



southern
utah
wilderness
alliance

Sent via e-mail (blm_ut_vernal_comments@blm.gov; showard@blm.gov) – Attachments sent via USPS First Class Mail only

July 15, 2016

Stephanie Howard
Bureau of Land Management
Vernal Field Office
170 South 500 East
Vernal, Utah 84631

Re: November 2016 Competitive Oil and Gas Lease Sale, DOI-BLM-UT-G010-2016-033-EA (June 2016)

Greetings,

The Grand Canyon Trust, Natural Resources Defense Council, Southern Utah Wilderness Alliance, and Utah Chapter of the Sierra Club (collectively, “SUWA”) respectfully submit the following comments on the November 2016 Competitive Oil and Gas Lease Sale, DOI-BLM-UT-G010-2016-033-EA (June 2016) (“Lease Sale EA” or “EA”). SUWA’s members routinely use and enjoy the public lands implicated by this lease sale and are keenly interested in the Bureau of Land Management’s (“BLM”) authorizations and activities in this area. The following parcels should be deferred from the November 15, 2016, competitive oil and gas lease sale, for the reasons discussed below:

UT-1116-004; UT-1116-005; UT-1116-009; UT-1116-010; UT-1116-032;
UT-1116-038; UT-1116-039; UT-1116-049; UT-1116-067; UT-1116-121;
UT-1116-122; UT-1116-151; UT-1116-152.

In short, the Lease Sale EA fails to comply with the National Environmental Policy Act (“NEPA”), Federal Land Policy and Management Act (“FLPMA”), National Historic Preservation Act (“NHPA”), and their implementing federal regulations. The EA does not take the requisite “hard look” at the direct, indirect, and cumulative impacts to cultural resources, climate change, potential and designated Areas of Critical Environmental Concern (“ACEC”), designated Special Recreation Management Areas (“SRMA”), and water quality, among other resource values.

I. Cultural Resources

The BLM has failed “to make a reasonable and good faith effort” to identify cultural resources that may be affected by this undertaking, as required by Section 106 of the NHPA. 36 C.F.R. § 800.4(b)(1). Likewise, BLM’s conclusion that the lease sale will not adversely affect cultural resources is arbitrary and capricious. BLM also failed to take a hard look at the project’s effects on cultural resources, as required by NEPA.

The Advisory Council on Historic Preservation defines area of potential effect as “the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist.” 36 C.F.R. § 800.16(d). The term “effect” is broadly defined to include both direct and indirect effects. See 65 Fed. Reg. 77,698, 77, 720 (Advisory Council on Historic Preservation, Final Rule) (Dec. 12, 2000).

The BLM alleges to have conducted a Class I Cultural Inventory for the proposed lease sale. *See* Lease Sale EA at 108. The term Class I Inventory is defined in BLM Manual 8110.21.A. Often, BLM misuses the term “Class I” inventory. As Manual 8110 explains, a Class I Inventory is “[n]ot a mere records check. [It is] a detailed study consisting of all the elements described in Manual 8110.21.A3 and .A4. In contrast, a ‘literature review,’ ‘existing data review,’ ‘file search,’ or ‘records check’ is generally the brief first step before initiating a field survey.” *Id.* Manual 8110.21.A1b. The preparation of this Class I inventory or literature review does not satisfy BLM’s obligation “to make a reasonable and good faith effort” to identify cultural resources at risk from this undertaking.

In the present case, it is unclear the extent and scope of the Class I survey or literature review conducted by BLM. For example, the EA states that “[c]ultural resource information and data has been considered” such as the Vernal RMP, previous cultural reports and surveys, and personal knowledge and experience. EA, Appendix C at 108. However, the EA also acknowledges that “it is likely that additional cultural resources will be located within the proposed lease parcels” and that certain parcels (*e.g.*, 4, 5) *never* have been surveyed while others (*e.g.*, 32, 39) have been surveyed only a few times and only on a small portion of each lease. *Id.* Appendix H, Sheet 1. Moreover, BLM has not conducted a complete Class III survey for any of the parcels. *See id.* Appendix C at 108 (“A complete inventory of the proposed leases has not been completed.”).

BLM does not discuss the extent and nature of all the sites or why additional inventories were not conducted. The EA also does not disclose what type of effects (direct, indirect and cumulative) oil and gas development may have to the cultural sites located in these parcels. This information should be included in the final EA or leasing should be deferred until this assessment can be completed. The EA’s current cursory treatment of this important resource does not comply with NEPA’s hard look mandate.

Despite a lack of complete cultural surveys BLM unreasonably and arbitrarily concludes that the proposed action will not adversely impact cultural resources. *See* Lease Sale EA at 37 (“Reasonable development could occur within the proposed parcels without effect to historic properties.”). There is no support in the record for BLM’s conclusion. To begin with, the EA

itself contradicts BLM's conclusion: "it has been determined that reasonable development could occur without adverse impacts to cultural properties *in most parcels*." *Id.* Appendix C at 108 (emphasis added); *see also id.* at 22 ("reasonable development . . . could likely occur on the other twenty-two parcels proposed for the 2016 lease sale without adverse impacts to cultural properties.").

Second, BLM's modified conclusion (*i.e.*, that adverse impacts can be avoided *in most parcels*) is arbitrary due to the agency's overwhelming dearth of information and analysis. For example, BLM has never performed a Class 1, 2, or 3, survey for parcels 4, 5, 49, and 151 – and has performed only minimal surveys for parcels 9, 10, 32, 38, 39, and 49 – but acknowledges that oil and gas development could, at a minimum, indirectly impact cultural resources in these areas. *Compare id.* Appendix H, Sheet 1, *with id.* at 37 ("Indirect impacts to cultural resources could result from future lease actions, such as exploration and development.").

Third, to the extent BLM analyzes impacts to cultural resources in the EA; the agency only does so for six of the twenty-eight lease parcels. *See* EA at 37 (analyzing impacts to "[t]wo parcels . . . within or adjacent to Nine Mile Canyon [*i.e.*, parcels 9, 10]" and "four parcels located adjacent to Steinkaker Reservoir [*i.e.*, parcels 69-71, 142]."); *id.* at 21 ("Of the twenty-eight parcels for lease there are six that are in areas with potential for adverse impacts [to cultural resources].").¹ The EA acknowledges that there are likely yet to be discovered cultural sites in each of the twenty-eight lease parcels and NEPA and the NHPA require BLM to analyze the direct, indirect, and cumulative impacts to these resource values and consult with interested parties to minimize impacts to such values. *See id.* at 37 ("all [proposed parcels] have a potential to contain cultural resources."); *id.* Appendix C at 108 ("it is likely that additional cultural resources will be located within the proposed lease parcels.").

Fourth, BLM's conclusion that the issuance of non-no surface occupancy ("non-NSO") leases will likely not adversely impact cultural resources is not the same as a "no adverse effect" determination. *See, e.g.*, EA at 22 (impacts to cultural resources could likely be avoided). SUWA maintains that even with these stipulations the sale of non-NSO leases *may* result in adverse effects to cultural resources. Thus, BLM is required to assess and disclose adverse effects now, *see* 36 C.F.R. § 800.5, and work with the SHPO, Native American tribes, and consulting parties to resolve those adverse effects. *See id.* § 800.6. The plain language of the referenced stipulations makes clear that subsequent undertakings may be approved even if they result in "minimized" adverse effects. Because BLM admits that it may allow subsequent undertakings to proceed if adverse effects are "minimized" or "mitigated," the agency's "no adverse effects" determination is baseless.

Finally, the EA states that consultation with SHPO is "ongoing." EA at 59. Regardless, SHPO's concurrence (if received) does not excuse BLM from complying with the NHPA:

While the NEPA requires BLM to consult with the Utah SHPO, its consultation with SHPO merely satisfies the procedural requirement of doing such a consultation. A concurrence from the SHPO *does not satisfy the other procedural*

¹ SUWA does not concede that BLM's analysis for the six parcels is sufficient or otherwise in compliance with NEPA or the NHPA.

requirements of NHPA. There is nothing in the NHPA or Section 106 that excuses the BLM's failure to comply with the other procedures based on a concurrence from the SHPO.

S. Utah Wilderness Alliance v. Burke, 981 F.Supp.2d 1099, 1109 (D. Utah 2013) (emphasis added).

SUWA requests to participate as a consulting party for this undertaking and that BLM provide it with a copy of this Class I Cultural Inventory and reserves the right to supplement these comments upon review of this document.

II. The EA Failed to Take a Hard Look at Climate Change

The EA fails to take a hard look at the indirect, direct, and cumulative impact on local, regional, and national climate change from leasing the above-listed parcels. While stating that oil and gas exploration and development activities are a large contributor of greenhouse gas ("GHG") emissions, the EA does not even attempt to analyze – quantitatively or qualitatively – the potential impacts of such emissions. *See, e.g.*, EA at 18-19 ("The most likely cause of elevated PM2.5 . . . are those common to other areas of the western U.S. (combustion and dust) plus nitrates and organics from oil and gas activities in the [Uinta] Basin."); *id.* at 20 (oil and gas activities "contribute to the regional, national, and global pool of GHG emissions"). Instead, BLM essentially punts on the issue, citing to the low amount of expected GHG emissions:

There are no direct impacts related to GHG emissions and climate change from leasing . . . Estimated GHG emissions can be calculated using a generic emissions calculator . . . which shows emissions of 1,192 tons per year CO₂-e for a single operational well, and 2,305 tons per year CO₂-e for a single drill rig. Based on this analysis a single exploratory well is unlikely to exceed the 25,000 ton per year reference point recommended by [CEQ], and no further analysis is warranted at this stage.

Lease Sale EA at 36-37. BLM further argues that analysis of the direct, indirect, and cumulative impacts to climate change is unwarranted because it is unclear whether a lease will ever be developed and if so, whether the well will be productive, among other factors. *See id.* at 50. BLM's reasoning is arbitrary and contradicted by evidence in the EA.

First, regardless of whether CEQ's *recommended* 25,000 ton / year of CO₂-e threshold is met, NEPA requires BLM to disclose and analyze the direct, indirect, and cumulative impacts of its leasing decision. *See, e.g.*, 40 C.F.R. § 1508.27; CEQ, Revised Draft Guidance for Greenhouse Gas Emissions and Climate Change Impacts 19 (Dec. 18, 2014) ("the [25,000 ton/year threshold] is for purposes of disclosure and not a substitute for an agency's determination of significance under NEPA.") ("CEQ Climate Change Guidance") (attached). Federal courts have held that NEPA requires such analysis. *See, e.g., WildEarth Guardians v. U.S. Office of Surface Mining, Reclamation and Enforcement*, 104 F.Supp.3d 1208, 1230 (D. Colo. 2015) ("[Plaintiff] rightly insists that [federal agencies] must take into account the effects of [GHG emissions] when determining whether there will be a significant impact on the environment."), *vacated for*

mootness after federal agency complied with district court order, WildEarth Guardians v. U.S. Office of Surface Mining and Reclamation and Enforcement, 2016 WL 3410216 (10th Cir. June 17, 2016).

Second, the proposed action will result in more than 25,000 tons per year of CO₂-e emissions, contrary to BLM's conclusion. As explained in the EA, "[i]t is assumed that each lease sold would have at least one well pad developed and that those well pads, including associated infrastructure, would disturb an estimated 4 acres."² Lease Sale EA at 9. There are twenty-eight proposed lease parcels. *Id.* It is further explained that each developed well will emit 1,192 tons per year of CO₂-e and the drilling of each well will result in 2,305 tons per year of CO₂-e. *See id.* at 37. Thus, under BLM's stated assumptions the lease sale will result in approximately 33,376 tons per year of CO₂-e from operational oil and gas wells and 64,540 tons per year of CO₂-e from drilling operations – significantly above CEQ's recommended threshold. As noted by CEQ – and BLM – proposed actions with annual CO₂-e emissions greater than 25,000 are those with "potentially large GHG emissions" and the impacts thereof should be fully disclosed and analyzed. *See* CEQ Climate Change Guidance at 18; *see also* Lease Sale EA at 37 (discussing CEQ's CO₂-e threshold).

Furthermore, CEQ has explained that "[c]limate change is a fundamental environmental issue, and the relation of Federal actions to it falls squarely within NEPA's focus. Focused and effective consideration of climate change in NEPA reviews will allow agencies to improve the quality of their decisions." CEQ Climate Change Guidance at 2. An agency's NEPA analysis should include, at a minimum, "observations, interpretive assessments, predictive modeling, scenarios, and other empirical evidence." *Id.* at 21. Moreover,

[t]he analysis of impacts on the affected environment should focus on those aspects of the human environment that are impacted by both the proposed action and climate change. Climate change can affect the environment of a proposed action in a variety of ways. Climate change can increase the vulnerability of a resource, ecosystem, human community, or structure, which would then be more susceptible to climate change and other effects and result in a proposed action's effects being more environmentally damaging . . . Such considerations *are squarely within the realm of NEPA*, informing decisions on whether to proceed with and how to design the proposed action so as to minimize impacts on the environment, as well as informing possible adaptation measures to address these impacts, ultimately enabling the selection of smarter, more resilient actions.

CEQ Climate Change Guidance at 22 (emphasis added).

Third, CEQ guidance makes clear BLM cannot merely conclude without qualitative or quantitative assessment "that the emissions from a particular proposed action represent only a small fraction of local, national, or international emissions or are otherwise immaterial," because

² This assumption – which underlies BLM's analysis throughout the EA for each resource issue discussed therein – is in direct conflict with BLM's argument that cumulative impact analysis for climate change is unwarranted due to the lack of necessary "input data" such as whether a proposed lease will be issued and/or developed. *See generally* EA at 50.

such an approach “is not helpful to the decisionmaker or the public.” CEQ Climate Change Guidance at 6, n. 11. Furthermore,

[T]he statement that emissions from a [proposed action] represent 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 impacts under NEPA*. Moreover, *these comparisons are not an appropriate method for characterizing the potential impacts associated with a proposed action and its alternatives and mitigations*. This approach does not reveal anything beyond the nature of the climate change challenge itself: the fact that diverse individual sources of emissions each make relatively small additions to global atmospheric GHG concentrations that collectively have a huge impact.

CEQ Climate Change Guidance at 9 (emphases added). However, this is precisely what BLM has done in the present case. *See, e.g.*, Lease Sale EA at 50 (“Any potential estimation of GHG emissions in a leasing EA will only represent a minute fraction of global GHG emissions, and by extension only represent an even smaller fraction of any potential impacts.”).

Finally, BLM also argues that “it is not technically feasible to determine the net impacts to climate due to [GHG] emissions.” Lease Sale EA, Appendix C at 107. This is inaccurate. The EA concludes as much. *See id.* at 36-37 (“Estimated GHG emissions can be calculated using a generic emissions calculator . . .”). Moreover, CEQ has explained that it *is* technically feasible to estimate GHG emissions due to scientific models and tools that are “widely available,” and “already 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.

Therefore, the EA failed to take a hard look at the impacts to local, regional, and national climate change from the proposed action.

III. The EA Failed to Take a Hard Look at the Social Cost of Carbon

The EA fails to take a hard look at the social cost of carbon from leasing the above-listed parcels. CEQ has instructed federal agencies, including the BLM, to consider the social cost of carbon when reviewing proposed actions under NEPA. *See* CEQ Climate Change Guidance at 16. While developed initially to assess the costs and benefits of alternatives in rulemaking, the social cost of carbon “offers a harmonized interagency metric that can provide decisionmakers and the public with some context for meaningful NEPA review.”³ *Id.*

Courts have also recognized the need for federal agencies to consider the social cost of carbon during their NEPA review. *See, e.g., High Country Conservation Advocates v. United States*

³ The EPA has developed a formula for calculating the social cost of carbon to estimate the potential costs and benefits of a proposed action. *See* EPA, The Social Cost of Carbon, <http://www.epa.gov/climatechange/EPAactivities/economics/scc.html> (last updated Feb. 23, 2016). While useful to federal agencies, EPA acknowledges that “given current modeling and data limitations, [the social cost of carbon formula] does not include all important damages.” *Id.* Despite its shortcomings, the social cost of carbon formula “is a useful measure to assess the benefits of CO₂ reductions.” *Id.*

Forest Service, 52 F.Supp.3d 1174, 1190-93 (D. Colo. 2014) (enjoining the United States Forest Service’s decision because the agency failed to consider and analyze the social cost of carbon). Moreover, other BLM field offices have considered the social cost of carbon in an environmental assessment for a proposed oil and gas lease sale. *See, e.g.*, BLM, Oil and Gas Lease Parcel Sale, Environmental Assessment, DOI-BLM-MT-0010-2013-0022-EA at 73 (July 2013) (excerpts attached).⁴

Calculating the social cost of carbon is an important element of NEPA, because it allows BLM to quantitatively and/or qualitatively determine the *costs* of authorizing a proposed action, such as social, environmental, and economic. This tool “was expressly designed to assist agencies in cost-benefit analyses.” *High Country Conservation Advocates*, 52 F.Supp.3d at 1190. While NEPA may not require a cost-benefit analysis, it is “arbitrary and capricious to quantify the *benefits* of [a proposed action] and then explain that a similar analysis of the *costs* was impossible when such analysis was in fact possible.” *Id.* at 1191 (referring to the tool for calculating the social cost of carbon). BLM cannot merely ignore the social cost of carbon formula on account of it being “imprecise,” “inaccurate,” or because there is disagreement as to the cost of GHG emissions:

[T]here is a wide range of estimates about the social cost of GHG emissions. But neither the BLM’s economist nor anyone else in the record appears to suggest the cost is as low as \$0 per unit. Yet by deciding not to quantify the costs at all, [BLM] effectively zeroed out the cost in its quantitative analysis.

...

[The court is] not persuaded . . . that it is reasonable completely to ignore a tool in which an interagency group of experts invested time and expertise. Common sense tells [the court] that quantifying the effects of [GHG] in dollar terms is difficult at best. The critical importance of the subject, however, tells [the court] that a “hard look” has to include 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.

High Country Conservation Advocates, 52 F.Supp.3d at 1192-93.

In the present case, the EA does not even attempt to analyze or disclose the social costs of carbon from the proposed action. Instead, BLM concludes – without analysis – that

[n]o impact to the social or economic status of the counties or nearby communities would occur from the leasing of these parcels due to the[] small size of this project in relation to ongoing development throughout the Uinta Basin.

Lease Sale EA, Appendix C at 114. This reasoning is arbitrary. To begin with, BLM has zeroed out *all* costs associated with its leasing decision by concluding that it will have “no impact.” This

⁴ The full environmental assessment is available at: http://www.blm.gov/pgdata/etc/medialib/blm/mt/blm_programs/energy/oil_and_gas/leasing/lease_sales/2013/october/7-24-13_post_docs.Par.9918.File.dat/Finial_Billings_EA.pdf (last visited July 12, 2016).

conclusion is inaccurate because, among other things, it ignores BLM's own data and emissions calculator designed specifically to estimate GHG emissions. *See* EA at 36-37. The assumption underlying BLM's analysis of all issues in the EA is that at least one well will be drilled on each of the proposed twenty-eight parcels and that each well will emit 1,192 tons per year and each drill rig 2,305 tons per year of CO₂-e, respectively. *See id.* at 9, 37. Furthermore, the EPA's social cost of carbon formula concludes that each ton of carbon emitted equates to \$36 (2015 value) of cost to society. *See* EPA, The Social Cost of Carbon, <https://www3.epa.gov/climatechange/EPAactivities/economics/scc.html>. Therefore, the proposed action will result in a cost to society – in the first year only – of \$3,524,976, at a minimum.⁵

Finally, BLM needs to reconcile several inconsistencies in the EA. For example, the EA states that it is “not technically feasible to determine the net impacts to climate due to [GHG] emissions.” EA, Appendix C at 107. However, as noted *supra* BLM acknowledges that the agency *can* estimate GHG emissions using a formula it developed. *Id.* at 36-37. Moreover, it is inconsistent to claim that it “is not technically feasible” to calculate the social cost of carbon and at the same time claim there is no social impact, because, in order to arrive at the latter it is necessary to calculate the former.

Therefore, the EA failed to take a hard look at the social cost of carbon.

IV. The EA Does Not Comply With Instruction Memorandum No. 2010-117

The EA does not comply with Instruction Memorandum No. 2010-117, *Oil and Gas, Planning, and National Environmental Policy Act (NEPA)* (May 17, 2010) (“IM 2010-117”) (attached). Specifically, the EA does not analyze alternative(s) in which oil and gas lease parcels are not offered in BLM-identified LWCs. *Compare* Lease Sale EA, Appendix C at 111 (Parcels 9, 10, 32, 38, 39, and 49 each are located in BLM-identified LWC), *with id.* at 13 (the EA considered the Proposed Action and No Action alternatives only). Such an alternative is required by IM 2010-117:

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); *see also id.* § III.C.4 (an oil and gas leasing EA must consider “other considerations” such as whether “[i]n undeveloped areas, non-mineral resource values are greater than potential mineral development values”).⁶ The EA does not consider an

⁵ This amount assumes that all twenty-eight leases are issued and developed in the first year of issuance. However, it likely underestimates the true cost because EPA's estimated cost for each ton of emitted carbon increases annually and the agency's formula “does not include all important damages.” *See, e.g.,* EPA, The Social Cost of Carbon, <https://www3.epa.gov/climatechange/EPAactivities/economics/scc.html> (the social cost of carbon in 2020 and 2025 is \$42 and \$46, respectively).

⁶ BLM-identified LWCs remain an “unresolved resource conflict[.]” because, among other things, BLM identified the Currant Canyon LWC *post*-Vernal RMP/ROD and thus never determined how that area would be managed in light of the identified resource value.

alternative which addresses unresolved resource conflicts, such as BLM-identified LWCs. *See, e.g.,* Lease Sale EA at 13.⁷ Furthermore, BLM’s failure to consider alternatives to address unresolved resource conflicts also violates NEPA which requires consideration of “appropriate alternatives” to a proposed action, as well as their environmental consequences. 42 U.S.C. § 4332(2)(E); 40 C.F.R. § 1501.2(c). “The requirement that appropriate alternatives be studied applies to the preparation of an [environmental assessment] even if no [environmental impact statement] is found to be warranted.” *S. Utah Wilderness Alliance*, 122 IBLA 334, 338 (1992); *see also* 40 C.F.R. § 1508.9(b). “Precisely because the NEPA mandate is primarily procedural, it is absolutely incumbent upon agencies considering activities which may impact the environment to assiduously fulfill the obligations imposed by NEPA. Informed and meaningful consideration of alternatives – including the no action alternative is an integral part of NEPA.” *S. Utah Wilderness Alliance*, 122 IBLA at 339 (internal quotations and citations omitted).

Second, there is no record evidence that BLM took into account “other considerations,” including whether “non-mineral resource values are greater than potential mineral development” in “undeveloped areas,” such as BLM-identified LWCs. IM 2010-117 § III.C.4. The BLM-identified LWCs at issue here each have considerable “non-mineral resource values” such as wilderness character, cultural, and historic, among others. *See, e.g.,* Vernal RMP at 3-46 (Desolation Canyon LWC); *id.* at 3-88 (Nine Mile Canyon ACEC). These values *vis`a vis* mineral values were not considered in the EA.⁸

Finally, there also is no record evidence that BLM ever evaluated whether (1) oil and gas management decisions – such as the decision to not manage the LWCs at issue here for protection of their wilderness values – made in the Vernal RMP/ROD are still appropriate or

⁷ The decision to offer lease parcels in BLM-identified LWCs also violates Secretarial Order 3310 which establishes that it is the policy of the Department of the Interior to avoid impairment of such lands. *See* Secretarial Order 3310 (Dec. 22, 2010), *available at* <http://www.doi.gov/news/pressreleases/loader.cfm?csModule=security/getfile&PageID=115974>. Although Congress has indicated that funds are not available for implementing this order, the Order has not been revoked and the Interior Department’s policy remains unchanged. *See* Department of Defense and Full-Year Continuing Appropriations Act, 2011, Pub. L. No. 112-010, § 1769 (stating that “For the fiscal year ending September 30, 2011, none of the funds made available by this division or any other Act may be used to implement, administer, or enforce Secretarial Order No. 3310 issued by the Secretary of the Interior on December 22, 2010.”). On June 1, the Secretary of the Interior responded to this legislation stating that “the BLM will not designate any lands as ‘Wild Lands.’” Memo. from Ken Salazar, Sec’y of the Interior, to Bob Abbey, BLM (June 1, 2011), *available at* <http://www.doi.gov/news/pressreleases/upload/Salazar-Wilderness-Memo-Final.pdf>. Thus, the Secretary did not end the Department’s policy to avoid impairment of wilderness character lands. The BLM should not offer the aforementioned leases because it would be contrary to the policy of Secretarial Order 3310. Following this policy would require no expenditure of money here and it would not entail the designation of Wild Lands, therefore it does not run afoul of the spending limitations or the Secretary’s June 1 memo. This is entirely consistent with BLM’s authority to manage and protect wilderness characteristics under FLPMA and BLM’s Land Use Planning Handbook. *See* 43 U.S.C. § 1702(c); H-1601-1, App. C at 12-13; *see also* BLM, 6310 – Conducting Wilderness Characteristics Inventory on BLM Lands (Public) (March 15, 2012); BLM, 6320 – Considering Lands with Wilderness Characteristics in the BLM Land Use Planning Process (Public) (March 15, 2012).

⁸ At most, the EA considered only the *benefits* of oil and gas leasing while ignoring any associated costs. *See, e.g.,* EA at 2 (describing the purpose and need of the proposed action as “needed to meet the energy needs of the United States public”).

provide adequate protection for resources values, or (2) new lease stipulations need to be developed or existing stipulations updated. *See* IM 2010-117 § III.C.2 (requiring such analysis).⁹ If the Vernal RMP/ROD no longer is adequate in this regard, a plan amendment is required and “the parcel(s) should be withheld from leasing” until such amendment is completed. *Id.*

Therefore, the EA failed to comply with IM 2010-117.

V. The EA Fails to Protect the Relevant and Important Values Identified in the Designated Nine Mile Canyon ACEC

BLM designated the Nine Mile Canyon ACEC to protect the area’s relevant and important values such as cultural, high quality scenic, and special status plant species. *See* Vernal ROD at 36. 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.

The Nine Mile Canyon ACEC’s cultural values include “[n]ationally significant Fremont, Ute, and Archaic rock art and structures.” Vernal RMP at 3-88. Nine Mile Canyon has been referred to as “the world’s longest art gallery” and an “outdoor museum.” BLM, Price Field Office, Proposed Resource Management Plan and Final Environmental Impact Statement 3-28 (Aug. 2008). Despite its obligation to do so, BLM has yet to prepare a management plan for the Nine Mile Canyon ACEC and has therefore failed to give priority to the protection the area’s relevant and important values. *See, e.g.*, BLM, Vernal RMP Five-Year Evaluation Report at 1, http://www.blm.gov/ut/st/en/fo/vernal/planning/rmp/rod_approved_rmp.html (follow hyperlink for “RMP 5-Year Review”) (Nov. 2014) (noting that “[n]o program-specific or integrated activity level plans have been completed” for ACECs) (“Vernal RMP Five-Year Review”).

Furthermore, the Nine Mile Canyon ACEC is a “unresolved resource conflict[]” – similar to LWCs discussed *supra* – due to BLM’s continued failure to complete the required management plan. As such, BLM is required to consider in the EA an alternative which does not offer leases in the ACEC. *See* IM 2010-117 § III.E. Moreover, BLM should not offer new oil and gas leases in the ACEC – such as Parcels 9 and 10 – until completion of a management plan to ensure that future management options are not foreclosed or limited such as adding restrictions to oil and gas development activities. *See, e.g.*, 40 C.F.R. § 1506.1(c)(3); Lease Sale EA at 23 (Parcels 9 and 10 are in the Nine Mile Canyon ACEC).

⁹ The fact that BLM in the Vernal RMP/ROD chose to not manage the relevant LWCs for the protection and preservation of their wilderness values is irrelevant here, and cannot serve as a basis to ignore the subsequently issued IM 2010-117. *See, e.g.*, 43 U.S.C. § 1711(a); IM 2010-117 § III.C.2.

VI. The EA Failed to Take a Hard Look at Impacts to the Potential Four Mile Wash and Nine Mile Canyon Extension ACECs

The EA failed to take a hard look at the direct, indirect, and cumulative impacts to the potential Four Mile Wash and Nine Mile Canyon Extension ACECs from leasing the above-listed parcels. These potential ACECs contain BLM-identified relevant and important values such as high value scenery, important riparian ecosystems, and significant cultural resources, among others. *See* Vernal RMP at 3-89 to 3-90. Parcels 32, 38, and 39, are in the potential Four Mile Wash ACEC which contains “[s]pectacular scenery viewed by increasing numbers of visitors” and “lush riparian vegetation [which] is rare in this desert ecosystem.” *Id.* at 3-89. Similarly, Parcels 4, 5, and 151, are in the Nine Mile Canyon Extension ACEC which contains relevant and important values on par with those in the designated Nine Mile Canyon ACEC such as “[n]ationally significant Fremont, Ute, and Archaic rock art and structures.” *Id.* at 3-88, 3-90.

Despite the obligation to do so under FLPMA and NEPA, the EA *does not even mention* – let alone analyze or disclose impacts to – either the potential Four Mile Wash or Nine Mile Canyon Extension ACECs. *See, e.g.,* Lease Sale EA at 22-23, 37-38, 51. The impacts to BLM-identified values in these potential ACECs may be significant and BLM’s failure to consider these resources and values is arbitrary and violates NEPA. *See, e.g., id.* at 9 (assumption that each lease parcel will be developed); *id.* at 37 (“the issuance of leases does convey an expectation that drilling and development could occur.”). The leasing of parcels in the potential ACECs fails to prioritize protection of their BLM-identified resource values in violation of FLPMA.

Finally, oil and gas leasing, with its associated surface disturbing activities such as roads, will facilitate access to previously inaccessible areas, including those areas with significant cultural and historic resources, important watershed functions, and critical ecosystems. When areas become more accessible the likelihood of vandalism and illegal activity – such as illegal OHV routes – increases. *See, e.g.,* BLM, Rock Shelter in Northeastern Utah Vandalized (April 9, 2015) (attached); BLM, BLM Offers Reward for Information about Vandalism to Cultural Sites in Lake Mountains Area (Aug. 14, 2014) (attached); PBS NEWSHOUR, Utah archaeological site becomes protest site in federal land dispute, <http://www.pbs.org/newshour/bb/utah-archaeological-site-becomes-protest-site-federal-land-dispute/> (Sept. 18, 2014); Amy Joi O’Donoghue, *Vandals deface prehistoric ‘Pregnant Buffalo’ rock art*, DesNews (May 27, 2014) (attached). To ensure protection of the Four Mile Wash and Nine Mile Canyon Extension ACECs’ identified relevant and important values, the EA must take a hard look at whether new roads and other surface disturbing activities (whether constructed legally or illegally) that occur as a result of the proposed oil and gas leasing will open the area to adverse impacts thereby threatening identified resource values.

VII. The EA Fails to Protect BLM-Identified Resource Values in the Nine Mile Canyon SRMA

The EA fails to protect the BLM-identified resource values in the Nine Mile Canyon SRMA from leasing Parcels 9 and 10. BLM must manage the SRMA to “protect high-value cultural values and scenic quality.” Vernal RMP at 4-321; Vernal ROD at 35 (same). However, BLM

has yet to complete a management plan for the SRMA to ensure protection of these values. *See* Vernal RMP Five-Year Review at 1 (“No program-specific or integrated activity level plans have been completed” for designated SRMAs).¹⁰ No SRMA management plan has been prepared; meaning that oil and gas leasing in this area remains a “unresolved resource conflict[]” which – pursuant to IM 2010-117 – requires BLM to consider an alternative in the EA to address this issue such as prohibiting and/or restricting oil and gas leasing in this area. *See* IM 2010-117 § III.E. The EA fails to do so. *See, e.g.*, Lease Sale EA at 13 (EA considered the Proposed Action and No Action alternatives only).

Furthermore, leasing Parcels 9 and 10 prior to completion of the management plan will foreclose and/or limit management options such as restricting oil and gas development activities, in violation of NEPA. *See, e.g.*, 40 C.F.R. § 1506.1(c)(3). Therefore, the EA fails to protect resource values in the Nine Mile Canyon SRMA.

VIII. The EA Failed to Take a Hard Look at Water Quality

The EA failed to take a hard look at the direct, indirect, and cumulative impacts to water quality/resources from leasing Parcels 4, 5, 9, 10, and 38, among others. In particular, the EA does not analyze or disclose impacts to *any* surface water let alone to Argyle Creek, Ninemile Creek, and the Green River. *See, e.g.*, Lease Sale EA, Appendix C at 117 (surface water quality is “present, but not affected to a degree that detailed analysis is required”).

Moreover, Ninemile Creek is on the state of Utah’s “303(d)” list of impaired waters for temperature. *See* Utah Dep’t of Env’tl. Quality, Div. of Water Quality, Monitoring and Reporting, Chapter 5: Rivers and Stream Assessments at PDF 165/214 http://www.deq.utah.gov/ProgramsServices/programs/water/wqmanagement/assessment/docs/2016/02feb/chapter_5_river_and_stream_assessments_final20122014ir.pdf (last visited July 14, 2016). The EA does not address this factor or analyze whether the issuance of leases in the Nine Mile Canyon region will impair efforts to bring Ninemile Creek into compliance with relevant water quality standards. *See, e.g.*, EA, Appendix C at 117 (detailed analysis of water quality impacts is unwarranted). Because a National Pollutant Discharge Elimination System permit is not required for oil and gas operations, it is particularly important that BLM analyze the impact to surface waters from runoff associated with such activities, among other things. *See, e.g.*, 33 U.S.C. § 1342(i)(2).

BLM has determined that the Green River segment – referred to as the “Lower Green River” segment – which passes near Parcel 38 is “suitable” for inclusion in the National Wild and Scenic Rivers System. *See* Vernal ROD at Fig. 14a. As such, BLM is required to manage the area to protect its outstanding remarkable values, free-flowing water, and tentative classification. *See* Vernal RMP at 4-437. The Lower Green River contains BLM-identified outstanding remarkable values such as recreational and fish and is classified as “scenic.” *Id.* at 3-92, tbl. 3.16.3. However, current stipulations and management prescriptions in the Vernal RMP/ROD fail to protect these values. *See, e.g.*, Vernal ROD at Fig. 8a (oil and gas leasing); Lease Sale EA, Appendix A at 72-73 (stipulations and notices attached to Parcel 38).

¹⁰ BLM is in the process of preparing the Nine Mile Canyon SRMA management plan. *See* BLM, Nine Mile Canyon Special Recreation Management Area Plan, DOI-BLM-UT-G020-2015-0060-EA.

Furthermore, Argyle Creek and Ninemile Creek were identified by BLM as eligible for inclusion in the National Wild and Scenic Rivers System. *See, e.g.*, Vernal RMP at EIS Fig. 32. These waterways contain BLM-identified outstandingly remarkable scenic and/or cultural values. *See id.* at 3-91 to -92, tbl. 3.16.3. Argyle Creek is characterized by “steep wooded side canyons, high canyon walls, and vertical cliff faces.” *Id.* Appendix C at C-8. Similarly, Ninemile Creek flows through varied scenery including aspen groves and vertical cliffs. *Id.* Appendix C at C-10. BLM has committed to protect these outstandingly remarkable values. *See id.* at 4-437. However, current stipulations and management prescriptions in the Vernal RMP/ROD fail to protect these values. *See, e.g.*, Vernal ROD at Fig. 8a (oil and gas leasing); Lease Sale EA, Appendix A at 67-69, 72-73 (stipulations and notices attached to Parcels 4, 5, 9, 10, 32 and 39).

Finally, there is no record evidence in the Lease Sale EA that BLM has “[m]onitor[ed] the effectiveness of management decisions [made in the relevant RMP/ROD] for . . . rivers identified as eligible or suitable.” BLM, 6400 – Wild and Scenic Rivers – Policy and Program Direction for Identification, Evaluation, Planning, and Management (Public) § 1.6.9 (July 13, 2012). For example, BLM did not consider the effectiveness of management decisions regarding eligible and/or suitable rivers in its recent review of the Vernal RMP/ROD. *See, e.g.*, Vernal RMP Five-Year Review at Page 52/61 (noting that “Appendix C [of the Vernal ROD] covers the WSR segment determination”). Instead, BLM considered whether “interim management measures [have] been established” – not whether such management measures were effective – and concluded that such measures had been established only for the Upper and Lower Green River – not for other eligible/suitable segments such as Argyle Creek and Ninemile Creek. *Id.* at 53/61. BLM therefore has not complied with Manual 6400. The Lease Sale EA similarly does not contain any evaluation of the effectiveness of BLM’s prior management decisions.

In addition, because no evaluation has been performed regarding the effectiveness of BLM’s prior management decisions, BLM’s management of eligible and/or suitable rivers is an “unresolved resource conflict.” Therefore, pursuant to IM 2010-117 BLM must consider an alternative that addresses this matter and, at a minimum, should defer all parcels that may adversely impact suitable and/or eligible rivers while the agency complies with relevant laws and guidance.

Therefore, the EA failed to take a hard look at water quality/resources.

IX. The EA Failed to Prioritize Oil and Gas Leasing Outside of Greater Sage-Grouse Habitat

The EA fails to prioritize oil and gas leasing outside of greater sage-grouse General Habitat Management Areas (“GHMA”). GHMA is BLM-managed lands where special management is needed to sustain greater sage-grouse populations and viability. *See* BLM, Utah Greater Sage-Grouse Approved Resource Management Plan Amendment at 1-6 (Sept. 2015). Notably, BLM is required to “[p]rioritize the leasing and development of fluid mineral resources *outside of*” GHMAs. *Id.* at 1-11 (emphasis added); *id.* at 2-25 (same). In addition, FLPMA requires BLM to manage public lands pursuant to and in compliance with approved land use plans. *See* 43 U.S.C. § 1732(a). The EA does not meet these requirements.

First, Parcels 32, 67, and 152, are located in GHMAs. *See* Lease Sale EA at 31. Furthermore, there is no record evidence in the EA that BLM prioritized the leasing of areas outside of GHMAs before resorting to inclusion of Parcels 32, 67, and 152, in the lease sale. The EA does not contain any discussion regarding the need for these parcels or why other parcels outside of GHMA were not prioritized, among other things. Instead, the EA contains only a few generic statements regarding the location of each parcel at issue and then concludes that oil and gas activities in these areas would adversely impact greater sage-grouse and the species' habitat – a factor that cuts against BLM's decision to offer leases in GHMA and in favor of prioritizing leasing *outside* of such areas. *See id.* at 31-32, 44-46.

Therefore, BLM has failed to prioritize oil and gas leasing outside of GHMA in violation of its relevant land management plans and FLPMA.

X. The EA Failed to Take a Hard Look at Impacts to Graham's Beardtongue (*Penstemon grahamii*) and White River Beardtongue (*Penstemon scariosus* var. *albifluvis*)

SUWA herein incorporates and adopts the comments and analysis submitted by the Center for Biological Diversity for the Lease Sale EA with regard to Graham's beardtongue (*Penstemon grahamii*) and White River beardtongue (*Penstemon scariosus*).

SUWA appreciates the opportunity to provide these comments and also appreciates the BLM's attention to these concerns.

Sincerely,

/s/ Landon Newell

Stephen H.M. Bloch
Landon Newell

Enclosures (sent via USPS First Class Mail)