Nine Mile Canyon Coalition
P.O. Box 402
Price, Utah 84501

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Sheri Wysong
BLM Utah State Office
440 West 200 South Suite 500
Salt Lake City, Utah 84101-1345

Re: Protest of December 2016 Oil and Gas Lease Sale. Project # UT-G010-2016-033-EA.

Dear Sheri Wysong:

Interest of the Protesting Party

This protest is filed by the Nine Mile Canyon Coalition. Since 1994, the Nine Mile Canyon Coalition (NMCC) has been an active partner in management of Nine Mile Canyon, investing thousands of hours and over $30,000 of our funds assisting the BLM with management of the canyon. We are consulting parties under 36 CFR 800 for 106 consultation on this project, the West Tavaputs Programmatic Agreement and the Gate Canyon Road project. We provided written comments on the EA during the public review period and submitted written comments relevant to 106 consultation. We have also met personally with Jenna Whitlock and Kent Hoffman about this lease sale.

We have concerns for a number of the proposed lease parcels. However this protest specifically addresses parcels 9 & 10 and is limited to those parcels.

Statement of Protest, Lease Parcels 9 & 10

The BLM has failed to take the required "hard look" prior to offering these leases for sale. Despite BLM's repeated claims the act of leasing would not have any direct impacts, it is a precursor action with a reasonable, foreseeable development scenario that most assuredly will have a negative impact on cultural resources, recreation and scenic values. It will also have the effect of precluding future BLM management options, including options already outlined in BLM planning documents as desirable.

BLM Ignores the Most Obvious, Reasonable, Foreseeable Development Scenario

Throughout the EA, BLM repeatedly states the agency cannot predict how or if the parcels would be developed. While that may be true in a general, generic case of NSO leasing, it does not apply to this unique, site specific situation here. A look at these parcels on a topographic map shows the most likely development scenario would be to access the parcels via the bottom of Nine Mile Canyon. The Nine Mile Canyon Road, is

an all-weather, paved road runs along the edge of parcel 10 and bisects parcel 9, in the bottom of the canyon. Along the road are historic ranches with flat ground unencumbered by the NSO stipulation, and a ready source of water. If the target is natural gas, the target of all the wells in similar geology in the region, there is a transmission pipeline already in the canyon. It is hard to imagine a reasonable developer forsaking all these advantages and building new, more expensive and difficult access.

Oil and gas development in the bottom of Nine Mile Canyon and its tributaries has long been an issue, starting with the Bill Barrett Corporation (BBC) Tavaputs Plateau Drilling Program (EA#UT-070-2004-28). The BBC Proposed Action drilling locations included canyon bottom sites. Alternatives were developed specifically to avoid the resource conflicts caused by development in the canyon bottoms. The decision was to avoid the impacts of drilling in canyon bottoms by directional drilling from the plateau above. The commitment to avoiding canyon bottom drilling followed through into the West Tavaputs Full Field Development EIS.

In this specific instance, the BLM is all but directing oil and gas development activities to private lands on the canyon bottom. In doing so, it is also limiting the ability of the agency to mitigate development impacts. BLM's NEPA and NHPA responsibilities do not stop at its property line. BLM is obligated to analyze impacts on surrounding and adjacent lands. BLM emphasized this point in the issuance of Washington Office Instruction Memorandum 2010-117.

Traffic volume on the Nine Mile Canyon road was an issue and extensively analyzed and mitigations imposed for the West Tavaputs Drilling Project. This EA fails to even consider the increased industrial traffic volume that would occur if the leases are developed.

The EA provides great detail about what development would look like; from pad size and construction, the hydraulic fracturing process, ancillary facilities, etc. It is simply disingenuous to provide such detail, yet claim the agency has no clue where or how or if development would occur. The reasonable foreseeable development scenario for this action simply falls short.

<u>The Section 106 NHPA Process Is Incomplete and Inadequate</u>

We were notified by letter dated August 16, 2016 that the Vernal Field Office (VFO) had made a determination of no significant effect for these lease parcels. The letter requested our comments on that determination. We responded, and did not concur with the determination. When consulting parties disagree with the agency no adverse effect determination, the agency may either engage in additional consultation to resolve the disagreement or forward the case to the National Advisory Council (35 CFR 800.5(3). There was one additional consultation meeting on October 28, with no resolution. An agency request to the Advisory Council requires concurrent notification, providing the submission documentation to all consulting parties. Since we have not been so notified,

we assume consultation is continuing and the matter has not been forwarded to the Council.

If the BLM intends to change its finding to adverse effect, the matter is still incomplete and unresolved until the Resolution of Adverse Effect (36 CFR 800.6) requirements are met. This includes additional consultation and the development of mitigation.

How is the BLM able to make a final determination to lease these parcels when these NHPA issues and associated NEPA analysis remain unresolved? This hardly meets the requirement the agency take a hard look at issues before making a final decision.

We find the following faults with the 106 process to date:

1. 36 CFR 800.3(f) states; "the agency official shall identify any other parties entitled to be consulting parties and invite them as such to participate in the section 106 process." Given the 22 year history of the NMCC working continually with BLM on Nine Mile Canyon issues and the contributions of the professional archaeologists on our board, we would expect to be among those consulting parties. We were invited, but only to comment on the determination of no adverse effect.
2. The regulations at 36 CFR 800.4 indicate consulting parties have a role in the identification of historic properties and issues within the area of potential effects (APE). The NMCC was not consulted on these issues at all. For that matter we have not seen a delineation or description of the APE for these lease parcels. A reasonable APE must include the adjacent private lands which contain eligible prehistoric resources and are themselves historic properties.
3. BLM has provided no documentation of how they applied the Criteria of Adverse Effect found in 36 CFR 800.5(a)(1). The BLM no adverse effect determination does not describe or address the historic property's "location, design, setting, materials, workmanship, feeling or association." It also does not address the criteria found at 36 CRR 800.5(2)(v), "Introduction of visual, atmospheric, or audible elements that diminish the integrity of the property's significant historic features." The no effect determination is an unsubstantiated conclusion.
4. The determination of no adverse effect contradicts the BLM's own findings for the West Tavaputs Project. The parcels 9 & 10 are within the APE for the West Tavaputs Programmatic Agreement. The APE was extended beyond the proposed development area both to accommodate future leasing and because effects may extend miles beyond the area of disturbance (PA, Attachment B). BLM also found that oil and gas activities both on leased and unleased areas within the APE would have potential adverse effects, despite all the mitigation developed in the West Tavaputs EIS (PA, Attachment C). The PA has been a work in progress for the past nine years, involving 18 parties. The no adverse effect determination attempts to invalidate the PA and contradicts the West Tavaputs EIS.

The Action Unduly Constrains Future BLM Planning and Management Including Actions Already Identified in Current BLM Plans

The Vernal RMP and Price RMP both designate a Nine Mile Canyon SRMA. Both RMPs adopt the 1995 Special Recreation and Cultural Resources Management Plan for Nine Mile Canyon. Both RMPs require this activity plan be revised as needed.

In the West Tavaputs PA, the BLM commits to have a revised activity plan completed by 2012. To date, no such plan has been drafted, much less completed. The existing activity plan identifies opportunities for interpretive locations on the private lands adjacent to lease parcels 9 and 10. Land acquisitions by easement and fee title are action items in the plan. The development of the private lands for oil and gas production may preclude these acquisitions or make the proposed interpretive sites less viable. Development may lead to the destruction of the cultural resources BLM identified as valuable for public visitation. None of this is addressed in the leasing decision, the actions items in the 1995 activity plan are simply ignored.

Since the completion of the 1995 Plan with its dozens of action items, BLM's implementation has consisted of installing an outhouse and two picnic tables. This brings into question BLM's commitment to the internationally significant, cultural, recreational and scenic values of Nine Mile Canyon. The failure of BLM to consider the 1995 SRMA plan renders the Plan Conformance section of the EA incomplete. BLM continues to delay its five year overdue commitment in the PA. It seems the BLM approach is to allow recreation and scenic vistas to be enhanced only on the lands left over after industry has taken all it wants first.

Wild and Scenic Rivers Ignored

Both the Price and Vernal RMPs identify Nine Mile Creek as eligible for designation as a Wild and Scenic River within the recreational category. Both RMPs identify scenery and cultural (archaeological) as outstandingly remarkable values (ORVs). Price also identifies a historic ORV associated with *"one of the best examples of a Non-City of Zion settlement, an unusual pattern in Utah. Values include sites associated with community development and decline, fur trade and exploration, farming or ranching, military history, communication, transportation, irrigation, and Civilian Conservation Corps. These sites retain original character and their values are important for interpreting associated historic events."* It is hard to imagine this ORV starts and stops along the Carbon/Duchesne county line. In fact these historic features are found throughout the canyon including areas associated with lease parcels 9 & 10.

The EA fails to recognize an eligible Wild and Scenic River associated with the parcels. The EA fails to analyze the impacts of the leases on the Wild and Scenic River characteristics, including the ORVs and ultimate effect on eligibility.

BLM Designated Backcountry Byway Not Addressed

The Nine Mile Canyon Road was designated by the Director of the BLM as a Backcountry Byway in 1991. The values of the Byway are well addressed in the 1995 Special Recreation and Cultural Resources Management Plan. We made multiple comments on the EA about the Backcountry Byway, including the fact it was not

mentioned, much less considered, in the document. In the response to public comments (Appendix E to the EA) BLM stated the EA would be amended to include the Backcountry Byway. Beyond the lip service provided in Appendix E, the Backcountry Byway is not even mentioned in the most current version of the EA. This important designation and more importantly its values and characteristics were ignored in the initial version of the EA and the agency was not responsive to our comments. Ignoring a BLM national designation hardly comports with having taken a hard look at the action.

Recreation and Associated Scenic Resources Are Not Adequately Considered.

Nine Mile Canyon Coalition comments regarding outdoor recreation in the EA were not addressed. BLM's response to comments begins with a paragraph discussing the ACEC, which was not even the topic at hand. The second paragraph begins with the sentence: "*Recreation opportunities and experience are qualitative values which are different for each individual recreationist.*" Those words could only be written by someone who is not a professional outdoor recreation planner and ignorant of the BLM's Recreation and Visitor Services manual and handbook.

Not only is recreation not adequately addressed in this decision, given the current state of planning, it cannot be. The Vernal RMP designates the Nine Mile Canyon SRMA with a very broad goal statement and little else to back it up.

SRMAs require more than mere designation. BLM policy and guidance on the subject states: "*An SRMA is an administrative unit where existing or proposed recreation opportunities and RSCs are recognized for their unique value, importance, and/or distinctiveness especially as compared to other areas used for recreation. An SRMA is managed to protect and enhance a targeted set of activities, experiences, benefits and desired RSCs.*" Vernal BLM has not shown it has even inventoried the opportunities and RSC's, much less provided direction for their management. Instead, we are offered a generic list recreation activities that might occur on public land anywhere. In BLM recreation management, experiences, outcomes and settings are the coin of the realm. They comprise the criteria and metrics used to discuss and analyze recreation. Absent documentation on these attributes, BLM cannot describe recreation within the SRMA, much less analyze impacts on recreation from oil and gas leasing.

NSO does not solve this problem. Unlike an ACEC, that is specific only to public lands, BLM policy on RMAs is to consider public lands and adjacent lands when considering recreation.

Need for a Landscape Level Approach. Fragmented Management Does Not Support This Irreversible, Irretrievable Commitment of Public Resources.

Nine Mile Canyon is a unique place, often described in superlatives. Unfortunately, this 40 mile long feature meanders in lazy-S curves, back and forth, across an arbitrary, straight line political boundary. The canyon cuts across three counties and two BLM field offices. It deserves and needs to be managed on a holistic basis rather than an assortment of fiefdoms. The canyon has long suffered from a fragmented, uncoordinated approach to management. With the exception of the 1995 activity plan, centered on the Backcountry Byway, there has never been good coordination between the Vernal and Price Field Offices with regard to Nine Mile Canyon. The two RMPs,

prepared at the same time, signed at the same time, show great disparity at the field office boundaries in Nine Mile Canyon.

1. The ACECs are different. Price is drawn tight to the canyon bottom, delineated by aliquot parts. Vernal's ACEC is much larger, drawn along topographic features encompassing much more of the watershed.
2. The Vernal ACEC lists Cultural, Sensitive Plant Species and Scenic as the relevant and important values (R&I). The Price ACEC shows only Cultural as the R&I value. In the Price ACEC evaluation, the same sensitive plant species as the Vernal ACEC are identified but not considered a value and scenic resources are not identified or discussed for the ACEC even though great scenic value is identified elsewhere in the plan.
3. The two respective SRMA designations have the same discrepancies in mapping criteria described for the ACECs.
4. The two SRMA management prescriptions are very different. Vernal does little more than designate a SRMA. Management for the Price SRMA is much more developed, describing the market, targeted experiences and outcomes and prescription of some Recreation Settings Characteristics. An odd result for two, supposedly coordinated, contemporaneous plans prepared using the same planning guidance.
5. In the Wild and Scenic Rivers inventory, both offices found Nine Mile Creek eligible for designation but there is discrepancy on the ORVs.
6. The VRM management classes change arbitrarily on the field office boundary. Most visitors to the canyon find the scenery spectacular throughout the canyon. BLM seems to think the scenic value changes based on an imaginary, straight county line.

Nine Mile Canyon is one of the jewels of the public land, not just within the state, but nationally and internationally. BLM should avoid making long term, irreversible and irretrievable commitments of resources until such time as it can assure a cohesive, comprehensive approach to management. The current fragmented planning approach and unilateral actions by both field offices is leading to the death by a thousand cuts. Please stop cutting, put the rusty razor down, and give the place the careful, considered management attention it so richly deserves.

For all the reasons contained in our protest we request lease parcels 9 & 10 be deferred. Given the disparate land use plan direction, the lack of information, the documentation provided does not support oil and gas leasing as a rational decision.

Sincerely yours,

Dennis J. Willis

Dennis Willis
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