. Colorado Wild has worked for over a decade to protect, preserve, and restore the native plants and animals of the Southern Rocky Mountains.

Both CNE and Colorado Wild have a well-established history of participation in Bureau of Land Management ("BLM") planning and management activities, including participation in Utah BLM oil and gas leasing decisions and the planning processes for the various Utah BLM Field Offices ("FO"). RMW continues the work of each organization to save endangered species and preserve landscapes and critical ecosystems. It achieves these goals by working with biologists and landowners, utilizing GIS technology to promote understanding of complex land-use issues, and monitoring government agencies whose actions affect endangered and threatened species. Its members include approximately 1200 outdoor enthusiasts, wildlife conservationists, scientists, and concerned citizens across the country.

RMW's staff and members visit, recreate on, and use lands on or near the parcels proposed for leasing. Our staff and members enjoy various activities on or near land proposed for leasing, including viewing and studying rare and imperiled wildlife and native ecosystems, hiking, camping, taking photographs, and experiencing solitude. Our staff and members plan to return to the subject lands in the future to engage in these activities, and to observe and monitor rare and imperiled species and native ecosystems. We are collectively committed to ensuring that federal agencies properly manage rare and imperiled species and native ecosystems. Members and professional staff of RMW are conducting research and advocacy to protect the populations and habitat of rare and imperiled species discussed herein. Our members and staff value the important role that areas of high conservation value should play in safeguarding rare and imperiled species and natural communities, and other unique resources on public land.

Our members' interests in rare and imperiled species and ecosystems on BLM lands will be adversely affected if the sale of these parcels proceeds as proposed. Oil and gas leasing and subsequent mineral development on the protested parcels, if approved without response to public comments made under the National Environmental Policy Act ("NEPA"), consultation required by the Endangered Species Act ("ESA"), and appropriate safeguards to minimize negative impacts, is likely to result in a greatly increased risk of significant harm to rare and imperiled species and native ecosystems. As a result, BLM's decision to lease the protested parcels is not based on the best available science and will result in significant harm to rare and imperiled species and native ecosystems. The proposed leasing of the protested parcels will harm our members' interests in the continued use of these public lands, and the rare and imperiled species they support. Therefore protestors have legally recognizable interests that will be affected by the proposed action.

Matthew Sandler, Staff Attorney for Rocky Mountain Wild, is authorized to file these comments on behalf of our members.

**II. Sage Grouse:**

Parcels UT-116-009, 032, 067, 122, 152, are completely or partially within sage grouse Preliminary Priority Habitat areas ("PPH"). These parcels should be deferred. We remain concerned that sage grouse stipulations prescribed in BLM land-use plan amendments and revisions to protect greater sage grouse are scientifically unsound, legally invalid, and fail to grant an adequate level of protection to allow for the survival of greater sage grouse in the context of development on oil and gas leases, and therefore protest these parcels. Under BLM's greater sage grouse plan amendments and revisions, the agency made an explicit commitment to prioritize greater sage-grouse habitat over oil and gas leasing activities. Particularly relevant to this lease sale:

> "Changes in management of GRSG habitats are necessary to avoid the continued decline of populations across the species' range. This ARMPA focuses on areas affected by threats to GRSG habitat identified by the USFWS in the March 2010 listing decision and in the USFWS COT Report. The major threats to GRSG or GRSG habitat on BLM-administered lands in the Utah Subregion are the following: … Minerals extraction—Fragmentation of GRSG habitat due to mineral exploration and development." Utah Greater Sage-Grouse Approved RMP Amendment September 2015.[1]

> "Prioritize the leasing and development of fluid mineral resources outside of GRSG habitat." Utah Greater Sage-Grouse Approved RMP Amendment September 2015.[1]

> "Subject to applicable laws and regulations and valid existing rights, if the average density of one energy and mining facility per 640 acres (the density cap) is exceeded on all lands (regardless of land ownership) in PHMA within a proposed project analysis area, then no further disturbance from energy or mining facilities will be permitted by BLM." Utah Greater Sage-Grouse Approved RMP Amendment September 2015.[1]

To comply with this direction, BLM should require leaseholders to diligently explore for and develop all existing fluid mineral leases, prioritizing those outside sage grouse habitats, before any new leases are offered at auction inside designated sage grouse habitats. Thus, all sage grouse parcels in this lease sale should be removed from the auction. Further, attachment 2 shows the increasing density of oil and gas leasing activities in Uinta and Duchesne Counties over the past several decades. In order to comply with BLM's greater sage-grouse amendment plan limiting disturbance to one energy facility per 640 acres, the BLM should defer all parcels within the proposed lease sale counties.

It is a wise decision to defer the long-term commitment of mineral leases in areas that are sensitive sage-grouse habitats. This is consistent with the Presidential Memorandum of November 6, 2015 titled "Mitigating Impacts on Natural Resources From Development and

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[1]http://www.blm.gov/style/medialib/blm/ut/natural_resources/SageGrouse/ARMPA_appendices.Par.31778.File.dat/Utah_ARMPA.pdf

Encouraging Related Private Investment," which directs federal agencies "to avoid and then minimize harmful effects to land, water, wildlife, and other ecological resources (natural resources) caused by land- or water-disturbing activities… ." 80 Fed. Reg. 68743, 68744. This Presidential Memorandum also directs agencies to identify areas "where natural resource values are irreplaceable"; sage-grouse habitats clearly fall into this category, as there is no demonstrated possibility of creating or restoring sage grouse habitats once they have been destroyed due to the fragility and long recovery times of the sagebrush habitats upon which the grouse depend.

We request that all parcels listed above be deferred from the lease sale. BLM should do its best to keep largely unleased areas of public land in designated sage-grouse habitats unleased, regardless of mineral ownership patterns. Since 1965, sage-grouse populations have declined significantly, and these declines continue in recent years, with the risk of sage grouse extirpation a sizeable threat over large portions of the species' range.[2] These declines are attributable at least in part to habitat loss due to mining and energy development and associated roads, and to habitat fragmentation due to roads and well fields. Oil and gas development poses perhaps the greatest threat to sage grouse viability in the region. The area within 5.3 miles of a sage grouse lek is crucial to both the breeding activities and nesting success of local sage grouse populations. In a study near Pinedale, Wyoming, sage grouse from disturbed leks where gas development occurred within 3 km of the lek site showed lower nesting rates (and hence lower reproduction), traveled farther to nest, and selected greater shrub cover than grouse from undisturbed leks.[3] According to this study, impacts of oil and gas development to sage grouse include (1) direct habitat loss from new construction, (2) increased human activity and pumping noise causing displacement, (3) increased legal and illegal harvest, (4) direct mortality associated with reserve pits, and (5) lowered water tables resulting in herbaceous vegetation loss. These impacts have not been thoroughly evaluated with full NEPA analysis.

Limitation Stipulations proposed for sage grouse in this lease sale are ineffective in the face of standard oil and gas development practices. These stipulations have likewise been condemned as inadequate by the U.S. Fish and Wildlife Service and renowned sage grouse expert Dr. Clait Braun. The BLM itself has been forced to admit that "New information from monitoring and studies indicate that current RMP decisions/actions may move the species toward listing…conflicts with current BLM decision to implement BLM's sensitive species policy" and "New information and science indicate 1985 RMP Decisions, as amended, may not be adequate for sage grouse."[4] Continued application of stipulations known to be ineffective in the face of strong evidence that they do not work, and continuing to drive the sage grouse toward ESA listing in violation of BLM Sensitive Species policy, is arbitrary and capricious and an abuse of discretion under the Administrative Procedures Act. BLM's failure to do so will permit oil and gas development activities which will contribute to declining sage-grouse populations and

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[2] Garton, E.O., A.G. Wells, J.A. Baumgardt, and J.W. Connelly. 2015. Greater sage-grouse population dynamics and probability of persistence. Final Report to Pew Charitable Trusts, 90 pp. Online at http://www.pewtrusts.org/~/media/assets/2015/04/garton-et-al-2015-greater-sagegrouse-population-dynamics-and-persistence-31815.pdf.

[3] Lyon, A.G. 2000. The potential effects of natural gas development on sage-grouse (*Centrocercus urophasianus*) near Pinedale, Wyoming. M.S. Thesis, Univ. of Wyoming, 121 pp.

[4] Sage grouse plan amendment land user information meeting PowerPoint, available online at http://www.blm.gov/pgdata/etc/medialib/blm/wy/information/NEPA/bfodocs/sagegrouse.Par.94571.File.dat/May28_InfoMtg.pdf. Site last visited 7/16/2008.

ultimately listing by the U.S. Fish and Wildlife Service *as a threatened or endangered species*, in violation of BLM's duty to take all actions necessary to prevent listing.

The vague stipulations included in BLM's Notice of Competitive Oil and Gas Lease Sale for particular parcels do little to clarify to the interested public or potential lessees what restrictions might actually apply to protect sage grouse populations. For example, for some parcels, BLM imposes a Controlled Surface Use Stipulation. Such acceptable plans for mitigation of anticipated impacts must be prepared prior to issuing the lease in order to give the public full opportunity to comment, and to abide by the Department of Interior's stated new policy to complete site-specific environmental review at the leasing stage, not the APD stage. Without site-specific review and opportunity for comment, neither the public nor potential lessees can clearly gauge how restrictive or lax "acceptable plans for mitigation" might be, and whether they comply with federal laws, regulations, and agency guidelines and policies. Thus, absent such review, the leases should not issue at all.

BLM has the scientific information needed to recognize that any use of these parcels will result in further population declines. Again, it is in all interested parties favor (conservation groups, potential lessees, BLM and other federal agencies) for BLM to determine specific "modifications" prior to issuing leases, such as NSO restrictions.

We recommend against the sale of any lease parcels which contain sage grouse leks, nesting habitat, breeding habitat, wintering habitat and brood-rearing habitat. We request that these parcels be withdrawn from the lease sale. Failing withdrawal of the parcels, parcel-by-parcel NEPA analysis should occur, and NSO stipulations must be placed on all lease parcels with sage grouse leks. In addition, three-mile buffers must be placed around all leks. It is critical that these stipulations be attached at the leasing stage, when BLM has the maximum authority to restrict activities on these crucial habitats for the protection of the species, and that no exceptions to the stipulations be granted. BLM's failure to do so will permit oil and gas development activities which will contribute to declining sage grouse populations and ultimately could result in listing by the U.S. Fish and Wildlife Service as a threatened or endangered species, in violation of BLM's duty to take all actions necessary to prevent listing under its Sensitive Species Manual.

We remain concerned that development activities on the sage grouse parcels noted above will result in significant impacts to sage grouse occupying these parcels and/or the habitats nearby, and the BLM's programmatic NEPA underlying this lease sale does not adequately address these significant impacts in light of new information. Therefore, the requisite NEPA analysis to support the leasing of the sage grouse parcels listed above in the absence of an Environmental Impact Statement does not exist.

**III. ACEC:**

BLM should not lease parcels that are within Areas of Critical Environmental Concern ("ACEC"). Parcels UT-116-009 and 010 are within the Nine Mile ACEC. Even with NSO stipulations for the ACEC, accessing and developing this parcel will impact the ACEC. This limited NSO stipulation will not ensure the ACEC's values are protected. The plan to "mitigate" anticipated impacts is uncertain and any such mitigation should be analyzed in this NEPA

process. The resource values warrant and deserve better protection than that being afforded.

The Nine Mile Canyon ACEC (44,168 acres) was designated in the Vernal RMP to "be managed to enhance cultural and special status plant species while enhancing scenic vistas, recreation, and wildlife resource values."[5] Nowhere does it state that the ACEC should be managed for oil and gas leasing. According to the BLM's website:

> The Nine Mile Canyon has outstanding ACEC values. The Nine Mile Canyon is very scenic with steep, red-walled canyons, contrasting with pleasing rural and historical farmsteads. The area offers exceptional opportunities for interpretation of outstanding historical and cultural properties. The area includes habitat for two federally listed plant species, which are endemic to the area: toad-flax cress and Uinta Basin hookless cactus. For the visitor - sight-seeing enjoyment and historical research is rich with scenic and cultural appeal.[6]

With low demand for resource extraction, it would be wise and proper to defer these parcels, or risk losing the other uses the ACEC provides the public under BLM's multiple use mandate. The EA fails to adequately analyze the impacts of accessing the resources below these parcels or an alternative that would defer this parcel. Failure to conduct this analysis is arbitrary and capricious.

**IV. Uinta hookless cactus and Pariette cactus**

The Uinta hookless cactus and Pariette cactus occur primarily in the Uinta and Duchesne Counties in Utah. These counties are where a majority of the Vernal Field Office's November 2016 oil and gas parcels are to be leased. Specifically, parcels UT-116-032, 038, 039, 067, and 151 are entirely within recognized cactus habitat. We ask that the BLM defer these parcels and any other parcels within Uinta and Duchesne Counties since the development of these areas will undoubtedly lead to cactus habitat degradation, and a listing of "endangered" for the cactus species by the Fish and Wildlife Service ("FWS").

Currently, The FWS is conducting a 5-year review of the threatened status of the Uinta hookless and Pariette cacti. At minimum, the BLM should defer sale of the parcels known to contain cactus habitat until the 5-year review has reached a decision on whether to uplist the species from "threatened" to "endangered." Failure to do so will permit oil and gas development activities, which will contribute to declining cactus populations and ultimate listing by the U.S. Fish and Wildlife Service as an *endangered species*, in violation of BLM's duty to take all actions necessary to prevent listing.

Of the two species, the Pariette cactus (*Sclerocactus brevispinus)* is in far greater regression than the Uinta hookless cactus (*S. wetlandicus*). This is because *S. brevispinus* populations are limited to the Pariette Draw of the central Uinta Basin. Since the split of the two species into separate taxonomic groups, the number of individuals of *S. brevispinus* is substantially lower than what

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[5] Bureau of Land Management *Vernal Field Office Resource Management Plan*. U.S. Department of the Interior, Bureau of Land Management, Vernal District Office.

[6] http://www.blm.gov/ut/st/en/fo/vernal/more_/blm_special_areas/nine_mile_canyon_acec.html

would be considered a healthy population for the species. This fact led to the FWS determination that the listing of the Pariette cactus as 'endangered' under the Endangered Species Act was 'warranted but precluded' in 2007. Since the species has continued to decline due to numerous threats, it should be foreseeable that the FWS will at least come to the same conclusion, if not a conclusion for a full uplisting of the species to endangered, at the conclusion of the 5-year review. For this reason, the BLM should defer leasing any and all parcels where either cactus species and their associated habitat occur, pending the decision regarding the 5-year review by the FWS.

One of the most significant threats to Uinta hookless and Pariette cacti habitat is mineral and energy development. According to the BLM's 2010 recovery outline for the Pariette cactus, "Energy development remains one of the largest threats to this species through direct loss of habitat, and it is occurring in *S. brevispinus* [and *S. wetlandicus*] habitat at a rate much greater than existed at the time of the 1979 listing," and "Initial results show potential effects of oil and gas development (i.e., roads and well pads) on the survival and reproductive success of *S. brevispinus* (72 FR 53215, September 18, 2007),"[7] and similar effects should be expected for *S. wetlandicus*. This diagnosis is further qualified by new and credible scientific data. For example, attachment 2 shows the increase of oil wells in the Uinta and Duchesne Counties from 1995-2005 and from 2005-2015. This data shows over a 3x increase in oil and gas wells in cactus habitat. This data confirms that the BLM has not committed to the species recovery plan as outlined in 2010, and the current proposed parcels further confirms the BLM's lack of consideration for the species when selecting parcels to lease.

The EA fails to properly consider the connected actions and cumulative effects that oil and gas activity will have on the cactus species. The BLM must consider connected actions and cumulative effects as part of its analysis. Connected actions and cumulative effects include roads and well pads that fragment cactus habitat:

. "Oil and gas development fragments and destroys *S. brevispinus* and *S. wetlandicus* suitable habitat (BLM 2005; 2008)[8]. Each well disturbs approximately 0.6 ha (1.5 ac) of surface area (Hereford 2009)[9]. Roads, pipelines, and related infrastructure are constructed in association with each well pad, substantially increasing the amount of habitat loss and fragmentation. Habitat loss and fragmentation modify the plant's interactions with other individuals of the same species, exacerbating edge effects and potentially affecting the genetic composition of local populations (Debinski and Holt 2000)[10]." [11]

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[7] https://www.fws.gov/mountain-prairie/species/plants/pariettecactus/RecoveryOutlineApril2010.pdf

[8] Bureau of Land Management. 2005. Final Environmental Impact Statement and Record of Decision—Castle Peak and Eightmile Flat Oil and Gas Expansion Project—Newfield Rocky Mountains Inc. Bureau of Land Management, Vernal, Utah. 421 pp. and appendices; *see also* Bureau of Land Management. 2008. Record of Decision and Approved Management Plan— Vernal Field Office. Bureau of Land Management, Vernal, Utah. 201 pp. and maps, figures, and appendices.

[9] Hereford, J. 2009. Memo documenting conversation with BLM Vernal Field Office Natural Resource Specialist regarding disturbance associated with wellpads.

[10] Debinski, D.M., and R.D. Holt. 2000. A survey and overview of habitat fragmentation experiment. Conservation Biology 14:342-355.

[11] https://www.fws.gov/mountain-prairie/species/plants/pariettecactus/RecoveryOutlineApril2010.pdf

Should the BLM fail to follow its own recovery outline for the species, the agency will no doubt be directly responsible for the uplisting of the species to endangered pending the results of the FWS's 5-year review.

The prognosis for *S. wetlandicus* and *S. brevispinus* is not good. The recovery plans for both cacti species stipulate that oil and gas development should be avoided in suitable cactus habitat, "Oil and gas leasing and other mineral extraction activities should avoid occupied sites and other important habitat when possible [and] [i]mplement standard conservation measures to minimize future project and use impacts."[12] Failure to follow the BLm 2010 recovery plan for the two species is a violation of the APA as arbitrary and capricious. Alternatives to the proposed action that would eliminate threatened cactus' habitat have not been addressed. Alternatives should include stipulations of NSO for all parcels in Uinta hookless cactus and Pariette cactus habitat. Further, it appears BLM may be in violation of Sections 7 and 9 of the Endangered Species Act for inadequate consultation on an action reasonably foreseeable to result in take of these listed species.

## V. Graham's penstemon and White River beardtongue

Graham's penstemon and White River beardtongue occur on parcels UT-116-032, 121, and 122, with parcels 121 and 122 occurring within a designated Conservation Agreement Area for the species that will require additional mitigation measures. It is in all parties' best interest, as well as mandated by the CEQ, that mitigation measures be promulgated at the earliest possible time so that all parties involved are aware of their responsibilities. We request that an alternative containing NSO for these parcels be considered in order to protect Graham's penstemon and White River beardtongue habitat. The EA references a penstemon stipulation, but it does not appear to exist.

Graham's beardtongue is susceptible to impacts from energy exploration and development, as well as the cumulative impacts of increased energy development, livestock grazing, invasive weeds, and climate change. White River beardtongue faces similar threats, but may be more vulnerable due to its even smaller population sizes. The small population sizes of both species increases their vulnerability to these factors.[13]

It is critical to protect Graham's penstemon habitat because the species is currently under judicial review for listing under the ESA. Pending the outcome of this litigation, the BLM should defer the above listed parcels from the November 2016 lease sale.

## VI. Hydraulic Fracturing

The EA fails to consider the impacts of hydraulically fracturing of oil and gas wells. There is not adequate analysis of wildlife impacts, seismic activity, health impacts, or many of the other known impacts of hydraulic fracturing. Around 90 percent of wells have used hydraulic fracturing to get more gas flowing, according to the drilling industry.[14] With the very high

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[12] https://www.fws.gov/mountainprairie/species/plants/UintaBasinHooklessCactus/RecoveryOutlineApril2010.pdf
[13] https://www.fws.gov/mountain-prairie/species/plants/2utahbeardtongues/
[14] http://www.nytimes.com/2011/02/27/us/27gas.html?_r=2&pagewanted=all&

probability that this practice will occur on the specific parcels, it is arbitrary and capricious of BLM to neglect this highly controversial and impactful practice in its environmental analysis.

At a minimum, "the agency's [Environmental Assessment] must give a realistic evaluation of the total impacts and cannot isolate a proposed project, viewing it in a vacuum." *Grand Canyon Trust v. F.A.A.*, 290 F.3d 339, 342 (D.C. Cir. 2002). More specifically, "an environmental impact statement must analyze not only the direct impacts of a proposed action, but also the indirect and cumulative impacts." *Utahns for Better Transp. v. U.S. Dep't of Transp.*, 305 F.3d 1152, 1172 (10th Cir. 2002) (citing *Custer County Action Assoc. v. Garvey*, 256 F.3d 1024, 1035 (10th Cir. 2001)) (internal quotation omitted); *see also* 40 C.F.R. § 1509.25(a)(2) (2009) (scope of EIS is influenced by cumulative actions and impact); *Greenpeace v. Nat'l Marine Fisheries Serv.*, 80 F. Supp. 2d 1137, 1149 (W.D. Wash. 2000) (management plans were unlawful for failing to consider cumulative impacts on species). *Conner v. Burford* holds that the inability at the lease sale stage to fully ascertain effects of development "is not a justification for failing to estimate what those effects might be." *Conner v. Burford*, 848 F.2d 1441 (9th Cir. 1988); *see also Methow Valley Citizens Council*, 490 U.S. 332 (1989).

Cumulative impact is defined as "the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time." 40 C.F.R. § 1508.7 (2009). The Tenth Circuit recently noted that the BLM's own Handbook for Fluid Mineral Resources recognizes that "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." *Pennaco Energy Inc., v. U.S. Dep't of Interior*, 377 F.3d 1147, 1160 (10th Cir. 2004).

The National Environmental Policy Act, 42 U.S.C. § 4332(C), requires the BLM to take a "hard look" at the environmental consequences of their proposed actions. *Kleppe v. Sierra Club*, 427 U.S. 390, 410 n.21 (1976). When offering oil and gas leases for sale without stipulations prohibiting surface occupancy the agencies must assess the environmental impacts of reasonably foreseeable post-leasing oil and gas development prior to issuance of the lease. *See, e.g., Southern Utah Wilderness Alliance*, 159 IBLA 220, 240-43 (2003); *Pennaco Energy, Inc. v. U.S. Dep't of the Interior*, 377 F.3d 1147 (10th Cir. 2004); *Conner v. Burford*, 848 F.2d 1441 (9th Cir. 1988); *Sierra Club v. Peterson*, 717 F.2d 1409 (D.C. Cir. 1983). The BLM cannot legally avoid analysis of environmental consequences by insisting that lease issuance is a mere paper transaction without on-the-ground consequences. Regardless of the fact that additional federal actions will precede commercial drilling, the issuance of a lease (particularly without stipulations allowing the BLM to preclude surface disturbance) commits the leased parcel to development and conveys legal rights to the purchaser. *See* 43 C.F.R. § 3101.1-2. Following lease, land management agencies' ability to prevent impacts to other resources is limited to those "reasonable measures" that are "consistent with lease rights granted." *Id*. Where, as here, the lease right allows surface occupancy, a significant commitment of resources is made at the time of lease issuance. This is an action with readily foreseeable on-the-ground consequences. *See Conner*, 848 F.2d 1441; *Sierra Club v. Peterson*, 717 F.2d 1409, 1413 (D.C. Cir. 1983). As the

Tenth Circuit Court of Appeals recently clarified, *Park County Resource Council v. United States Dept. of Agriculture*, 817 F.2d 609 (10th Cir. 1987) does not excuse the BLM from its obligation to analyze these consequences prior to leasing. *Pennaco Energy, Inc. v. United States Dept. of the Interior*, 377 F.3d 1147, 1162 (10th Cir. 2004).

BLM must conduct a thorough analysis of hydraulic fracturing to comply with its NEPA responsibilities. The analysis of hydraulic fracturing should require an Environmental Impact Statement due to its significant environmental impacts that have heretofore never been analyzed in the programmatic EISs underlying oil and gas leasing in these Field Offices. The failure to analyze this anticipated future action is arbitrary and capricious.

## III. CONCLUSION

Please consider the issues concerning greater sage-grouse, the Nine Mile ACEC, Uinta hookless cactus, Pariette cactus, and Graham's penstemon that have been raised in this protest submitted on behalf of Rocky Mountain Wild. We thank you for your commitment to Utah's public lands; but ask that at this crucial junction you defer the parcels in Uinta and Duchesne Counties in an effort to strongly conserve the Uinta hookless and Pariette cacti, defer the parcels identified as ACEC, and take a significant 'hard look' at hydraulic fracturing as part of the oil and gas leasing process.

Sincerely,

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