

**Appendix I**  
**Public Comments on the Draft**  
**Environmental Impact Statement and**  
**Agency Responses**

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# APPENDIX I – PUBLIC COMMENTS ON THE DRAFT ENVIRONMENTAL IMPACT STATEMENT

## I.1 Introduction and Background

Appendix I contains the comments received by the Bureau of Land Management (BLM) regarding the Draft Environmental Impact Statement (EIS) for the Enefit American Oil (Applicant) Utility Corridor Project (Utility Project) and the BLM's response to those comments.

On April 8, 2016, the BLM published in the *Federal Register* (Volume 81, Number 68, page 20671) a Notice of Availability of the Draft EIS for public review and comment. The Environmental Protection Agency (EPA) published in the *Federal Register* (Volume 81, Number 73, page 22263) a Notice of Availability of the Draft EIS for public review and comment on April 15, 2016, which initiated the 60-day public comment period.

The availability of the Draft EIS, the deadline for public comments, and the locations, dates, and times of public meetings on the Draft EIS were announced in legal notices, newspaper advertisements, and project newsletters that were mailed to the affected property owners, members of the public who expressed interest during project scoping, agencies, and stakeholders. The Draft EIS (16 hard copies and 157 electronic copies) were sent to federal, state, and local government agencies, institutions, organizations, and individuals for review and comment.

During the 60-day public comment period, the BLM conducted three open house meetings to provide the public with an opportunity to view informational displays on the project, discuss the project individually with BLM staff and representatives, and provide comments on the Draft EIS. The public open houses were held on three consecutive days from May 3 through May 5, 2016. The open houses were held in Vernal, Utah; Rangely, Colorado; and Salt Lake City, Utah, respectively. A total of 148 people attended the public open house meetings. The majority of the attendees (85) attended the meeting in Rangely, Colorado.

## I.2 General Summary of Comments

During the 60-day comment period, 69 submittals offering comments on the Draft EIS were received from various federal, state, and local agencies, special interest groups, and public citizens. This included 12 comment forms submitted at the public open house meetings, 4 comments mailed to the BLM, 3 comments submitted through the BLM website, and the remainder submitted through email. In addition, approximately 15,500 form letters were sent to the BLM from 8 different organizations. An additional comment submittal from a nongovernmental organization was submitted after the comment period, but has been included in the comment response effort, bringing the total of unique comment submittals to 70. Comments and responses are presented in Appendix I of this EIS. A list of agencies, organizations, and individuals who commented on the Draft EIS is presented in Table I-1.

Table I-1 Guide to Agencies, Organizations, and Individuals Who Provided Written Comments on the Draft Environmental Impact Statement and Land-Use Plan Amendments	
Submittal Number	Name/Affiliation
<b>Federal</b>	
F1	U.S. Environmental Protection Agency
F2	U.S. Fish and Wildlife Service
<b>Tribal</b>	
T1	Hopi Tribe

<b>Table I-1</b> <b>Guide to Agencies, Organizations, and Individuals Who Provided Written Comments</b> <b>on the Draft Environmental Impact Statement and Land-Use Plan Amendments</b>	
<b>Submittal Number</b>	<b>Name/Affiliation</b>
<b>State</b>	
S1	Colorado Department of Public Health & Environment
S2	Office of the Governor - Utah Public Lands Policy Coordination
<b>County</b>	
C1	Uintah County
<b>City/Town</b>	
CT1	Town of Rangely
<b>Nongovernmental Organizations</b>	
N1	Conservation Colorado, Western Colorado Congress, Great Old Broads for Wilderness
N2	Earth Justice
N3	Grand Canyon Trust, Living Rivers, Sierra Club, Southern Utah Wilderness Alliance, Western Resource Advocates, the WaterKeeper Alliance, American Rivers, the Natural Resource Defense Council, the Center for Biological Diversity, The Wilderness Society, Utah Physicians for a Health Environment, the Science and Environmental Health Network, Wildearth Guardians, and EarthJustice
N4	National Oil Shale Association
N5	National Wildlife Federation
N6	Utah Mining Association
N7	Utah Native Plant Society
N8	Utah Petroleum Association
N9	Utah Physicians for a Healthy Environment
<b>Corporations</b>	
CP1	Chevron Pipe Line Company
CP2	Enefit American Oil
CP3	Norwest Corporation
<b>Individuals</b>	
I1	Beth Allen
I2	B. Shane Brady
I3	Roxanne Bucaria
I4	Constance Contreras
I5	J Stephen Cranney
I6	Julia Davis
I7	Tom Elder
I8	Virginia Exton
I9	Aaron Fumarola
I10	Dan Gibbs
I11	Ariel y Heron
I12	Jake Hodie
I13	Herm Hoops
I14	Beth Jones
I15	Amy Kopischke
I16	Christopher Lish
I17	Josie Lopez
I18	Greg Madsen
I19	Marv Poulson
I20	Elizabeth Reed
I21	Earlene Rex
I22	Galen Schuck



Table I-1 Guide to Agencies, Organizations, and Individuals Who Provided Written Comments on the Draft Environmental Impact Statement and Land-Use Plan Amendments	
Submittal Number	Name/Affiliation
I23	Jim Steitz
I24	Matt Thomas
I25	John Vaillant
Form Letters	
FL1	Action Network
FL2	EarthJustice
FL3	Grand Canyon Trust
FL4	KnowWho Services
FL5	Multiple Individuals – Group 1
FL6	Multiple Individuals – Group 2
FL7	WildEarth Guardians

In compliance with Council on Environmental Quality regulations for implementing the National Environmental Policy Act (NEPA), all substantive comments received were assessed and responded to. Of the 69 individual (non-form letter) comment submittals received, 26 comments were identified as substantive according to BLM guidelines, and most of these submittals contained multiple comments. BLM's NEPA Handbook (H-1790 1, January 2008) defines substantive comments as doing one or more of the following:

- Questioning, with reasonable basis, the accuracy of information in the EIS
- Questioning, with reasonable basis, the adequacy of, methodology for, or assumptions used for the environmental analysis
- Presenting new information relevant to the analysis
- Presenting reasonable alternatives other than those analyzed in the EIS
- Causing changes or revisions in one or more of the alternatives

Submittals containing substantive comments on the Draft EIS are reproduced in full and are presented at the end of this appendix. The comments are categorized by federal agencies, state agencies, local agencies, special interest groups, corporations, individuals, and form letters (Table I-2). Each substantive comment in a submittal is bracketed in the left margin and is labeled with a letter, which corresponds with the BLM's response on the right side of the page.

## I.2.1 Issues and Key Comments

Table I-2 indicates the number of substantive comments received (241 comments received in 70 comment submittals) by issue. The final column indicates the percentage of comments for each issue in relation to the total number of substantive comments received.

Table I-2 Comments by Issue		
Issue	Number of Comments	Percentage of Total
Agency Purpose and Need	6	2.3
Alternative Considered	35	13.7
Project Description	44	17.2
Air Quality	27	10.5
Water Resources	3	1.2
Vegetation	14	5.5
Wildlife	7	2.7
Cultural Resources	4	1.6

<b>Table I-2 Comments by Issue</b>		
<b>Issue</b>	<b>Number of Comments</b>	<b>Percentage of Total</b>
Visual Resources	4	1.6
Lands and Access	3	1.2
Travel Management	3	1.2
Recreation	2	1.0
Social and Economic Conditions	8	3.1
Public Health and Safety	5	2.0
NEPA Process	29	11.3
Plan of Development	5	1.9
Request Final EIS	3	1.2
Nonsubstantive	54	21.1
Note: Because individual comment submittals had multiple comments, the “Number of Comments” column reflects the reference to the topic within a comment letter. Therefore, this number is not equal to the sum of comment letters received.		

A summary description of the comments on these issues is provided below.

#### **I.2.1.1 Agency Purpose and Need**

Comments on the Agency Purpose and Need (2.3 percent) included comments on the document’s consistency with current policy and regulations. Uintah County and the National Oil Shale Association expressed support for BLM’s compliance with the Energy Policy Act of 2005 and the Uintah Basin Energy Zone goals and objectives (established under the State of Utah Resource Management Plan for Federal Lands and adopted as a Utah state law). Utah Physicians for Healthy Environment (UPHE) requested that language regarding the Energy Policy Act of 2005 be added to emphasize that the development of oil shale “should occur, with an emphasis on sustainability” to benefit the United States. UPHE also indicated that other policies, such as the Clean Air Act (CAA), Clean Water Act (CWA), and Clean Power Plan, should be referenced in the Purpose and Need section of the EIS.

#### **I.2.1.2 Alternatives Considered**

Approximately 13.7 percent of the comments received from respondents were either supporting or opposing the Utility Project action alternative. There were no comments received that proposed a new action alternative.

#### **I.2.1.3 Project Description**

Many comments (17.2 percent) requested clarification on the relationship between the proposed action and the South Project. Additional clarification was also requested to better describe the rationale and basis for including the South Project as a non-federal connected action.

#### **I.2.1.4 Air Quality**

Comments on potential impacts on air quality (10.5 percent) included comments from the Grand Canyon Trust et. al, Utah Physicians for Healthy Environment, and individual commenters. These comments generally expressed concern for potential impacts on air quality in an area with existing industrial, mining, or oil and gas development. The Colorado Department of Health expressed interest in a more robust air quality analysis that includes consideration of projects in nearby Rangely, Colorado.

### **I.2.1.5 Water Resources**

Several commenters (1.2 percent) expressed concern regarding water use and impact on species in the Colorado River Basin. The U.S. Fish and Wildlife Service (FWS) expressed concern regarding the project crossing the White River. In addition, the FWS provided information regarding requirements for use of the existing Desert Generation and Transmission Cooperative water right.

### **I.2.1.6 Vegetation Resources**

Comments on vegetation (5.5 percent) recommended adjustments to reclamation plans and activities. The FWS and the Utah Native Plant Society provided comments on the need to update vegetation data sets to reflect new information and revise mitigation strategies to include longer reclamation periods and use of only native species in reseeding.

### **I.2.1.7 Wildlife Resources**

Comments on wildlife resources (2.7 percent) were received from the National Wildlife Federation expressing concern for potential impacts from the Utility Project and the South Project on water quality and both aquatic and terrestrial wildlife. The FWS provided information regarding coordination for Section 7 Consultation.

### **I.2.1.8 Cultural Resources**

Comments on cultural resources (1.6 percent) were received from the Hopi Cultural Preservation Office requesting consultation on both the Utility Project and the South Project. An individual requested that data be verified regarding the presence of sacred tribal lands in the project study area.

### **I.2.1.9 Visual Resources**

Individual commenters provided input (1.6 percent) recommending that dark skies mitigation and buffering of ambient lights be implemented during the construction of both the Utility Project and the South Project. In addition, one commenter requested that the transmission lines be buried.

### **I.2.1.10 Lands and Access**

Comments (1.2 percent) expressed concern regarding the need to consider proposed wilderness and conservation areas and existing easements. Individual commenters indicated that sacred tribal lands may be located within the Utility Project study area. Uintah County acknowledged consistency of the project with the Uintah County General Plan (2005).

### **I.2.1.11 Travel Management**

Several comments (1.2 percent) were received regarding transportation. Uintah County expressed concern regarding the potential impacts from increased truck traffic related to cost maintenance and need for improvements to local roads under the No Action Alternative. Individual commenters recommended improving access along Dragon Trail Road between Rangely, Colorado, and the South Project site.

### **I.2.1.12 Recreation**

Comments on recreation (1.0 percent) indicated that the document lacks consideration for recreation uses other than all-terrain vehicles. Individual commenters requested that the discussion of recreation along the White River be expanded to include boat access and dispersed recreation.

### **I.2.1.13 Social and Economic Conditions**

Several commenters (3.1 percent), including Uintah County, the Utah Mining Association, and the National Oil Shale Association, generally expressed concern for what the commenters believe is an oversight regarding the difference in socioeconomic benefits between implementing the Proposed Action and No Action Alternative. Individual commenters expressed concern regarding the economic feasibility of the South Project.

### **I.2.1.14 Public Health and Safety**

Comments (2.0 percent) were received expressing concern about the health and safety from pipeline leaks. Uintah County recommended that analysis of public health and safety be expanded to include consideration of increased truck traffic associated with the No Action Alternative.

### **I.2.1.15 NEPA Process**

Comments (11.3 percent) were received on the NEPA process and the method of analysis for the Utility Project and South Project for both environmental consequences and cumulative impact analysis. The comments included input indicating that more information should be provided for the South Project and potential impacts should be more fully analyzed in the EIS. Other comments indicated that the BLM has no jurisdiction over the South Project and, therefore, no analysis of the South Project should be included in this EIS.

An additional comment from a nongovernmental organization (Earth Justice) was submitted after the comment period ended, but has been included in the comment response effort to address comments related to the proposed Indemnity Selection and the Applicant's Utility Project, given the proximity of the two projects. The inclusion of the Indemnity Selection has been incorporated into the cumulative impacts analysis as a reasonably foreseeable future action as an extension of the South Project mining operations.

### **I.2.1.16 Plan of Development**

Several comments (1.9 percent) were received providing recommendations about additions or revisions to identified design features and reclamation activities for both the Utility Project and the South Project.

### **I.2.1.17 Nonsubstantive Comments**

The greater part of the comments (21.1 percent) were received from respondents indicating general opposition to the proposed action and the South Project.

According to BLM guidelines (BLM's NEPA Handbook, H-1790 1, January 2008), comments not considered substantive include the following:

- comments in favor of or against the Proposed Action or alternatives without reasoning that meets the BLM's definition of substantive comments
- comments that only agree or disagree with BLM policy or resource decisions without justification or supporting data that meet the BLM's definition of substantive
- comments that do not pertain to the project area or proposed project
- comments that take the form of vague, open-ended questions

## **Appendix I1**

### **Federal**

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## COMMENT(S)

## RESPONSE(S)

F1

## U.S. Environmental Protection Agency



## UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

## REGION 8

1595 Wynkoop Street  
 Denver, CO 80202-1129  
 Phone 800-227-8917  
 www.epa.gov/region08

JUL 15 2016

Ref: EPR-N

Jenna Whitlock, Utah State Director  
 U.S. Bureau of Land Management  
 440 West 200 South, Suite 500  
 Salt Lake City, Utah 84101

Re: Enefit American Oil Utility Corridor Project Draft EIS; CEQ # 20160077

Dear Ms. Whitlock:

The U.S. Environmental Protection Agency has reviewed the Bureau of Land Management's (BLM) Draft Environmental Impact Statement (EIS) for Enefit American Oil (Enefit)'s applications for rights-of-way (ROW) to construct various utilities on federal lands. In accordance with our responsibilities under Section 102(2)(C) of the National Environmental Policy Act (NEPA) and Section 309 of the Clean Air Act, the EPA has reviewed and commented on this Draft EIS. The EPA's principal comments are included in this letter with additional comments provided in the enclosure.

**Project Background**

The Draft EIS considers environmental impacts associated with five ROWs (collectively referred to as the Utility Corridor) to provide access and utilities to Enefit's "South Project," a proposed commercial oil shale mining, retorting, and upgrading operation located on non-federal land within the exterior boundary of the Uintah and Ouray Indian Reservation in Uintah County, Utah. Activities on BLM-administered land include 19 miles of water supply pipeline, 9 miles of natural gas supply pipeline, 11 miles of oil product line, 30 miles of powerlines, and 6 miles of upgrading to Dragon Road. Since the only purpose for the Utility Corridor is to support Enefit's South Project, BLM has appropriately considered the Utility Corridor and the South Project together. The South Project will consist of 7,000 to 9,000 acres of surface mining, 320 acres of plant facilities for retorting and upgrading, and is the first commercial scale oil shale project in the US, which is expected to produce over 18 million barrels of oil per year for 30 years.

**Summary of Principal Comments**

Although the Draft EIS considers the environmental impacts within the Utility Corridor itself in some detail, the analysis of the South Project falls substantially short of the level of detail and rigor appropriate to evaluate the environmental impacts of the project before BLM. A primary purpose of a NEPA analysis is to take a hard look at the environmental impacts, including the direct, indirect and cumulative effects of a proposed project and feasible alternatives, so that the decision maker can make a reasoned choice on the project and the public has sufficient information to enable meaningful input. The indirect and cumulative effects considered pursuant to NEPA include the effects that are reasonably

The South Project is independent of the Utility Project because it is on private land and private minerals and therefore is outside of the BLM's jurisdiction. The South Project will proceed to full buildout regardless of the BLM decision to be made for the Utility Project. Likewise, the Utility Project is being pursued regardless of the outcome of the South Project permitting process. The BLM is not required to compare or contrast alternatives or develop mitigation for the South Project, and analysis of the South Project itself is not necessary for a reasoned choice between Utility Project alternatives for the purposes of NEPA. However, since the South Project is a reasonably foreseeable cumulative action which may have impacts that will accumulate with the Utility Project alternative impacts, those impacts are included in the cumulative impacts section of the EIS to the degree that they are known. When the impacts are not known, the procedures in 40 Code of Federal Regulations (CFR) 1052.22 were followed. Since the No Action Alternative is to deny the requested rights of way, there is no accumulation of impacts under that alternative. However, given public interest in the South Project, Section 4.4 has been added to the EIS that describes the South Project if the BLM were to deny the Utility Project. Section 1.2.1 has been changed to reflect this clarification.

F1a

Enefit has reiterated that the South Project will move forward regardless of BLM's ultimate decision on the rights-of-way applications. The South Project is outside of the jurisdiction of the BLM and will proceed to full buildout regardless of the BLM decision to be made for the Utility Project. To address confusion expressed by the public during the Draft EIS comment period, the impacts from the South Project have been moved to the cumulative impact analysis in the Final EIS. The BLM is not required to compare or contrast alternatives for the South Project, which is a reasonably foreseeable non-federal action. Also, since the No Action Alternative is to deny the requested rights-of-way, there is no accumulation of impacts under that alternative. However, given public interest in the South Project, Section 4.4 has been added to the EIS that describes the South Project if the BLM were to deny the Utility Project. The changes made as a result of public comment do not present new information or change the scope of the EIS—they only clarify the South Project is not a connected action—which is how the Draft EIS treated the South Project in that full buildout was assumed under the No Action Alternative. For this reason, a supplemental EIS is not warranted. However, the Final EIS will be made available for public review for 45 days instead of the usual 30 days to allow the public additional time to consider the clarifications before a Record of Decision (ROD) is published.

F1a

## COMMENT(S)

## RESPONSE(S)

F1

## U.S. Environmental Protection Agency (cont.)

F1a

foreseeable. In this instance, the South Project is more than reasonably foreseeable; it is the stated purpose for the application for the Utility Corridor. The most significant environmental impacts associated with this project are the indirect effects associated with the South Project oil shale operations. Despite the fact that this is a very large project, involving surface mining, processing, retorting and upgrading oil shale, the Draft EIS contains very little to no quantitative analysis of the expected impacts. That omission is even more striking given the available information which suggests that the South Project would have potentially very serious implications for climate change, and has the potential to exacerbate existing impaired water and air quality conditions. The very general qualitative statements on these subjects in the Draft EIS do not allow the public or the decision maker to understand or evaluate the environmental impacts of this project. Due to the likely magnitude and significance of these indirect effects, a Supplemental EIS (SEIS) is warranted to provide the detail necessary to appropriately assess and consider the impacts associated with the South Project.

According to the Draft EIS, “[t]he Applicant has provided BLM with all the information it has for the South Project mine plan and is unwilling to expend further resources to develop the mine plan and engineering specifications until it receives a decision on the utility corridor rights-of-way application.” The BLM was justified in requesting additional detail from Enefit to support the BLM’s evaluation of indirect effects. As a result of Enefit’s refusal to provide sufficient information to support a quantified effects analysis, the Draft EIS does not take a hard look at the potential indirect impacts associated with the South Project.

The enclosed *Additional Comments* provide additional topics and issues that should be addressed in the EIS and BLM’s subsequent decision. The principal areas on which potential impacts appear significant but that are not addressed in detail or with the necessary rigor in the Draft EIS are included below.

Greenhouse gases and climate change

F1b

The Draft EIS does not include a quantitative estimate or even a range of estimates of the indirect greenhouse gas (GHG) emissions associated with the project. This is particularly notable given the higher GHG intensity of oil shale compared to reference crudes. While estimates of lifecycle GHG emissions are limited due to lack of U.S. commercial-scale oil shale development, existing research indicates that oil shale is the most energy intensive fuel among upgraded primary fossil fuel options.<sup>[1]</sup>

F1c

In addition, a range of well-to-wheel emissions associated with the production of diesel from oil shale provide a reasonable estimate of lifecycle emissions absent additional detailed information provided by the company. The estimated production rates for the South Project are stated to be 50,000 barrels of shale oil per day for 30 years. At between 23 and 73% greater GHG intensity for this oil compared to the U.S. 2005 average diesel baseline,<sup>[2]</sup> the GHG emissions associated with this project are potentially very large and warrant detailed analysis in the EIS. The EPA also notes that it is not appropriate to

<sup>[1]</sup> Nduagu and Gates. 2015. Unconventional Heavy Oil Growth and Global Greenhouse Gas Emissions. Environmental Science and Technology Journal. <http://pubs.acs.org/doi/pdf/10.1021/acs.est.5b01913>

<sup>[2]</sup> Brandt, A.R. (2009) Converting oil shale to liquid fuels with the Alberta Taciuk Processor: Energy inputs and greenhouse gas emissions. *Energy & Fuels*. Issue 23, pp. 6253-6258.

Brandt, A.R. Converting oil shale to liquid fuels: Energy inputs and greenhouse gas emissions of the Shell in situ conversion process. *Environmental Science & Technology* 42(19) 7489-7495. (2008). DOI: 10.1021/es800531f.

F1b

The Draft EIS does quantify the greenhouse gas (GHG) emissions associated with the Utility Project (refer to Section 4.2.1.1.1). Impacts from the South Project are not indirect effects; they are cumulative effects because the South Project is not a connected action and will go forward to full buildout regardless of whether the Utility Project Alternative is selected by the BLM. BLM acknowledges in the cumulative impacts section that the South Project may have GHG emissions, and that those emissions cannot be known at this time because the South Project has not yet been fully engineered.

F1c

The BLM has no jurisdiction over the South Project. In addition, the South Project downstream product combustion is not necessary for a reasoned choice between alternatives in this EIS for the purposes of NEPA because the South Project will continue to full buildout regardless of the BLM decision on the Utility Project. However, South Project effects have been included in the cumulative effects analyses to the degree that those effects accumulate with the effects of the Proposed Action. Where the effects are unknown, the best available info has been included in the EIS, and the procedures in 40 CFR 1502.22 have been followed. The BLM believes that comparisons provide context for determining significance. Based on those comparisons, the BLM agrees that there is no clear distinction to be made between the effects of GHG emissions from the Utility Project and the South Project, or from the South Project alone, compared to regional or global climate change effects. The BLM did disclose in the EIS for context the GHG emissions from the Utility Project (9,427 metric tons), Uintah County (4.26 million metric tons carbon dioxide equivalent [CO<sub>2</sub>eq]), and U.S. Industrial Sectors (23 to 5,637 million metric tons CO<sub>2</sub>eq) as well as the minimum reporting threshold established by the EPA (25,000 metric tons CO<sub>2</sub>eq annually).



## COMMENT(S)

## RESPONSE(S)

F1

## U.S. Environmental Protection Agency (cont.)

F1c

evaluate the significance of GHG emissions by comparing emissions from one project to national or global GHG emission totals. Such comparisons obscure rather than explain how to consider GHG emissions under NEPA.

Air quality

F1d

The discussion of air quality impacts does not provide sufficiently detailed information to determine the potential magnitude of impacts from the South Project. The EPA recommends that a quantitative estimate of air quality impacts be provided in the SEIS. According to the BLM's 2012 Oil Shale and Tar Sands Programmatic EIS (OSTS PEIS), oil shale mining and processing is expected to emit NO<sub>x</sub>, CO, PM, VOCs and SO<sub>2</sub>. These pollutants are likely to impact local and regional air quality. In particular, the Draft EIS qualitatively describes emissions of NO<sub>x</sub> and VOCs from the South Project as being likely to exacerbate existing ozone concerns in the Uinta Basin. The Basin currently experiences monitored ozone exceedances, and additional emissions of ozone precursors within the Uinta Basin should be expected to contribute to any future exceedances or violations of the ozone National Ambient Air Quality Standards (NAAQS). As an indicator of the level of emissions anticipated, the Draft EIS states that the South Project facility is expected to be classified as a major source for purposes of Clean Air Act permitting.

Water quality

F1e

The proposed surface mining of 7,000 to 9,000 acres for the South Project is all within the Evacuation Creek watershed. Evacuation Creek is on Utah's 303(d) list of impaired waters. The Draft EIS lacks a detailed analysis of the potential for the South Project to exacerbate the water quality impairments in this watershed including on BLM lands. Runoff and groundwater impacts from the mining processes would have the potential to impact water quality, particularly because the watershed is limited in flow and the waterbody is already impaired. In addition, the BLM's 2012 OSTS PEIS states that "[a]t both surface and underground mining sites, the spent shale piles and mine tailings could be sources of contamination for salts, metals and hydrocarbons. If surface retorting is used to upgrade oil shale, fly ash and boiler bottom ash would also be produced by the retorts as wastes. Leachates containing associated contaminants may enter nearby surface water bodies or groundwater and continue to degrade the water quality well after site reclamation if the wastes are not properly managed." We recommend that the BLM work with the applicant to provide further detail on the South Project so that a more refined analysis of the affected environment is presented and a more detailed projection of mitigation efforts necessary to avoid exacerbating existing impairment of surface waters can be developed.

**Draft EIS Rating**

F1f

The additional information specified above is necessary to ensure the information in the EIS is adequate to fully inform decision makers and the public about the potential environmental consequences of the project. Since the Draft EIS does not contain the necessary information to evaluate the environmental impacts of the project and the available information suggests that the impacts would in fact be very significant, the EPA is giving the Draft EIS Preferred Alternative a rating of 3 – Inadequate Information. As with all projects that have not addressed potentially significant impacts, this proposal is a potential candidate for referral to the Council on Environmental Quality (CEQ). We recommend that the additional information and analysis be circulated for full public review in a Supplemental Draft EIS. A description of the EPA's rating system can be found at: <http://www2.epa.gov/epa/environmental->

3

F1d

The Draft EIS does quantify the emissions associated with the Utility Project. South Project emissions are cumulative effects because the South Project is a non-federal cumulative action and will go forward to full buildout regardless of the Utility Project alternative selected by the BLM; therefore, South Project emission amounts are not necessary for a reasoned choice between Utility Project alternatives in this EIS for the purposes of NEPA. BLM acknowledges in the cumulative impacts section that the South Project may have emissions, and that those emissions cannot be known at this time because the South Project has not yet been fully engineered. It is likely the Basin will be designated as nonattainment, and any future emissions sources (such as the South Project or other development projects) will be subject to the associated regulation; however, those regulatory processes are beyond the scope of this EIS. Also, the BLM followed 40 CFR 1502.22 when dealing with unknown information.

F1e

South Project water quality impacts are cumulative effects because the South Project is a non-federal cumulative action and will go forward to full buildout regardless of the Utility Project alternative selected by the BLM; therefore, South Project impacts are not necessary for a reasoned choice between Utility Project alternatives in this EIS for the purposes of NEPA. However, Section 4.3.3.5 qualitatively indicates the impacts that are expected to accumulate from the South Project with the Utility Project Proposed Action as well as the permitting processes that will be applied to the South Project to address potential water impacts.

BLM has no authority or obligation to require mitigation for the South Project. The appropriate permitting authorities, through their permitting processes, will address appropriate mitigation of South Project impacts as they deem appropriate.

F1f

See next page for response to Comment F1f.

COMMENT(S)

RESPONSE(S)

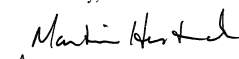
F1

U.S. Environmental Protection Agency (cont.)

[impact-statement-rating-system-criteria](#).

Thank you for the opportunity to review and comment on the Draft EIS for the Enefit Utility Corridor Project. We hope that our comments here and in the enclosure will assist the BLM in preparing an adequate NEPA analysis and it will be important that we work closely together to resolve the identified inadequacies in the Draft EIS. If you have any questions or comments, please contact Phil Strobel, Region 8 NEPA Program Director at 303-312-6704, [strobel.philip@epa.gov](mailto:strobel.philip@epa.gov).

Sincerely,

  
Shaun L. McGrath  
Regional Administrator

Enclosure

Cc: Ester McCullough, Field Office Manager, BLM, Vernal Field Office  
Stephanie Howard, BLM, Vernal Field Office  
Catie Buchner, BLM, Vernal Filed Office

4

F1f

To reduce confusion that became apparent through public comment, the impacts from the South Project, which is outside of the jurisdiction of the BLM and which will proceed to full buildout regardless of the BLM decision to be made for the Utility Project, has been moved to the cumulative impact analysis in the Final EIS. As a reasonably foreseeable non-federal action, the BLM is not required to compare or contrast alternatives for the South Project. Impacts are only disclosed to the extent that they accumulate with the Utility Project proposed action, and to the extent that they are known. If they are not known, the procedures in 40 CFR 1502.22 were followed. However, because the South Project is not connected, and because it will go forward to full buildout regardless of the Utility Project decision by the BLM, the South Project impacts are not necessary for a reasoned choice between Utility Project alternatives in this EIS for the purposes of NEPA. Note that since the No Action Alternative is to deny the requested rights of way, there is no accumulation of impacts under the alternative action. However, given public interest in the South Project, Section 4.4 has been added to the EIS that describes the South Project if the BLM were to deny the Utility Project. BLM disagrees with the need for a Supplemental Draft EIS because supplements are required when significant new information is available that was not previously publicly disclosed. The BLM does not believe that this is the case because:

- No additional alternatives have been identified for analysis.
- No significant new data or issues have been raised by the public or agencies pertaining to the Utility Project.
- The changes made between draft and final were limited to moving the South Project description and impact analysis to the cumulative impact section to reduce public confusion, and to add a comment response document with minor editorial changes to address some of those comments.
- All remaining EPA concerns are tied to the South Project (over which the BLM has no jurisdiction, oversight, or approval authority), detailed data on operations do not exist, and no reasonable proxy has been identified. Information that may be used to further inform these concerns is already available to the public (e.g., the Colorado Plateau Rapid Eco-Regional Assessment and the Oil Shale/Tar Sands Programmatic EIS). The BLM has referenced these documents in this EIS. When data was still lacking after review of these sources, the BLM followed 40 CFR 1502.22.

However, since the South Project has been moved to Section 4.4, for the sake of clarity, the Final EIS will be made available for an extended Final EIS waiting period (45-days instead of the usual 30).

## COMMENT(S)

## RESPONSE(S)

F1

## U.S. Environmental Protection Agency (cont.)

## U.S. Environmental Protection Agency

## Additional Comments - Enefit American Oil Utility Corridor Project Draft EIS

In addition to the comments in the cover letter, the EPA offers the following comments that should also be considered in the EIS and BLM's subsequent decision.

Greenhouse Gases and Climate Change Impacts

**The effect of climate change on the environmental impacts of this project.** The EPA recommends that the EIS describe potential changes to the affected environment that may result from climate change. Including future climate scenarios in the EIS would help decision makers and the public consider whether the environmental impacts of the alternatives would be exacerbated by climate change. If impacts may be exacerbated by climate change, additional mitigation measures may be warranted.

F1g

The EPA recommends considering climate adaptation measures based on how future climate scenarios may impact the project. The National Climate Assessment (NCA), released by the U.S. Global Change Resource Program<sup>1</sup> contains scenarios for regions and sectors, including energy and transportation. We recommend that the EIS use NCA or other peer-reviewed climate scenarios because this can inform alternatives analysis, and possible changes to the proposal can improve resilience and preparedness for climate change. Changing climate conditions can affect a proposed project, as well as the project's ability to meet the purpose and need presented in the EIS.

F1h

**Mitigation.** The Draft EIS includes a list of potential mitigation measures to reduce the GHG emissions of the South Project. The EPA recommends that the EIS analyze practicable mitigation measures to reduce project-related GHG emissions, locally and downstream, that the BLM work with the applicant to describe specific measures to reduce GHG emissions associated with the South Project and identify specific measures with co-benefits for reducing ozone precursor emissions given the proposed action is occurring in an area that is experiencing wintertime exceedances of the ozone NAAQS. These measures may include analysis of practicable mitigation opportunities and disclosure of the estimated GHG reductions associated with such measures - for example, energy efficiency, consideration of renewable energy resources to address energy needs for compressor stations and other facilities. We also recommend that the EIS make clear whether commitments have been made to ensure implementation of design or other measures to reduce GHG emissions.

Air Quality Impacts

In absence of an analysis to inform mitigation decisions, it is not clear whether the mitigation described in the Draft EIS is sufficient to avoid exceedances of the NAAQS associated with ROW construction activities. However, the action alternative requires Tier 2 engines or better for construction and diesel equipment thereby providing some assurance that construction impacts will be reduced, and we support requiring this mitigation as well as the mitigation measures 1 through 5 in Table 4-1.

F1i

With regard to item 6 in table 4-1, the text states, "Construction activities would occur in winter to reduce ozone issues encountered during summer time." The Uinta Basin experiences high wintertime ozone and this proposed mitigation would not be expected to be appropriate. The EPA recommends amending the statement to indicate that construction will not be conducted during anticipated high ozone events, regardless of season.

<sup>1</sup> <http://nca2014.globalchange.gov/report>

The BLM's Colorado Plateau Rapid Ecoregional Assessment (2012) provides an estimate of where climate change may occur, and is incorporated by reference. Section 6.2.2.3 of the Report states that:

F1g

"The MAPSS climate results were used to predict changes in temperature, precipitation, potential evapotranspiration, and runoff; a number of the key findings from these analyses were selected to assemble into an overall relative climate change map showing different levels of climate change potential that could then be used to assess relative impacts on the specific conservation elements (Section 5.4). The fuzzy model inputs included potential for summer temperature change and potential for winter temperature change averaged into a single factor, potential for runoff change from MAPSS modeling, potential for precipitation change, and potential for vegetation change, again from MAPSS modeling. Direction of the change was not important—only degree of departure from historic measures.

F1h

The Project area is an area predicted to be subject to moderately low change (Figure 6-14A). In particular, the REA states that the pinyon-juniper and sagebrush vegetation communities in the Uinta Basin are predicted to experience Moderately Low exposure to climate change. It is already difficult to conduct reclamation in the Project area due to its naturally dry climate, as disclosed in the EIS. It is anticipated that this difficulty will continue into the future. Since the direction of climate change is not known, it is impossible to predict whether the reclamation difficulty may decrease or increase. The Green River District Reclamation Guidelines have been developed with this difficulty in mind, and identify standards for successful reclamation.

F1i

See the response to Comments F1c, F1d, and F1g. The BLM cannot impose or enforce mitigation on a non-federal action.

The BLM disclosed the emissions associated with the Utility Project in the EIS. It is unlikely temporary and transitory construction activities could cause a National Ambient Air Quality Standards (NAAQS) violation. The BLM is not aware of that actually occurring under similar right-of-way construction projects for pipelines and transmission lines. Please note that any GHG mitigation measures that applied solely to the South Project were removed from Table 4-1 when the South Project was moved to the cumulative impact section. This deletion clarifies that BLM has no obligation to identify or authority to impose or enforce mitigation on a non-federal action.

The text has been revised to correct the error. However, shut down during ozone events is not Applicant-committed, and is not required by regulation, so the identified mitigation measure was not added to Table 4-1. The emissions from the Utility Project are temporary and transitory and unlikely to cause an NAAQS violation. Also, no exceedances of the NAAQS have been recorded for the Basin in spring, summer, or fall when work on the Utility Project is most likely to occur.

## COMMENT(S)

## RESPONSE(S)

F1

## U.S. Environmental Protection Agency (cont.)

Surface and Ground Water Impacts

F1j

The Draft EIS does not disclose what the effects of a projected 30 years of operation and maintenance on the Utility Corridor will have on water quality, erosion and sedimentation in the watershed. The Draft EIS primarily focuses on the initial construction phases, but does not evaluate the long-term effects. The Draft EIS notes that the South Project may be utilized to process material from its other substantial holdings in the vicinity. The EPA recommends that the EIS evaluate the implications of increased use of Dragon Road on water quality in order to deliver material from other project locations, such as Enefit's adjacent RD&D lease.

F1k

The Draft EIS does not adequately describe the reasonably foreseeable indirect effects a projected 30 years of operation at the South Project will have on erosion and sedimentation in the watershed. We encourage the BLM to work with the applicant to provide greater detail on the construction and mining operations of the South Project to further the understanding of any long term effects from the South Project in this impaired watershed.

F1l

The potential for a pipeline leak or rupture to impact surface and ground water resources is briefly discussed in the Draft EIS. Given the numerous waterbody crossings along the utility corridor, the importance of water resources in the Uinta Basin, and the anticipated 30 year operating life of the utility equipment, we recommend that the Final EIS include additional detail regarding potential adverse impacts to surface and ground waters from pipeline leaks or spills. We recommend that the BLM work with the applicant to provide the chemical characteristics of the product and the anticipated fate and transport of any spilled natural gas or product in the aquatic environment. We recommend that the analysis address the potential for both acute and chronic impacts to aquatic life anticipated from a spill. We further recommend that the Final EIS detail what spill prevention measures (e.g., shutoff hardware/software) will be utilized and evaluate the delay between leak detection and shut off when evaluating the potential volume of a spill.

F1m

F1n

The Draft EIS discloses that "[w]ater levels in the Bird's Nest aquifer range from a few feet below ground surface where the formation occurs as outcrop along Evacuation Creek to over 400 feet near the White River Mine, which is located approximately two miles northwest of the South Project area." Given how shallow the groundwater is in the South Project area, the EPA is concerned that mining activities may directly contact the aquifer, resulting in reasonably foreseeable and likely impacts to water quality and quantity. Further support for this comment and recommendation is found in the OSTs PEIS, which states, "[b]ecause a large volume of rock is disturbed in surface mining operations, the permeability of the geologic material in the mine and in overburden disposal areas is permanently increased. The porosity and permeability of spent shale backfill are also relatively high. Precipitation could infiltrate these materials and produce leachate with relatively high dissolved solids and organics, potentially causing long-term contaminant sources for groundwater." The EPA recommends that the BLM work with the applicant to provide more specifics regarding the South Project so that a more detailed analysis of groundwater impacts and specific mitigation measures may be presented in the EIS.

F1o

The Draft EIS states that the majority of the water supplied via the utility corridor to the South Project will come from the Green River through an existing 15 cfs water right. The Draft EIS notes that due to the uncertainty of the South Project design and operations, it may be necessary for additional water

EPA Additional Comments – Page 2

The EIS addresses long-term effects on water quality, erosion, and sedimentation in the watershed in Section 4.2.5.1.1.1, where it is noted the greatest potential for impacts is shortly after the start of construction, and long term impacts are expected to be minimal due to reclamation, revegetation, and stabilization efforts.

The Applicant has clarified that the "permanent surface disturbance" estimates are actually the permanent right-of-way acreages and that actual surface disturbance will be much less. Refer to Enefit Comment 66.

Enefit is pursuing through a separate process a RD&D lease and a preferential right lease for oil shale development. The environmental effects of the RD&D process were analyzed and approved through UT-080-06-280-EA and its associated Finding of No Significant Impact/ Decision Record. A 5-year time extension for the completion of the process was considered and granted under DOI-BLM-UT-G010-2017-0056-CX. Although the RD&D process is within the BLM's authority, it is not a connected action to the BLM's Utility Project because the Utility Project, if granted, would be constructed regardless of the outcome of the RD&D and preferential lease process. Similarly, the RD&D and preferential right lease will continue regardless of whether the Utility Project is granted. No Utility Project rights-of-way spurs to the RD&D lease are planned or proposed. Further, no activity on the RD&D lease is reasonably foreseeable since the Applicant has not yet completed the steps required by law preceding development.

Future use of Dragon Road for RD&D lease development is not reasonably foreseeable and would not result in an accumulation of impacts under the Utility Project.

F1j

F1k

The South Project has been moved to the cumulative impacts section. Cumulative impacts on erosion and sedimentation are described in sections 4.3.3.5.3.2 and 4.3.3.5.4. The Applicant in its comments has clarified that mining will occur in a phased or successional way, so the total disturbance disclosed will not occur at any one time. See Enefit Comment 240. The exact nature and magnitude of the impacts would depend on the detailed mine plan of development (POD), which would be submitted to the Utah Division of Oil, Gas and Mining (UDOGM) for approvals. The South Project also will be subject to permitting through the National Pollutant Discharge Elimination System (NPDES) and subject to compliance with the CWA and any requirements identified through the Total Maximum Daily Load Program developed for Evacuation Creek.

F1l

See next page for response to F1l.

F1m

See next page for response to F1m.

F1n

See next page for response to F1n.

F1o

See next page for response to F1o.

COMMENT(S)

RESPONSE(S) - CONTINUED

F1	U.S. Environmental Protection Agency (cont.)
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F1l	<p>The Utility Project crosses one perennial waterbody, the White River, and several ephemeral washes, including Evacuation Creek. There are not numerous waterbody crossings involved with the project.</p> <p>The Utility Project has been designed to prevent leaks. Leak protection is described in Section 2.2.3.1 of the EIS. Due to the various habitat types in the Utility Project area, potential impacts from leaks are discussed in Sections 4.2.5.1.1.1, 4.2.10.1.1, and 4.2.3.1.1.1. Cumulative effects are in Sections 4.3.3.5.3.3 and 4.3.3.10.3, and 4.3.3.3.3.</p>
F1m	<p>As noted in the EIS, the chemical composition of the synthetic crude oil (SCO) product is not known by the BLM at this time, and is not available from the Applicant. For example, in a letter dated November 18, 2016, Enefit reaffirmed that the Utah oil shale is physically and chemically different from other oil shale and cannot be assumed from other oil shale data. They stated that Estonian oil shale contains 12 to 14 percent moisture by weight, while the Utah oil shale contains less than 2 percent moisture. This and other differences will affect processing methods (for example, no dryers will be necessary for the Utah shale, but are standard for Estonian shale) as well as final product composition. A detailed analysis of the chemical characteristics, anticipated fate, and spills for operations related to the South Project are beyond the scope of this EIS because they are the product of a reasonably foreseeable non-federal action, which is outside of the jurisdiction of the BLM. However, the spill prevention measures for the Utility Project are described in Section 2.2.3.1 of the EIS. In addition, due to the various habitat types in the Project area, potential adverse impacts from spills and leaks are discussed in Sections 4.2.5.1.1.1 and 4.2.10.1.1. Cumulative impacts are addressed in Sections 4.3.3.5 and 4.3.3.10.</p> <p>Pipelines would be designed to minimize the potential for leaks and potential spills during construction and operation of the Utility Project. Flow meters on either end of the pipelines and at each end of the White River crossing would be used to control and monitor pipelines. Degradation of surface water due to sedimentation and turbidity from construction activities and vehicle use during operations is not anticipated. Additionally, the use of site-appropriate best management practices and mitigation would minimize impacts. Therefore, the analysis of spilled natural gas or SCO product in the aquatic environment is only discussed qualitatively in this EIS.</p>



**COMMENT(S)**

**RESPONSE(S) - CONTINUED**

<b>F1</b>	<b>U.S. Environmental Protection Agency (cont.)</b>
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F1n

The Applicant has developed a general concept of the South Project to inform ongoing development activities related to the Utility Project EIS. Due to the fact that design and engineering of the South Project will change based on whether or not the BLM allows the Applicant to build one or more of the proposed utilities, detailed engineering design has not yet been prepared. However, the South Project is a reasonably foreseeable non-federal action that is outside of the jurisdiction of the BLM, that is outside the scope of this EIS, and that will go forward regardless of the BLM decision to be made regarding the Utility Project. The South Project water impacts that will accumulate with the Utility Project impacts have been disclosed in section 4.3.3.5 to the extent they are known. When effects are unknown, the procedures in 40 CFR 1502.22 have been followed. The BLM is not obligated or able to mitigate the South Project impacts because it is a non-federal action. Also, further disclosure of impacts on ground water from the South Project are not necessary to inform a reasoned decision between the Utility Project alternatives.

The exact nature and magnitude of the impacts on the aquifer would depend on the detailed mine POD, which would be submitted to UDOGM for approvals. The South Project also will be subject to permitting through the NPDES and subject to compliance with the CWA.

F1o

The Applicant has developed a general concept of the South Project to inform design of the Utility Project and to inform the cumulative impacts of the Utility Project. Due to the conceptual nature of this design, the Applicant acknowledges that there is a possibility for additional water sources and acknowledges that they will abide by the appropriate processes to acquire additional water. However, the current conceptual design does not necessitate additional water sources, other than the existing water right. In fact, the current upper estimate of water use for the South Project is 7.83 cubic feet per second (cfs) as disclosed in Table 4-23, below the 15 cfs available to the Applicant. Therefore, additional water supply sources for the South Project are not identified and are not essential to a reasoned choice between Utility Project alternatives. To eliminate confusion, the statement in question has been removed from the Final EIS.

## COMMENT(S)

## RESPONSE(S)

F1

## U.S. Environmental Protection Agency (cont.)

F1o

F1p

sources to be utilized, and that should additional water sources be necessary, a new BLM SF-299 for additional rights of way and additional studies would be required. This assumes that additional water sources would be transported across the BLM's land. The Draft EIS does not specifically identify where additional water resources would be acquired. We recommend that the BLM work with the applicant to detail alternative water supply sources and upper range estimates of water usage for the South Project. Additionally, the Draft EIS notes the average flow in the Green River and asserts that the 15 cfs draw will not significantly reduce flows. We recommend the EIS discuss the cumulative effects of water usage by this and other projects, such as those identified in Table 4-32, or other major water users.

Specific Capacity Needed for Utility Corridor

F1q

F1r

Enefit has not provided BLM with engineering details for the South Project, and it remains unclear how the capacity requirements for the utilities were generated. The lack of information regarding the utility capacity needed for the South Project limits the ability to determine which alternate methods of obtaining those utilities may be available and reasonable. We recommend that the description of the intended use of the utilities for development and operation of the South Project provide enough detail to support the capacity requested for the proposed Utility Corridor and to ensure that the BLM makes an informed decision regarding the ROW. Additionally, the Draft EIS notes that the South Project may process material originating from Enefit's other substantial holdings in the area, including their BLM research, design and development (RD&D) lease, which is adjacent to the Utility Corridor and South Project. The EPA recommends that the BLM evaluate the potential for increased usage of the utility corridor, and subsequent direct impacts, should material from other locations be trucked to the South Project processing facility.

Consistency with Vernal Resource Management Plan

F1s

Because the South Project is surrounded by land managed by the BLM's Vernal Field Office, the potential environmental impacts of the South Project could inhibit the BLM's ability to achieve resource management goals. We recommend the SEIS specifically evaluate whether the South Project is likely to produce impacts that are not consistent with the resource objectives in the Vernal Resource Management Plan.

Right of Way Decision Criteria

F1t

F1u

To enable an evaluation of the proposed ROW against the criteria listed in BLM's guidance for making ROW decisions,<sup>2</sup> we recommend that the Supplemental EIS include additional assessment of whether the South Project's direct and indirect effects would:

- be consistent with the resource objectives in the applicable land use plan
- be consistent with federal, state and local environmental laws, or
- result in serious environmental consequences that could not be mitigated

For example, the Draft EIS states that the South Project is likely to contribute to the overall trends in Uinta Basin wintertime ozone. There are existing exceedances of the ozone NAAQS, and BLM's air

<sup>2</sup>[http://www.blm.gov/style/medialib/blm/wo/MINERALS\\_REALTY\\_AND\\_RESOURCE\\_PROTECTION/\\_cost\\_recovery.Par.58417.File.dat/ObtaininaROWPamphlet.pdf](http://www.blm.gov/style/medialib/blm/wo/MINERALS_REALTY_AND_RESOURCE_PROTECTION/_cost_recovery.Par.58417.File.dat/ObtaininaROWPamphlet.pdf)

F1p

Estimated water needed for the Utility Project during construction is described in Table 4-7 of the EIS. Water usage by the South Project is a cumulative effect to the Utility Project and is disclosed in Section 4.3.3.5. Section 4.3.3.5.3.2 states that the 15 cfs water right use is not expected to affect flows or users of a 3,897 cfs river. Section 4.3.3.5.2 has been expanded to include water availability and consumption in the Uinta Basin (Daggett, Duchesne, and Uintah counties), total developed water diversions on the Green River, and Utah allocations and usages from the Colorado River system to provide additional context for this impact analysis.

F1q

The request that BLM determine appropriate utility sizing and methods for a non-federal project is outside of the scope of this EIS and outside of the jurisdiction and mission of the BLM. BLM's purpose and need for this EIS is to analyze and respond to the Applicant's requested rights-of-way. It became clear during the public comment period that the public was confused as to the degree of control that the BLM has over the South Project. To clarify that the South Project is a non-federal action over which the BLM has no jurisdiction, its impacts that will accumulate with the Utility Project Proposed Action have been moved to the cumulative effects section of this EIS. However, in response to this comment, Enefit sent the BLM a letter dated February 28, 2017, to provide clarification to the BLM's assumptions regarding the design of the Utility Project power requirements and road design. Power requirement estimates were made in consultation with Moon Lake Electric Association (MLEA), and are based on the assumed power demand for startup and early operations as well as assumed power surplus during full operations, in order to best interconnect with existing regional transmission facilities and grid. Dragon Road maintenance needs have been discussed with Uintah County. It has been mutually determined that the road can handle the projected increased traffic volumes in its existing condition (without the proposed paving), although with likely increased maintenance demand on Uintah County. A draft maintenance agreement has been provided to Enefit, and Uintah County has indicated their willingness to provide the increased maintenance if it becomes necessary. A November 18, 2016, letter from Enefit and subsequent conversations with Enefit representatives clarify that the water, natural gas, and product pipelines have been proposed with a range of diameters based on conceptual engineering of the South Project and in consideration of its target nominal production capacity of 50,000 barrels per day at full buildout. This conceptual design takes into account the full production mining and processing of approximately 28.5 million tons per year of oil shale, and the mining and refining equipment used in similar mineral mining and oil shale refining operations, as well as the typical operational demands of that equipment. The range in pipeline diameters allows Enefit to respond to future refined engineering data with minimal adjustments to the actual right of way grant (should one be issued).

F1r

See next page for response to F1r.

F1s

See next page for response to F1s.

F1t

See next page for response to F1t.

**COMMENT(S)**

**RESPONSE(S) - CONTINUED**

<b>F1</b>	<b>U.S. Environmental Protection Agency (cont.)</b>
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F1r

The statement in question, located in Section 4.4.2.2, specifies that development of Enefit's other holdings is not contemplated. Therefore, such development does not qualify as reasonably foreseeable. In addition, BLM does not have any information regarding quantity or future processing of material from the Applicant's other holdings to determine potential impacts from increased usage of the utility corridors or Dragon Road. Any analysis would be highly speculative and unsupported by factual data. BLM understands that development of their other holdings would be 20 to 30 years in the future because of overburden would necessitate underground mining.

BLM's consideration of the rights-of-way applications for the Utility Project is separate from the RD&D Lease. The RD&D process is for the Applicant to prove that there are commercial quantities of the shale available for mining. That process has not yet been concluded, and an extension has been requested. Therefore, increased usage of the Utility Project tied to the RD&D is not reasonably foreseeable.

F1s

This request is outside the scope of this EIS. The South Project will take place wholly on private land and private minerals, and BLM has no decision to make regarding the South Project. The BLM Land Use Planning Handbook H1601-1 Section II.C Decision Area clarifies that land use plan decisions apply to the lands within a planning area for which the BLM has authority to make land use and management decisions. Additionally, BLM Planning regulations 43 CFR 1601.0-5 defines conformity or conformance to mean that a resource management action shall be clearly consistent with the plan components of the approved resource management plan. The "resource management action" implies a BLM decision to be made since BLM does not manage resources on other agencies' or individuals' lands.

The BLM Handbook H1601-1 Section II C Geographic Areas defines an Analysis Area to be any lands regardless of jurisdiction for which the BLM synthesizes, analyzes, and interprets data and information that relates to planning for BLM-administered lands. Should the South Project be authorized in the future by the agencies with jurisdiction over it, any subsequent BLM Vernal Field Office Resource Management Plan (RMP) revision could use data or information from that private land to inform decisions on the adjacent BLM land and/or minerals.

F1t

This comment applies to the South Project, which has been moved to the cumulative impact section to address public confusion. This comment is tied to the BLM's public interest determination, which is a right-of-way processing step that allows the BLM to deny a right of way. See 43 CFR 2804.26 and 43 CFR 2884.23. These right-of-way regulations do not apply to the South Project, which will be located on private lands and private mineral estates. This comment is outside the scope of this EIS.



## COMMENT(S)

## RESPONSE(S)

F1

## U.S. Environmental Protection Agency (cont.)

F1u

quality modeling forecasts a trend toward nonattainment of the NAAQs in the Basin. The South Project may also adversely affect other resources on BLM lands. We recommend these analyses be specifically considered as the BLM determines whether this ROW is in the public interest.

Range of Alternatives

The Draft EIS analyzes a single utility corridor action alternative (the Proposed Action) and a No Action alternative. According to Council on Environmental Quality (CEQ) regulations and guidance, a lead agency must consider a reasonable range of action alternatives, and it is typically not appropriate for an EIS to analyze only a Proposed Action and No Action alternative. See 40 CFR §1505.1(e) and CEQ's *40 Most Asked Questions* - Number 1a (<https://ceq.doe.gov/nepa/regs/40/40p3.htm>).

F1v

The Draft EIS discusses alternative ROW routes as "Alternatives Considered but Dismissed from Analysis." The decisions regarding alternate routes and criteria weighting are not as detailed as they would be if they were considered as alternative actions. The EPA recommends that the BLM consider and evaluate as alternatives in the EIS other routes for the ROW that could decrease the impacts expected from the project.

No Action Alternative

The Draft EIS makes the unsupported assertion that the No Action Alternative (denial of the ROW) would lead to the project proponent supplying the necessary utilities and shipping the oil produced via other means, primarily trucking. This assumption leads to other conclusions in the Draft EIS which are likewise unsupported by analysis. The applicant has not provided sufficient information for BLM to develop an analysis that would support, or contradict, the potential for supplying utilities or shipping product via other means, such as trucking. Because this conclusion is foundational to an appropriate analysis of impacts, it cannot be asserted without investigation and economic analysis to determine if trucking in fact is feasible or likely, and whether the additional expense of trucking would make the project uneconomic or would significantly change either the scope or the timing of the oil shale development.

F1w

The EPA recommends that additional detail and analysis be provided to understand how the operations, scale and the resulting impacts of South Project under the no action alternative would differ from the proposed action. Without additional information on the logistics, costs and impacts of the No Action alternative, the Draft EIS does not present a reasoned basis to conclude that the project would proceed even without the ROW.

Baseline for Effects Analysis

The Draft EIS is focused on comparing the Action Alternative to the No Action alternative, and there is very little analysis of the impacts of those alternatives on current resource conditions. The EPA recommends that the EIS evaluate all alternatives against a current condition baseline for each resource. While comparing alternatives against each other is valuable, evaluating alternatives against current conditions provides the public and decision makers a clear assessment of each alternative's impacts on the environment.

F1x

EPA Additional Comments – Page 4

F1u

The BLM's public interest determination is a right of way processing step. See 43 CFR 2804.26 and 43 CFR 2884.23. These right of way regulations do not apply to the South Project, which will be located on private lands and private mineral.

The BLM independently considered 31 initial alternatives before preparing the Draft EIS, with the Proposed Action and No Action alternatives considered in detail. These included alternate utility routes, alternate river crossing methods and locations, and alternate water sources. See Section 2.4 and the alternative discussion in the EIS, Appendix D.

The regulations cited apply to the BLM's realty regulations and apply to review of a right-of-way application. Please note that the realty regulations are separate from the NEPA process.

It is unclear from the comment what information the EPA believes has been withheld that pertains to the right-of-way application. Based on the other EPA comments, the BLM assumes that the EPA deficiency concern is regarding the South Project design and environmental impacts. The BLM realty regulation does not apply to the South Project because the BLM has no jurisdiction over the South Project. In addition, the South Project information is not necessary for a reasoned choice between alternatives for the purposes of NEPA because the South Project will continue to full buildout regardless of the BLM decision on the Utility Project.

F1v

Regarding the Utility Project, the Applicant has compiled all data deficiency notices and responded to all BLM requests for additional information necessary to process the right-of-way application.

Environmental analysis of the South Project, which is outside the jurisdiction of BLM decision-making, will be subject to permitting by the appropriate federal, state, and local permitting agencies whose jurisdiction applies to those facilities.

Cooperating agencies, including the EPA, were involved in the alternative development process. No alternatives that were less impacting than the Utility Project Proposed Action and No Action alternatives were identified. In addition, no less impacting alternatives were raised by the public or cooperating agencies during the public comment period. Direct and indirect impacts from the two alternatives are known and fully disclosed. Cumulative impacts have been assessed to the extent the information is available. When information was not available, the BLM followed the procedures in 40 CFR 1502.22. BLM reviewed 40 CFR 1505, Council on Environmental Quality's (CEQ)'40 Most Asked Questions, and the BLM NEPA Handbook. None of these documents forbids a two-detailed-alternatives EIS.

F1w

See next page for response to Comment F1w.

F1x

See next page for response to Comment F1x.

**COMMENT(S)**

**RESPONSE(S) - CONTINUED**

**F1**

**U.S. Environmental Protection Agency (cont.)**

F1w

The Proposed Action and No Action alternatives are for the Utility Project. To reduce confusion expressed by the public during the public comment period, the impacts from the South Project, which is outside of the jurisdiction of the BLM, and which will proceed to full buildout regardless of the BLM decision to be made for the Utility Project, has been moved to the cumulative impact analysis in the EIS. As a reasonably foreseeable non-federal action, the BLM is not required to compare or contrast alternatives for the South Project. Also, since the No Action Alternative is to deny the requested rights-of-way, there is no accumulation of impacts under that alternative – which is the scenario being questioned by this comment. However, given public interest in the South Project, Section 4.4 has been added to the EIS that describes the South Project if the BLM were to deny the Utility Project. To better inform this informational section, Enefit has supplied additional details on how the South Project would obtain utilities and export product, which were included in this section.

F1x

In accordance with the NEPA, CEQ regulations, and BLM Handbook H-1790-1, the impacts of the Utility Project and No Action alternatives are analyzed based on current resource conditions as described in Chapter 3 of the EIS in terms of their relative contribution of impacts. The impacts are also summarized in Table 2-8 of the EIS. It is believed that this concern is primarily with the South Project impact analysis. In the Draft EIS, the Proposed Action included an indirect impact analysis of the South Project, and the No Action Alternative disclosed only the additional indirect impacts that would occur associated with the South Project should the utilities be denied. This approach confused the public, as was expressed through public comment, by making it appear as though the BLM had jurisdiction over the South Project. The BLM has no jurisdiction over the South Project. To clarify their apparent confusion, the South Project has been moved to the cumulative impact section to the extent that the South Project impacts accumulate with the Proposed Action. There are no impacts under the No Action Alternative, which would be the denial of the Utility Project, therefore there would be no accumulation of impacts. However, given public interest in the South Project, Section 4.4 has been added to the EIS that describes the South Project if the BLM were to deny the Utility Project. This information has no bearing on the BLM decision to be made, but to eliminate redundancy with the Proposed Action cumulative effects sections, the description still focuses on only the additional components that would occur should the South Project move forward without the proposed Utility Project rights-of-way.

COMMENT(S)

RESPONSE(S)

F1	U.S. Environmental Protection Agency (cont.)
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F1y	<p><u>Other Federal Permits</u></p> <p>As noted in the Draft EIS, the South Project will require additional permits for federal environmental programs in order to operate. Based on the information currently available, it is not clear which of those permitting actions will require additional compliance with NEPA. Therefore, it is valuable for the Final EIS to provide as much detail as is reasonably available regarding permitted activities of the South Project and their impacts.</p>
F1z	<p>The South Project will likely impact jurisdictional Waters of the U.S., and may require a Clean Water Act (CWA) Section 404 individual permit from the U.S. Army Corps of Engineers (Corps). Review of an individual CWA Section 404 permit application would trigger NEPA requirements for the Corps. We encourage the BLM to discuss with the Corps the possibility of combining analysis of both federal decisions into a single EIS. Combining connected NEPA actions into a single EIS is encouraged, as it provides more complete public disclosure and streamlines the NEPA process (see the CEQ's 40 Most Asked Questions, Number 9). Further, it may benefit both the BLM and the Corps to analyze the two Federal actions in a single EIS by reducing the information gathering and analysis burden on each agency individually. For example, analysis of the potential impacts of the South Project for the purposes of a CWA Section 404 permitting decision likely would require additional information from the applicant than the information that the applicant has previously provided to the BLM regarding the mining and processing activities. Therefore, a more detailed and accurate analysis of the impacts of the BLM's ROW decision would be possible.</p>
F1aa	<p><u>General</u></p> <p>We recommend that the BLM make further efforts to engage the applicant to disclose its operating plan and to provide supporting documentation and a credible estimate, or range of estimates, of the South Project's likely impacts in a Supplemental Draft EIS. Optimally, the applicant would provide details from their mine pre-feasibility studies or scaled estimates they reasonably could be expected to be able to provide based on their operations at other sites. Given that Enefit operates oil shale operations in Estonia and Jordan, other information likely exists regarding the company's mining and processing techniques that could inform BLM's quantification of likely impacts of the South Project.</p>

	<p>The South Project is located on private land and minerals. Therefore, analysis of the potential impacts and need for environmental analysis for the construction and operation of the South Project is outside the jurisdiction of the BLM and the scope of this EIS.</p>
F1y	<p>However, the Applicant is aware that NEPA may be required to facilitate the Utility Project CWA and Section 404 Permitting process. The BLM invited cooperators to assist with the EIS preparation in the hopes of being able to identify and address any additional NEPA requirements.</p> <p>Specifically, the U.S. Army Corps of Engineers (USACE) participated as cooperator on this EIS with the understanding that they would be able to use the EIS for any future permitting that may be necessary. Based on a delineation completed by Enefit, USACE representatives verbally indicated their belief that the Utility Project would qualify for a nationwide permit. No additional NEPA requirements have been identified by cooperators or the public during scoping or public comment.</p>
F1z	<p>The Applicant has developed a general concept of the South Project to inform ongoing project development activities for the Utility Project. Due to the conceptual nature of this design, no data is available regarding the South Project's need for a Section 404 Permit. However, the USACE is a cooperating agency on this EIS. See also the response to Comment F1y.</p>
F1aa	<p>See the response to Comment F1w.</p>

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COMMENT(S)

RESPONSE(S)

F2

U.S. Fish and Wildlife Service



United States Department of the Interior  
FISH AND WILDLIFE SERVICE

UTAH FIELD OFFICE  
2369 WEST ORTON CIRCLE, SUITE 50  
WEST VALLEY CITY, UTAH 84119

June 14, 2016

RECEIVED  
JUN 23 2016  
BLM Vernal UT

In Reply Refer To:  
FWS/R6

ES/UT

06E23000\_2012\_CPA\_0115

Memorandum

To: Field Office Manager, Vernal Field Office, Bureau of Land Management,  
Vernal, Utah

From: Utah Field Supervisor, Ecological Services, U.S. Fish and Wildlife Service,  
West Valley City, Utah *K. Reisor*

Subject: Programmatic Draft Environmental Impact Statement Comments for the  
Enefit American Oil Utility Corridor Project

We have reviewed your April 2016 Programmatic Draft Environmental Impact Statement (PDEIS) for the Enefit American Oil Utility Corridor Project (Project). Our comments are provided below and focus on the effects of the proposed action to our trust resources, which include species listed under the Endangered Species Act and migratory birds. We have referenced two sources of information that should be considered as you continue to develop this project and the associated NEPA document. The following attachments are included:

- Appendix A includes our water depletion guidance for the four listed Colorado River fish.
- Appendix B includes the 2015 guidelines for the identification of suitable breeding, nesting, and foraging habitat for the Western yellow-billed cuckoo.

We appreciate your commitment to the conservation of endangered species and migratory birds. If you require further assistance or have any questions, please contact Rita Reisor at (801) 975-3330 ext. 135.

# COMMENT(S)

# RESPONSE(S)

F2

## U.S. Fish and Wildlife Service (cont.)

U.S. Fish and Wildlife Service (USFWS) Comment Tracking Table for Benefit American Oil Utility Corridor Project Final EIS Submitted to the Bureau of Land Management (BLM) and Cooperating Agencies on June 14, 2016					
Section	Resource	Page Number	Commenter	Comment or Text Revision	BLM Response
2.2.8.9	Clean up and Final Reclamation	2-22	R. Reisor	5th Bullet: We recommend using only native species or annual sterile grasses (non-rhizomatous) that do not persist in the environment as part of the reclamation seed mixture.  Third paragraph: We recommend that a literature review be conducted of non-fertilizer soil amendment techniques that can be used to assist with revegetation by increasing soil water holding capacity and other beneficial characteristics. Revegetation in the high desert environment is difficult and every reasonable effort to improve that success should be implemented. Uinta Basin specific restoration research is ongoing and providing new information for restoration practitioners.  In the final paragraph, we recommend adding text stating that the most up to date BLM Reclamation Guidelines will be used by altering the following sentence: "The Applicant would adhere to the Green River District Reclamation Guidelines (BLM 2009) or most up-to-date guidance document to ensure slope stability and topsoil integrity;.....".	
2.2.8.9.1	Seed Mixtures	2-22 to 23	R. Reisor	We recommend using only native species or annual sterile grasses (non-rhizomatous) as part of the reclamation seed mixture. If seeded non-native grasses, such as Siberian wheat grass and Crested wheatgrass, become established they can persist in the environment, creating competition for native species, reducing native pollinator forage, and increasing ungulate grazing pressures on native species.  We recommend adding more forb species to the seed mix in order to more accurately represent the suite of native plant species present in adjacent undisturbed areas and provide forage for native pollinators.  Additionally, we recommend that a specific reclamation seed mix be developed for Penstemon Conservation Areas in coordination with the BLM and according to Penstemon Conservation Team recommendations. This may involve collecting and storing seeds of specific native species for reclamation.	
3.2.7.3.1.1 And 4.2.7.1.1	Uinta Basin hookless cactus	3-38 And 4-79	R. Reisor	1. We recommend updating the discussion of the Sclerocactus habitat polygon and acreage within the Project area to reflect the most recent 2016 polygon. This update will reduce the acres of Sclerocactus Suitable Habitat affected, but not for the Core 1 or Core 2 areas. 2. Please add a reference for the data source and date retrieved for the 438 occurrences of Sclerocactus that were identified.	

F2a

F2b

F2c

F2a

Text revised as suggested.

F2b

The Applicant's proposed reclamation seed mixture has been revised and no longer reflects the mixture presented in Table 2-4. The revised seed mix will be developed in coordination with BLM reclamation specialists and will follow the recommendation of the Penstemon Conservation Team, including possible seed collection and increase. The methods for developing the reclamation seed mixture(s) are described in greater detail in the POD.

F2c

Text and analysis revised to reflect the most current 2016 habitat polygon and to identify the 2015 BLM source for *Sclerocactus* occurrence information.

# COMMENT(S)

# RESPONSE(S)

F2

## U.S. Fish and Wildlife Service (cont.)

U.S. Fish and Wildlife Service (USFWS) Comment Tracking Table for Benefit American Oil Utility Corridor Project Final EIS Submitted to the Bureau of Land Management (BLM) and Cooperating Agencies on June 14, 2016					
Section	Resource	Page Number	Commenter	Comment or Text Revision	BLM Response
3.2.7.3.1.2	Graham's penstemon	3-39	R. Reisor	We recommend the following changes, indicated with underlined text, to this paragraph: "Reproduction of Graham's beardtongue is primarily by <u>self-pollination</u> and through cross pollination by pollinators such as bees; however, the species can reproduce through self-pollination but with fewer viable seeds being produced (Dodge and Yates 2009; Dodge and Yates 2010). A number of native bee species were found to visit the plants when in flower. Pollinator distance for the penstemon is about 700 meters (2,296.6 feet) (please add citation here). Seeds ripen in mid-summer and are dispersed in the summer into early fall <del>and winter</del> ."	
3.2.7.3.1.2	White River Penstemon: South Project	3-41	R. Reisor	Please clarify if any of the identified individuals are within Conservation Areas or are on private non-conservation areas. Please state how many of these individuals are within 300 feet of proposed disturbance or are expected to be directly lost due to disturbance.	
3.2.9.3.2	Throughout	3-59 to 3-67	S. Graham	We recommend reviewing the Utah Natural Heritage database for additional information regarding the presence of migratory birds, including raptors.	
3.2.9.3.2	Eagle	3-59	S. Graham	We would like to re-iterate a comment from our June 17, 2015 letter, which states "Although no active bald eagle nests were identified within the study area, there are active nests in very close proximity to the study area based on information provided during a site visit. We recommend that you update the document to provide information about active bald eagle nests in close proximity (within 10 miles) of the study area due to the conservation status of this species." We recommend that this area, which would include both the Utility Corridor and South Project, be surveyed to assess risk and identify adequate avoidance, minimization, and mitigation measures. Please identify survey techniques used for raptor surveys within 1-2 miles of the Utility Corridor.	
3.2.10.3.3	Bonytail chub	3-70	GW	The U.S. Fish and Wildlife Service does not consider the bonytail chub as "functionally extinct." While the entire population of bonytail chub in the upper Colorado River basin is from hatchery propagation, the fish still exists in the basin and the first evidence of wild reproduction of bonytail since ESA listing occurred in the Green River in 2015. In addition, bonytail are also found in Lake Mohave and Lake Havasu in the Lower Colorado River basin.	
3.2.10.3.3	Humpback chub	3-71	GW	We recommend deletion of the sentence "Historic distribution of this species is not fully understood, although presently the humpback chub is found only in the Little Colorado River and adjacent portions of the Colorado River." This sentence only refers to humpback chub populations in the lower Colorado River basin. As the remainder of the section points out, there are five self-sustaining populations of humpback chub in the Upper Colorado River basin.	

F2d

Text revised as recommended.

F2e

Text revised as recommended to discuss known White River beardtongue habitat and occurrences outside the Penstemon Conservation Areas, as well as, provide quantitative information about the number of occurrences and acres of suitable habitat located within Penstemon Conservation Areas.

F2f

The Utah Natural Heritage database (<http://dwr.cdc.nr.utah.gov/ucdc/>) was reviewed for additional information regarding the presence of migratory birds, including raptors. No bird species were added to the list of species with potential to occur in the Utility Project study area (Table 3-20) developed using Cornell's Birds of North America online database (Cornell Lab of Ornithology, 2013).

F2g

Surveys for raptors, including bald eagles, were conducted within 1 mile of the Utility and South Project areas from a helicopter. Survey techniques are described in detail in the Special Status Wildlife Species Report (SWCA 2013i). The BLM will not require surveys within 10 miles of the Project area. The raptor nest survey that was conducted is sufficient to document occurrence and assess risks in the EIS. Avoidance, minimization, and mitigation measures were developed to eliminate, reduce, and/or minimize risk to all large birds, including bald eagles, based on Avian Power Line Interaction Committee (APLIC) recommendations and the MLEA Avian Protection Plan. These measures will be effective regardless of the distance of active bald eagle nests from the projects.

F2h

Reference to the bonytail chub as "functionally extinct" in Section 3.2.10.3.3 has been deleted.

F2i

The sentence has been deleted.



## COMMENT(S)

## RESPONSE(S)

F2

## U.S. Fish and Wildlife Service (cont.)

U.S. Fish and Wildlife Service (USFWS) Comment Tracking Table for Benefit American Oil Utility Corridor Project Final EIS. Submitted to the Bureau of Land Management (BLM) and Cooperating Agencies on June 14, 2016					
Section	Resource	Page Number	Commenter	Comment or Text Revision	BLM Response
3.2.10.3.4.1	Special Status Fish Species	3-71	GW	We recommend the following revisions to this sentence: "Bluehead sucker ( <i>Castostomus discobolus</i> ), flannelmouth sucker ( <i>C. latipinnis</i> ), and roundtail chub ( <i>Gila robusta</i> ) have existing conservation easements agreements in Utah and are listed as sensitive species."	
3.2.10.3.4.1	Special Status Fish Species: Roundtail chub	3-72	GW	We recommend deletion of references to the White River in the following sentence: "The species has been extirpated from about 45 percent of its historical range, including the White River and portions of the San Juan, Gunnison, and Green rivers." Roundtail chub are not extirpated from the White River and are actually relatively abundant in the system.	
Table 4-1	Soil	4-8	R. Reisor	#8. Vehicle travel on unpaved roads is a large contributor to fugitive dust in the region that affects air quality and surrounding vegetation. Please specify the appropriate speed limits that will be used.	
Table 4-1	Vegetation and Weeds	4-12	R. Reisor	#1. We recommend adding text stating that the most up to date BLM Reclamation Guidelines will be used by altering the following sentence: "The Applicant would adhere to the Green River District Reclamation Guidelines (BLM 2009) or most up-to-date guidance document to ensure slope stability and topsoil integrity;....."	
Table 4-1	Vegetation and Weeds	4-14	R. Reisor	#4. The footnote "3" doesn't seem to fit with this specific design feature.	
Table 4-1	Vegetation and Weeds	4-16	R. Reisor	#10. This design feature states that only native species will be used for reseeding. However, table 2-4 includes four non-native grass species in the general reclamation mix. We recommend using native species only in the seed mixtures.	
Table 4-1	Special Status Plant Species	4-16	R. Reisor	#2. Change text to say "...when wind speed is below 6 ph..." in order to match BLM guidelines.	
Table 4-1	Special Status Plant Species	4-17	R. Reisor	#7. Change flowering period to be April – June 30.	
Table 4-1	Special Status Plant Species	4-19	R. Reisor	#15. Please indicate in the table whether this conservation measure will be applied as an Applicant Design Feature or a BLM Mitigation Measure.	
Table 4-1	Migratory Birds	4-22	S. Graham	The EIS states "The lessee would also, at a minimum, develop a site-specific avian plan to assist the engineering design, and will utilize standards from the APLIC and Moon Lake Avian Protection Plan." We would like to review the avian plan and provide comments prior to project commencement. Several sections of the EIS, such as 4.2.8.1.1.1, state that standards from the Moon Lake Electric Avian Protection Plan and APLIC will be utilized. However, specific standards are not included in the EIS. We recommend including the specific standards from the Moon Lake Avian Protection Plan and APLIC in the EIS and allowing our office an opportunity to review and comment on the new protection plan. We recommend that power lines be constructed in a manner that will prevent electrocution, collision, and minimal habitat disturbance.	

F2j Text revised as suggested.

F2k Reference to the White River has been deleted.

F2l Instruction to employees to adhere to county or state set speed limits for vehicles traveling on unpaved roads is included in Table 4-1. The speed limits on those roads are set by federal, state, or local code, and vary depending on road conditions. It is outside of the jurisdiction of the BLM to set speed limits on federal, state, or county roads. No BLM roads are anticipated to be used by the project. As speed limits vary depending on the road to be used, and since the BLM does not set the limits, there is no way for BLM to specify what speed will be driven.

F2m Text revised as suggested.

F2n The footnote is present in Table 4-1. Because construction of the South Project is not a connected action and is located entirely on private land, weed control measures specific to the South Project will be developed during separate permitting with the State of Utah and other agencies.

F2o The reclamation seed mixture has been revised and no longer reflects the mixture presented in Table 24. The revised seed mix will be developed in coordination with BLM reclamation specialists and will follow the recommendation of the Penstemon Conservation Team, including possible seed collection and increase. The methods for developing the reclamation seed mixture(s) are described in greater detail in the POD.

F2p Text changed to 5 miles per hour as per BLM guidance on Page 4-9 of the Vegetation Treatments Using Herbicides Final Programmatic EIS.

F2q Text revised as suggested.

F2r Clarified as suggested.

F2s The requested plan has been provided to the FWS for review. The language in question has been changed to "The Applicant would also utilize standards from APLIC 2006 and MLEA Avian Protection Plan." Since the powerlines will be installed and maintained by MLEA, it is presumed that their existing referenced plan will be followed. It is not feasible to construct power lines that prevent all risks to birds. Power lines will be constructed using APLIC Guidelines and MLEA Avian Protection Plan, which aim to reduce electrocution, collision, and minimal habitat disturbance.



## COMMENT(S)

## RESPONSE(S)

F2

## U.S. Fish and Wildlife Service (cont.)

U.S. Fish and Wildlife Service (USFWS) Comment Tracking Table for Enfit American Oil Utility Corridor Project Final EIS Submitted to the Bureau of Land Management (BLM) and Cooperating Agencies on June 14, 2016					
Section	Resource	Page Number	Commenter	Comment or Text Revision	BLM Response
Table 4-1	All	All	S. Graham	We recommend the applicant and BLM commit to the design features and mitigation measures outlined in the table regarding migratory birds. These measures reduce the risk of "take" according to the Migratory Bird Treaty Act and Bald and Golden Eagle Protection Act. We also recommend additional clarification regarding the distinction between "Applicant Design Feature" and "BLM Mitigation Measure." We recommend that mitigation measures be implemented across the entire Project.	
Table 4-1	2	4-21	S. Graham	The EIS states "The Applicant will install raptor deterrents and measures according to Moon Lake Electric Avian Protection Plan, previously submitted to BLM." Previously, BLM and Enfit did not have a copy of this document when requested by our office. We received one directly from Moon Lake Electric. Please ensure that Enfit and BLM have a copy of this document that was provided to them from our office.	
Table 4-1	Bullet point "d"	4-27	A. Defreese	Under Design Feature "d," the last sentence incorrectly states that, "For every 2 acres of temporary disturbance or 3 acres of permanent disturbance within suitable habitat, 1 acre will be restored." It should say the opposite in that for every 1 acre of temporary disturbance, 2 acres of suitable habitat will be restored and for every 1 acre of permanent disturbance, 3 acres of suitable habitat will be restored.	
4.2.8.1.2	Non-federal Connected Action South Project	4-92	S. Graham	1. The EIS states "Effects to wildlife from the proposed South Project construction would be similar to those described above for the Utility Project. Indirect and short-term effects would also occur from an increase in traffic on Dragon Road, Highway 45 and some local roads for the duration of construction activity associated with the South Project increasing the potential for wildlife collisions resulting in a loss of individual wildlife species." We recommend analyzing the south project and incorporating avoidance, minimization, and mitigation measures to the entire project.  2. We also recommend that additional supportive detail be incorporated that explains why the south project is not being analyzed by the BLM.	
4.2.8.1.1.1	Raptors and Eagles	4-89	S. Graham	Information on this page is contradictory. The information in this section is vague and non-committal by using several "if" statements. On page 4-90 there is a commitment to avoiding seasonal buffers, however on page 4-89 it states "if activities related to construction of the Utility Project were to take place during the nesting season...", please clarify if the seasonal buffer will be followed. The USFWS recommended seasonal buffer dates (Romin and Muck 2002) are also different from those listed in Table 4-1. We recommend making this information consistent and clear throughout the document.	

F2t

Applicant-committed Environmental Protection Measures (ACEPM) will be implemented if the Proposed Action Alternative is selected. These measures will be a condition of issuing a permit to the Applicant. The distinction between "Applicant Design Feature" and BLM Mitigation Measure" is provided in footnotes 1 and 3 of Table 4-1.

F2u

The Applicant and the BLM have a copy of the MLEA Avian Protection Plan for future implementation.

F2v

The analysis for yellow-billed cuckoo was revised to indicate that no suitable habitat is present in the Project area (also refer to Appendix F3). Therefore, mitigation measures for suitable yellow-billed cuckoo habitat are not needed and the yellow-billed cuckoo design feature was removed from Table 4-1.

F2w

The Proposed Action and No Action alternatives are for the Utility Project. To reduce confusion, the impacts from the South Project, which is outside of the jurisdiction of the BLM and which will proceed to full buildout regardless of the BLM decision to be made for the Utility Project, has been moved to the cumulative impact analysis in the Final EIS. As a reasonably foreseeable non-federal action, the BLM is not required to compare or contrast alternatives or develop mitigation for the South Project. Also, since the No Action Alternative is to deny the requested rights of way, there is no accumulation of impacts under that alternative. However, given public interest in the South Project, Section 4.4 has been added to the EIS that describes the South Project if the BLM were to deny the Utility Project.

F2x

The South Project is outside the jurisdiction of the BLM and will proceed to full buildout regardless of the BLM decision to be made for the Utility Project. To address confusion expressed by the public during the Draft EIS comment period, those South Project impacts that may accumulate with the impacts of the Proposed Action have been moved to the cumulative impact analysis in the EIS. Since the No Action Alternative is to deny the requested rights-of-way, there is no accumulation of impacts under that alternative. However, given public interest in the South Project, Section 4.4 has been added to the EIS that describes the South Project if the BLM were to deny the Utility Project. Section 1.2.1 has been changed to reflect this clarification.

See next page for response to Comment F2x.

## COMMENT(S)

## RESPONSE(S)

F2

## U.S. Fish and Wildlife Service (cont.)

U.S. Fish and Wildlife Service (USFWS) Comment Tracking Table for Enfit American Oil Utility Corridor Project Final EIS. Submitted to the Bureau of Land Management (BLM) and Cooperating Agencies on June 14, 2016					
Section	Resource	Page Number	Commenter	Comment or Text Revision	BLM Response
4.2.8.1.1.1	Raptors and Eagles	4-89	S. Graham	We recommend avoiding permanent impacts to the extent practicable.	
4.2.8.1.1.1	Raptors and Eagles	4-91	S. Graham	A 1 mile buffer is recommended for bald eagle nests.	
All	All	All	S. Graham	We recommend incorporating maps of raptor surveys into the EIS.	
All	All	All	S. Graham	We recommend the following conservation measure be incorporated: Remove road-kill carcasses and trash as quickly as possible to reduce vehicle collisions with raptors and other migratory birds.	
4.2.10.1	Listed Fish	4-110	GW	For section 7 consultation with us, we recommend that the BLM provide additional details on the pipeline crossing of the White River, including construction methods, pipeline depth, and hydraulic/scour analyses for the proposed crossing. We understand the applicant has developed a Pre-feasibility pipeline crossing analysis that contains many of these details. This will be important information for determining effects to listed fish species from potential oil and other contaminant spills.	
4.2.10.1	Listed Fish	4-111	GW	While the Deseret Generation and Transmission Cooperative water right (WR #49-258) has a priority date of February 1965, the water right has not been perfected (fully developed). We recommend BLM add this information in the paragraph. Under our guidelines for water depletions in the Colorado River basin, any depletion perfected after 1988 are considered a new depletion (not historic) and thus require formal consultation with our office and payment of a one-time depletion fee at the current rate. For a depletion amount greater than 4,500 acre-feet, additional Recovery Implementation Program Recovery Action Plan (RIPRAP) actions may be necessary. The need for additional RIPRAP actions will be determined during the section 7 consultation process. We have included additional guidance on water depletions in the upper Colorado River basin as an attachment to this letter.	
2.2.4	Not Applicable	All	Defreese	Regarding the construction, maintenance and operation of the proposed transmission lines, we recommend that you clearly identify, in detail, planned vegetation management within the ROW for the transmission line.	
2.2.8.10	Not Applicable	All	Defreese	Regarding the construction, maintenance and operation of the proposed transmission lines, we recommend that you clearly identify, in detail, planned vegetation management within the ROW for the transmission line.	
2.2.4.1	Not Applicable	All	Defreese	We recommend the use of steel monopole transmission structures to reduce the disturbance footprint during construction and long-term operation. Monopoles are also preferable to H-frame structures because they decrease perching opportunities for avian predators.	

Raptor management on BLM lands in Utah are guided by Best Management Practices for Raptors and Their Associated Habitats in Utah (August 2006). These are BLM-specific recommendations for implementing the U.S. Fish and Wildlife Service Utah Field Office's Guidelines for Raptor Protection from Human and Land Use *Disturbances* (Romin and Much, 2002). Modifications to implementation of raptor spatial and seasonal buffers in Table 2 of the U.S. Fish and Wildlife Service's Guidelines for BLM-authorized actions would be permitted if protection of nesting raptors is ensured. Spatial and seasonal buffers are the best available recommendations for protecting nesting raptors but are not site-specific to the proposed project. Modifications to the spatial and seasonal buffers will be implemented for the proposed project based on the type and duration of a proposed activity, topographic and vegetation features, sensitivity of the affected species, and habituation of breeding pairs to existing activities while still ensuring protecting nesting raptors.

F2x

F2y

Permanent impacts will be avoided to the maximum extent possible.

F2z

The nearest nest is 2 miles from the Project area.

F2aa

This information has been added to Maps A-7a and A-7b in Appendix A.

F2ab

Text revised as suggested. The BLM cannot enforce removal of road-kill carcasses. A mitigation measure to notify Utah Division of Wildlife Resources of any road-kill carcasses within the Project area was added instead.

F2ac

See next page for response to Comment F2ac.

F2ad

See next page for response to Comment F2ad.

F2ae

See next page for response to Comment F2ae.

F2af

See next page for response to Comment F2af.

COMMENT(S)

RESPONSE(S) - CONTINUED

F2	U.S. Fish and Wildlife Service (cont.)	
		<p data-bbox="1081 586 1129 610">F2ac</p> <p data-bbox="1178 293 1999 578">The proposed method for the pipeline to cross the White River is a trenchless construction method called micro-tunneling, which is described in Section 2.2.8.11.6. The preliminary engineering plans show a minimum depth of cover of 8 feet from the bottom of the river channel to the top of the pipe casing. The engineering plans are based upon the recommended depth used for the Questar Mainline 103 Pipeline Extension Project located approximately 3 miles upstream of the proposed Utility Project crossing, which followed recommendations from a detailed scour analysis of the river. The detailed scour analysis is included as Appendix 2B-1 in Resource Report No. 2 for the Questar ML103 project, available on the Federal Energy Regulatory Commission's eLibrary system under file number CP12-18 ( available at <a href="https://elibrary.ferc.gov/IDMWS/common/OpenNat.asp?fileID=12819712">https://elibrary.ferc.gov/IDMWS/common/OpenNat.asp?fileID=12819712</a>).</p> <p data-bbox="1178 594 1999 911">As <a href="#">noted</a> in the scour analysis report, the estimated total cumulative scour depth for the 500-year flood event at the Questar crossing location was 6 feet; thus, a minimum depth of cover of 8 feet for the Utility Project crossing location was assumed (this is the same depth of cover used by Questar, as approved in FERC's order). The scour analysis for the Questar crossing was specific to that crossing location; however, the geomorphological and riverine conditions at the proposed Utility Project crossing location are similar, and the Applicant's engineer deemed the analysis appropriate to inform preliminary engineering design for the proposed Utility Project crossing. Prior to commencing construction on the pipeline crossing, the Applicant would conduct site-specific geotechnical and scour analyses to confirm that 8 feet to the top of the pipeline casing is sufficient to protect the casing from migration and/or scour damage.</p> <p data-bbox="1081 1049 1129 1073">F2ad</p> <p data-bbox="1178 951 1999 1179">Text regarding the appropriate processes for the water right and the need to consult with FWS has been added to Section 4.2.10.1 The Utility Project will consume 8.56 acre feet of water. The reasonably foreseeable South Project consumption is disclosed in the cumulative impacts section because it will accumulate with the Utility Project consumption. However, the BLM has no jurisdiction over the South Project, and the South Project will go forward to full buildout regardless of whether the BLM decision to be made on the Utility Project. Therefore, the consumption of water by the South Project will not be a part of the BLM consultation except as a cumulative impact disclosure.</p> <p data-bbox="1081 1227 1129 1252">F2ae</p> <p data-bbox="1178 1211 1999 1268">Vegetation clearing for construction and operation is outlined in Chapter 2 of the EIS and in the Applicant's POD.</p> <p data-bbox="1081 1333 1129 1357">F2af</p> <p data-bbox="1178 1308 1999 1390">Wildlife Design Feature 7 is developed to incorporate anti-perching for all project activities. See Table 4-1 for all applicable mitigation measures and design features developed for the Project.</p>

## COMMENT(S)

## RESPONSE(S)

F2

## U.S. Fish and Wildlife Service (cont.)

U.S. Fish and Wildlife Service (USFWS) Comment Tracking Table for EnertAmerican Oil Utility Corridor Project Final EIS Submitted to the Bureau of Land Management(BLM) and Cooperating Agencies on June 14, 2016						
	Section	Resource	Page Number	Commenter	Comment or Text Revision	BLM Response
F2ag	2.2.4.1	Not Applicable	All	Defreese	We recommend that transmission structures be sited outside of the White River riparian corridor and its 100 year floodplain.	
	2.2.4.1	Not Applicable	All	Defreese	We do not recommend standard transmission line ROW vegetation management where the line crosses the White River. We recommend development of an alternative management plan for this area that eliminates vegetation clearing for construction, operation or maintenance purposes.	
F2ah	2.2.8.2	Not Applicable	2-18	Defreese	We do not recommend standard ROW vegetation management, as proposed, where project features and ROW cross the White River. We recommend development of an alternative management plan for this area that eliminates vegetation clearing and grading for construction, operation, or maintenance plit/Q. oses.	
	2.2.8.11.6	Not Applicable	2-28	Defreese	We recommend the applicant conduct a scour analysis to identify the appropriate depth at which the pipelines should be tunneled under the White River.	
F2ai	2.2.8.11.6	Not Applicable	2-27	Defreese	We recommend the applicant conduct a scour analysis to identify the appropriate depth at which the pipelines should be tunneled under the White River.	
F2aj	3.2.9.3.1	Not Applicable	3-57	Defreese	<u>Western Yellow-billed Cuckoo</u> : We recommend that you provide survey (positive and negative) results referenced here to our office for review.	
F2ak	3.2.9.3.1	Not Applicable	3-57	Defreese	<u>Western Yellow-billed Cuckoo</u> : If surveys were not conducted according to protocol, we advise that negative results may not imply absence.	
F2al	3.2.9.3.1	Not Applicable	3-57	Defreese.	We recommend that you use our <i>Guidelines for the identification of suitable habitat for WYBCU in Utah</i> (2015) to determine whether suitable habitat exists for western yellow-billed cuckoo at the White River crossing. See Appendix B.	
F2am	4.1.2	Not Applicable	4-26 and 4-27	Defreese	Table 4-1, Number 5: We provided incorrect language to you in our August 31, 2015letter. For Mitigation Measure (d), the language should read as follows: "Acreage of vegetation removal or alteration within suitable and occupied habitat will be quantified; compensatory mitigation for changes to vegetation within suitable and occupied habitat will be provided at a 2:1 ratio for temporary losses and a 3:1 ratio for permanent losses. <del>For every 2 acres of temporary disturbance or 3 acres of permanent disturbance within a suitable habitat, 1 acre will be restored.</del> A restoration plan will be produced in consultation with the BLM and USFWS."	
	4.2.9.1.1.1	Not Applicable	4-97	Defreese	The statement that suitable habitat for cuckoo exists along the White River within the Utility Project study area appears to contradict statements in section 3.2.9.3.1.	
F2an						

F2ag

Design Feature 23 for Water Resources indicates: "No permanent structures will be located within the 100-year floodplain."

F2ah

No change. The objective of Design Features 11, 12, and 13 are to have the Applicant develop a vegetation management plan and restoration plan specific to the area being disturbed.

F2ai

The requirement for analysis of channel degradation and scour to determine the appropriate depth to bury the pipeline to the benefit the streambed is currently identified as Mitigation Measures 4 and 24 in Table 4-1. See also the response to Comment F2ac.

F2aj

Surveys for yellow-billed cuckoo were not conducted based on a lack of suitable habitat. A habitat suitability assessment (refer to Appendix F3) concluded that no suitable breeding, nesting, and foraging habitat for yellow-billed cuckoo (as defined by the 2015 FWS guidelines) is present in riparian areas along the White River that are within 0.5 miles of the Project.

F2ak

Surveys for Western yellow-billed cuckoo were not conducted and absence is not implied. Section 4.2.9.1.1.1 states, "While there is a low potential for the species to occur within the Project Utility corridor, their presence within the area cannot be entirely discounted."

F2al

Surveys for yellow-billed cuckoo were not conducted based on a lack of suitable habitat. A habitat suitability assessment (refer to Appendix F3) concluded that no suitable breeding, nesting, and foraging habitat for yellow-billed cuckoo (as defined by the 2015 FWS guidelines) is present in riparian areas along the White River that are within 0.5 miles of the Project.

F2am

A habitat suitability assessment (refer to Appendix F3) concluded that no suitable breeding, nesting, and foraging habitat for yellow-billed cuckoo (as defined by the 2015 FWS guidelines) is present in riparian areas along the White River that are within 0.5 miles of the Project.

F2an

The analysis for yellow-billed cuckoo was revised to reflect that no suitable habitat is present in the Project area. Therefore, mitigation measures for suitable yellow-billed cuckoo habitat are not needed and the yellow-billed cuckoo design feature was removed from Table 4-1.

F2an

There is no suitable breeding or foraging habitat within the Utility Project corridor (refer to Appendix F3). The text in Section 4.2.9.1.1.1 has been revised.

# COMMENT(S)

# RESPONSE(S)

F2

## U.S. Fish and Wildlife Service (cont.)

U.S. Fish and Wildlife Service (USFWS) Comment Tracking Table for Benefit American Oil Utility Corridor Project Final EIS Submitted to the Bureau of Land Management (BLM) and Cooperating Agencies on June 14, 2016					
Section	Resource	Page Number	Commenter	Comment or Text Revision	BLM Response
4.2.9.1.1.1	Not Applicable	4-97	Defreese	Western Yellow-billed Cuckoo: It is unclear if this statement accurate. "The Utility Project would not have direct effects on 2.0 acres of invasive southwest riparian woodland and shrubland habitat and 0.5 acres of Rocky Mountain lower montane riparian woodland habitat." If so, please provide supporting rationale.	
4.2.9.1.1.1	Not Applicable	4-97	Defreese	We recommend a more robust analysis of potential direct and indirect effects to western yellow-billed cuckoo and its habitat. This should include: <ul style="list-style-type: none"> <li>the effect of lost habitat due to construction, operation, and maintenance of proposed</li> <li>ROWs in the floodplain of the White River under the proposed alternative.</li> <li>the effects of noise from construction, operation, and maintenance activities.</li> <li>the effects of human disturbance.</li> </ul>	
4.2.9.1.1.1	Not Applicable	4-97	Defreese	We recommend that you provide support for your statements that the Utility Project will be located to avoid or minimize impacts in riparian areas and the 100-year floodplain of the White River. We further recommend that you identify how these avoidance and minimization measures lead you to conclude that there will be no direct or indirect effects to western yellow-billed cuckoo.	
4.2.7.1.1.1	Uinta Basin Hookless Cactus	4-79	Reisor	Please clarify if direct surface disturbance is proposed within <i>Sclerocactus</i> Core 1 area. Map A- Sa does not show that actual surface clearing will occur on Core 1, but only in Core 2.	
4.2.7.1.1.2	Graham's Penstemon	4-80	Reisor	The permanent nature of the utility Project will have long-term impacts in addition to temporary impacts on the vegetation community and pollinators. Please include an assessment of the long-term impacts of the Project to Graham's penstemon.	
4.2.7.1.2.2	Graham's Penstemon	4-83	Reisor	First sentence after Table 4-20: Please clarify if this sentence is referring to White River penstemon or Graham's penstemon.	
4.2.7.1.2.2	White River Penstemon	4-83	Reisor	Please clarify the text in the second paragraph with the information presented in the Map A-5b. The second paragraph states that there is no White River penstemon habitat within the south project that is also within the Penstemon Conservation Agreement Areas (PCAA); however map A-5b shows PCAA within the South Project with positive data points for White River penstemon.	

F2ao

The statement is not accurate and has been deleted. The revised text focuses on suitable breeding and foraging habitat, which does not occur within the Utility Project corridor (refer to Appendix F3).

F2ap

Additional discussion of potential effects western yellow-billed cuckoo has been added to Section 4.2.9.1.1.1. Additionally, a habitat suitability assessment (refer to Appendix F3) concluded that no suitable breeding, nesting, and foraging habitat for yellow-billed cuckoo (as defined by the 2015 FWS guidelines) is present in riparian areas along the White River that are within 0.5 miles of the Project.

F2aq

Section 4.2.9.1.1.1 has been clarified by stating that the project may affect cuckoos although there will be no loss of individuals or suitable habitat.

F2ar

Text revised to clarify that surface disturbance from the Utility Project is only expected in Level 2 Core habitat.

F2as

Text revised to more clearly discuss impacts on Graham's beardtongue and identify which impacts could persist in the long term.

F2at

Text revised. Please note that South Project impacts that may accumulate with the Utility Project Proposed Action have been moved to the cumulative impact section. South Project impacts that are anticipated to occur should the BLM deny the Utility Project Proposed Action are disclosed in the new section.

F2au

Text revised to clearly discuss the extent of suitable White River beardtongue habitat, and known occurrences identified during 2013 surveys within the South Project area in relation to the Penstemon Conservation Areas.

## ATTACHMENT

F2

### U.S. Fish and Wildlife Service (cont.)

#### Appendix A

##### Memorandum

To: All Federal Partners in the State of Utah

From: Utah Field Supervisor, Ecological Services, U.S. Fish and Wildlife Service, West Valley City, Utah

Subject: Formal consultation requirements for water depletions affecting the four federally listed Colorado River fish species

Dear Partner:

As you are aware, water depletions from the Upper Colorado River Basin are likely to adversely affect the federally endangered Colorado pikeminnow (*Ptychocheilus lucius*), humpback chub (*Gila cypha*), bonytail (*Gila elegans*), and razorback sucker (*Xyrauchen texanus*) and their designated critical habitat. We recently determined that clarification concerning the requirements and process for consulting on water depletion impacts to these species would be beneficial. In order to clarify the consultation requirements, we have created two documents that should aid your agency in:

1. Determining if consultation is required based on the location of the project, classification of the depletion as 'new' or 'historic', type of use, and size of the depletion; and
2. Understanding how the impacts should be covered under project planning, including if a water depletion fee or other conservation measures are required.

##### Project Location

The first enclosed document (Attachment 1) is a map showing designated critical habitat for the four listed fish species in Utah and drainages that contribute flows to this habitat (also listed in Table 2). A depletion from any portion of the contributing drainages is considered to adversely affect or adversely modify the critical habitat of the endangered fish species by reducing water quantity and quality.

Therefore, a project that depletes water from any of these drainages, including non-occupied headwater reaches, must be evaluated with regard to the criteria described in the pertinent fish recovery programs.

We use the US Geological Survey's *National Hydrography Dataset*<sup>1</sup> (NHD) to establish drainage boundaries and naming conventions in order to maintain consistency in geographic analysis. The NHD uses a nested hierarchy of numbering to provide easy interpretation of drainage locations. An example of the naming and numbering process is found below for Wolf

F2av

Text regarding the appropriate processes for the water right and the need to consult with FWS has been added to Section 4.2.10.1.

## ATTACHMENT

F2

## U.S. Fish and Wildlife Service (cont.)

Creek, a tributary to the Duchesne River (Table 1). A depletion from the Wolf Creek sub-watershed would require consultation.

Table 1. Example of NHD nested hierarchy and naming convention

NHD Division	Name	Hydrologic Unit Code (HUC)
Region	Colorado River	14
Sub-region	Lower Green River	1406
Basin	Lower Green River	140600
Sub-basin	Duchesne River	14060003
Watershed	Headwaters Duchesne	1406000301
Sub-watershed	Wolf Creek	140600030102

Using the NHD convention, projects that deplete water from the following sub-basins in the State of Utah require consultation (as shown in the enclosed map):

Table 2. Sub-basins in which a water depletion requires section 7 consultation.

Sub-region (4 digit HUC)	Sub-basin	8 Digit HUC
Colorado Headwaters (1401)	Colorado Headwaters Plateau	14010005
Upper Colorado & Dolores Rivers (1403)	Westwater Canyon	14030001
	Upper Dolores River	14030002
	Lower Dolores River	14030004
	Upper Colorado River & Kane Springs	14030005
Upper Green River (1404)	Upper Green River & Flaming Gorge Reservoir	14040106
	Black Forks	14040107
	Muddy	14040108
White & Yampa Rivers (1405)	Lower White River	14050007
Lower Green River (1406)	Lower Green River and Diamond	14060001
	Ashley and Brush Creeks	14060002
	Duchesne River	14060003
	Strawberry River	14060004
	Lower Green River – Desolation Canyon	14060005
	Willow Creek	14060006
	Price River	14060007
	Lower Green River	14060008
	San Rafael River	14060009
Upper Colorado River (1407)	Upper Lake Powell	14070001
San Juan River (1408)	Lower San Juan River – Four Corners	14080201
	McElmo	14080202
	Montezuma	14080203
	Chinle	14080204
	Lower San Juan River	14080205

<sup>1</sup> Data and more information can be found online at: [nhd.usgs.gov](http://nhd.usgs.gov)



## ATTACHMENT

F2

### U.S. Fish and Wildlife Service (cont.)

#### Characteristics of water depletion

The second enclosed document (Attachment 2) is a decision tree that walks the user through a set of questions to determine if consultation is required and what conservation measures will be needed. The decision tree explains how to classify a depletion as 'historic' or 'new' and how water depletions of different volumes require different conservation measures. One such conservation measure is the payment of a 'depletion fee' to offset impacts of water depletions. This fee is a one-time fee paid for the maximum annual water depletion associated with a project.

In fiscal year 2011 (October 2010 to September 2011), this fee is \$18.91 per acre-foot<sup>2</sup>. This amount is adjusted annually to correspond with economic inflation, as measured by the consumer price index.

The decision tree specifically reflects the requirements for consultation established under the Upper Colorado River Endangered Fish Recovery Program. However, it also provides general guidance on classifying historic and new depletions in the San Juan River drainage. Of note, if a project facilitates the continued use of a historic depletion, then formal consultation may be necessary, but conservation measures will be covered by the Recovery Program. We hope the decision tree will help clarify the requirements for formal consultation in the project planning phase.

#### Reinitiation of consultation

Finally, we want to inform your office that during project operations, if water depletions increase by 10% or more, reinitiation of formal consultation is required because impacts have increased to levels not considered during consultation.

Thank you for your cooperation. For more information please contact Kevin McAbee, Paul Abate, or Drew Crane at (801) 975-3330.

Enclosures: Designated Critical Habitat in Utah for Federally Listed Colorado River Fish (map) Water Depletion Information and Decision Tree (3 pages)

Z:\McAbee\CO River Consultations\Water Depletion Guidelines\Water Depletion Guidelines.docx

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<sup>2</sup> To determine the current fiscal year rate, please contact our office.



## ATTACHMENT

F2

### U.S. Fish and Wildlife Service (cont.)

#### Attachment 2

##### Water Depletion Information and Decision Tree

The following information clarifies the process for water depletion consultations. Specifically, this decision tree should be used to differentiate historic and new water depletions, determine section 7 consultation requirements, and identify required depletion fees. Please answer the following questions for your project to arrive at an understanding of your project's impacts.

1. Is the depletion less than 0.1 acre feet?
  - If the depletion is less than 0.1 acre feet, **no consultation is necessary.**
  - **If the depletion is greater than 0.1 acre feet, go to #2**
2. Is the depletion historic?
  - If the entire water source was perfected (i.e. put into use) prior to 1988, then it is considered historic and **formal consultation is not necessary**. However, if new permitting is occurring that facilitates the continued use of the depletion, formal consultation may be necessary. Please contact our office for project by project analysis.
  - If the water source was permitted prior to 1988 but the total amount was not put into use, then the unused portion would be considered a new depletion and **formal consultation would be necessary**. For example, a municipality has a water right of several thousand acre feet which was permitted prior to 1988, but did not fully utilize their water right and later sells a portion of their water to a developer. The amount sold was not previously perfected and would be a new depletion to the system.
  - If the entire water source was perfected prior to 1988 but now there will be a change in use (i.e. going from agriculture to oil and gas development), this would be considered a new depletion and **formal consultation would be necessary**.
    - The conditions above are supported by the following citation:  
*In order to further define and clarify the process in the Recovery Program, a section 7 agreement was implemented on October 15, 1993, by the Recovery Program participants. The agreement describes the framework for conducting Section 7 consultations on depletion impacts related to new projects (as defined in Section 4.1.5 a. of the [Recovery Implementation Program (RIP)]) and impacts associated with historic projects in the Upper*

## ATTACHMENT

F2

### U.S. Fish and Wildlife Service (cont.)

*Colorado River Basin. The RIP is intended to offset both the direct and depletion impacts of historic projects occurring prior to January 22, 1988 (the date when the Cooperative Agreement for the RIP was executed) if such offsets are needed to recover the fishes. Under certain circumstances, historic projects may be subject to consultation under Section 7 of the ESA. An increase in depletions from a historic project occurring after January 22, 1988, will be subject to the depletion charge.*

- If the depletion is not historic go to #3.

3. Is the depletion less than 100-acre feet?

- If less than 100 acre feet, **Formal consultation is required. However, the depletion fee for this project is waived.**

- **The conditions above are supported by the following citation:**

*Included in the Recovery Program was the requirement that a depletion fee would be paid to help support the Recovery Program. On July 8, 1997, the Service issued an intra-Service biological opinion determining that the depletion fee for depletions of 100 acre-feet or less are no longer required because the Recovery Program has made sufficient progress to be the reasonable and prudent alternative to avoid the likelihood of jeopardy to the endangered fishes and to avoid destruction or adverse modification of their critical habitat by depletions of 100 acre-feet or less.*

- If more than 100-acre feet, **Formal consultation is required and a depletion fee must be paid.**
  - **This fee is a one-time fee paid for the maximum annual water depletion associated with a project. In fiscal year 2011 (October 2010 to September 2011), this fee is \$18.91 per acre-foot. This amount is adjusted annually to correspond with economic inflation, as measured by the consumer price index. Please contact our office for the current rate.**
- If more than 4,500 acre feet, **Formal consultation is required, a depletion fee must be paid, and additional RIPRAP actions may be necessary.** The need for additional RIPRAP actions will be determined during the formal consultation process.

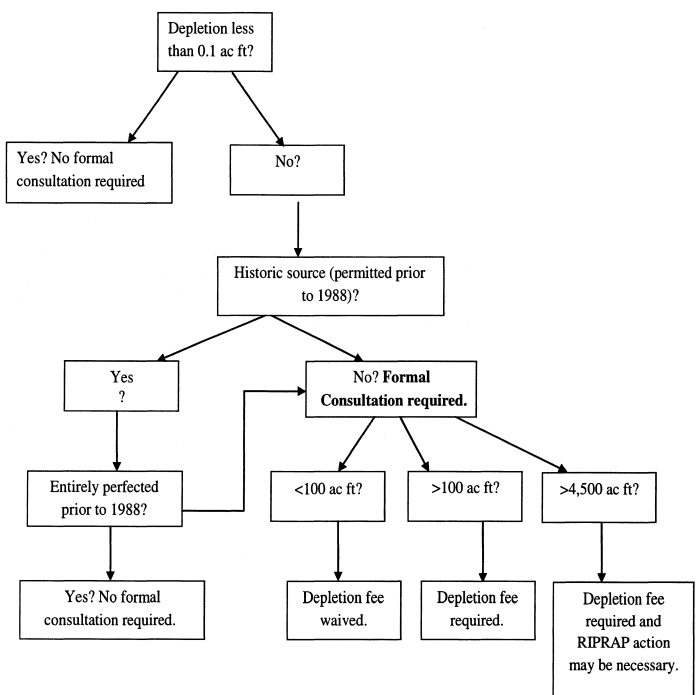
ATTACHMENT

F2

U.S. Fish and Wildlife Service (cont.)

Attachment 2

Water Depletion Decision Tree

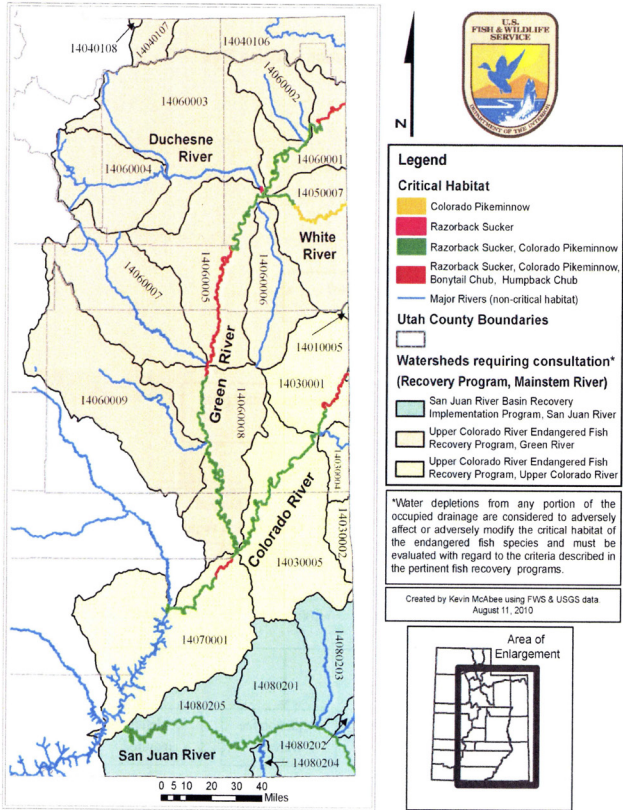


ATTACHMENT

F2

U.S. Fish and Wildlife Service (cont.)

Designated Critical Habitat in Utah for Federally Listed Colorado River Fish



## ATTACHMENT

F2

## U.S. Fish and Wildlife Service (cont.)

## Appendix B

## Guidelines for identification of suitable habitat for Western yellow-billed cuckoo in Utah

*U.S. Fish and Wildlife Service, Utah Ecological Services Field Office  
June 2015*

The purpose of this guidance is to assist agencies and project proponents in identifying areas that meet minimum criteria as potentially suitable breeding, nesting, and foraging habitat for yellow-billed cuckoo in Utah, Colorado, and Wyoming. Areas that meet the minimum criteria should be (1) avoided by 0.5 mile<sup>1</sup>, or (2) surveyed, and/or (3) carried forward for evaluation of potential effects.

**Step 1:** Identify and delineate all riparian habitats within 0.5 mile of the proposed action, below the elevation of 8,500 feet.

**Step 2:** Riparian patches used by breeding cuckoos vary in size and shape, ranging from a relatively contiguous stand of mixed native/exotic<sup>2</sup> vegetation to an irregularly shaped mosaic of dense vegetation with open areas. Riparian patches used by foraging cuckoos are typically composed of an overstory canopy only and will be adjacent to riparian patches used by breeding cuckoos. In Step 2, review riparian habitat for the following positive attributes of suitable cuckoo breeding and nesting habitat:

- Vegetation<sup>3</sup> that is predominantly multi-layered, with riparian canopy trees and at least one layer of understory shrubby vegetation;
- Patches of multi-layered vegetation (as described above) that are at least 12 acres (5 ha) or greater in extent and separated from other patches of suitable habitat by at least 300 meters;
- Within a patch, the width of multi-layered riparian vegetation (as described above) should be at least 100 meters for a length of at least 100 meters. This is to avoid unsuitable patches that may be 750 m x 75 m (length x width) for example; and,
- Open areas, or gaps of multi-layered vegetation within a patch are less than 300 meters.

To identify suitable foraging habitat, review riparian habitat for single layer overstory canopy that is within 300 meters of suitable breeding and nesting habitat.

<sup>1</sup> A 0.5-mile buffer is likely the largest buffer necessary to preclude impacts to the species from noise, light and human disturbance. Regardless, this buffer could be adjusted according to the type of activity and noise that is generated (for example, oil well drilling as opposed to construction vehicle traffic).

<sup>2</sup> Western yellow-billed cuckoo have been documented nesting in tamarisk, consequently, the presence of tamarisk should not eliminate a vegetation patch from a suitability determination. However the odds of cuckoo occurrence decrease rapidly as the amount of tamarisk cover increases.

<sup>3</sup> Riparian overstory and understory vegetation that supports suitable cuckoo habitat may include: cottonwood (*Populus spp.*), willow (*Salix spp.*), alder (*Alnus spp.*), walnut (*Juglans spp.*), boxelder (*Acer spp.*), sycamore (*Plantanus spp.*), ash (*Fraxinus spp.*), mesquite (*Prosopis spp.*), tamarisk (*Tamarix spp.*), and Russian olive (*Elaeagnus angustifolia*). Suitable understory vegetation does not include grasses or forbs although herbaceous vegetation is often present alongside shrubby understory.

**ATTACHMENT**

**F2**

**U.S. Fish and Wildlife Service (cont.)**

**References**

Halterman, M., M.J. Johnson, J.A. Holmes and S.A. Laymon. 2015. A Natural History Summary and Survey Protocol for the Western Distinct Population Segment of the Yellow-billed Cuckoo: U.S. Fish and Wildlife Techniques and Methods, 45 p.

Laymon, S. 2015. Pers. Comm. Senior Wildlife Biologist, Sacramento Fish and Wildlife Office.

U.S. Fish and Wildlife Service. 2014. Final rule determining threatened status for the western yellow-billed cuckoo. Federal Register 79: 59992-60038.

## **Appendix I2**

### **Tribal Governments**

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## COMMENT(S)

## RESPONSE(S)

T1

## The Hopi Tribe



Herman G. Honanie  
CHAIRMAN  
Alfred Lomahquahu Jr.  
VICE-CHAIRMAN

RECEIVED  
MAY 06 2016  
BLM Vernal UT

May 2, 2016

Richard Rymerson, District Manager  
Attention: Stephanie Howard, Project Coordinator  
Bureau of Land Management, Green River District, Vernal Field Office  
170 South 500 East  
Vernal, Utah 84078

Re: Enefit American Oil Utility Corridor Project

Dear Mr. Rymerson,

Thank you for your correspondence dated April 2016 with an enclosed Environmental Impact Statement regarding the Enefit American Oil Utility Corridor Project. The Hopi Tribe claims cultural affiliation to earlier identifiable cultural groups in Utah. The Hopi Cultural Preservation Office supports the identification and avoidance of our ancestral sites, and we consider the prehistoric archaeological sites of our ancestors to be "footprints" and Traditional Cultural Properties. Therefore, we appreciate the BLM Vernal Field Office's continuing solicitation of our input and your efforts to address our concerns.

The Hopi Cultural Preservation Office requests consultation on any proposal on the Vernal Field Office that has the potential to effect prehistoric sites. In our enclosed letter dated October 5, 2015, we noted that the cultural resources survey of the project area identified 8 prehistoric sites, including 42UN005374, described as a prehistoric rock shelter with potential subsurface deposits that will be avoided by project activities.

We have now reviewed the enclosed Draft Environmental Impact Statement and understand the Utility Project is a connected action with the South Project on 7,000-9,000 acres of private land, and 76 sites would potentially be subject to impacts associated with the construction of the South Project. Therefore, to enable us to determine if the Utility Corridor Project and the connected South Project may affect cultural resources significant to the Hopi Tribe, please provide us with a copy of the cultural resources survey of the South Project for review and comment.

If you have any questions or need additional information, please contact Terry Morgart at the Hopi Cultural Preservation Office at 928-734-3619 or [tmorgart@hopi.nsn.us](mailto:tmorgart@hopi.nsn.us). Thank you again for your consideration.

Respectfully,

Keith L. Kowanwisiwma, Director  
Hopi Cultural Preservation Office

Enclosure: October 5, 2015 letter  
xc: Utah State Historic Preservation Office

P.O. Box 123

KYKOTSMOVI, AZ 86039

(928) 734-3000

T1a

The Hopi requested a copy of the Draft EIS and the cultural report for the proposed project. A redacted copy of the cultural report was sent to the Hopi and the Draft EIS was available online. The Vernal Field Office followed up with an email to the Hopi on January 17, 2017, requesting any additional concerns or comments on the proposed undertaking and received no response.

T1b

The Class I and Class III cultural resource surveys for both the Utility Corridor Project and the South Project have been provided to the BLM by Enefit American Oil's cultural resource consultant in order that the BLM may complete the required National Historic Preservation Act Section 106 consultation and government-to-government Tribal consultation (under a variety of relevant laws, treaties, and Executive Orders). BLM staff has reached out to the Hopi Tribe numerous times in response to this comment to provide information regarding the appropriate procedure for reviewing the requested cultural report. Representatives for the Hopi Tribe have not responded to BLM. It is important to note that the South Project is outside the jurisdiction of BLM decision-making. Activities on the private-land South Project will be subject to other federal and state regulatory processes that may also require government-to-government Tribal consultation (e.g. Prevention of Significant Deterioration air emission permit through the Environmental Protection Agency, Large Mine Operation permit through the State of Utah's Division of Oil, Gas and Mining); therefore, it is likely that review and comment by the Hopi Tribe on the South Project may be better served under those regulatory processes. BLM cannot send out cultural reports and site reports due to the sensitivity of information contained in these documents.

COMMENT(S)

RESPONSE(S)

T1

The Hopi Tribe (cont.)



Herman G. Honanie  
CHAIRMAN

Alfred Lomahquahu Jr.  
VICE-CHAIRMAN

October 5, 2015

Michelle Brown, Assistant Field Manager, Renewable Resources  
Attention: David Grant, Archaeologist  
Bureau of Land Management, Green River District, Vernal Field Office  
170 South 500 East  
Vernal, Utah 84078

Re: Enefit American Oil Utah Oil Shale Project

Dear Ms. Brown,

Thank you for your correspondence regarding the 9,223-acre Enefit American Oil Utah Oil Shale Project on 7,915 acres of private land, 513 acres of Bureau of Land Management (BLM) land and 795 acres of State land. The Hopi Tribe claims cultural affiliation to earlier identifiable cultural groups in Utah. The Hopi Cultural Preservation Office supports the identification and avoidance of our ancestral sites, and we consider the prehistoric archaeological sites of our ancestors to be "footprints" and Traditional Cultural Properties. Therefore, we appreciate the BLM Vernal Field Office's continuing solicitation of our input and your efforts to address our concerns.

The Hopi Cultural Preservation Office requests consultation on any proposal on the Vernal Field Office that has the potential to effect prehistoric sites. Your letter states that the draft EIS has analyzed potential impacts to cultural resources and a cultural resources survey of the project area identified 89 sites including 8 prehistoric sites, and seven of these sites have been determined to be National Register eligible, including 42UN005374, described as a prehistoric rock shelter with potential subsurface deposits, and will be avoided by project activities.

However, to enable us to determine if this proposal may affect cultural resources significant to the Hopi Tribe, please provide us with copies of the Draft EIS and cultural resources survey report for review and comment. If you have any questions or need additional information, please contact Terry Morgart at the Hopi Cultural Preservation Office at 928-734-3619 or [tmorgart@hopi.nsn.us](mailto:tmorgart@hopi.nsn.us). Thank you again for your consideration.

Respectfully,

Leigh J. Kuwanwisiwma, Director  
Hopi Cultural Preservation Office

cc: Utah State Historic Preservation Office

## **Appendix I3**

### **State**

---



COMMENT(S)

RESPONSE(S)

S1	Colorado Department of Public Health & Environment
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**COLORADO**  
Department of Public  
Health & Environment

Dedicated to protecting and improving the health and environment of the people of Colorado

Stephanie Howard  
Bureau of Land Management  
Vernal Field Office  
170 South 500 East  
Vernal, UT 84078

June 13, 2016

RE: Colorado Department of Public Health and Environment comments on the Draft Environmental Impact Statement (EIS) for the Enefit American Oil Utility Corridor Project

Ms. Howard,

The Air Pollution Control Division (APCD) of the Colorado Department of Public Health and Environment (Department) appreciates the opportunity to provide comments on the air quality related aspects of the proposed EIS. Given the magnitude of the oil shale development addressed in the draft plan, it is essential that reasonable and appropriate measures be put into place to minimize air quality impacts. The Division emphasizes the importance of addressing air quality impacts due to the project's close proximity to areas struggling to meet the new 2015 8-hour ozone standard. As the project area is within several miles of the Colorado boarder, the Department has concerns about future emissions impacting Colorado's ambient air quality. Based on our review of the overall plan, the Division believes that BLM has developed a thoughtful and comprehensive approach for managing air quality resources within the project area but asks that the full range of environmental impacts on Colorado be evaluated. Further, the Department would ask to be kept apprised of future actions related to this project so that impacts on Colorado's air quality may be assessed at an earlier stage of the planning process.

The APCD provided comments on this proposed EIS which can be found on the comment spreadsheet accompanying this letter. The Department is committed to assisting the BLM and looks forward to reviewing the final EIS with attention to the issues highlighted in this letter and those on the comment spreadsheet.

The Department appreciates the opportunity to review and comment on this proposed Draft EIS. Should you have any questions, please contact Ingrid Hewitson at 303-692-6331 or [Ingrid.hewitson@state.co.us](mailto:Ingrid.hewitson@state.co.us).

Sincerely,

Ingrid Hewitson

cc: William Allison, APCD Director  
Chris Colclasure, APCD Deputy Director  
Lisa Devore, Emerging Air Quality Issues Supervisor  
Paul Lee, Transportation Planner

4300 Cherry Creek Drive S., Denver, CO 80246-1530 P 303-692-2000 [www.colorado.gov/cdphe](http://www.colorado.gov/cdphe)  
John W. Hickenlooper, Governor | Larry Wolk, MD, MSPH, Executive Director and Chief Medical Officer



COMMENT(S)

RESPONSE(S) - CONTINUED

S1

Colorado Department of Public Health & Environment (cont.)

Colorado Department of Public Health and Environment, Air Pollution Control Division  
Comments on the Draft Environmental Impact Statement (EIS) for the Enefit American Oil Utility  
Corridor Project

S1a	Chapter	Section	Page	Comment																																												
	3	3.2.2.2.1	3-7	Table 3-2																																												
	3	3.2.2.2.3	3-8	First sentence																																												
S1c	3	3.2.2.5.1	3-13	Table 3-4																																												
	Recommend including oil and gas operations on the Colorado side of the border near Rangely, CO. Existing sources of air pollutant emissions in the vicinity of the Utility Project and the South Project site include, but are not limited to:																																															
S1d	<table><tr><th>Facility Name</th><th>Type of Operation</th><th>Existing or Future</th><th>General Location</th></tr><tr><td>Chevron USA - Sand Unit CO<sub>2</sub>/NGL Plant</td><td>CO<sub>2</sub>/ Natural Gas Processing</td><td>Existing</td><td>100 Chevron Rd., Rangely, CO 81648</td></tr><tr><td>Chevron - Collection Station 14</td><td>Produced Water Collection Station</td><td>Existing</td><td>SEC 31 T2N R102W</td></tr><tr><td>Red Rocks Gathering - N. Douglas Gas Plant</td><td>Natural Gas Processing</td><td>Existing</td><td>NE SEC 19 T1S R101W</td></tr><tr><td>Chevron - Collection Station 16</td><td>Produced Water Collection Station</td><td>Existing</td><td>SEC 20 T2N R102W</td></tr><tr><td>Chevron - Collection Station 22</td><td>Produced Water Collection Station</td><td>Existing</td><td>SEC 28 T2N R102W</td></tr><tr><td>Chevron - Collection Station 13</td><td>Produced Water Collection Station</td><td>Existing</td><td>Sec 25 T2N R103W</td></tr><tr><td>Chevron - Collection Station 28</td><td>Produced Water Collection Station</td><td>Existing</td><td>SEC 28 T2N R102W</td></tr><tr><td>Chevron - Collection Station 20</td><td>Produced Water Collection Station</td><td>Existing</td><td>SEC 20 T2N R102W</td></tr><tr><td>Chevron - Collection Station 17</td><td>Produced Water Collection Station</td><td>Existing</td><td>SEC 29 T2N R102W</td></tr><tr><td>Encana Oil and Gas - Dragon Trail</td><td>Natural Gas Processing</td><td>Existing</td><td>3606 County Road 116, Rangely, CO 81648</td></tr></table>				Facility Name	Type of Operation	Existing or Future	General Location	Chevron USA - Sand Unit CO <sub>2</sub> /NGL Plant	CO <sub>2</sub> / Natural Gas Processing	Existing	100 Chevron Rd., Rangely, CO 81648	Chevron - Collection Station 14	Produced Water Collection Station	Existing	SEC 31 T2N R102W	Red Rocks Gathering - N. Douglas Gas Plant	Natural Gas Processing	Existing	NE SEC 19 T1S R101W	Chevron - Collection Station 16	Produced Water Collection Station	Existing	SEC 20 T2N R102W	Chevron - Collection Station 22	Produced Water Collection Station	Existing	SEC 28 T2N R102W	Chevron - Collection Station 13	Produced Water Collection Station	Existing	Sec 25 T2N R103W	Chevron - Collection Station 28	Produced Water Collection Station	Existing	SEC 28 T2N R102W	Chevron - Collection Station 20	Produced Water Collection Station	Existing	SEC 20 T2N R102W	Chevron - Collection Station 17	Produced Water Collection Station	Existing	SEC 29 T2N R102W	Encana Oil and Gas - Dragon Trail	Natural Gas Processing	Existing	3606 County Road 116, Rangely, CO 81648
	Facility Name	Type of Operation	Existing or Future	General Location																																												
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	Encana Oil and Gas - Dragon Trail	Natural Gas Processing	Existing	3606 County Road 116, Rangely, CO 81648																																												

S1a

Citation of the Colorado sulfur dioxide standard for 3-hour average added to Table 3-3, and applicable standard added to first paragraph of 3.2.2.2.1.

S1b

The South Project has been moved to the cumulative impact section. This language has been removed since it does not apply to the Utility Project.

S1c

Table 3-5 edited to correct the state location for Ouray project.

S1d

Added to Table 3-5 an abbreviated roster of oil and gas operations in the project vicinity on the Colorado side of state border.



# COMMENT(S)

# RESPONSE(S) - CONTINUED

S1

## Colorado Department of Public Health & Environment (cont.)

Colorado Department of Public Health and Environment, Air Pollution Control Division  
Comments on the Draft Environmental Impact Statement (EIS) for the Enefit American Oil Utility Corridor Project

S1e	3	3.2.2.6	3-15	Second to last paragraph under 3.2.2.6	For consistency, suggest spelling out nitrous acid in sentence "This was a key finding, in that nitrous acid and formaldehyde are unconventional sources for ozone formation..." or revise formaldehyde to HCHO and change sentence to, "This was a key finding, in that HONO and HCHO are unconventional sources for ozone formation..."
S1f	4	4.1.2	4-5	Table 4.1	The Division requests clarification as to why measures 1 and 3 are not considered for the proposed action under "BLM Mitigation Measures" in the Greenhouse Gases section of the table.
S1g	4	4.1.2	4-6	Table 4.1	Item #6 under air quality states that "Construction activities would occur in winter to reduce ozone issues encountered during summer time" however, as discussed throughout the EIS, the Uinta basin experiences high ozone in the winter. The Division suggests conducting construction activities at other times of the year to reduce ozone issues encountered during the winter.
S1h	4	4.2.2.1.1.4	4-47	Table 4.5	The Division requests clarification as to how emissions from unpaved roads were calculated or whether they were accounted for. AP-42 Chapter 13.2.1 was referenced for paved roads but no reference was provided for unpaved roads. Since the EIS references the following unpaved roads: Rabbit Mountain road, the existing unpaved road mentioned on page 2-14 under switchyards, and the access roads discussed on pages 2-15, 2-18, and 2-26, using only paved road emission factors is not appropriate.
	4	4.2.2.1.2	4-47		The Division requests clarification as to how emissions from unpaved roads were calculated or whether they were accounted for. AP-42 Chapter 13.2.1 was referenced for paved roads but no reference was provided for unpaved roads. Since the EIS references the following unpaved roads: Rabbit Mountain road, the existing unpaved road mentioned on page 2-14 under switchyards, and the access roads discussed on pages 2-15, 2-18, and 2-26, using only paved road emission factors is not appropriate.
S1i	4	4.2.2.1.3.4	4-51	Second Paragraph under section 4.2.2.1.3.4	The second paragraph in this section states, "The EPA has more recently proposed tightening that limit to 70 or 65 ppb". As the limit has been changed to 70 ppb and is in effect (as of October 26, 2015), the Division recommends updating this section with the current standard.

S1e

Chemical nomenclature edited to be consistent in Section 3.2.2.

S1f

BLM Mitigation Measure 1 under Greenhouse Gases in Table 41 (use of alternative fuels other than diesel) and Mitigation Measure 3 (capture and destruction of vapor leaks from storage tanks) are not considered and are not applicable as GHG mitigation for the Proposed Action. Since the Proposed Action involves a variety of large construction vehicles, the opportunity to use alternative fuel vehicles is limited. Some smaller on-road vehicles (e.g., pickup trucks) could use liquefied natural gas, but this would entail construction site storage and shipping of liquefied natural gas to a fueling depot. There are no large and permanent hydrocarbon liquid storage tanks involved in the Proposed Action, so a mechanism to capture/destroy vapor is not applicable. Text to this effect is added to Section 4.2.1.1.1.1.

S1g

Edited Table 4.1 entry to state that construction is distributed throughout the year with more activity anticipated during summer months due to weather constraints, which will have the benefit of reducing contributions to winter season ozone.

S1h

The truck and commuter trips quantified as part of the Proposed Action and No Action alternatives take place on paved roads. While maintenance vehicle trips and intermittent worker trips on unpaved roads will take place, these are a small fraction of the total air emissions due to vehicle traffic. Text to this effect included in the discussion of air emissions in Section 4.2.2.1.3.

S1i

Text in Section 4.3.3.2.3 is edited to reference the updated ozone NAAQS.



COMMENT(S)

RESPONSE(S) - CONTINUED

S1	Colorado Department of Public Health & Environment (cont.)
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Colorado Department of Public Health and Environment, Air Pollution Control Division  
Comments on the Draft Environmental Impact Statement (EIS) for the Enefit American Oil Utility  
Corridor Project

4	4.2.2.1.5	4-53		The Division requests clarification as to how emissions from unpaved roads were calculated or whether they were accounted for. AP-42 Chapter 13.2.1 was referenced for paved roads but no reference was provided for unpaved roads. Since the EIS references the following unpaved roads: Rabbit Mountain road, the existing unpaved road mentioned on page 2-14 under switchyards, and the access roads discussed on pages 2-15, 2-18, and 2-26, using only paved road emission factors is not appropriate.
4	4.2.2.1.5	4-54	Table 4-7	The Division requests clarification as to how emissions from unpaved roads were calculated or whether they were accounted for. AP-42 Chapter 13.2.1 was referenced for paved roads but no reference was provided for unpaved roads. Since the EIS references the following unpaved roads: Rabbit Mountain road, the existing unpaved road mentioned on page 2-14 under switchyards, and the access roads discussed on pages 2-15, 2-18, and 2-26, using only paved road emission factors is not appropriate.
Appendix E		E-10	Table E-10	Suggest finishing last sentence for Note #4 under table E-10. The sentence currently reads, "Total emissions of CH <sub>4</sub> and NO <sub>2</sub> take into" and does not make sense.

S1j

S1j

Table E-10 in Appendix E, edited to provide complete Note 4.





COMMENT(S)

RESPONSE(S)

S2

Utah Public Lands Policy Coordination



State of Utah

GARY R. HERBERT  
Governor

SPENCER J. COX  
Lieutenant  
Governor

Office of the Governor  
PUBLIC LANDS POLICY COORDINATING OFFICE

KATHLEEN CLARKE  
Director

June 14, 2016

Sent via electronic mail: [showard@utah.gov](mailto:showard@utah.gov)

Stephanie Howard  
Environmental Planning Coordinator  
Bureau of Land Management, Vernal FO  
170 South 500 East  
Salt Lake City, Utah, 84078

Subject: Enefit American Utility Corridor Project Draft Environmental Impact Statement

Dear Ms. Howard:

The State of Utah has reviewed the Enefit American Oil Utility Corridor Project Draft Environmental Impact Statement (DEIS) released April 8, 2016. According to UCA 40-8, the Legislature of the State of Utah views mining as "essential to the economic and physical well-being of the State of Utah and the nation." As such, the State favors oil and gas projects as an important addition to the state's economy, while taking prudent steps to protect important environmental values. The State supports the BLM in its conclusion that the Agency Preferred Alternative is the Proposed Action of the DEIS.

The State would like to thank the Bureau of Land Management (BLM) for allowing it to participate in the collaborating stages of the Utility Project DEIS. Please direct any other written questions regarding this correspondence to the Public Lands Policy Coordinating Office at the address below, or call to discuss any questions or concerns.

Sincerely,

  
Kathleen Clarke  
Director

S2a

S2a

Comment noted.

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## **Appendix I4**

### **County**

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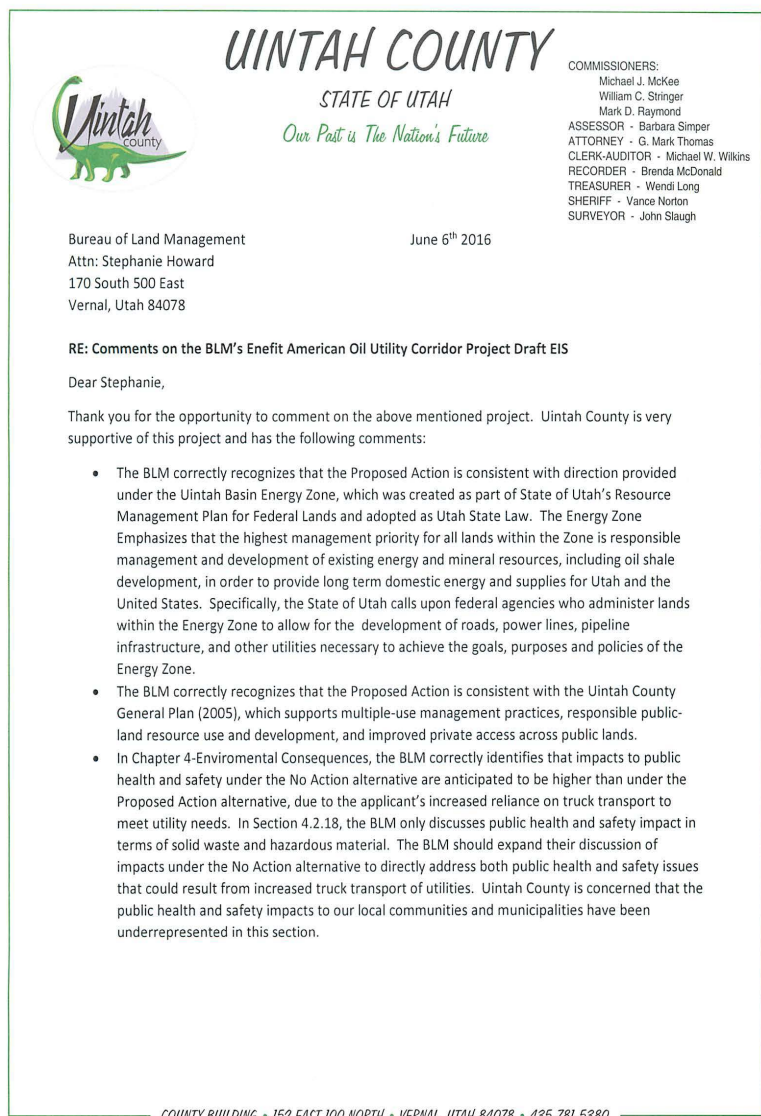


COMMENT(S)

RESPONSE(S)

C1

Uintah County



C1a

C1b

C1c

C1a

Comment noted.

C1b

Comment noted.

C1c

The South Project has been moved to the cumulative impact section for clarity since it is outside of BLM's jurisdiction, and since it will proceed to full buildout regardless of the Decision to be made for the Utility Project. See Section 4.4.3.18. Since the No Action Alternative is to not approve the proposed Utility Project, there will be no accumulation of impacts. However, due to public interest, the BLM created a section in the EIS to describe how the South Project will be built to the extent that the information is known (Section 4.4). In that section, this text has been revised to state "Indirect impacts on public health and safety would result from the increase in tank truck traffic on public roads. The increase in large trucks bringing in supplies and trucking out product would pose a safety risk to the travelling public from an increase in large trucks on already congested roadways, increase risk for accidents, increase potential for spills." Also, see Section 4.3.3.15 for further information regarding Travel Management.

COMMENT(S)

RESPONSE(S)

C1

Uintah County (cont.)

C1d

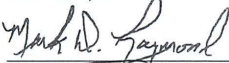
C1e

- Further to the issue of increased truck traffic, in Section 4.2.15.3, the BLM correctly assumes that the No Action alternative would result in "additional wear (and cost of maintenance and repair) on local, state, and federal roads." However, there is no indication of how the BLM arrived at this conclusion. Uintah County is significantly concerned about the added cost of maintenance and improvements to our local roads under the No Action alternative, and the impacts of that alternative to our public works budget and the budgets of those municipalities within our county. The BLM should expound upon this analysis to more clearly establish that the Proposed Action is more advantageous than the No Action alternative.
- The BLM is correct in identifying, in section 4.2.17, that direct socioeconomic impacts as a result of the Utility Corridor Project would be temporary and minimal to our community. The BLM also correctly discloses beneficial indirect and cumulative socioeconomic effects to the region as a result of the South Project in Section 4.2.17.1.2. While the BLM assumes that there is no difference in socioeconomic effects between the Proposed Action and No Action alternatives, it is incumbent upon Uintah County to stress the importance of this project to our local community. The positive effects on employment, purchase of local goods and services, housing development, and re-investment of local taxes into education and healthcare cannot be understated, and it is critical that Enefit American Oil be afforded the best opportunity at successful and responsible economic development of the Utah project. That "best opportunity" is clearly through selection of the Proposed Alternative.

The Proposed Action would advance responsible development of energy and mineral resources in Uintah County in accordance with our plans and goals, as well as those of the State of Utah. Enefit American Oil has proved themselves to be a welcome corporate citizen in our community, and they have taken our concerns into account as they continue to develop the Utah oil shale project. This project has the potential to represent a significant source of jobs and economic development in our region. The No Action alternative would present unnecessary impacts, and infrastructure maintenance costs due to added trucks on our public roads supplying utilities. The No Action alternative offers no clear benefit over the Proposed Action; thus, the BLM should approve the utility rights-of-way.

Sincerely,

Uintah County Commission



Mark D. Raymond, Chairman



Michael J. McKee



William C. Stringer

C1d

See the response to Comment C1c. The text in Section 4.4.3.15.2 revised to say "As identified in the POD, truck traffic is anticipated...." This information was used to estimate the increase in truck travel.

C1e

The BLM recognizes the county's concern. The South Project will proceed to full buildout regardless of the alternative selected in the Utility Project.

## **Appendix I5**

### **Cities and Towns**

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COMMENT(S)

RESPONSE(S)

CT1	Town of Rangely
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**From:** [kbuckner@blm.gov](mailto:kbuckner@blm.gov) on behalf of [Vernal Comments, BLM UT](#)  
**To:** [Dana Holmes](#); [ryan.clerico@enefit.com](mailto:ryan.clerico@enefit.com)  
**Subject:** Fwd: FW: Enefit - Utility Corridor Project - Town of Rangely, CO  
**Date:** Tuesday, June 14, 2016 1:48:29 PM

----- Forwarded message -----  
 From: **Peter Brixius** <[pbrixius@rangelyco.gov](mailto:pbrixius@rangelyco.gov)>  
 Date: Tue, Jun 14, 2016 at 1:22 PM  
 Subject: FW: Enefit - Utility Corridor Project - Town of Rangely, CO  
 To: "[blm\\_ut\\_vernal\\_comments@blm.gov](mailto:blm_ut_vernal_comments@blm.gov)" <[blm\\_ut\\_vernal\\_comments@blm.gov](mailto:blm_ut_vernal_comments@blm.gov)>

Peter Brixius  
 Town Manager  
 Rangely, Colorado  
 209 E. Main Street  
 Rangely, CO 81648  
 (970) 675-8476  
[pbrixius@rangelyco.gov](mailto:pbrixius@rangelyco.gov)

ENEFIT AMERICAN OIL UTILITY CORRIDOR PROJECT

After attending the Public Comment meeting in Rangely on May 4<sup>th</sup> of this year, it was impressed upon the Town of Rangely that this project would be a substantial benefit for many reasons:

1. Enefit has shown that their company is a committed, tenacious and environmentally conscience energy company.
2. The corridors that Enefit requires for the transportation of their products and utilities to the site will have a negligible impact to the environment, while providing a potential 2000 FTE's in an area already hard hit by energy extraction contraction.
3. This application has been patiently processed and all aspects of environmental impact to

CT1	COMMENT(S)	RESPONSE(S)
	<p><b>Town of Rangely (cont.)</b></p> <p>CT1a [ air, land and water have been evaluated for the areas being proposed. The area that Enefit has been operating is consistent with the types of activities occurring in the general vicinity and should not be a burden to residents in the area, which are few.</p> <p>CT1b [ 4. The alternative to the approval of the right-of-ways for the electricity, water, gas and product is less desirable for the area and has the potential of making the local roads a much more congested and potentially less safe alternative.</p> <p>5. Action by the BLM on these corridors will benefit wildlife, transportation safety and the company and its employees.</p> <p>CT1c [ Rangely, Colorado whole-heartedly supports the application related to UTILITY CORRIDOR PROJECT DRAFT ENVIRONMENTAL IMPACT STATEMENT.</p> <p>Thank you for your consideration of this extremely important project for Colorado and Utah.</p> <p><i>Peter Brixius - Town Manager</i></p> <p><i>209 E. Main Street</i></p> <p><i>Rangely, CO 81648</i></p> <p><i>(970) 675-8476</i></p> <p><i>Cell: (970) 589-5547</i></p> <hr/> <p>This email has been scanned by the Symantec Email Security.cloud service. For more information please visit <a href="http://www.symanteccloud.com">http://www.symanteccloud.com</a></p>	<p>CT1a [ Comment noted.</p> <p>CT1b [ The South Project has been moved to the cumulative impact section for clarity since it is outside of BLM's jurisdiction, and since it will proceed to full buildout regardless of the Decision to be made for the Utility Project. See Section 4.4.3.18. Since the No Action Alternative is to not approve the proposed Utility Project, there will be no accumulation of impacts. However, due to public interest, the BLM created a section in the EIS to describe how the South Project will be built to the extent that the information is known (Section 4.4). This includes estimations about traffic impacts and human health hazards.</p> <p>CT1c [ Comment noted.</p>

## **Appendix I6**

# **Nongovernmental Organizations**

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## COMMENT(S)

## RESPONSE(S)

N1

Conservation Colorado, Western Colorado Congress, Great Old  
Broads for Wilderness

**\*\*CONSERVATION COLORADO\*\*WESTERN COLORADO CONGRESS\*\*GREAT  
OLD BROADS FOR WILDERNSS\*\***

June 10, 2016

Ms. Ester McCullough, Field Office Manager  
Bureau of Land Management, Vernal Field Office  
170 South 500 East  
Vernal, UT 84078;  
Email: [BLM\\_UT\\_Vernal\\_Comments@blm.gov](mailto:BLM_UT_Vernal_Comments@blm.gov)

**RE: BLM Should Adopt the “No Action Alternative” for the Enefit American Oil Utility  
Corridor Project, Uintah County, Utah**

Dear Manager McCullough:

The undersigned groups, representing tens of thousands of our Colorado members and supporters, submit these comments on the draft Environmental Impact Statement (EIS) for the Enefit American Oil Utility Corridor Project, Uintah County, Utah. BLM is proposing to approve three pipeline rights-of-way, a right-of-way for a 138-kV power line, and a right-of-way grant to pave and widen an existing road for the purpose of permitting a foreign company, Enefit, to strip-mine 9,000 acres of land and build a half-square-mile processing facility for the company's "South Project" in the remote Book Cliffs. That facility would process up to one billions gallons of petroleum from oil shale over a 30-year period.

For the reasons set forth below, we oppose granting Enefit any rights-of-way, and urge BLM to adopt the “no action” alternative, and request that BLM address critical issues omitted in the draft EIS.

Climate change. Climate change is a significant threat to the environment and quality of life of Coloradans. Some of the impacts already being felt in Colorado include shorter winters, reduced snowpack, more frequent flooding, longer and more intense outbreaks of pests and disease impacting forests, and longer fire seasons. Given these impacts to Colorado, and across the globe, it is imperative that the federal government take action to reduce our dependence on fossil fuels.

Providing a subsidy of federal lands and easy access to electricity, water, natural gas, and pipelines to ship the product to market will make it more likely that Enefit's project will be built and operated for decades. Enefit itself admits that the process it will use to transform oil shale into shale oil could require nearly 40% more carbon to produce a given unit of energy than conventional oil. Simply put, in a world that must move rapidly to reduce carbon emissions, the BLM should not be locking in decades of pollution from dirtier, unconventional fossil fuel.

Further, BLM's analysis of the climate change impacts of the project fails to disclose the impacts of either the South Project itself or of the downstream impacts of combustion of the billion gallons of fuel Enefit hopes to produce from the South Project. Any Final EIS must address these omissions.

N1a

1

N1a

The BLM has no jurisdiction over the South Project. In addition, the South Project downstream product combustion is not necessary for a reasoned choice between alternatives in this EIS for the purposes of NEPA because the South Project will continue to full buildout regardless of the BLM decision on the Utility Project. However, certain South Project effects have been included in the cumulative effects analysis of the EIS to the degree that those effects accumulate with the effects of the Proposed Action. Where the effects are unknown, the best available info has been included in the EIS, and the procedures in 40 CFR 1502.22 have been followed.

COMMENT(S)

RESPONSE(S)

N1

Conservation Colorado, Western Colorado Congress, Great Old Broads for Wilderness (cont.)

N1b

Air Quality. The South Project is located in Utah less than five miles from the Colorado border. Prevailing winds will certainly send air pollution from the South Project into Colorado. Some Colorado communities, including Rangely and Grand Junction, are already flirting with the new limit for non-attainment for ozone. Pollution from the South Project threatens the health of Colorado residents and could push these communities into non-attainment, which could cause a host of economic consequences in addition to public health issues in local NW CO communities.

The draft EIS contains no information at all concerning the potential air quality impacts of the South Project. Instead, BLM puts off any analysis of the air quality impacts until an EPA permitting process, years after the EIS process is complete. This is wrong. Such an approach deprives Colorado communities of understanding the threats to public health posed by the South Project *before* BLM commits to subsidizing its construction. Further, while Enefit claims that it cannot predict the precise nature of the retort and other facilities it intends to build until after BLM decides on the company's rights-of-way, Enefit touts the technology it will use as "proven." It also projects the number of people the South Project will employ, the precise amount of water to be withdrawn for the project, and other impacts. Enefit and BLM can make reasonable projections concerning air quality impacts based on Enefit's current operations and its pending proposal, just as the draft EIS does for impacts to other resources. BLM cannot ignore one of the most significant impacts – most of which will be felt in Colorado – by pretending ignorance or uncertainty.

Adopt the No Action Alternative. The climate and air impacts of the South Project that the rights-of-way will service are enough for BLM to find this proposal to be not in the public interest and to adopt the "no action" alternative. The South Project will also result in the consumption of vast amounts of water, threatening imperiled Colorado River fish that inhabit Colorado as well as Utah, which could impact water uses in Colorado.

BLM has deferred to Enefit's assertion that the approving five rights-of-way across public land is environmentally preferable because Enefit threatens to build the South Project even without the public lands rights-of-way. This is a specious and spurious argument given current and future projected market conditions and popular national opinions towards combatting climate change.

The fact is, without the rights-of-way, Enefit will be forced to: find an alternate source for hundreds of millions of gallons of water; transport produced fuel using hundreds of truck trips a day over a dirt road that it will have to maintain; and build its own power-plant on-site. The level of investment to build and maintain such an operation without heavy subsidies has not been demonstrated as feasible in the context of oil shale development. In the case of this project, a foreign corporation utilizing a completely unproven technology is asking for a suite of shortcuts and handouts from the American public to help facilitate the development of one of the dirtiest fossil fuels known to man. The reality is that the more expensive the South Project is to develop, the less likely it is that it will ever be constructed, as the project will be even more unlikely to be a profitable endeavor. The draft EIS should acknowledge this reality and use the rationale that BLM is not in the business of underwriting the development of climate-destroying fossil fuels as justification for the no-action alternative being the proposed action in the final EIS.

Again, we urge BLM to adopt the no-action alternative in the Final EIS due to the aforementioned reasons and we thank BLM for the opportunity to provide comment.

N1b

The BLM has no jurisdiction over the South Project. In addition, potential air quality impacts of the South Project are not necessary for a reasoned choice between alternatives in this EIS for the purposes of NEPA because the South Project will continue to full buildout regardless of the BLM decision on the Utility Project. However, South Project effects have been included in the cumulative effects analysis of the EIS to the degree that those effects accumulate with the effects of the Proposed Action. Where the effects are unknown, the best available info has been included in the EIS, and the procedures in 40 CFR 1502.22 have been followed. As disclosed in the EIS, it is believed that the emissions from the South Project will exceed EPA monitoring minimum thresholds.

**COMMENT(S)**

**RESPONSE(S)**

<b>N1</b>	<b>Conservation Colorado, Western Colorado Congress, Great Old Broads for Wilderness (cont.)</b>
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Sincerely,

Luke Schafer  
Western Slope Advocacy Director  
Conservation Colorado  
529 Yampa Ave.  
Craig, CO 81625

Rien van West  
President  
Western Colorado Congress  
134 N 6th St  
Grand Junction, CO 81502

Sherry Schenk  
Grand Junction Area Broadband coleader  
Great Old Broads for Wilderness  
Grand Junction, CO

COMMENT(S)

RESPONSE(S)

N2

Earth Justice



May 12, 2017

Mr. Ed Roberson, Director  
Ms. Anita Bilbao, Associate State Director  
Bureau of Land Management, Utah State Office  
440 West 200 South, Suite 500  
Salt Lake City, UT 84101-1345  
Email: [eroberso@blm.gov](mailto:eroberso@blm.gov); [abilbao@blm.gov](mailto:abilbao@blm.gov)

**Re: BLM Must Evaluate in a Single EIS Enefit's Rights-of-Way Applications and Utah's In Lieu Selection of a Parcel Surrounded by Enefit Lands**

Dear Mr. Roberson and Ms. Bilbao:

The Bureau of Land Management (BLM) is currently reviewing two proposals, either sponsored by or pressed for by Enefit American Oil (Enefit), that are located adjacent to one another and that have the same purpose: facilitating Enefit's development of an oil shale mining and refining operation on the company's private land.

On behalf of Southern Utah Wilderness Alliance, Grand Canyon Trust, Western Resource Advocates, Center for Biological Diversity, Natural Resources Defense Council, Sierra Club and the Sierra Club's Utah Chapter, we write to urge you to comply with the National Environmental Policy Act (NEPA) by analyzing these two projects together in a single environmental impact statement (EIS).

Earlier this year, we became aware that the state of Utah had submitted to BLM an application for in lieu selection for a parcel of BLM land surrounded by land owned by Enefit. BLM is currently reviewing the State's proposal. The moving force behind the application is Enefit, which hopes state ownership will make it easier for the company to mine oil shale on some or all of the parcel.

BLM's review of this proposal is occurring at the same time as its review of Enefit's application for rights-of-way to facilitate oil shale mining and processing on private land directly adjacent to the parcel the state of Utah seeks to obtain title to. The proposed rights-of-way will impact BLM lands in close proximity to the in-lieu parcel Utah seeks to acquire.

The purpose of both proposals is the same: to facilitate Enefit's South Project. The two proposals are therefore "interdependent parts of a larger action and depend on the larger action for their justification." 40 C.F.R. § 1508.25(a)(1)(iii). They will also cumulatively have significant impacts on related or the same resources. *Id.* § 1508.25(a)(2). They are also "similar actions" that involve common timing and geography. *Id.* § 1508.25(a)(3). For these reasons, the two actions meet NEPA's definition of both "connected actions" and "cumulative actions" that must be addressed in a single EIS.

ROCKY MOUNTAIN 633 17<sup>TH</sup> STREET, SUITE 1600 DENVER, CO 80202  
T: 303.623.9466 F: 303.623.8083 [RMOFFICE@EARTHJUSTICE.ORG](mailto:RMOFFICE@EARTHJUSTICE.ORG) [WWW.EARTHJUSTICE.ORG](http://WWW.EARTHJUSTICE.ORG)



## COMMENT(S)

## RESPONSE(S)

N2

## Earth Justice (cont.)

We therefore respectfully request that BLM address both actions together in the same EIS. The most efficient way to accomplish this required outcome would be to issue a supplemental draft EIS on the rights-of-way project that, for the first time, would address the potential impacts of the two projects together.

**I. NEPA REQUIRES AGENCIES TO ADDRESS “CONNECTED,” “CUMULATIVE” AND “SIMILAR” ACTIONS IN A SINGLE NEPA DOCUMENT.**

**A. NEPA Requires Agencies to Address “Connected Actions” in a Single NEPA Document.**

Regulations implementing NEPA define “connected actions” as those that “are closely related and therefore should be discussed in the same impact statement.” 40 C.F.R. § 1508.25(a)(1). Actions are connected if they “[a]re interdependent parts of a larger action and depend on the larger action for their justification.” *Id.* § 1508.25(a)(1)(iii).<sup>1</sup> Further, “[p]roposals or parts of proposals which are related to each other closely enough to be, in effect, a single course of action shall be evaluated in a single impact statement.” *Id.* § 1502.4(a).

An agency must consider all “connected actions” in a single EIS. *Great Basin Mine Watch v. Hanks*, 456 F.3d 955, 968-69 (9th Cir. 2006). *See also Kleppe v. Sierra Club*, 427 U.S. 390, 399 (1976) (a single environmental review document is required for distinct projects when there is a single proposal governing the projects); *Alpine Lakes Prot. Soc’y v. U.S. Forest Serv.*, 838 F. Supp. 478, 482 (D. Wash. 1993) (“In its use of the word ‘shall,’ 40 C.F.R. § 1508.25 makes mandatory the consideration of connected, cumulative, and similar actions by an agency when determining the scope of an EIS.”); *Klamath-Siskiyou Wildlands Ctr. v. Bureau of Land Mgmt.*, 387 F.3d 989, 998 (9th Cir. 2004) (“[p]roposals or parts of proposals which are related to each other closely enough to be, in effect, a single course of action shall be evaluated in a single impact statement”); *Utahns for Better Transp. v. United States Dep’t of Transp.*, 305 F.3d 1152, 1182 (10th Cir. 2002), modified in part on other grounds, 319 F.3d 1207 (2003). The “purpose of this requirement is to prevent an agency from dividing a project into multiple actions, each of which individually has an insignificant environmental impact, but which collectively have a substantial impact.” *Great Basin Mine Watch*, 456 F.3d at 969 (quotation marks omitted).

The Tenth Circuit utilizes an “independent utility test in which it concludes that projects that have independent utility are not connected actions under 40 C.F.R. § 1508.25(a)(1)(iii).” *Citizens’ Comm. to Save Our Canyons v. U.S. Forest Serv.*, 297 F.3d 1012, 1029 (10th Cir. 2002) (citations & quotations omitted). Where projects are interdependent, they must be reviewed together. *Id.* at 1028; *see also Thomas v. Peterson*, 753 F.2d 754, 758-59 (9th Cir. 1985) (finding agency must analyze road construction project and timber sales together because “[i]t is clear that the timber sales cannot proceed without the road, and the road would not be

<sup>1</sup> CEQ regulations provide three definitions of connected actions, of which the “interdependent parts” definition is one. The three definitions are to be read disjunctively. *See Blue Ocean Pres. Soc. v. Watkins*, 754 F. Supp. 1450, 1457 (D. Haw. 1991) (“The case law interpretations of the regulation have been consistent with this, having treated the separate subsections as sufficient conditions, not necessary conditions.”).

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### Earth Justice (cont.)

built but for the contemplated timber sales.”). The Ninth Circuit has required the Forest Service to prepare a single EIS for multiple post-fire timber sales that were planned in response to the same fire and located in the same watershed. *Blue Mountains Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1214-15 (9th Cir. 1998).

B. NEPA Requires Agencies to Address “Cumulative Actions” in a Single NEPA Document.

NEPA regulations further require that agencies “shall” consider in a single EIS “[c]umulative actions, which when viewed with other proposed actions have cumulatively significant impacts and should therefore be discussed in the same impact statement.” 40 C.F.R. § 1508.25(a)(2). “[C]umulative actions must be considered together to prevent an agency from dividing a project into multiple actions, each of which individually has an insignificant environmental impact, but which collectively has a substantial impact.” *Wetlands Action Network v. United States Army Corps of Eng’rs*, 222 F.3d 1105, 1118 (9th Cir. 2000) (internal quotations omitted). Courts have held that “where several foreseeable similar projects in a geographical region have a cumulative impact, they should be evaluated in a single EIS.” *City of Tenakee Springs v. Clough*, 915 F.2d 1308, 1312 (9th Cir. 2001). See also *N. C. Alliance for Transp. Reform, Inc. v. U.S. Dep’t of Transp.*, 151 F. Supp. 2d 661, 684-85 (D. N.C. 2001) (ordering agency to consider in a single EIS two separate halves of a highway beltway proposal, because the two will have cumulative impacts); *Wash. Trails Ass’n v. U.S. Forest Serv.*, 935 F. Supp. 1117, 1122 (W.D. Wash. 1996) (finding agency violated NEPA when it failed to consider in a single EIS multiple proposed actions involving trails that could connect).

C. NEPA Encourages Agencies to Address “Similar Actions” in a Single NEPA Document.

NEPA regulations mandate that in evaluating the scope of an EIS, agencies “shall consider” “[s]imilar actions, which when viewed with other reasonably foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their environmental consequences together, such as common timing or geography. An agency may wish to analyze these actions in the same impact statement. It should do so when the best way to assess adequately the combined impacts of similar actions or reasonable alternatives to such actions is to treat them in a single impact statement.” 40 C.F.R. § 1508.25(a)(3).

II. **ENEFIT’S PROPOSED RIGHTS-OF-WAY AND THE IN LIEU SELECTION ARE “CONNECTED ACTIONS,” “CUMULATIVE ACTIONS” AND “SIMILAR ACTIONS” THAT MUST BE ADDRESSED IN THE SAME EIS.**

A. Enefit’s Proposed Rights-of-Way.

In 2012 and 2013, Enefit American Oil submitted applications to BLM seeking authorization to construct and operate 19 miles of water supply pipeline, 9 miles of natural gas supply pipeline, 11 miles of oil product line, 30 miles of single or dual overhead 138-kilovolt (kV) H-frame powerlines, and 6 miles of Dragon Road upgrade and pavement across BLM- and State-administered lands managed by the BLM Vernal Field Office. BLM, Draft Environmental Impact Statement for the Enefit American Oil Utility Corridor Project (April 2016) at ES-1

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(Utility Project DEIS).<sup>2</sup> “The Utility Project area is located in the southern portion of Township 8-10 South, Range 24-25 East, Salt Lake Meridian, in Uintah County, Utah, approximately 12 miles southeast of Bonanza, Utah.” *Id.*

The purpose of the rights-of-way is to facilitate the construction of a massive mining and oil shale processing facility on thousands of acres of land owned by Enefit. The Utility Project would allow access to utilities and move processed oil from Enefit’s South Project. “The South Project is a non-federal connected action and would include development of a 7,000- to 9,000-acre commercial oil shale mining, retorting, and upgrading operation in Uintah County. The South Project is anticipated to produce 50,000 barrels of oil per day at full build out for a period of up to 30 years utilizing oil shale ore rock mined from Enefit’s private property holdings.” Utility Project DEIS at ES-1.

The rights-of-way will impact the environment through the construction of facilities and the disturbance of habitat, soils, vegetation and other resources on BLM land adjacent to Enefit’s private property. *See generally* Utility Project DEIS, Chapter 4. The approval of the rights-of-way has the potential to “result in both direct and indirect impacts on greater sage-grouse habitat,” as well as habitat for the imperiled plants, including the White River and Graham’s penstemon. *Id.* at 4-97 (sage grouse); ES-21 – ES-22 (penstemon). The rights-of-way also have the purpose and effect of making possible Enefit’s private land development of the South Project.

The rights-of-way “Project Study Area” includes Enefit’s private land upon which the company plans to build the South Project, as well as a 440-acre, Z-shaped parcel of BLM land that is entirely surrounded by Enefit’s private land. The Z-parcel is located near the northwest corner of Township 11 South, Range 25 East, Salt Lake Meridian, in Uintah County, Utah, less than two miles to the southwest of the southern terminus of the five rights-of-way. *See* Utility Project DEIS at 1-3 (Map 1-1).

BLM initiated public scoping on the rights-of-way applications on July 1, 2013. 78 Fed. Reg. 39,313 (July 1, 2013). The agency published a draft EIS in the spring of 2016, and allowed the public 60 days to comment on the draft. 81 Fed. Reg. 20,671 (April 8, 2016). BLM has not yet completed a final EIS on the project. The project is located entirely within the external boundaries of the Uintah and Ouray Reservation (a fact never once explicitly mentioned in the draft EIS).

B. The State of Utah’s In-Lieu Selection of the Z-Parcel.

On August 29, 2013, the state of Utah filed with BLM a “Petition for Classification/State Application for Indemnity Selection” for the 440-acre Z-parcel of BLM land that is completely surrounded by Enefit’s private property. The State is seeking ownership of this parcel at the behest of Enefit, to which the State intends to lease the land for oil shale mining as part of Enefit’s operation for the South Project.

<sup>2</sup> Available at [https://eplanning.blm.gov/epl-front-office/projects/nepa/37462/71941/78940/Enefit\\_American\\_Oil\\_Utility\\_Corridor\\_Project\\_Draft\\_EIS.pdf](https://eplanning.blm.gov/epl-front-office/projects/nepa/37462/71941/78940/Enefit_American_Oil_Utility_Corridor_Project_Draft_EIS.pdf) (last visited May 12, 2017).

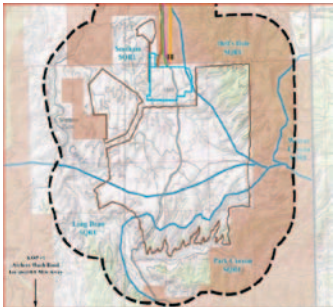
COMMENT(S)

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N2	Earth Justice (cont.)
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In-lieu selections allow the State to obtain federal property in lieu of lands that the State was entitled to obtain at statehood. Utah was entitled to obtain 4 sections (mile square parcels) for each township (6 mile by 6 mile squares) of federal land, but some of the lands the state was entitled to were already held in federal “reservations” (including tribal reservations and military posts) or were otherwise unavailable. To make up for this deficit, federal law and regulations permit the State to “select” a parcel of federal lands (with some restrictions) of equal value. 43 U.S.C. §§ 851, 852; 43 C.F.R. Part 2621.

The BLM parcel that the State has proposed to select is the Z-shaped beige area on the upper left of the map below. The white area is Enefit’s private land.



Map 1. From Map A-9b, BLM, Draft EIS, Enefit Right of Way Project (2016). Dark beige indicates BLM-owned land. Dark brown lines indicate Enefit’s mine site area. The dotted black line is the utility right-of-way “project study area.”

Despite the fact that the state of Utah submitted its application for selection of the Z-parcel more than two years before preparation of the Enefit Utility Corridor Project draft EIS, the draft nowhere mentions Utah’s proposal to take title to the Z-parcel.

Rather than analyze the in-lieu selection project in the Utility Project DEIS, BLM has decided to analyze it as a separate and distinct project under NEPA. See generally BLM, Proposed Classification of Public Lands for State Indemnity Selection (IL 333) Surface and Mineral Estate, DOI-BLM-UT-G010-2014-0142-EA, available at <https://eplanning.blm.gov/epl-front-office/eplanning/projectSummary.do?methodName=renderDefaultProjectSummary&projectId=39206> (last viewed May 12, 2017). BLM staff indicated that the agency may release an EA in the summer of 2017, while the BLM is still considering Enefit’s rights-of-way applications.

1. The Purpose of the State’s Selection of the Z-Parcel Is to Facilitate Oil Shale Development as Part of the South Project.

As with the applications for rights-of-way, Enefit is the driving force behind Utah’s selection of the parcel. Records show that SITLA is working with, and at the behest of, Enefit in attempting to transfer the land from BLM to Utah so that the state can lease the land to Enefit for oil shale

BLM agrees that both the Utility Project and the Z-parcel may further Enefit’s purposes by increasing the value of or streamlining the development of the South Project. However, the purpose and need of a NEPA document is always federal, not private. BLM has no common purpose for the Z-parcel and the Utility Project. Each is simply an external application to which BLM must respond. The Enefit Utility Project involves the five rights-of-way (three pipelines, 1 power line, and road) that would supply utilities to Enefit’s private property southeast of the RD&D leasehold. The Utility Project is being considered in accordance with the 43 CFR 2800 regulations. The proposed state indemnity selection would involve the transfer of a BLM-managed z-shaped parcel (lands and minerals) to the State of Utah in accordance with the provisions of Sections 2275 and 2276 of the Revised Statutes, as amended (43 U.S.C. 851, 852). The Utility Project’s proposed features are 1 mile east of the Z-parcel. No Utility Project spurs to the Z-parcel are planned or proposed. The Utility Project and the Z-parcel NEPA each are proceeding through their process regardless of the status of the other project. Therefore, these projects do not have a direct relationship, as demonstrated by the different authorities under which they would be approved, their different locations, and their independent time frames.

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mining as part of the company's South Project. Over a four-year period, Enefit repeatedly contacted SITLA staff to pressure BLM to move forward with the in-lieu selection process.

Enefit and SITLA repeatedly refer to the parcel's selection as part of Enefit's mine plan. Enefit GIS data from 2013 identify the Z-parcel as part of Enefit's 'preliminary mine site area.' Comparing the map below with that published in the 2016 rights-of-way EIS shows that the EIS map omits from the proposed mine site the southeast portion of Z-parcel Enefit identified in 2013 as part of the mine site.



Map 2. From admin. record, *Rocky Mountain Wild v. Walsh*, 1:15-cv-00615-WJM (D. Colo.), page 27,042. Light purple areas are labeled "EAO PrelimMineSiteArea\_04082013." Note mine site overlap with the Z-parcel, not shown in Map 1.

Enefit staff refer to SITLA's acquisition of the parcel as "part of our project" and part of "our mine plan."<sup>3</sup> SITLA staff, in a memo explaining the in-lieu selection to the agency's board,

<sup>3</sup> E-mail of R.L. Hrenko-Browning, Enefit to J. Andrews, SITLA (June 6, 2016 1:13 PM) [SITLA GRAMA production at page D208-036] ("Just wanted to let you know that I will meet with the [Utah congressional] delegation in DC this week and will mention the Z parcel as *part of our project update*" (emphasis added)) (attached as Ex. 1); E-mail of R.L. Hrenko-Browning, Enefit to J. Andrews, SITLA (June 13, 2016 10:39 AM) [SITLA GRAMA production D208-037] (discussing PowerPoint Hrenko-Browning will present to SITLA's board, stating "I will present Enefit, our activities, and how the Z parcel fits into our mine plan...." (emphasis added)) (attached as Ex. 2); E-mail of R.L. Hrenko-Browning, Enefit to J. Andrews, SITLA (June 16, 2016 4:47 PM) [SITLA GRAMA production page D208-038] (complaining about BLM's unwillingness to accept certain parcels for mitigation, and stating "[l]ets [sic] make a decision after the BLM call, but try to keep moving forward so that we have some hope of being able to include this parcel in our mine plan (or at least can make an informed decision to remove it in a timely manner." (emphasis added)) (attached as Ex. 3); E-mail of J. Andrews, SITLA to J. Lekas, *et al.*, SITLA Board (May 11, 2016 5:02 PM) [SITLA GRAMA production page D208-

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make clear that the in-lieu selection is meant to further Enefit's South Project mining operation, the same purpose as the rights-of-way:

Continued BLM ownership of the parcel would negatively impact the efficiency [sic] of [Enefit's] mine plan. [Enefit] approached SITLA about acquiring this parcel (called the "Z Parcel" due to its shape) so that it could be leased by [Enefit] to support its mining operation....

SITLA selected the Z Parcel because of its ability to support a mining project that includes other SITLA lands (see map); the ability to sell the surface to [Enefit] for cash; and the opportunity to acquire an estimated 49.3 million barrels of kerogen at what we believe will be a low cost to the trust.<sup>4</sup>

BLM also understands that the in-lieu parcel's selection is related to oil shale development because SITLA has told BLM as much. In a 2015 e-mail exchange, BLM assumes that the purpose of the parcel's selection is to facilitate oil shale production, but asks SITLA to provide more detail.<sup>5</sup> In response, SITLA describes the in-lieu selection's purpose as related to mining on Enefit's private parcel, and tied to the proposed rights-of-way.

BLM needs to know what SITLA is planning to do with the property once we acquire it. You can basically use the following: "Upon acquisition of the subject property, SITLA intends to lease it to Enefit American Oil (EAO) for long-term future mineral development and ancillary surfaces uses, subject to terms and conditions provided by mine plan approvals issued by Utah DOGM, and consistent with proposed operations plans submitted by EAO to BLM in

047] ("The memo and attachments relate to a proposed in-lieu selection *associated with Enefit's oil shale proposal in Uintah County*." (emphasis added)) (attached as Ex. 4).

<sup>4</sup> Memo of John Andrews, SITLA to Land Exchange Committee & SITLA Board of Trustees (May 11, 2016) [SITLA GRAMA production pages D208-048-49] (attached as Ex. 5).

<sup>5</sup> E-mail of R. Rymerson, BLM to J. Andrews, SITLA (Aug. 26, 2015 5:30 PM) [SITLA GRAMA production page D208-0115] ("Our NEPA team does not have an actual proposal from SITLA. We do have a one page description created by the BLM that summarizes what we think is the proposal but nothing definitive from SITLA. The EA assumes that certain resources will be impacted because the land will eventually become part of the oil shale development. If this is true, the EA is essentially complete but we need a proposal from SITLA stating this intent and including some details as to development, etc. If this is not the intent of SITLA for the parcel, we need to know what is reasonably foreseeable as intended use so the EA reflects those (potentially different) impacts to resources on the parcel.") (attached as Ex. 6). See also E-mail of L. Hunsaker, Utah to C. Cox, BLM (May 20, 2014) [SITLA GRAMA production page D208-0133] (State of Utah official telling BLM staffer characterizing the in-lieu selection: "its [sic] an oil shale transfer") (attached as Ex. 7).

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N2

Earth Justice (cont.)

N2b

connection with pending ROW approvals.” - or something like that. I assume you all know Enefit’s general plan, and I would just paste that in.<sup>6</sup>

2. The Environmental Impacts of the State’s Selection of the Z-Parcel May Include Harm to Imperiled Wildlife and Plants.

Enefit’s private property contains occupied habitat for several imperiled plants, including the White River and Graham’s penstemon, within 1-3 miles of the Z-parcel. See Utility Project DEIS, Appendix A, Map A-5b. The newspaper advertisement making public Utah’s selection of the Z-parcel stated:

Two issues taken under consideration in this proposed classification are the potential effects from this action to (1) the greater sage grouse (*Centrocercus urophasianus*) habitat, and (2) Graham’s beardtongue (*Penstemon grahamii*) and White River beardtongue (*Penstemon scariosus* var *albifluvis*) habitat.

Vernal Express, Legal Notice, Proposed Classification of Public Lands for State Indemnity Selection (IL 333) UTU-9009 (May 13, 2014) (attached as Ex. 9).

Penstemon. The 2014 newspaper notice explains:

Regarding the impacts on the beardtongue range, approximately 6.9 acres of the land located in the southwest corner of the In Lieu Parcel is currently proposed as critical habitat for the White River beardtongue. This represents less than one-tenth of a percent (0.1%) of the total critical habitat proposed for the White River beardtongue. No critical habitat for Graham’s beardtongues is proposed on the In Lieu Parcel. Although neither Graham’s nor White River beardtongues are currently known to occur within the In Lieu parcel, this parcel contains potential habitat for both species and should be surveyed prior to disposal to confirm[] species’ presence or absence. In addition, the BLM is currently a partner in developing a conservation agreement for both of these species. The BLM will further examine these issues through the public review process. Consultation with the USFWS will occur in conjunction with the NEPA process prior to a final classification decision.

*Id.* BLM’s November 2016 checklist of tasks necessary before the parcel can be transferred confirms that: “beardtongue surveys will need to be conducted during the flowering period which begins in May [2017].” BLM, In-Lieu (Indemnity) Selection Process, Processing Steps (Nov. 2, 2016) at 2 [SITLA GRAMA production page D208-010 – 011] (attached as Ex. 10).

Greater Sage-Grouse. The Z-parcel includes habitat for sage grouse that would be degraded or eliminated by planned oil shale development. BLM apparently delayed the initial environmental review of the selection process until the completion of the sage grouse RMP amendments

<sup>6</sup> E-mail of J. Andrews, SITLA to R. Rymerson, BLM (Aug. 26, 2015 6:18 PM) [SITLA GRAMA production page D208-0116] (emphasis added) (attached as Ex. 8).

N2b

Impacts on resources of concern from development of the Z-parcel may accumulate with the Proposed Action, and are disclosed qualitatively in the EIS cumulative impact section wherever mining impacts are discussed.

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## Earth Justice (cont.)

because the parcel includes sage grouse habitat.<sup>7</sup> For example, a Utah Division of Wildlife Resources biologist has suspected the existence of a lek on the Z-parcel.<sup>8</sup>

Further, the sage grouse amendments to the applicable resource management plan (RMP) for the area designate the Z-parcel as “GHMA” (general habitat management area), which means that BLM must retain the property unless certain conditions are met. Specifically, “Lands classified as ... GHMA ... will be retained in federal management unless: (1) the agency can demonstrate that disposal of the lands, including land exchanges, will provide a net conservation gain to the [greater sage grouse] or (2) the agency can demonstrate that the disposal of the lands, including land exchanges, will have no direct or indirect adverse impact on conservation of the [greater sage-grouse].” BLM, Approved Resource Management Plan Amendment, Utah Sage Grouse (Sep. 2015) at 2-35.<sup>9</sup> Any transfer of the Z-parcel to SITLA would have to comply with this RMP provision to mitigate the impacts due to the loss of sage grouse habitat.

C. The Two Proposals Are Connected Actions.

The rights-of-way applications and the transfer of the Z-parcel to the state of Utah are “interdependent parts of a larger action and depend on the larger action for their justification.” 40 C.F.R. § 1508.25(a)(1)(iii). Both of the proposals are a part of Enefit’s proposed South Project, and both depend upon the South Project for their justification. Enefit proposed the rights-of-way to facilitate its oil shale strip mining and processing facility; the company considers the parcel to be part of its mine plan; and the company is the moving force behind SITLA’s application for the Z-parcel, because the company intends to mine at least part of the parcel.

Enefit has recognized that the rights-of-way project are interrelated and interdependent, which led the company to express concern that the two NEPA processes may be “confuse[d]” by BLM.<sup>10</sup> In one e-mail to SITLA, an Enefit staffer discloses that Enefit does not want BLM’s

<sup>7</sup> E-mail of J. Andrews, SITLA to R.L. Hrenko-Browning, Enefit (Aug. 1, 2014 2:24 PM) [SITLA GRAMA production page D208-126] (“I received a call earlier in the week from Vicki Wood, BLM Vernal (435-781-4472). She indicated that word had come down from the State Office that because the selection is sage grouse habitat, the [in-lieu selection] EA should not be completed until the Sage Grouse RMP EIS was completed....”) (attached as Ex. 11).

<sup>8</sup> E-mail of J. Andrews, SITLA to R.L. Hrenko-Browning, Enefit (Mar. 10, 2016 4:35 PM) [SITLA GRAMA production page D208-0062] (attached as Ex. 12). In this e-mail, Mr. Andrews quotes a UDWR biologist who has suspicions that the Z-parcel is occupied grouse habitat: “The ‘in lieu’ section of BLM land is an area where I suspected a lek for several years. We documented grouse use in late winter and early spring along the ridge that cuts through the piece. However, we never saw males strut but only observed them in the area. This area is good winter habitat with Wyoming sagebrush on the ridgelines.” *Id.*

<sup>9</sup> Available at [https://eplanning.blm.gov/epl-front-office/projects/lup/68351/87600/104856/Utah\\_ARMPA.pdf](https://eplanning.blm.gov/epl-front-office/projects/lup/68351/87600/104856/Utah_ARMPA.pdf) (last viewed May 12, 2017).

<sup>10</sup> See, e.g., E-mail R. Clerico, Enefit to J. Andrews, SITLA (Feb. 21, 2017 3:39 PM) [SITLA GRAMA production, pages D208-0007-0008] (“[H]ave you heard anything further from Brandon [Johnson at BLM]? I was in a meeting with him last week on our Utility Corridor EIS

N2c

The Indemnity Selection application is wholly within the BLM’s jurisdiction to approve or deny. If the BLM were to deny the Indemnity Selection, no oil shale development would occur on the 440 acres because the Vernal RMP, as amended by the Utah Greater Sage Grouse RMP Amendment and the Oil Shale and Tar Sands RMP Amendment, closed this area to oil shale leasing. If the BLM were to approve the Indemnity Selection, it is presumed, based on email exchanges between the State and Enefit, that the State would make the 440 acres available for oil shale leasing; however, such a leasing decision is outside the jurisdiction of the BLM. Therefore, leasing and oil shale development of the Indemnity Selection is not a federal action and does not qualify as a connected action to the Utility Project.



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## Earth Justice (cont.)

review of the in-lieu parcel to slow down the federal agency's review of Enefit's rights-of-way, despite the fact that both relate to mining oil shale for the South Project.

In reading through the email chain [between SITLA and BLM], I see your suggested language for the BLM's proposed action for the [in-lieu selection] EA. While we greatly appreciate SITLA's intent regarding leasing of the Z-parcel to Enefit and are eager to move through the process as quickly as possible, *I also want to be sure that BLM doesn't confuse or mix together the ongoing EIS for our Utility Corridor Project with the SITLA In Lieu Selection EA and associated potential future mine activities on Enefit South.* We have provided BLM with a detailed plan of development for the utilities that would be crossing their land, as well as a preliminary description of the private-land activities (the South Project) for their connected action analysis in our ongoing EIS. I believe [BLM staff] are aware that we haven't submitted a formal mine plan to them (nor are we going to, since it's outside of their decision-making capacity under the utility EIS), but in case it comes up on your call [with BLM], I just wanted you to be aware.

Our Draft EIS [for the rights-of-way] is due to be out for public comment this fall, so *we want to be sure this EA/land swap doesn't give BLM or others a reason to delay to the utility corridor NEPA.* I certainly don't want to delay the EA or any forward progress on this, but rather *want to be sure to keep the BLM/SITLA EA action and the Enefit utility EIS action separate.*<sup>11</sup>

In short, Enefit understands how interrelated and interdependent the two BLM actions are; the company's basis for urging that they be analyzed in two NEPA documents rather than one is that such an analysis might "delay" BLM's approval of one or the other decision. That is not a valid basis for BLM to separate analysis of the two projects that are without question "interdependent parts of a larger action."

Further, BLM staff initially expressed interest in understanding how the rights-of-way and in-lieu selection related to one another.<sup>12</sup> It is unclear why BLM apparently concluded that the two projects need not be analyzed together, as NEPA regulations require. *See* 40 C.F.R. § 1508.25(a)(1).

and was going to ask him about it [the in-lieu selection], but I didn't want him to confuse the two issues." (attached as Ex. 13); E-mail of R.L. Hrenko-Browning, Enefit to J. Andrews, SITLA (Feb. 9, 2016 9:32 AM) [SITLA GRAMA production page D208-0102] ("I was in DC yesterday for meetings with the BLM regarding the EIS. Linda [Lance?] did bring up the indemnity selection. We only discussed very briefly *(as I am not eager to have this issue further complicate/delay the EIS)*, but clearly it is on her radar." (emphasis added)) (attached as Ex. 14).

<sup>11</sup> E-mail of R.L. Hrenko-Browning, Enefit to J. Andrews, SITLA (Sep. 4, 2015 7:04 AM) [SITLA GRAMA production page D208-0119] (emphases added) (attached as Ex. 15).

<sup>12</sup> *See* E-mail of M. DeKeyrel, BLM State Office to J. Andrews, SITLA (Sep. 23, 2013 1:56 PM) [SITLA GRAMA production page D208-147] ("I know that there is an EIS process beginning for the Enefit ROW corridor project, so the Vernal Field Office will need to see how this [the in-lieu selection] relates NEPA-wise.") (attached as Ex. 16).

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It is clear, however, that because the two proposals are “connected actions,” they must be reviewed in the same EIS.

D. The Two Proposals Are Cumulative Actions.

Because the rights-of-way and the in-lieu selection are both proposed actions which, when viewed together are likely to have cumulatively significant impacts, they “should therefore be discussed in the same impact statement” as cumulative actions. 40 C.F.R. § 1508.25(a)(2). The two proposals will occur in close proximity to one another. They are each being evaluated by BLM at the same time. They will impact similar soils, vegetation, habitat and wildlife populations. Each is being pushed by the same private applicant to facilitate and make possible that same private development. They will therefore have cumulative effects that may be significant, and therefore must be evaluated in a single EIS.

E. The Two Proposals Are Similar Actions.

The two proposed actions share numerous similarities including “common timing and geography.” See 40 C.F.R. § 1508.25(a)(3). As noted above, BLM is evaluating both projects at the same time; both projects are part of Enfit’s plan to develop the same parcel of private land during the same period; both projects involve wildlife and plant habitats across the same geographic landscape. The best way for BLM to proceed is “to treat them in a single impact statement.” *Id.* See also *San Juan Citizens’ Alliance v. Salazar*, 2009 WL 824410 at \* (D. Colo. 2009) (holding that agencies must determine whether projects are “similar actions” by considering “the extent of the interrelationship among proposed actions and practical considerations of feasibility”) (citing *Kleppe v. Sierra Club*, 427 U.S. at 411). BLM therefore should evaluate the two projects in a single EIS.<sup>13</sup>

III. **BLM SHOULD ADDRESS THE TWO PROPOSALS IN A SUPPLEMENTAL DRAFT EIS.**

The most efficient way for BLM to comply with NEPA’s mandate that the rights-of-way and the transfer of the Z-parcel be addressed as connected and/or cumulative actions in a single EIS

<sup>13</sup> Even if BLM concludes that it need not analyze Enfit’s proposed rights-of-way and the in-lieu selection in the same EIS, BLM must disclose the cumulative impacts of the two projects in the rights-of-way EIS. Even if actions are not “connected” or “cumulative,” and thus need not be evaluated in a single EIS, agencies have a duty to evaluate three types of impacts of a federal action: direct, indirect, and cumulative. *Colo. Envtl. Coal. v. Dombeck*, 185 F.3d 1162, 1176 (10th Cir. 1999); 40 C.F.R. § 1508.25(c). Cumulative impacts are “the impact[s] on the environment which result[] 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.” 40 C.F.R. § 1508.7. The in-lieu selection proposal is a reasonably foreseeable action that may impact cumulatively the values of the rights-of-way project area, when taken together with the impacts of the proposed rights-of-way. But the rights-of-way draft EIS nowhere mentions or describes the transfer of the Z-parcel to the State of Utah to facilitate oil shale mining, or the potential impacts of that transfer, violating NEPA.

N2d

While the Indemnity Selection is not a connected action, its effects may be reasonably foreseeable, thus the BLM has added the Indemnity Selection to the cumulative impacts analysis for the Utility Project. Because of the small proportion of the Indemnity Selection mining proposal compared to the South Project mining proposal (less than 1 percent), the Indemnity Selection cumulative effects discussion is subsumed into the South Project mining discussion.

N2e

While the Indemnity Selection is not a connected action, its effects of future development, should BLM transfer the parcel to the State, may be reasonably foreseeable, thus the BLM has added the Indemnity Selection to the cumulative impacts analysis for the Utility Project. Because of the small proportion of the Indemnity Selection mining assumption compared to the South Project mining proposal (less than 1 percent), the Indemnity Selection cumulative effects discussion is subsumed into the South Project mining discussion.

N2f

The Indemnity Selection has been incorporated into the EIS, but it was determined that a supplemental EIS is not necessary because no substantial changes to the scope of or analysis were made between the Draft EIS and the EIS. All text changes and relocations have been made for the purpose of clarification based on public comment and the BLM’s reconsideration of the appropriate structure of the EIS. The addition of the Indemnity Selection cumulative impacts from the mining assumption comprises a small portion of the total South Project mining proposal (56 acres out of 7,000 to 9,000 acres) cumulative impacts so it is not a substantial addition to the EIS.

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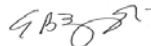
**Earth Justice (cont.)**

would be for the agency to issue a supplement to its draft EIS for the rights-of-way proposal which addresses as well the in-lieu selection application.

We urge BLM to notify the public promptly that it intends to issue such a draft supplemental EIS. This will also assist BLM in addressing the other deficiencies identified by the undersigned, as well as the Environmental Protection Agency and others, in comments on the rights-of-way draft EIS.

Thank you for your attention to this matter. Please contact Mr. Zukoski at (303) 996-9622 or [tzukoski@earthjustice.org](mailto:tzukoski@earthjustice.org) if you have any questions on this matter.

Sincerely,



Edward B. Zukoski, Staff Attorney  
Attorney for Grand Canyon Trust

Landon Newell, Staff Attorney  
Southern Utah Wilderness Alliance

Amber Reimondo, Energy Program Director  
Grand Canyon Trust

Rob Dubuc, Consulting Senior Counsel  
Western Resource Advocates

Taylor McKinnon, Public Lands Campaigner  
Center for Biological Diversity

Bobby McEnaney, Senior Deputy Director, Western Renewable Energy Project  
Natural Resources Defense Council

Elly Benson, Staff Attorney, Environmental Law Program  
Sierra Club

Amy Mills, Conservation Committee Co-Chair  
Sierra Club - Utah Chapter

cc: Ester McCollough, Field Manager, BLM Vernal Field Office

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**TABLE OF EXHIBITS**

Exhibit 1.	E-mail of R.L. Hrenko-Browning, Enefit to J. Andrews, SITLA (June 6, 2016 1:13 PM)
Exhibit 2.	E-mail of R.L. Hrenko-Browning, Enefit to J. Andrews, SITLA (June 13, 2016 10:39 AM)
Exhibit 3.	E-mail of R.L. Hrenko-Browning, Enefit to J. Andrews, SITLA (June 16, 2016 4:47 PM)
Exhibit 4.	E-mail of J. Andrews, SITLA to J. Lekas, et al., SITLA Board (May 11, 2016 5:02 PM)
Exhibit 5.	Memo of John Andrews, SITLA to Land Exchange Committee & SITLA Board of Trustees (May 11, 2016)
Exhibit 6.	E-mail of R. Rymerson, BLM to J. Andrews, SITLA (Aug. 26, 2015 5:30 PM)
Exhibit 7.	E-mail of L. Hunsaker, Utah to C. Cox, BLM (May 20, 2014)
Exhibit 8.	E-mail of J. Andrews, SITLA to R. Rymerson, BLM (Aug. 26, 2015 6:18 PM)
Exhibit 9.	Vernal Express, Legal Notice, Proposed Classification of Public Lands for State Indemnity Selection (IL 333) UTU-9009 (May 13, 2014)
Exhibit 10.	BLM, In-Lieu (Indemnity) Selection Process, Processing Steps (Nov. 2, 2016)
Exhibit 11.	E-mail of J. Andrews, SITLA to R.L. Hrenko-Browning, Enefit (Aug. 1, 2014 2:24 PM)
Exhibit 12.	E-mail of J. Andrews, SITLA to R.L. Hrenko-Browning, Enefit (Mar. 10, 2016 4:35 PM)
Exhibit 13.	E-mail R. Clerico, Enefit to J. Andrews, SITLA (Feb. 21, 2017 3:39 PM)
Exhibit 14.	E-mail of R.L. Hrenko-Browning, Enefit to J. Andrews, SITLA (Feb. 9, 2016 9:32 AM)
Exhibit 15.	E-mail of R.L. Hrenko-Browning, Enefit to J. Andrews, SITLA (Sep. 4, 2015 7:04 AM)
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**Grand Canyon Trust and  
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June 14, 2016

Vernal Field Office, BLM  
Attn: Stephanie Howard  
170 South 500 East  
Vernal, UT 84078

RE: Comments – Enefit American Oil Utility Corridor Project DEIS

Reviewers:

Thank you for the opportunity to provide comments on the Enefit American Oil (Enefit) Utility Corridor Project, DOI-BLM-UT-G010-2014-0007-EIS (Utility Corridor DEIS). We appreciate your time, and attention to this issue. We are submitting these comments on behalf of the Grand Canyon Trust, Living Rivers, Sierra Club, Southern Utah Wilderness Alliance, Western Resource Advocates, the WaterKeeper Alliance, American Rivers, the Natural Resource Defense Council, the Center for Biological Diversity, The Wilderness Society, Utah Physicians for a Healthy Environment, the Science and Environmental Health Network, Wildearth Guardians, and Earthjustice (on behalf of the Grand Canyon Trust).

**I. Introduction**

The purpose of the proposed rights-of-way is to promote an unprecedented and uniquely destructive project in the Upper Colorado River Basin. Enefit's "South Project," located in northeastern Utah near the White and Green Rivers, will attempt to take a pre-petroleum found within rock – oil shale – bake it at high temperatures, and turn it into a liquid synthetic crude oil. Enefit hopes to produce 50,000 barrels a day at the facility for 30 years.

With the subsidy of rights-of-way over federal public land for power, fuel, water, and roads, Enefit plans to:

- build a half-square mile industrial complex in the desert – the first commercial-scale oil shale operation in the United States;
- strip mine up to 28 million tons of rock per year over 14 square miles of undeveloped lands – resulting in waste rock totaling up to 750 million tons;
- remove up to 100 billion gallons of water from the already over-allocated Colorado River basin during the next three decades, a time when climate change and growing populations are likely to reduce river flows even further;
- nearly double oil production in the Uinta Basin, which already has over ten thousand oil and gas wells;
- emit toxic air pollutants in an area that already suffers from some of the worst smog in the nation, due to winter-time inversions and pollution from existing fossil fuel

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production facilities; and

- use an extraction and refining process that results in nearly 40% more carbon per unit of energy than conventional oil, and more even than notoriously dirty tar sands, at a time when the world needs to move quickly to cleaner, not dirtier, fuels if humanity is to avoid the worst impacts of climate change.

This DEIS represents the first real opportunity for BLM to analyze the impacts of a commercial oil shale project in the United States. Thus, it is vital that BLM take an exhaustive and expansive look at Enefit's oil shale project and take all steps necessary to protect public resources. Indeed, the already-known potential harms of the oil shale strip mine and processing plant – to land, water, air and climate – are so destructive that BLM, as part of its obligation to protect the public interest, can and should deny the rights-of-way that facilitate this project.

But Enefit has willfully refused to provide BLM with engineering and design plans for the South Project, and argued that it is therefore impossible to disclose the most controversial impacts of the South Project – air, climate, and water pollution impacts. At the same time, Enefit has demanded that BLM grant the rights-of-way applications nonetheless.

BLM must not permit Enefit to game the system by obtaining BLM's approval before the company discloses the project's true environmental damage. If BLM continues to process Enefit's applications for rights-of-way, despite the fact that they are not in the public interest, the agency must require Enefit to disclose its plans and permit the public and decisionmakers to understand the air pollution, climate impacts, and other harms that Enefit's operations will cause *before* BLM decides on the applications. To do less will cut the heart out of the environmental review mandated by Congress.

**II. Background on Enefit American Oil**

**1. Eesti Energia and Enefit American Oil**

Enefit is a subsidiary of Eesti Energia, a state-owned energy development company located in Estonia. The majority of Eesti Energia's past oil shale development work involves electricity produced by burning oil shale in much the same manner that industry burns coal to produce electricity. In recent years, Eesti Energia has sought to ramp up development of liquid transportation fuels by retorting oil shale deposits mined in Estonia.

As part of this effort, Enefit developed and began operating a new retort processor, the Enefit280. Eesti Energia details the results of Enefit280 operation in its 2016 Q1 interim financial report: "During the quarter, our new Enefit280 oil plant increased its output to 38 thousand tonnes and for the first time contributed more than half of our total shale oil output." Eesti Energia, Q1 2016 Interim Report 1 January 2016 – 31 March 2016, at 4, *available at* [https://www.energia.ee/-/doc/10187/pdf/concern/Interim\\_report\\_2016\\_Q1\\_eng.pdf](https://www.energia.ee/-/doc/10187/pdf/concern/Interim_report_2016_Q1_eng.pdf) (last viewed June 13, 2016) and attached as Exhibit I. There is no dispute that the Enefit 280 technology is understood, studied, and fully operational at a commercial scale in Estonia.

Enefit has sought to expand liquid fuel development by initiating operations in both Jordan and

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the United States. As part of this effort, in March 2011, Enefit purchased 100% ownership of the Oil Shale Exploration Company (OSEC), one of the four companies in 2007 to receive a federal research, development and demonstration (RD&D) lease from BLM. In acquiring OSEC, Enefit obtained ownership of all property, leases and assets from OSEC, including OSEC's RD&D lessee (Lease # UTU-84087). Enefit has also acquired state and private landholdings near its RD&D lease, including the South Project parcel, over 19,000 acres of state land leases and private holdings. Draft EIS at 3-97.

Enefit's initial plans for commercial scale oil shale development are hinged to the South Project parcel. The 13,000 acre South Project property lies along the Utah-Colorado boarder and is adjacent to (southeast of) Enefit's 160 acre federal research, development, and demonstration (RD&D) lease and the 4,960 acre federal preferential right lease area that Enefit would be able to expand into if it proves commercial viability of its process. The South Project, as proposed, would involve the strip mining of over 9,000 acres of land and the construction and operation of a 50,000 barrel per day oil shale retort facility. It is this project that requires, among other things, a right-of-way (ROW) across BLM land for utilities—19 miles of water supply pipeline, eight miles of natural gas supply pipeline, 10 miles of oil product line, 29 miles of powerlines, and five miles of upgrading to Dragon Road.

2. Enefit and Enefit's Impacts in Estonia

Oil shale mining in Estonia has resulted in adverse impacts to public and environmental health. Many of these impacts have been extensively studied, and there is also existing information on the impacts of the Enefit280 technology in Estonia.

First, a significant environmental impact of mining and processing of oil shale is that it creates a substantial amount of solid waste. Indeed, to produce 50,000 barrels/day, Enefit will have to mine 28 million tons of rock a year, in addition to digging up and relocating whatever overburden is necessary. More troubling is that after the shale is retorted, the residual char, or spent shale, is chemically altered for the worse. The spent shale, transformed due to its exposure to increased temperatures, contains a number of soluble inorganics including significant quantities of arsenic and selenium. Natalya Irha & Erik Teinmaa. *Behavior of Three- to Four-Ring PAHs in the Presence of Oil Shale Ash and Aluminosilicate Matter*, 22 Polycyclic Aromatic Compounds, 663 – 671, (2002) attached as Exhibit 2. Compounding matters, spent shale also contains highly carcinogenic polycyclic aromatic hydrocarbons (PAHs).

Even under the best of circumstances, it is not technically evident that the hazardous char waste stream can be fully segregated from the rest of the retorted spent shale material. Anne Karhu, *Environmental Hazard of the Waste streams of Estonian Oil Shale Industry: An Ecotoxicological Review*, 23 Oil Shale 53-93 (2006), available at <http://www.kirj.ee/public/oilshale/oil-2006-1-5.pdf> (last viewed June 13, 2016) at attached as Exhibit 3. The inability to separate or manage for these mixed waste streams presents additional challenges. Intrusion and exposure to water concentrates undesirable inorganic elements into quantities that pose critical problems for the overall welfare of an ecosystem. Argonne National Laboratory, *Environmental Consequences of, and Control Processes For, Energy Technologies*, Pollution Technology Review No. 181, Argonne National Laboratory, Noyes Data Corporation, Park Ridge NY, 102-115, (1990). Given

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the vast volume of wastes produced by a retort facility, the sheer industrial scale of such an operation presents considerable challenges in any endeavor to stabilize and manage such a waste stream. Preventing leaching of inorganic elements in a spent shale waste pile has so far proven to be a practical impossibility.

Due to this problem in Estonia, the European Union (EU) has taken measures to further tighten the regulatory controls that govern the disposition of spent shale as a hazardous material in Estonia. In 2000, facing the inclusion of Estonia as a new member of the EU, the EU adopted increasingly more stringent requirements for the management of spent shale waste. Commission Decision 2000/532/EC of 3 May 2000 replacing Decision 94/3/EC establishing a list of wastes pursuant to Article 1(a) of Council Directive 75/442/EEC on waste and Council Decision 94/904/EC establishing a list of hazardous waste pursuant to Article 1(4) of Council Directive 91/689/EEC on hazardous waste (notified under document number C(2000) 1147 OJ L 226 (2000), 3-24. The EU was motivated to act because Estonia had generated over 110 million tons of spent shale waste (generated from aboveground retorting of oil shale). In 2003, after further analysis revealed that the spent shale waste piles created by the Estonian oil shale industry were exceedingly toxic, the EU issued specific guidance to further regulate the administration of spent shale wastes created by retorting. Council Decision 2003/33/EC *Establishing criteria and procedures for the acceptance of waste at landfills pursuant to Article 16 and Annex II to Directive 1999/31/EC*, OJ L 11/27, 16.1, (2003).

Second, the processing of oil shale into electricity and petroleum products has had profound environmental implications in the context of climate change. A number of papers have established that oil shale is possibly the dirtiest feedstock to be found on the planet in terms of CO<sub>2</sub> emissions. See, e.g., Adam Brandt, *Greenhouse gas emissions from liquid fuels produced from Estonian oil shale*. Prepared for European Commission - Joint Research Center, 2011 available at [https://circabc.europa.eu/sd/d/9ab55170-dc88-4dcb-b2d6-e7e7ba59d8c3/Brandt\\_Estonian\\_Oil\\_Shale\\_Final.pdf](https://circabc.europa.eu/sd/d/9ab55170-dc88-4dcb-b2d6-e7e7ba59d8c3/Brandt_Estonian_Oil_Shale_Final.pdf) (last viewed June 13, 2016) and attached as Exhibit 4; Simon Mui *et al.*, *GHG Emission Factors for High Carbon Intensity Crude Oils*. Natural Resources Defense Council, 2010. available at [https://www.nrdc.org/sites/default/files/ene\\_10070101a.pdf](https://www.nrdc.org/sites/default/files/ene_10070101a.pdf) (last viewed June 13, 2016) and attached as Exhibit 5. Even Enefit's promotional materials regarding emission factors – which are based on a number of optimistic or at least unchallenged assumptions – show that the CO<sub>2</sub> emissions of the Enefit 280 process will still be more substantial than current conventional fuel development or even tar sands. Indrek Aarna, & T. Lauringson, *Carbon intensity, water use and EROI of production of upgraded shale oil products using the Enefit280 technology*. October 2011. Presentation, Golden, CO, available at [http://www.costar-mines.org/oss/31/F-pres-sm-sec/12-4\\_Aarna\\_Indrek.pdf](http://www.costar-mines.org/oss/31/F-pres-sm-sec/12-4_Aarna_Indrek.pdf) (last viewed June 13, 2016) and attached as Exhibit 6.

It is likely that the Utah operation will, due to geology and design, not be *exactly* the same as Enefit's operations in Estonia. However, Enefit's Estonian operations are clearly models for what Enefit plans to construct in Utah. As such, the Estonian experience forecasts the potential impacts of the projects enabled by the Utility Corridor rights-of-way with regard to waste, water quality, air quality and climate in Utah and the greater Colorado River Basin.



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**III. BLM Must Reject the Right-of-Way Applications Because They Are Not in the Public Interest.**

Title V of the Federal Land Policy and Management Act (FLPMA) grants BLM the authority, but not the obligation, to grant rights-of-way for a variety of uses across federal lands. 43 U.S.C. § 1761(a); *see also* 43 C.F.R. § 2802.10(a) (“In its discretion, BLM may grant rights-of-way on [its] lands” (emphasis added)). The Interior Department recognizes that “BLM has broad discretionary authority under Title V of FLPMA to approve or disapprove FLPMA ROW applications.” *Graham Pass, LLC*, 182 IBLA 79, 87 (Feb. 22, 2012) (emphasis added), citing *Union Telephone Company, Inc.*, 173 IBLA 313, 327 (2008), and *Tom Cox*, 142 IBLA 256, 257 (1998). Further, “a BLM decision, made in the exercise of its discretionary authority, will be overturned by the [IBLA] only when it is ... not supported on any rational basis.” *Id.*, citing *Wiley F. Beaux*, 171 IBLA 58, 66 (2007), *Echo Bay Resort*, 151 IBLA 277, 281 (1999), and *John Ditli*, 139 IBLA 68, 77 (1997).

BLM regulations identify a number of specific circumstances in which BLM may deny an application. These circumstances include:

- “if ... [t]he proposed use would not be in the public interest.” 43 C.F.R. § 2804.26(a)(2).
- if the applicant “do[es] not have or cannot demonstrate the technical or financial capability to construct the project or operate facilities within the right-of-way.” 43 C.F.R. § 2804.26(a)(5).
- if the applicant “do[es] not adequately comply with a deficiency notice ... or with any BLM requests for additional information needed to process the application.” 43 C.F.R. § 2804.26(a)(6).
- ... if “[i]ssuing the grant would be inconsistent with the Act, other laws, or these or other regulations.” § 2804.26(a)(4).

For each of these reasons, BLM must reject Enefit’s right-of-way applications.

I. Enefit’s Proposed Right-of-Way Are Not in the Public Interest.

The purpose of the rights-of-way is to service the South Project, a giant industrial facility for the mining, retorting, and upgrading of oil shale. “The Applicant’s purpose and need for the Utility Project is to supply natural gas, electrical power, water, and other needed infrastructure through one or more utility corridors to produce and deliver shale oil from oil shale mined under the South Project by uninterrupted operation of an economically viable mining, oil shale retorting, and upgrading facility.” Draft EIS at 1-7.

The extraction of oil shale in general, and subsidizing this project in particular, are not in the public interest. The South Project will be a significant new source of greenhouse gases, air pollution, and water depletion.

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The BLM’s public interest determination is a right-of-way processing step that allows the BLM to deny a right-of-way. See 43 CFR 2804.26 and 43 CFR 2884.23. These right-of-way regulations do not apply to the South Project, which will be located on private lands and private mineral estates.

This EIS is being prepared under NEPA to help the BLM make a decision based on an understanding of the environmental consequences, and take actions that protect, restore, and enhance the environment (40 CFR 1500.1(c)). There are no public interest requirements in either the Act itself or CEQ’s implementing regulations. Therefore, this NEPA analysis may inform the BLM’s final right-of-way public interest determination, but it will not make that determination.

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Granting the rights-of-way would amount to a public subsidy that increases the likelihood that an Estonian company will move forward with a project that poses serious threat to the American public and the environment. In particular:

- *The ROW for the new natural gas pipeline is a subsidy.* If Enefit cannot use public lands to construct a new pipeline, it may either: (1) seek space in an existing pipeline; or (2) truck natural gas to the South Project on a daily or weekly basis from a location outside the parcel. *See* Draft EIS at 2-40. Enefit likely would not be seeking its own pipeline if it believed existing pipelines had the capacity to move natural gas more cheaply. And while the Draft EIS did not disclose the impacts of a trucking alternative, alleging that the exact quality, quantity and rate of this potential delivery was unknown, trucking gas to the South Parcel would likely result in greater costs to Enefit. *Id.*

Enefit's description of other natural gas delivery alternatives makes clear that the company rejected such options as too costly to make the project viable. For example, Enefit notes that using the Summit existing pipeline would require "re-commissioning" the pipeline, which "could require additional compression and/or gas treatment to meet the pressure and quality demands of the [Enefit's] hydrogen plant, and it is unclear at this time where those facilities would need to be located." Email of R. Clerico, Enefit American to R. Rymerson, BLM (Mar. 22, 2015) re: Response to data gaps, at PDF page 3, attached as Exhibit 7. Re-commission would also require integrity tests, the potential replacement of parts of the pipeline, and disturbance of BLM land, all of which would involve costs to Enefit. *Id.* Further, Enefit admits that "[i]t is unclear if a Summit re-commissioned pipeline could support [the natural gas] demand rate" of the South Project at full build-out, rendering this alternative ineffective. *Id.*

Enefit rejects using two Mapco pipelines because the natural gas liquids (NGL) those pipelines carry is too expensive for Enefit's purposes. *Id.* (Enefit "has not considered NGL as a viable hydrogen source for the upgrader *due to economics*" (emphasis added)); *see also id.* ("the use of NGL as a hydrogen source is more than 400 percent more expensive than natural gas and therefore uneconomic"). Enefit also rejects a process to provide the needed natural gas on site through a device called a "POX unit" because "[i]t is also unlikely that deployment of a POX unit would be economical when compared to" building a new gas pipeline). *Id.* at PDF page 4. In short, not only is the proposed pipeline right-of-way a subsidy, it appears to be the only alternative under which the South Project is economically feasible.

- *The ROW for the water pipeline is a subsidy.* If Enefit cannot use the proposed route across public lands to construct a new water pipeline, it may seek to provide water to the South Project via: (1) use of existing groundwater rights; (2) acquisition of additional groundwater rights; (3) conversion of existing groundwater monitoring wells to supply wells; (4) diversion of water from the White River rather than the Green River; and/or (5) use of trucks to provide daily/weekly delivery of water. *Id.* at 2 -40. The first two would require drilling wells, and the first three would require surmounting additional regulatory hurdles, and thus likely require additional expense. Diverting water from the White River would require Enefit to store the excess water in a reservoir or in storage tanks on

Please note that the South Project has been moved to the cumulative impact section to address public confusion regarding the South Project and that it is not a connected action because the BLM lacks jurisdiction over it.

Section 4.4 has been added to the EIS to describe alternative means of obtaining utilities for the South Project, which will continue to full buildout regardless of the BLM decision on the Utility Project.

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the company's property, and would also require Enefit to construct facilities on BLM land to withdraw the water from the river. *Id.* at 2–46. Trucking more than 10,000 acre-feet of water every year for 30 years would likely be orders of magnitude more expensive than a pipeline. All of these would add costs to the South Project. While Enefit currently has several groundwater monitoring wells on the South Project site, BLM concluded that converting the monitoring wells into supply wells would likely not be sufficient to meet the South Project's water demands. *Id.* at 2–40. And Enefit concluded "[s]hould groundwater wells prove insufficient to meet the facility['s] demand, [Enefit] could be required to purchase and truck in water to supply the balance, which would *almost certainly be both technically and economically infeasible*. This would also be true if the [point of diversion for a pipeline] was shifted to the White River." Email of R. Clerico re: Response to data gaps (Mar. 22, 2015) (Ex. 7), at PDF page 3 (emphasis added). In short, without the subsidy of a right-of-way for a water pipeline across public lands, Enefit admits it may not be able to build the South Project.

- *The ROW for the transmission line is a subsidy.* If Enefit cannot have access to new transmission across public lands, it will apparently need to generate electricity at the South Project site to: (1) address demand during construction and start-up (5 MW to be "[g]enerated onsite via several portable diesel fired generators"); and (2) provide electricity during project operation (125 to 200 MW "[g]enerated onsite via natural gas combustion"). Draft EIS at 2–41. Importing diesel fuel (by truck) and using on-site generators would add to construction costs. A projected increase in vehicle use to transport diesel fuel "will cause a related increase in local fuel supply requirements" adding to costs, an "increase in vehicle and roadway maintenance," which would increase costs, and a "larger demand for workforce at the South Project," which would increase labor costs. *Id.* at 4–42. Building an on-site natural gas power plant after full build out would clearly add to Enefit's operational costs. Further, without a transmission line, Enefit would be unable to export power from the South Project after "full build out." *Id.* at 2–9 (during full operation, "the South Project would be capable of exporting between 50 and 100 MW" of power). The public land subsidy of a transmission right-of-way would thus likely enable Enefit to reap profits through the sale to the grid of electricity, profits that will be foregone without the transmission lines. *Id.* at 4–42 ("Absent the transmission line, the South Project would need to have higher base loads to consume the excess power, or may need to flare excess oil shale gases").
- *The ROW for the pipeline for produced fuel is a subsidy.* If Enefit is not granted a right-of-way for a pipeline across public lands to deliver the upgraded synthetic crude oil produced by the South Project to market, the company would either: (1) "develop a new pipeline trans-loading terminal in the region" to which the product could be "trucked ... and off-loaded into an existing pipeline;" or (2) "[c]onvert an existing natural gas pipeline ... located within the South Project area to an oil liquids transport pipeline." *Id.* at 2–41. Developing a new terminal would have financial costs, as would purchasing and maintaining a fleet trucks and employing drivers to move the fuel. BLM estimates that transporting the fuel via tanker truck would require that a loaded vehicle leave the South Project every 7.5 minutes for 30 years. *Id.* at 4–42 (projecting that it would take "a fleet of tanker trucks having either 172 barrel or 249 barrel capacity," to ship out the 50,000

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barrels of product per day). Enefit has not closely examined the prospect of using existing pipelines that traverse the South Project property, presumably because it is cheaper to build a new one that Enefit will control. *See id.* at 2-41 (BLM declines to address the existing pipeline alternative because the “technical feasibility and willingness of these facility owners” to convert the pipelines to be capable of transporting the synthetic crude oil “is unknown.”).

- *The ROW for Paving, widening, and realigning Dragon Road is a subsidy.* If Enefit is not granted a right-of-way to pave and widen Dragon Road, the route will be left as it is now: a narrow dirt road. Realignment will not be made to limit the maximum grade and to allow for speeds up to 45 miles per hour. *Id.* at 2-2, 2-16. The Dragon Road adjustments are predicted to cost \$43 million, including labor, materials, development engineering and equipment. *Id.* at 4-133. Absent paving, increased traffic may cause Dragon Road to “disintegrate and deteriorate,” requiring additional maintenance and increasing travel times, fuel costs, and inconvenience. *Id.* at 2-63. Absent paving, Enefit will be required to expend funds applying water to the road regularly to minimize fugitive dust. *Id.* at 2-26; 4-6. Absent paving, safe speeds on the road will be lower, increasing Enefit’s labor and fuel costs as transportation times to and from the South Project will take longer. The public land subsidy of a road right-of-way will thus make travel to and from the site faster and safer, and reduce maintenance costs, all of which would financially benefit Enefit.

In sum, each of the rights-of-way would subsidize Enefit’s project costs, and thus make the development of the South Project more likely. Absent BLM’s subsidizing Enefit’s operation, it is less likely that Enefit will choose to invest in what could become a money-losing operation. BLM’s repeated mantra that “the South Project will proceed to full buildout regardless of the BLM’s decision” on the rights-of-way, *see, e.g., id.* at 4-39, is therefore arbitrary and capricious and conflicts with the evidence before the agency.

Because the South Project will likely have significant, negative environmental impacts, it is contrary to the public interest for BLM to aid, abet, encourage and subsidize the environmental damage Enefit’s project would inflict.

- a. *The South Project’s Climate Impacts Will Undermine the Public Interest.*

In September 2015, President Obama called climate change “a challenge that will define the contours of this century more dramatically than any other.” President Obama, Remarks by the President at the GLACIER Conference -- Anchorage, AK (Sept. 1, 2015), *available at* <https://www.whitehouse.gov/the-press-office/2015/09/01/remarks-president-glacier-conference-anchorage-ak> (last visited June 14, 2016). He has concluded that “climate change can no longer be denied – or ignored.” Barack Obama, President of the United States, Weekly Address (Apr. 18, 2015), attached as Exhibit 8, *available at* <https://www.whitehouse.gov/the-press-office/2015/04/17/weekly-address-climate-change-can-no-longer-be-ignored-0> (last viewed June 14, 2016). The President elaborated in unequivocal terms:

The science is stark. It is sharpening. It proves that this once-distant threat is now very much in the present. . . . But the point is that climate change is no

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Please note that discussion of the South Project has been moved to the cumulative impacts section to address public confusion regarding the South Project and that it is not a connected action because the BLM lacks jurisdiction over it. To the extent possible, Section 4.4 describes potential effects on GHG emissions and climate change associated with the South Project.

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longer some far-off problem. It is happening here. It is happening now. Climate change is already disrupting our agriculture and ecosystems, our water and food supplies, our energy, our infrastructure, human health, human safety – now. Today. And climate change is a trend that affects all trends – economic trends, security trends. Everything will be impacted. And it becomes more dramatic with each passing year.

*Id.* This past November, the President recognized that this urgent problem demands strong action that leaves fossil fuels in the ground:

Because ultimately, if we're going to prevent large parts of this Earth from becoming not only inhospitable but uninhabitable in our lifetimes, we're going to have to keep some fossil fuels in the ground rather than burn them and release more dangerous pollution into the sky.

President Obama, Statement by the President on the Keystone XL Pipeline (Nov. 6, 2015), available at <https://www.whitehouse.gov/the-press-office/2015/11/06/statement-president-keystone-xl-pipeline> (last visited June 13, 2016).

The President has also recognized the need to transition away from – not toward fuels like oil shale:

Now we've got to accelerate the transition away from old, dirtier energy sources. Rather than subsidize the past, we should invest in the future... That's why I'm going to push to change the way we manage our oil and coal resources, so that they better reflect the costs they impose on taxpayers and our planet.

President Obama, Remarks of President Obama—State of the Union Address as Delivered (January 13, 2016), available at <https://www.whitehouse.gov/the-press-office/2016/01/12/remarks-president-barack-obama-%E2%80%93-prepared-delivery-state-union-address> (last visited June 13, 2016).

Similarly, U.S. Treasury Secretary Jack Lew noted earlier this month that continuing government subsidies for carbon-intensive projects cannot continue: “[S]upporting low-carbon investments alone is not sufficient [to combat climate change]. We also need to reduce financing for high-carbon projects ... and take advantage of increasingly cost-effective, low-carbon alternatives. It makes little sense to cut carbon emissions at home by greening our power sector only to subsidize the construction of high-emission facilities elsewhere in the world.” U.S. Department of State, S&ED Joint Session on Climate Change Remarks (June 6, 2016), available at <http://www.state.gov/secretary/remarks/2016/06/258093.htm> (last visited June 13, 2016) and attached as Exhibit 9.

Any BLM effort to promote or subsidize oil shale will undermine President Obama's calls for meaningful climate action and his Administration's ground-breaking initiatives to reduce carbon emissions. BLM has an obligation to be honest with the American people about the climate impacts of subsidizing oil shale and the extent to which promoting oil shale mining and processing undermines the President's climate objectives. This is particularly true because

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unconventional oil shale is much more carbon-intensive – in other words, it results in more greenhouse gas (GHG) pollution per unit of fuel produced – than conventional oil production.

A plethora of recent studies have confirmed and deepened scientific knowledge about the nature and consequences of climate change. Further, recent studies demonstrate that the need to keep the vast majority of the world's known reserves of fossil fuels in the ground if the planet is to avoid warming so severe as to have significant damage consequences for all life, including human life. The proposed action – subsidizing the mining and production of oil shale for the next 30 years – would exacerbate the significant threat posed by climate change, feed our dependence on fossil fuels, and add to climate pollution for decades to come.

An increasing body of scientific literature indicates that to avoid the worst consequences of climate change, the vast majority of fossil fuel reserves must stay in the ground. As part of its consideration of a proposal that would enable Enefit to produce more than a half a billion barrels of fossil fuels, BLM must inform the public and decisionmakers of the dramatic reductions in GHGs that are required to avert global catastrophe.<sup>1</sup> Recent scholarship affirms the urgency of keeping fossil fuels in the ground in order to avert the worst harms from climate change. For example, a peer-reviewed article published in the prestigious research journal *Nature* concluded that if we are to keep climate change below dangerous levels, 80 percent of global coal reserves, half of all gas reserves, and a third of oil reserves must stay in the ground through 2050. Christophe McGlade & Paul Ekins, *The Geographical Distribution of Fossil Fuels Unused When Limiting Global Warming to 2°C*, NATURE Vol. 517, pp. 187-190 (Jan. 7, 2015), attached as Ex. 10, summary available at <http://www.nature.com/nature/journal/v517/n7533/full/nature14016.html> (last viewed June 13, 2016). For unconventional oil, closer to 90% of such fossil fuels must remain in the ground. *Id.* at 190.

In a historic moment capturing the growing national concern over climate change, 190 nations, including the United States, signed the Paris climate agreement, committing to attempt to limit global temperatures to 2°C above preindustrial temperatures, and to further pursue efforts to limit the increase to 1.5°C above preindustrial levels:

This Agreement, in enhancing the implementation of the Convention, including its objective, aims to strengthen the global response to the threat of climate change, in the context of sustainable development and efforts to eradicate poverty, including by:

(a) Holding the increase in the global average temperature to well below 2 °C above pre-industrial levels and to pursue efforts to limit the temperature increase to 1.5 °C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change.

<sup>1</sup> The South Project is proposed to produce 50,000 barrels of shale oil per day, every day for 30 years. Draft EIS at 2-38. That is about 548 million barrels of fuel (50,000 barrels per day \* 365.25 days per year \* 30 years = 548.25 million barrels). The Draft EIS states, however, that the South Project property contains “approximately 1.2 billion barrels of shale oil.” *Id.* at 2-37. This discrepancy is not explained.

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United Nations, Framework Convention on Climate Change, Paris Agreement, Article 2 ¶ 1(a) (Dec. 11, 2015), attached as Exhibit 11. To meet this threshold of safety, “deep reductions in global emissions will be required,” and “[d]eveloped country Parties shall continue taking the lead by undertaking economy-wide absolute emission reduction targets.” *Id.* at Article 4 ¶ 4. The Agreement aims for net zero emission by mid-century. *Id.* at Article 4 ¶ 1. The governments further agreed that global emissions need to peak as quickly as possible. *Id.* Once 55 countries ratify this agreement, it will become binding, and countries must submit their emissions targets every 5 years beginning in 2020. *Id.* at Article 21 ¶ 1; Article 4 ¶ 9.

BLM’s proposal to ease the way for the South Project and its hundreds of millions of tons of additional greenhouse gas emissions undermines America’s commitment to the Paris Agreement, in which nations agreed to make deep cuts in emissions and to aim for zero net-emissions by mid-century.

In order to have better than even odds of meeting this target “cumulative CO<sub>2</sub> emissions from all anthropogenic sources [must] stay between ... 0 and 1000 GtC.... An amount of 531 [446 to 616] GtC, was already emitted by 2011.” IPCC, Working Group I Contribution to the IPCC Fifth Assessment Report: Climate Change 2013: the Physical Science Basis: Summary for Policy Makers (2013) at 25, attached as Exhibit 12. This means that for the rest of the 21<sup>st</sup> Century all nations on the planet can only emit approximately 470 GtC. To meet this limit, “between two-thirds and four-fifths of the planet’s reserves of coal, oil, and gas” need to stay in the ground. Bill McKibben, *Global Warming’s Terrifying New Math*, Rolling Stone (Aug. 2, 2012), attached as Exhibit 13; Bill McKibben, *Obama and Climate Change: The Real Story* (Dec. 17, 2013), attached as Exhibit 14. If unabated, “[b]urning all fossil fuels would produce a different, virtually uninhabitable, planet.” Hansen, *et al.*, *Climate Sensitivity, Sea Level and Atmospheric Carbon Dioxide*, 371 Phil. Trans. R. Soc’y (2013), attached as Exhibit 15; *see also* Global Carbon Project, Global Carbon Budget 2014 (Sept. 14, 2014), attached as Exhibit 16.

A proposal to unlock between a half-billion and one billion barrels of “shale oil” product must be viewed in this context.

In addition, the public interest in preventing the worst damages from climate change weighs heavily against subsidizing oil shale development because synthetic oil processed from oil shale is much more damaging from a climate perspective than conventional oil. Studies have concluded that life-cycle CO<sub>2</sub> emissions from oil shale processing make it *among the dirtiest feedstocks on the planet* from a climate perspective, producing greenhouse gas emissions far higher than those from conventional oil. *See, e.g.*, A. Brandt, “Greenhouse gas emissions from liquid fuels produced from Estonian oil shale” (Jan. 2011) (estimating that CO<sub>2</sub> emissions from Estonian oil shale are 40% to 60% higher than for conventional oil), *available at* [https://circabc.europa.eu/sd/d/9ab55170-dc88-4dcb-b2d6-e7e7ba59d8c3/Brandt\\_Estonian\\_Oil\\_Shale\\_Final.pdf](https://circabc.europa.eu/sd/d/9ab55170-dc88-4dcb-b2d6-e7e7ba59d8c3/Brandt_Estonian_Oil_Shale_Final.pdf) (last viewed June 13, 2016), and attached as Exhibit 4; S. Mui *et al.*, “GHG Emission Factors for High Carbon Intensity Crude Oils” (2010) at page 2 (concluding that CO<sub>2</sub> emissions from ex situ oil shale could be between 47% and 73% more carbon intensive than conventional oil), *available at* [https://www.nrdc.org/sites/default/files/ene\\_10070101a.pdf](https://www.nrdc.org/sites/default/files/ene_10070101a.pdf) (last viewed June 13, 2016), and attached as Exhibit 5. Last year, an International Energy Agency official stated bluntly:

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Experience has shown that exploitation of oil shale, whether for oil production, power generation or industrial use, is *energy-intensive and CO<sub>2</sub>-intensive*.

In Estonia, one might argue its use is positive for energy security and economic development — but it is certainly not positive for the environment.

D. Crouch, “Estonia sees a bright future for oil shale,” Financial Times (June 15, 2015) (emphasis added), available at <http://www.ft.com/intl/cms/s/0/778da826-fd66-11e4-9e96-00144feabdc0.html#axzz4ApF4sAk> (last viewed June 13, 2016) and attached as Exhibit 17.

Even Enefit’s own promotional materials regarding emission factors, based on non-peer-reviewed reports, state that life-cycle CO<sub>2</sub> emissions of the Enefit280 process – the very oil shale processing technology that the company intends to employ in Utah<sup>2</sup> – are as much as 40% more carbon intensive than emissions from conventional fuel development. I. Aarna *et al.*, Enefit, “Carbon intensity, water use and EROI” (Oct. 2011) at 8 (reporting results of a study of carbon intensity of the Enefit280 process), available at [http://www.costar-mines.org/oss/31/F-pres-sm-sec/12-4\\_Aarna\\_Lndrek.pdf](http://www.costar-mines.org/oss/31/F-pres-sm-sec/12-4_Aarna_Lndrek.pdf) (last viewed June 13, 2016), and attached as Exhibit 6. According to Enefit, oil shale produced from the Enefit280 process will result in even more CO<sub>2</sub> per unit of energy produced than tar sands, a notoriously carbon intensive fuel. *Id.* And Enefit’s self-serving, proprietary analysis likely under-estimates oil shale’s CO<sub>2</sub> intensity. For example, Enefit reduces its estimate of the carbon intensity of shale oil produced via the Enefit280 process due to an unexplained “power offset.” *Id.*

These outsized climate impacts will likely be worsened by additional mining and production of oil shale that will likely occur adjacent to, and with the aid of utilities accessing, the South Project property. Enefit owns, leases, or has preferential lease rights to an additional 19,000 acres of private, state, and federal land outside the South Project property. Draft EIS at 3-97. Most of these properties are crossed by or are in close proximity to the proposed rights-of-way; mining and/or processing on these additional properties could be served by the applicant’s

<sup>2</sup> Enefit promotes the South Project on its website as utilizing “proven” technology to produce liquid fuels. See “Enefit’s Utah Project,” available at <http://enefitutah.com/> (last viewed June 13, 2016), and attached as Exhibit 18. The most recent generation of Enefit’s production facilities that produces synthetic crude oil from oil shale in the company’s “Enefit280.” See Enefit Utah, “Next-Generation Enefit280 Plant is Nearing Peak Performance” (Dec. 22, 2014), available at <http://enefitutah.com/?s=next-generation> (last viewed June 13, 2016), and attached as Exhibit 19; Enefit, “Estonia shale oil industry,” available at <https://www.enefit.com/enefit280-building> (last viewed June 13, 2016), and attached as Exhibit 20. The production process is schematically described in Enefit’s promotional materials. See Enefit, Retorting Enefit280, available at <https://www.enefit.com/retorting-enefit280> (last viewed June 13, 2016), and attached as Exhibit 21. Enefit has specifically stated that it intends to use the Enefit280 process at its Utah operations:

Before this construction starts in Utah ... Enefit will have constructed a new generation Enefit280 plant in Estonia, scheduled to start up in 2012. *This is the same new generation Enefit technology that will be used in Utah.*

Letter of R.L. Hrenko, Enefit American Oil to K. Hoffman, BLM (July 19, 2012) at 5 (emphasis added), attached as Exhibit 22.



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utilities. *See id.* at 2-3 (map displaying Enefit's holdings). In addition, Enefit's South Project, as subsidized by BLM, would set a precedent as the U.S.'s first commercial oil shale production facility. The proposed rights-of-way will thus open the door to a huge and multi-decade commitment to one of the world's dirtiest liquid fuels, reversing progress on climate change, and undercutting the President's commitments to achieving reductions in carbon emissions in both the short- and long-term.

Helping to lock in a dirty carbon future, as our communities, ecosystems, and the planet as a whole are threatened with suffering from centuries of damage due to climate change already locked-in, is the antithesis of the public interest. It is elevating the private interest of one company owned by the Estonian government above the interests of the American public. On this basis alone, the right-of-way applications must be rejected.

b. *The South Project's Water Impacts Will Undermine the Public Interest.*

Water is a precious and over-allocated resource in the arid upper Colorado River basin. To turn rock into synthetic crude oil, the South Project will consume up to 15 cubic feet per second of the Green River – nearly 11,000 acre-feet per year. Draft EIS at 4-62. That's over a hundred billion gallons of water over the 30-year life of the South Project.<sup>3</sup> As discussed in more detail below, *any* water depletions from the basin, let alone the more than three billions gallons per year proposed by Enefit, will cause "jeopardy" to the endangered Colorado River fish under the Endangered Species Act. The Draft EIS admits that impacts of the rights-of-way and South Project may include "[w]ithdrawal of water from the Green River that reduces its flow and degrades the water quality of the stream down gradient from the point of the withdrawal." Draft EIS at 4-110.

Moreover, the South Project's likely impacts to water quality in the Colorado River Basin undermine the public interest. The product pipeline for Enefit's synthetic crude product would cross the White River and Evacuation Creek. Any rupture would be catastrophic to the ecosystem, imperiled fish, and downstream communities. Additionally, leaching from the up to 750 million tons of oil shale waste – potentially a half billion cubic yards of material – created by Enefit's project poses a threat to water quality of nearby surface and groundwater resources. Draft EIS at 2-37 ("The South Project will produce approximately 28 million tons of raw oil shale ore rock per year"); Bureau of Land Management, Final EIS, Proposed Land Use Plan Amendments for Allocation of Oil Shale and Tar Sands Resources (Nov. 2012), Appendix A, A-49 ("plant producing 50,000 bbl/day ... may need to dispose of as much as approximately 450 million ft<sup>3</sup> of spent shale each year").

It is not in the public interest to deplete the dwindling flow of the Upper Colorado and threaten those water resources with contamination in order to subsidize production of such a dirty, carbon intensive fossil fuel.

<sup>3</sup> 10,867 acre-feet per year \* 325,851 gallons per acre-foot \* 30 years = 106.23 billion gallons.

N3d

This comment applies to the South Project, which has been moved to the cumulative impact section to address public confusion. Section 4.3.3.5 indicates the permitting processes that will be applied to the South Project to address potential water impacts. It is assumed that the commenter's public interest comment is tied to the BLM's public interest determination, which is a right-of-way processing step that allows the BLM to deny a right-of-way. See 43 CFR 2804.26 and 43 CFR 2884.23. These right-of-way regulations do not apply to the South Project, which will be located on private lands and private mineral estates. This comment is outside the scope of this EIS.

## COMMENT(S)

N3

Grand Canyon Trust and  
Multiple Nongovernmental Organizations (cont.)c. *The South Project's Air Quality Impacts Will Undermine the Public Interest.*

Enefit's rights-of-way and the proposed South Project would have significant, negative impacts on air quality, given that Enefit intends to build a mining and processing complex that would produce nearly as much crude oil as is currently produced from every oil well in the Uinta Basin. See below at IV (4)-(6) & (V)(1)-(2) *see also* Exhibit 23. The Uinta Basin in winter has in recent years experienced ozone pollution worse than that in most major U.S. metropolitan areas, and far higher than is healthy to breathe on many days. Much of this air pollution would likely be transported by prevailing winds into Colorado.

The public interest in protecting human health thus strongly supports denying Enefit's applications, especially because Enefit has steadfastly refused to provide information to either BLM or the public concerning the likely nature and scale of the South Project's air pollution impacts. See below at IV (4)-(6), *see also* Exhibit 23.

d. *No Statutory or Policy Directive Supports the Right-of-Way Applications.*

The Draft EIS fails to directly address the public interest the rights-of-way will allegedly serve. In fact, the Draft fails to contain the phrase "public interest." While it does contain some claims that may relate to the public interest the rights-of-way will allegedly serve, none of these allegations have merit.

First, the Draft EIS addresses the purpose and need for the project, stating that the agency's consideration of the applications "is guided by the Energy Policy Act of 2005." Draft EIS at 1-2. But that law does not mandate the development of private land oil shale resources, nor does it require BLM to approve rights-of-way for such resources. Further, the Federal Land Policy and Management Act (FLPMA), also cited by BLM, merely provides BLM with "discretionary authority," not a duty, to grant rights-of-way. *Id.* Given the potential damage due to climate change, water depletion, and air pollution from the South Project, the public interest in multiple uses of BLM lands does not support rights-of-way approval. The most effective way for BLM to "minimize damage to scenic and esthetic values and fish and wildlife habitat and otherwise protect the environment," *id.* (quoting FLPMA Title V), is to deny Enefit's application.

Second, the Draft EIS includes Enefit's "interests and objectives" in the applications. Draft EIS at 1-7 - 1-8. But Enefit's *private* interest in cheaply developing the South Project with the subsidy of federal land conflicts with the public interest, given the environmental damage that Enefit's project will cause. The Draft EIS parrots Enefit's application in alleging that the Energy Policy Act of 2005 supports approving the rights-of-way. *Id.* at 1-7. Nothing in that law mandates the approval of such rights-of-way; the language Enefit and BLM cites comes from what is the non-binding Congressional "declaration of policy." See 42 U.S.C. § 15927(b). And that policy urges that oil shale development "should be conducted in an environmentally sound manner," which the South Project cannot do given its climate, water and air impacts. 42 U.S.C. § 15927(b)(2). Congress also declared that oil shale development "should occur, with an emphasis on sustainability, to benefit the United States." 42 U.S.C. § 15927(b)(3). Again, subsidizing one of the most carbon-intensive methods for creating liquid fossil fuels, and consuming tens of thousands of acre feet per year of water in the arid West to do so while polluting the atmosphere is not "sustainable," nor does the huge carbon and environmental

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## RESPONSE(S)

N3e

This comment applies to the South Project, which has been moved in whole to the cumulative impact section to address public confusion. The text has been revised to reflect winter ozone is a problem in the Uintah Basin, not summer ozone as was reported in the Draft EIS. The EIS discussion in Section 4.3.3.2.3 addresses the research efforts regarding winter ozone impacts in the region, and the complex causative factors. Incremental effects due to a single project cannot be quantified. Due to the fact that the Basin's winter ozone forms under inversion conditions (no winds), there is no transport risk. Monitoring data shows that on the days there are winds in the Basin in January, February, or March, there are no ozone exceedances. It is assumed that the commenter's public interest comment is tied to the BLM's public interest determination, which is a right-of-way processing step that allow the BLM to deny a right-of-way. See 43 CFR 2804.26 and 43 CFR 2884.23. These right-of-way regulations do not apply to the South Project, which will be located on private lands and private mineral estates. This comment is outside the scope of this EIS.

N3f

This EIS is being prepared under NEPA to help the BLM make a decision based on an understanding of the environmental consequences, and to take actions that protect, restore, and enhance the environment (40 CR 1500.1(c)). There are no public interest requirements in either the NEPA itself or in CEQ's implementing regulations. Therefore, this NEPA analysis may inform the BLM'S final right-of-way public interest determination, but it will not make that determination.

This comment refers to the BLM's public interest determination, which is a right-of-way processing step that allows the BLM to deny a right-of-way. See 43 CFR 2804.26 and 43 CFR 2884.23. The BLM manuals define public interest in two ways: Manual 2803.10A2 (Qualifications for Holding Federal Land Policy and Management Act [FLPMA] Grants) and Manual 2883.10A3 state: "It is not in the public interest to process a ROW application when the Applicant is an existing holder and is not in compliance with the existing grant terms and conditions, including nonpayment of rent and cost recovery. The existence of willful trespasses on public lands should also be considered." Manual 2800 (Rights of Way) states: "public interest or benefit: factors that serve to promote the good of the public in general rather than the exclusive benefit of the Applicant." Since the public interest determination is a right-of-way regulation concept, the BLM's public interest determination for the Utility Project will be made in the final approval or disapproval of the Applicant's SF299s.

This EIS is being prepared under NEPA to help the BLM make a decision based on an understanding of the environmental consequences, and take actions that protect, restore, and enhance the environment (40 CFR 1500.1(c)). There are no public interest requirements in either the Act itself or CEQ's implementing regulations. Therefore, this NEPA analysis may inform the BLM's final right-of-way public interest determination, but it will not make that determination.

N3g

See next page for response to Comment N3g.

## COMMENT(S)

## RESPONSE(S)

N3

Grand Canyon Trust and  
Multiple Nongovernmental Organizations (cont.)

footprint of the project “benefit the United States.” In fact, it benefits a foreign government at the expense of the American public, thereby undermining the legislation’s goals. And while Enefit cites Utah-specific policy supporting the development of oil shale, Draft EIS at 1-7 - 1-8, BLM must define the public interest more broadly. The subsidy of federal public lands for oil shale will damage the climate globally, will harm river flows in the Colorado River basin, which includes at least three other states downstream as well as Mexico, and will pollute the air, which will harm communities in Colorado as well as Utah. *See, e.g.*, letter of L. Schafer, Conservation Colorado *et al.* to E. McCullough, BLM (June 10, 2016), attached as Exhibit 24 (opposing rights-of-way due in part to potential air pollution impacts in Colorado due to the South Project).

In sum, the Energy Policy Act, FLPMA, and Utah’s policies cannot be used to avoid the fact that approving a subsidy of federal land to support significant climate and air pollution and river depletion is contrary to the public interest.

2. The Draft EIS Does Not Show That Enefit Has Demonstrated the Financial Capability to Construct the Right-of-Way Facilities.

BLM may deny an application if the applicant “do[es] not have or cannot demonstrate the technical or financial capability to construct the project or operate facilities within the right-of-way.” 43 C.F.R. § 2804.26(a)(5). The Draft EIS contains no evidence that Enefit has the financial capability to construct the right-of-way facilities.

Enefit’s application contains assertions related to financial capability, but most of these are mere puffery. *See* Enefit American, Preliminary Plan of Development And Right-of-Way Application To Support Enefit American Oil’s Utah Oil Shale South Project (Nov. 26, 2012) at 3 of 29 (“Enefit is well-qualified, both technically and financially, to execute the Project in a safe, responsible, and productive manner”); *id.* at 1 of 29 (discussing Enefit’s Estonian employees).

Recent news reports indicate that, to the contrary, Enefit may be incapable or unwilling to pay for the facilities. For example, on November 4, 2015, Estonian Public Broadcasting published the following article paraphrasing Hando Sutter, Eesti Energia’s CEO.

CEO of state-owned energy giant Eesti Energia, Hando Sutter, said the project in the US state of Utah *has been stopped and currently there is no business plan in place to continue*. The company purchased oil-shale-rock-rich land in Utah years ago, and has so far invested 51 million euros, plus pay annual upkeep of around 600,000 euros. The land has around 2.6 billion barrels of shale oil. Sutter said only a few Eesti Energia employees are located in the United States, and they are obtaining environmental licenses. He added that these permits could be used in the future. Sutter also said the other side of the project is the business plan and viability, which are calculated in Estonia, adding that *currently, there are no plans in place*.

J.M. Laats, “Utah project frozen, says Eesti Energia CEO,” Estonian Public Broadcasting (Nov. 4, 2015) (emphasis added), available at <http://news.err.ee/v/632891bc-26fd-45f2-b2ae-a90b79b8d8d19> (last viewed June 13, 2016), and attached as Exhibit 25. Further, within a month this report, newspapers announced that Enefit’s Estonian parent was “preparing to write off large

N3g

Comment noted. The Energy Policy Act of 2005 (EPAct2005) directs the Secretary of the Interior to, “make public lands available to support oil shale development activities”. However, the BLM retains the discretion under NEPA and FLPMA to approve or deny particular rights-of-way applications as acknowledged in the EIS. See the response to Comments N3a and N3b.

N3h

This comment refers to the BLM’s financial capability determination, which is a FLPMA requirement and a BLM right-of-way processing step that allows the BLM to deny a right-of-way. See 43 CFR 2804.26 and 43 CFR 2884.23. This EIS is being prepared under NEPA to help the BLM make a decision based on an understanding of the environmental consequences, and take actions that protect, restore, and enhance the environment (40 CFR 1500.1(c)). There are no financial capability requirements in either the Act itself or CEQ’s implementing regulations. Therefore, this EIS analysis may inform the BLM’s final right-of-way financial capability determination, but it will not make that determination. Financial capability is demonstrated in the right-of-way permit application process (Standard Form 299, Item 12).

## COMMENT(S)

## RESPONSE(S)

N3

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investments made into projects in the United States,” including Utah projects. *See also* J.M. Laats, “Daily: Eesti Energia preparing to devalue Utah and Auvere investments,” Estonian Public Broadcasting (Nov. 25, 2015), available at <http://news.err.ee/v/30971640-67f8-4749-9cab-2287cd04c656>, last viewed June 13, 2016), and attached as Exhibit 26. Later media appear to confirm Enefit’s write-down of the South Project:

The lastingly low oil price is increasingly affecting state-owned Eesti Energia. Today the company announced a 65-million write-off as it reduced the value of two of its largest projects, and it might have to give up shale oil production.

The assets in question are the only recently completed Auvere power plant as well as the company’s Utah project, now worth €39.6m and €26m less respectively.

BNS, “Low oil price affects Eesti Energia,” (Jan. 19, 2016), available at <http://news.err.ee/v/7fd01ed9-b4b7-4c2f-bcff-0cbc6771097d> (last viewed June 13, 2016), and attached as Exhibit 27. *See also* Eesti Energia. 2015 Annual Report (Jan. 2016) at 27 (recognizing “impairment loss concerning assets related to ... Utah project” of 26 million euros), available at [https://www.energia.ee/-/doc/10187/pdf/concern/2015\\_presentation\\_eng.pdf](https://www.energia.ee/-/doc/10187/pdf/concern/2015_presentation_eng.pdf).

Given that Enefit is writing down as a loss a significant investment in the South Project, it is unclear whether Enefit has the intention or capital available to construct and maintain the rights-of-way. BLM therefore has a valid basis to, and should, reject the applications on the grounds that Enefit has failed to demonstrate that it has the financial capability to construct the project or operate facilities within the right-of-way.

3. Enefit Has Failed to Provide BLM with Necessary Information Needed to Disclose the Impacts of the Right-of-Way Applications.

BLM may deny a right-of-way application if the applicant “do[es] not adequately comply with a deficiency notice ... or with any BLM requests for additional information needed to process the application.” 43 C.F.R. § 2804.26(a)(6). The Draft EIS demonstrates that Enefit has chosen to withhold information critical to understanding the impacts of the proposed action and the evaluation of alternatives, and that in doing so Enefit has fundamentally undermined BLM’s ability to consider or disclose potentially significant impacts of the proposal. Based on Enefit’s withholding of, and failure to provide, information, BLM should deny the right-of-way applications.

First, Enefit has failed to disclose or provide any useful analysis concerning potentially significant impacts of the South Project – especially air and climate pollution impacts – although facilitating construction of the South Project is the very purpose of the rights-of-way. The Draft EIS states that it does not disclose information about the South Project’s air impacts because “[t]he availability of utilities to the Applicant could influence certain mining and mineral processing design considerations, which in turn may affect the nature and magnitude of air emissions associated with the Utility Project and South Project.” Draft EIS at 3-8. The Draft EIS fails to disclose such important information because, as BLM describes it, Enefit is simply “unwilling” to provide it:

The regulations cited apply to the BLM’s realty regulations and apply to review of a right-of-way application. Please note that the realty regulations are separate from the NEPA process.

It is unclear from the comment what info Grand Canyon Trust believes has been withheld that pertains to the right-of-way application. Based on the other Grand Canyon Trust comments, the BLM assumes that the Grand Canyon Trust deficiency concern is regarding the South Project design and environmental impacts. The BLM realty regulation does not apply to the South Project because the BLM has no jurisdiction over the South Project. In addition, the South Project information is not necessary for a reasoned choice between alternatives for the purposes of NEPA because the South Project will continue to full buildout regardless of the BLM decision on the Utility Project.

Regarding the Utility Project, the Applicant has compiled all data deficiency notices and responded to all BLM requests for additional information necessary to process the right-of-way application.

Environmental analysis of the South Project, which is outside the jurisdiction of BLM decision-making, will be subject to permitting by the appropriate federal, state, and local permitting agencies whose jurisdiction applies to those facilities.

N3i

N3i

## COMMENT(S)

## RESPONSE(S)

N3

Grand Canyon Trust and  
Multiple Nongovernmental Organizations (cont.)

The Applicant has provided BLM with all the information it has for the South Project mine plan and is *unwilling to expend further resources* to develop the mine plan and engineering specifications until it receives a decision on the utility corridor rights-of-way application due to the different design requirements between the Proposed Action and No Action Alternatives.

*Id.* at 2-37. Indeed, Enefit has told BLM point-blank: “while we understand the need for BLM to request information from us to define whether the South Project could continue in some form without the ROW grant, *we will not develop alternative South Project scenarios based on the BLM’s No Action alternative.*” Email of R. Clerico, Enefit to S. Howard, BLM (July 14, 2014) re: Enefit EIS connected action clarification, at page 1 (emphasis added), attached as Exhibit 28. Enefit alleges there are too many variables should the right-of-ways be denied, and that “[a]ny alternative South Project development scenario at this point would be far too speculative.” *Id.*

N3j

With this approach, Enefit has deliberately chosen to refuse BLM’s data requests, which will make BLM’s job of comparing alternatives impossible by refusing to disclose how the company will design its project if it receives the rights-of-way versus if it does not. Yet such a comparison of alternatives is the “heart” of the NEPA process. 40 C.F.R. § 1502.14. Enefit’s willful withholding of information rips the “heart” out of the federal law requirement by undercutting the comparison of alternatives simply because the company refuses to disclose its business plan if BLM doesn’t do what Enefit wants.

Enefit is gaming the system. By withholding information about how it might design the South Project until after it its right-of-way applications are granted or rejected, Enefit prevents BLM from addressing the most contentious and potentially significant impacts of the Project: air and climate impacts.

N3k

Enefit’s failure to provide the requested and necessary information is particularly arbitrary because the company knows or has predicted what process it intends to use (the Enefit280 process), how much water, natural gas and electricity it needs, the amount of shale oil it intends to produce, how many workers it will employ, and numerous other variables. Enefit has experience with the Enefit280 process in Estonia. Enefit’s contention that it cannot provide even ballpark projections for climate or air pollution is thus not credible. The company’s “unwillingness” to model the potential impacts of competing alternatives should not give Enefit a free pass to fail to disclose those impacts, as the law requires.<sup>4</sup>

If Enefit wishes to obtain the rights-of-way at issue, the company must stop obstructing the NEPA process. Enefit’s decision to deny BLM requests for additional information necessary to understand the South Project’s impacts under the action and no action alternatives is ample reason for BLM to reject Enefit’s applications.

Enefit has also failed to provide additional information needed to process the applications by failing to answer basic questions about the availability and practicality of several alternatives that could reduce the use of publicly-owned lands for rights-of-way. For example, rather than using

<sup>4</sup> As discussed below in section IV, BLM’s failure to obtain the information or to engage in reasonable forecasting about the impacts of the South Project also violates NEPA.

See the response to Comment N3i. Also, BLM is following 40 CFR 1502.22, which provides guidance for instances when information is incomplete or unavailable.

N3j

Please note that the South Project has been moved to the cumulative impact section to address public comment confusion over the South Project and the BLM’s lack of jurisdiction over it.

N3k

See the response to Comments N3i and N3j. Also, please note that differences in the shale are what make the Estonia information different from what would be anticipated in the South Project. Please refer to the EPA comments and responses.

## COMMENT(S)

## RESPONSE(S)

N3

**Grand Canyon Trust and  
Multiple Nongovernmental Organizations (cont.)**

and degrading public lands to construct a new natural gas pipeline to the South Project, Enefit could use existing pipelines. The Draft EIS notes the presence of at least three gas pipelines that traverse the South Project parcel, but declines to investigate this alternative in detail, asserting that “the quality, quantity, and rate of delivery for those existing facilities is *unknown at this time*, therefore this option was dismissed from the assumptions under the No Action Alternative.” Draft EIS at 2-40 (emphasis added). Enefit, however, knows exactly what information is lacking as it explained in email correspondence with BLM. Over a year ago, Enefit stated that re-commissioning the Summit pipeline to meet Enefit’s needs “could require additional compression and/or gas treatment to meet the pressure and quality demands of the SMR-PSA hydrogen plant, and it is unclear at this time where those facilities would need to be located. The pipeline is also several decades old, and integrity tests would need to be conducted to determine if any sections require replacement as part of the re-commissioning process.” Email of R. Clerico re: Response to data gaps (Mar. 22, 2015) (Exhibit 7), at PDF page 3. However, rather than undertake or pay for the analysis and testing necessary to obtain the relevant data, Enefit has apparently chosen to do nothing.

The Draft EIS makes the similar excuses for failing to consider whether one of several existing natural gas pipelines could be converted to transport shale oil product to market, rather than scraping public lands for miles for a new pipeline. BLM acknowledges that the South Project parcel contains “existing natural gas pipeline[s] (owned by Summit MidStream or Mapco),” but declines to analyze using them because “the technical feasibility and willingness of these facility owners” to convert the pipelines to moving liquid fuels “is unknown.” *Id.* at 2-41. Again, it is unclear why Enefit (and BLM) have apparently failed to obtain the necessary data from the owners of existing pipelines, something that could help avoid damaging public lands. Enefit’s failure to obtain and provide this “additional information needed to process the application” is sufficient basis for BLM to reject Enefit’s applications.

4. Issuing the Rights-of-Way Would Be Inconsistent With Federal Regulations

BLM has the discretion to reject the right of way application if... “[i]ssuing the grant would be inconsistent with the Act, other laws, or these or other regulations.” 43 C.F.R. 2804.26(a)(4). As currently proposed, issuing the right-of-way for the utility corridor would enable Enefit to violate the federal regulations that bind its activities on its federal oil shale research, development (RD&D) lease tract and demonstration lease tract and accompanying preferential expansion area.

*a. RD&D Activities Must Occur on the 160-Acre RD&D Tract*

The oil shale commercial leasing regulations approved by the BLM in November 2008 establish the terms and conditions for converting an RD&D lease into a commercial lease. See 43 C.F.R. § 3926 (“Conversion of Preference Right for Research, Development, and Demonstration (R, D and D) Leases”). According to the leasing regulations, an RD&D lessee must, among meeting other requirements, document “that there have been commercial quantities of oil shale produced from the lease, including the narrative required by the R, D and D leases.” 43 C.F.R. § 3926.10 (a)(1). BLM can approve the conversion application only “if it determines that... there have been commercial quantities of shale oil produced from the lease.” 43 C.F.R. § 3926.10 (c)(1).

BLM’s consideration of the right-of-way application for the Utility Project is separate from the RD&D lease. To date, there is no proposed activity on the RD&D lease as part of this EIS. Nor is activity on the RD&D lease reasonably foreseeable since they have not yet completed the steps preceding development.

This comment is beyond the scope of the Utility Project.



## COMMENT(S)

## RESPONSE(S)

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Grand Canyon Trust and  
Multiple Nongovernmental Organizations (cont.)

Within the commercial leasing regulations, “Commercial quantities” are defined as:

Production of shale quantities in accordance with the approved Plan of Development for the proposed project through the research, development, and demonstration activities conducted **on the research, development, and demonstration (R, D and D) lease**, based on, and at the conclusion of which, there is a reasonable expectation that the expanded operation would provide positive return after all costs of production have been met, including the amortized costs of the capital investment.

43 C.F.R. § 3900.2 (emphasis added). These requirements are reflected in Section 23 of the lease that Enefit signed with the BLM. Specifically, that section reads:

The Lessee shall have the exclusive right to acquire any or all portions of the preference lease area for inclusion in the commercial lease, up to a total of 5,120 contiguous acres, upon (1) documenting to the satisfaction of the authorized officer that it has **produced commercial quantities of shale oil from the lease**.

BLM RD&D lease form, attached as Exhibit 29 (emphasis added). And, under the terms of the RD&D lease:

“Commercial Quantities” means production of shale oil quantities in accordance with the approved Plan of Development for the proposed project **through the research, development and demonstration activities conducted on the lease**, that a reasonable expectation exists that the expanded operation would provide a positive return after all costs of production have been met, including the amortized costs of the capital investment.

BLM RD&D lease form, Section 1(b), Exhibit 29 (emphasis added).

Taken together, the operative requirement for converting an RD&D lease into a commercial lease is the production of commercial quantities from research done on the leasehold. The requirements codified in 43 C.F.R. § 3926, *et seq.*, are unconditional, and the BLM does not have the discretionary authority to allow an RD&D lessee to prove commercial viability in any location other than on its RD&D lease tract.

Indeed, BLM specifically addressed this exact point in the introductory language accompanying the commercial leasing regulations.

[s]everal comments expressed concern with the requirement under section 3926.10(b)(1) that an R, D and D lessee must document to the BLM’s satisfaction that it has produced commercial quantities of oil shale from the lease. A commenter stated that an R, D and D lessee should be allowed to obtain the preference lease area without being required to demonstrate that a profit had been made on the oil shale produced exclusively in the 160-acre R, D and D lease area. According to the commenter, if the goal of the R, D and D program is to demonstrate that commercial development of oil shale is feasible, it should not matter that the retort was actually located on nearby or adjacent lands. We disagree.

## COMMENT(S)

## RESPONSE(S)

N3

**Grand Canyon Trust and  
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The quality of an oil shale deposit will vary with location and therefore we believe that the location could affect the feasibility of a commercial oil shale project. The requirement in Section 23 of the R, D and D leases to produce in commercial quantities on an R, D and D lease is a key component of the BLM's R, D and D program. As the intent of subpart 3926 is not to establish new or different application requirements for conversion than those listed in Section 23 of R, D and D leases, but rather to be consistent with those provisions in the regulations, we are not eliminating the requirement for an R, D and D lessee's to produce commercial quantities.  
73 FR 69438-39, November 18, 2008 (emphasis added).

*b. Enefit's Stated Plans to Conduct its RD&D Activities on the South Project Are Inconsistent with Federal Regulations*

Enefit's stated plan to use its operations on the South Project to prove commercial viability and enable expansion onto its federal preferential lease area is inconsistent with and prohibited by the RD&D regulations. With the exception of taking a few core samples from its RD&D lease, the majority of the work Enefit has done and plans to do on its RD&D lease is and will be limited to collecting environmental data (*i.e.*, ambient air quality conditions, raptor surveys, sage grouse survey, etc.). The majority of its research will focus on its private property adjacent to the RD&D lease tract (the South Project). Enefit plans to use data gleaned from the South Project adjacent to the RD&D lease, in lieu of conducting actual work on the lease. July 19, 2012 Plan at 2 ("The RD&D Development Phase activities will be carried out on *both* the BLM RD&D lease property and [Enefit Oil Company]'s adjacent private Skyline property...").

Enefit's plans do not conform to BLM requirements that RD&D activities occur on the lease, and are not allowed under the conversion provisions of the leasing regulations. In sum, because issuing the utility corridor right-of-way would enable Enefit to undertake activities that are inconsistent with the commercial leasing regulations, BLM should reject the right-of-way application. *See* 43 C.F.R. 2804.26(a)(4).

**IV. The Draft EIS Fails to Properly Disclose the Impacts of the South Project and Development of the RD&D Lease.**

The purpose of the proposed rights-of-way is to facilitate development of a massive oil shale mining and retort operation on Enefit's private land at the South Project. Absent the South Project, Enefit has no need for the proposed rights-of-way. Despite the fact that the rights-of-way and Enefit's plans to develop the South Project are inextricably intertwined, the Draft EIS fails to contain an analysis of key impacts of the South Project, including the Project's climate and air pollution impacts. Similarly, because Enefit plans to conduct its RD&D activities on the South Project parcel, as discussed above, the impacts of Enefit's RD&D activities and expansion onto Enefit's preferential rights lease area are likewise intertwined with the rights-of-way. BLM and Enefit offer a number of excuses to avoid analyzing impacts from the South Project, but none of them hold water. The Draft EIS's failure to estimate the potential climate, air, and other impacts of the South Project, RD&D activities, and federal preferential right expansion as connected actions, indirect effects, or cumulative actions, violates NEPA. Any subsequently prepared NEPA document must correct these significant omissions.

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N3m

No activity on the RD&D lease is proposed in the application to which BLM is responding. Further, no activity on the RD&D lease is reasonably foreseeable since the Applicant has not yet completed the steps required by law preceding development.

N3n

No activity on the RD&D lease is proposed in the application to which BLM is responding. Further, no activity on the RD&D lease is reasonably foreseeable since the Applicant has not yet completed the steps required by law preceding development.

Please note that the South Project has been moved to the cumulative impact section to address public comment confusion over the South Project and the BLM's lack of jurisdiction over it. Impacts of the South Project under the No Action Alternative are described in Section 4.4 of the EIS.



COMMENT(S)

RESPONSE(S)

N3

**Grand Canyon Trust and  
Multiple Nongovernmental Organizations (cont.)**

1. NEPA Requires Disclosure of the Impacts of Connected Actions, of Indirect Impacts, and Cumulative Impacts

CEQ regulations require agencies to include within the scope of their NEPA analyses both connected actions and “[i]mpacts, which may be: (1) Direct; (2) indirect; [or] (3) cumulative.” 40 C.F.R. § 1508.25(a), (c). “Actions are connected if they: (i) Automatically trigger other actions which may require environmental impact statements[;] (ii) Cannot or will not proceed unless other actions are taken previously or simultaneously[; or] (iii) Are interdependent parts of a larger action and depend on the larger action for their justification.” *Id.* § 1508.25(a)(1). Indirect effects are those that:

are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.

*Id.* § 1508.8(b).

Indirect effects are those “which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable.” 40 C.F.R. § 1508.8(b). Indirect effects “may include growth inducing effects,” such as the South Project’s development. *Id.*

Subsequent development — or induced growth — is a reasonably foreseeable effect of a federal action when the entire purpose of the federal action is to facilitate such development. *See, e.g., Sierra Club v. Marsh*, 769 F.2d 868, 878–80 (1st Cir. 1985); *City of Davis v. Coleman*, 521 F.2d 661, 674–77 (9th Cir. 1975). The *City of Davis v. Coleman* decision involved a claim that a federal agency funding a highway interchange failed to consider in its NEPA analysis the effects of industrial development the interchange would enable. 521 F.2d at 667. The court found that the interchange was “not being built to meet the existing demand for freeway access [as asserted by the project proponent] but to stimulate and service future industrial development in the . . . area.” *Id.* It noted that “the interchange is an indispensable prerequisite to rapid development of the Kidwell area.” *Id.* at 674. Not only could development not proceed without the interchange, but such development was the project’s “raison d’être.” *Id.* at 674. Accordingly the court ordered the federal agency to prepare an EIS accounting for the effects of industrial development that the interchange would enable. *Id.* at 677.

*Sierra Club v. United States* (hereafter *Rocky Flats*) involved a factual situation nearly identical to the present one. In that case, a private corporation asked the Department of Energy (DOE) for an easement across federal land to its inholding so that it could develop and transport resources from that land. 255 F. Supp. 2d 1177 (D. Colo. 2002). DOE did not consider an inholding’s development in a NEPA analysis. *Id.* at 1183. The court explained, “But for the road [across DOE lands], the mining company could not access the mine site; absent the mine, there is no independent utility for the access road.” *Id.* at 1184. The court concluded that “the [e]asement is an integral part of the entire mining project” and that development was “reasonably foreseeable” because there were “firm plans” to develop a mine on the inholding. *Id.* at 1185.

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The court thus held that development of the mine was an indirect effect that had to be considered in DOE's NEPA review of the easement. *Id.*

Enefit's requested rights-of-way are "an indispensable prerequisite" and "an integral part of the entire [development] project." The development is the easements' "raison d'être"; enabling the inholdings' development is the "announced goal and anticipated consequence" of the rights-of-way that Enefit has applied for. *Friends of the Earth, Inc. v. U.S. Army Corps of Eng'rs*, 109 F. Supp. 2d 30, 41 (D.D.C. 2000) ("Since the economic development of these areas is an announced goal and anticipated consequence of the [federally approved] projects, the Corps cannot claim that the prospect of secondary development is 'highly speculative.'"); *see also City of Davis*, 521 F. 2d at 677 ("The argument that the principle object of a federal project does not result from federal action contains its own refutation."); 44 Fed. Reg. 29,107, 29,110 (May 18, 1979) (stating Forest Service must consider "off-site consequences" in NEPA analysis of special use authorizations). The reason Enefit seeks the rights-of-way is to "produce and deliver shale oil from oil shale mined under the South Project." Draft EIS at 1-7. And development of the South Project is reasonably foreseeable if the subsidy of federal lands for the rights-of-way is provided.

Most circuits apply an "independent utility" test to determine whether two actions are connected and so must be analyzed together in a single EIS. *See, e.g., Del. Riverkeeper Network v. FERC*, 753 F.3d 1304, 1316–17 (D.C. Cir. 2014); *N. Plains Res. Council, Inc. v. Surface Transp. Bd.*, 668 F.3d 1067, 1087 (9th Cir. 2011). Under that test, the court asks "whether 'each of two projects would have taken place with or without the other.'" *N. Plains Res. Council*, 668 F.3d at 1087 (quoting *Wetlands Action Network v. U.S. Army Corps of Eng'rs*, 222 F.3d 1105, 1118 (9th Cir. 2000)). "If the answer is yes, then the projects have 'independent utility' and do not require the same EIS." *Id.* at 1087–88.

The court in *Alpine Lakes Protection Society v. U.S. Forest Service* applied the independent utility test to facts paralleling those here, holding that development on an inholding was a connected action to the easement requested to access the parcel. 838 F. Supp. 478, 482–83 (W.D. Wash. 1993). That case involved a challenge to a National Forest Service special use permit to allow a timber company "to build, maintain, and use a 0.23 mile road [across National Forest lands] for access to its property for a 5-year period to conduct timber management activities." *Id.* at 480. The Forest Service did not consider the company's timber management in its NEPA analysis. *Id.* The court stated, "there is no dispute that the sole purpose of the . . . access road is to facilitate [the] timber management activities." *Id.* at 482. It then held: "Because it depends solely on [the company's] logging activities for its justification and is an 'interdependent part' of [the company's] timber management activities, the . . . access road and the timber management activities are connected actions" that must be considered in a NEPA review of the easement. *Id.* (citing 40 C.F.R. § 1508.25(a)(1)(iii)).

This situation here is nearly identical: Enefit's requested easements and the South Project's development do not each serve an "independent utility": each action would not take place without the other. Granting the rights-of-way cannot be justified unless the South Project is to be developed. Further, as described above, the South Project is unlikely to be developed unless the rights-of-way are granted.

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It does not matter that the construction and development on the inholdings are not themselves federal projects. *See, e.g., Port of Astoria v. Hodel*, 595 F.2d 467, 477 (9th Cir. 1979); *Alpine Lakes*, 838 F. Supp. at 482. The South Project's development is a connected action to granting the rights-of-way. *See, e.g., Rocky Flats*, 255 F. Supp. 2d at 1184–85 (holding private mine was connected action to federal easement where easement was intended to allow transport of mined sand and gravel across federal land); *Alpine Lakes*, 838 F. Supp. at 482 (holding timber management on private inholdings was connected action to Forest Service easement where “the sole purpose of the . . . access road [was] to facilitate . . . timber management activities” on the inholdings). The BLM therefore must analyze and disclose the effects of the development as a connected action in its EIS.

Further, agencies must analyze and disclose the reasonably foreseeable environmental effects from induced development if that development is a connected action to or indirect effect of the federal action. *See* 40 C.F.R. § 1508.8(b) (“Indirect effects may include . . . effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.”); *TOMAC v. Norton*, 240 F. Supp. 2d 45, 51–52 (D.D.C. 2003) (holding EA’s discussion of induced growth inadequate because it “provides little discussion of the impact of secondary growth on public services . . . or on endangered species, wetlands, air quality, or other natural resources”), *aff’d*, 433 F.3d 852 (D.C. Cir. 2006). It is not adequate to simply disclose that such development is likely without addressing the development’s environmental effects. *See Davis v. Mineta*, 302 F.3d 1104, 1123 (10th Cir. 2002) (concluding adequate consideration of induced growth required “discussion or comparison of the local effects” of such growth; table outlining growth was insufficient).

A possible environmental effect of development must be analyzed “when the nature of the effect is reasonably foreseeable [even if] its extent is not.” *Mid States Coal. for Progress v. Surface Transp. Bd.*, 345 F.3d 520, 549 (8th Cir. 2003). Development plans do not need to be particularly detailed for the nature of the development’s effects to be reasonably foreseeable. *City of Davis*, 521 F.2d at 676 (“We reject [the] position that the uncertainty of development in the [project] area makes the ‘secondary’ environmental effects of the interchange too speculative for evaluation. . . . And regardless of its nature or extent, this development will have significant environmental consequences for the surrounding area, including Davis.”). When “the development potential which the [federal action] will create comprehends a range of possibilities,” the agency must “evaluate the possibilities in light of current and contemplated plans and . . . produce an informed estimate of the environmental consequences”; it must “explore in the EIS . . . alternative scenarios based on . . . external contingencies.” *Id.*

Enfit’s development plans for the South Project are “far from speculative.” Although there may be some uncertainty as to the precise engineering and design of the project, the nature and parameters of the development’s effects are known or knowable. As the Ninth Circuit explained in *City of Davis*, “this is precisely the kind of situation Congress had in mind when it enacted NEPA: substantial questions have been raised about the environmental consequences of federal action, and the responsible agencies should not be allowed to proceed with the proposed action in ignorance of what those consequences will be.” *Id.* at 675–76. BLM must analyze and disclose all reasonably foreseeable environmental effects possible under the range of development possibilities on the table.

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The South Project is outside the jurisdiction of the BLM and will proceed to full buildout regardless of the BLM decision to be made for the Utility Project. To address confusion expressed by the public during the Draft EIS comment period, those South Project impacts that may accumulate with the impacts of the Proposed Action have been moved to the cumulative impact analysis in the Final EIS. Since the No Action Alternative is to deny the requested rights of way, there is no accumulation of impacts under that alternative. However, given public interest in the South Project, Section 4.4 has been added to the EIS that describes the South Project if the BLM were to deny the Utility Project. Section 1.2.1 has been changed to reflect this clarification.

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Multiple Nongovernmental Organizations (cont.)2. NEPA Requires Agencies to Make Reasonable Projections of Proposed Actions.

Whether BLM considers the South Project to be a connected action or an indirect effect of the rights-of-way, or whether it considers the Project as a cumulative action, it must disclose the South Project's impacts because NEPA *requires* making projections about outcomes, even where there is some uncertainty about those impacts. "Reasonable forecasting and speculation is ... implicit in NEPA, and we must reject any attempt by agencies to shirk their responsibilities under NEPA by labeling any and all discussion of future environmental effects as 'crystal ball inquiry.'" *Scientists' Inst. for Pub. Info., Inc. v. Atomic Energy Comm'n*, 481 F.2d 1079, 1092 (D.C. Cir. 1973); *N. Plains Res. Council, Inc. v. Surface Transp. Bd.*, 668 F.3d 1067, 1079 (9th Cir. 2011) ("reasonable forecasting [and] speculation [are] implicit in NEPA") (quotations and citation omitted). "If it is reasonably possible to analyze the environmental consequences in an [EIS], the agency is required to perform that analysis." *Kern v. U.S. Bureau of Land Mgmt.*, 284 F.3d 1062, 1072 (9th Cir. 2002) (finding both EIS and later EA inadequate under NEPA). As the Ninth Circuit stated, "[t]he government's inability to fully ascertain the *precise extent* of the effects of mineral leasing in a national forest is not, however, a justification for failing to estimate what those effects might be before irrevocably committing to the activity." *Conner v. Burford*, 848 F.2d 1441, 1450 (9th Cir. 1988) (emphasis added).

Federal courts have set aside Interior Department agency NEPA documents where the agency failed to disclose, in a quantitative manner, climate pollution impacts of decisions that, like the one at issue here, enable the production of fossil fuels. *High Country Conservation Advocates v. U.S. Forest Serv.*, 52 F.Supp.3d 1174, 1196 (D. Colo. 2014) (finding BLM and Forest Service "decision to forgo calculating the reasonably foreseeable GHG emissions associated with the [Colorado Roadless Rule] was arbitrary in light of the agencies' apparent ability to perform such calculations and their decision to include a detailed economic analysis of the benefits associated with the rule"); *WildEarth Guardians v. United States Office of Surface Mining, Reclamation and Enforcement*, 104 F.Supp.3d 1208 (D. Colo. 2015) (setting aside environmental assessment where the agency failed to address the impacts of coal combustion because "[a]gencies need not have perfect foresight when considering indirect effects which by definition are later in time or farther removed in distance than direct ones.").

3. NEPA Requires Agencies to Disclose Important Information that May Be Difficult to Obtain.

NEPA further requires that where agencies identify that information "is incomplete or unavailable ..., the agency shall always make clear that such information is lacking." 40 C.F.R. § 1502.22. Agencies "shall" nonetheless obtain information relevant to adverse impacts where it "is essential to a reasoned choice among alternatives and the overall costs of obtaining it are not exorbitant." 40 C.F.R. § 1502.22(a). As such, NEPA mandates that agencies perform the research necessary to understand the difference in impact among alternatives. *Save Our Ecosystems v. Clark*, 747 F.2d 1240, 1244 n.5, 1249 (9th Cir. 1984) ("Section 1502.22 clearly contemplates original research if necessary;" "[a]s long as the information is ... 'significant,' or 'essential,' it must be provided when the costs are not exorbitant ...."); *Montgomery v. Ellis*, 364 F.Supp. 517, 528 (N.D. Ala. 1973) ("NEPA requires each agency to undertake the research needed adequately to expose environmental harms and, hence, to appraise available

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Section 4.4 of the EIS includes additional clarification on the South Project from the Applicant that was previously unavailable for the Draft EIS. Where appropriate, information and data that is unavailable is noted in the analysis. When the effects are unknown, the procedures in 40 CFR 1052.22 have been followed.

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alternatives.”). If the costs of obtaining the missing information are “exorbitant,” agencies have a duty to evaluate the potential, reasonably foreseeable impacts in the absence of relevant information, using a four-step process. 40 C.F.R. § 1502.22(b).

Courts have set aside NEPA analysis where agencies failed to disclose that information was unavailable or failed to obtain the necessary information. *See, e.g., Lands Council v. Powell*, 395 F.3d 1019, 1031-32 (9th Cir. 2005) (agency failure to disclose relevant shortcomings in model used for analysis violated NEPA); *Mid States Coal. for Progress v. Surface Transp. Bd.*, 345 F.3d 520, 549-50 (8th Cir. 2003) (pursuant to 40 C.F.R. § 1502.22, agency was required to evaluate potential air quality impacts associated with increased availability and utilization of coal).

4. The Draft EIS Fails to Disclose the South Project’s Climate and Air Pollution Impacts.

The Draft EIS fails to quantify, and fails to provide more than the most vague qualitative statements, concerning South Project’s climate and air impacts.

The Draft EIS’s “analysis” of the climate impacts of the South Project provides the public with no useful information about the scale and nature of greenhouse gas (GHG) emissions. The Draft EIS states that “the South Project would have substantial GHG emissions that *may be* higher than the 25,000 MT CO<sub>2</sub>eq per year.” Draft EIS at 4-39 (emphasis added). “The GHG emissions at the South Project *may be* reduced by implementation of mitigation measures,” or, apparently, may not be reduced. *Id.* (emphasis added). Mitigation measures that require “less use of vehicles” are, unsurprisingly, “expected to have lower GHG emission levels.” *Id.* The Draft EIS makes broad, bland statements that some types of processes involved in oil shale processing and mining will produce more climate emissions than others. *Id.* at 4-40 (“Based on the Applicant’s information provided describing the South Project, fuel combustion and oil shale mining operations would constitute the primary GHG emissions sources.”). The Draft EIS also divulges that fuel combustion will result in climate pollution. *Id.* at 4-41 (“During operation of the South Project fuel combustion for the shale retort operation and other fuel-burning equipment also would result in formation and release of GHGs”). The Draft EIS reveals that GHG emissions would be reduced when the South Project is closed. *Id.* at 4-44 (“The operation of the South Project facilities under the Proposed Action ... would result in increased GHG emissions throughout the operating life of the facility .... However, these emissions would cease when the oil shale resource is depleted.”). The Draft EIS provides quantitative estimates of GHG emissions from truck trips necessary to haul shale oil product to pipelines should the right-of-way not be built, *id.* at 4-43, but provides no other quantitative (or qualitative) analysis. In sum, the Draft EIS discloses that the South Project mining and processing of oil shale will cause climate pollution, but almost nothing else.

The Draft EIS’s treatment of the air quality impacts of oil shale mining and processing at the South Project is equally devoid of detail. The document explains that it provides only “[a] general description of the *types* of emissions sources that are expected to be present at the South Project,” as opposed to any projections of quantities of emissions. *Id.* at 4-49; *see also id.* (“the general nature of the anticipated air emissions sources that might result from the development of oil shale resources planned for the South Project can be identified”). The Draft EIS explains that

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The South Project is outside of the jurisdiction of the BLM and will proceed to full buildout regardless of the BLM decision to be made for the Utility Project. To address confusion expressed by the public during the Draft EIS comment period, those South Project impacts that may accumulate with the impacts of the Proposed Action have been moved to the cumulative impact analysis in the EIS (including climate change and air pollution). Given public interest in the South Project, Section 4.4 has been added to the EIS that describes the potential resource impacts from the South Project if the BLM were to deny the Utility Project.

Where possible, additional information has been added to the EIS to more clearly describe the potential impacts to GHG and air quality from the Utility Project and the South Project, as appropriate.

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certain types of processes will cause air pollution, but explains only what types of pollutants may result. *Id.* at 4-50 (“Electrical generation equipment . . . will have air emissions due to fuel combustion,” and identifying several chemicals (NOX, CO, VOC, SO<sub>2</sub> and PM) as pollutants). The Draft EIS admits that ozone pollution is a significant problem in the region, but concludes, equivocally, that “the operation of the South Project *may* have *some* contributory effect on the current winter ozone episodes.” *Id.* at 4-52 (emphasis added). The Draft EIS alleges that as part of EPA permitting, modeling must demonstrate that “the air emission controls included in the South Project facilities are sufficient to avoid adverse air quality impacts.” *Id.* at 4-51. As with climate pollution, the Draft EIS divulges that air pollution will diminish when the South Project is closed. *Id.* at 4-54 (“operation of the South Project facilities under the Proposed Action . . . would result in increased pollutant emissions throughout the operating life of the facility. However, these emissions would cease when the oil shale resource is depleted.”). The Draft EIS provides quantitative estimates of air pollution from truck trips necessary to haul shale oil product to pipelines should the right-of-way not be built, *id.* at 4-54, but provides almost no other quantitative (or qualitative) analysis. In sum, the Draft EIS discloses that the South Project mining and processing of oil shale will cause air pollution, but little else.

The Draft EIS contains data that does indicate that air pollution from the South Project is likely to be massive. In addressing ozone impacts, the Draft EIS states:

Overall the South Project contributes 50,000 barrels of [synthetic crude oil] per day in a region that now produces over 20 million barrels of conventionally extracted oil per year.

Draft EIS at 4-52. This comparison – 50,000 barrels per day to 20 million per year – may be intended to make the output of the South Project look small. However, 50,000 barrels per day is 18.3 million barrels per year, meaning that the South Project *will nearly double the amount of oil produced from the Uinta Basin*. This is significant because BLM uses air pollution from oil and gas operations as a proxy for the likely air pollution impacts of oil shale mining and processing. See Draft EIS at 4-52 (“Based on typical oil and gas mining and refining operations conducted in Wyoming and Utah, the general nature of the anticipated air emissions sources that might result from the development of oil shale resources planned for the South Project can be identified.”).

In any subsequently prepared NEPA document, BLM must disclose the fact that the South Project would nearly double the region’s oil production, and could result in a similar increase in the region’s air pollution from fossil fuel production.

5. The Draft EIS Provides Numerous Excuses for Its Failure to Disclose the South Project’s Climate and Air Pollution Impacts.

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The Draft EIS provides at least five justifications for providing only vague qualitative discussion of the climate change and air pollution impacts likely to result from the construction and operation of the South Project.

First, as noted above, the Draft EIS asserts that the specific design of the South Project may differ depending on whether the right-of-way applications are granted or not, and that BLM cannot disclose certain impacts of the South Project because Enefit is “*unwilling to expend*

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*further resources* to develop the mine plan and engineering specifications until it receives a decision” on the rights-of-way. Draft EIS at 2-37 (emphasis added). The Draft EIS specifically relies on this excuse, among others, to avoid even estimating potential climate and air pollution impacts:

It is not known what quantity of GHG [greenhouse gas] emissions would result from the South Project because it has not yet been fully designed and engineered. This information is unknown, and cannot be obtained, due to the fact that design and engineering of the South Project will change based on whether or not the BLM allows the Applicant to build one or more of the proposed utilities.

Draft EIS at 4-39. *See also id.* (“Engineering information for these sources has not been developed to allow credible estimates for South Project GHG emissions.... While it is appropriate to identify the nature of the future GHG sources, there is insufficient engineering data for the South Project at this time to quantify the GHG emissions”). The Draft EIS makes nearly identical statements concerning BLM’s failure to disclose air quality emissions data. *Id.* at 4-48 – 4-49.

Second, the Draft EIS alleges that it need not disclose the South Project’s pollution impacts because those impacts are unimportant to the analysis, concluding that under 40 C.F.R. § 1502.22, the disclosure of such impacts is not “essential to a reasoned choice among alternatives.”

BLM believes this unknown information is not essential to a reasoned choice between alternatives because the South Project will proceed to full buildout regardless of the BLM’s decision, and the BLM qualitatively knows that emissions under the No Action alternative from the South Project are generally going to be higher than under the Proposed Action alternative due to the need for the Applicant to generate their own electricity and utilize trucks to deliver water and product to and from the South Project.

*Id.* at 4-39 (addressing climate emissions). *See also id.* at 4-48 – 4-49 (making identical statement concerning air emissions).

Third, the Draft EIS apparently intends to assert that the cost of obtaining the information is “exorbitant” under 40 C.F.R. § 1502.22 when it states that “obtaining the unknown emissions quantifications from the South Project would be cost prohibitive because it would require the Applicant to design and engineer the entire South Project twice – once for the No Action and once for the Proposed Action alternatives.” Draft EIS at 4-39 addressing climate emissions); *id.* at 4-49 (making identical assertions concerning air emissions).

Fourth, the Draft EIS alleges that there is no need for BLM to provide the information now because a permitting process by another agency later will be “functionally equivalent” to a NEPA analysis.

BLM anticipates that [the missing climate pollution] information will be generated by the Applicant and disclosed to the public by EPA after the South

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Project is fully designed and engineered because the South Project *will be subject to the EPA's new source permitting process*, which is required by the Clean Air Act and is *functionally equivalent* to NEPA.

Draft EIS at 4-39 (emphasis added); *id.* at 4-49 (same for air pollution). Although BLM states unequivocally that “the South Project will be subject to the EPA’s new source permitting process,” the Draft EIS contradicts that statement with respect to climate pollution: “[W]ithout facility design information and corresponding emissions estimates it is *not known with certainty* that the major source/PSD permitting process will apply to South Project emissions of GHGs or other regulated air pollutants. Therefore, it cannot be guaranteed at this time that BACT will be required.” *Id.* at 4-39 – 4-40 (emphasis added). The Draft EIS similarly hedges with respect to air quality impacts, stating that the South Project “is *expected* to constitute a major source of air emissions,” which would require a Clean Air Act PSD permit. *Id.* at 4-49.

Finally, BLM argues that “as a connected action on private land, the South Project is not subject to BLM licensing and specific review under the NEPA process.” *Id.* at 4-39.

6. The Draft EIS’s Rationales for Failing to Disclose the Climate and Air Pollution Impacts of the South Project All Lack Merit.

As discussed in detail below, none of the rationales for failing to disclose the climate and air pollution impacts of the South Project has merit.

a. *BLM Can and Must Make Reasonable Forecasts Concerning the Climate and Air Pollution Impacts of the South Project.*

BLM can – and must – project climate and air quality impacts from South Project development and operation. First, monitoring data surely exists for air pollution from Enefit’s shale oil plant in Estonia that uses the Enefit280 process. Carbon pollution is regulated and monitored under the European Union’s Emissions Trading System (ETS). See [http://ec.europa.eu/clima/policies/ets/auctioning/index\\_en.htm](http://ec.europa.eu/clima/policies/ets/auctioning/index_en.htm) (last viewed June 13, 2016). The air and climate pollution impacts of that Estonian Enefit280 facility would provide useful data for the public and decisionmakers to understand the potential nature and scope of the South Project’s emissions, even if there are differences between the nature of oil shale in Utah and that in Europe, and potential differences in project design. Further, BLM and other agencies routinely model air impacts in NEPA documents based on less than perfect information for a variety of proposed agency actions, including for oil and gas leasing as well as coal leasing. Failing to compile and disclose such data, and to use it to make reasonable projections, violates NEPA.

Further, failing to disclose such emissions in this EIS would contradict a commitment made by BLM in its 2012 programmatic EIS evaluating the impact of identifying federal lands open to oil shale and tar sands leasing. That EIS states:

To estimate total potential air pollutant emissions, emission factors for a specific activity must be identified and then multiplied by activity levels and engineering control efficiencies. The emission factors from proposed project activities *would*

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*be estimated in future NEPA analyses* by using appropriate equipment manufacturer's specifications, testing information, EPA AP-42 emission factor references (EPA 1995), and other relevant references.

Bureau of Land Management, Final EIS, Proposed Land Use Plan Amendments for Allocation of Oil Shale and Tar Sands Resources (Nov. 2012) at 4-61 (emphasis added). Enefit undoubtedly has emissions factors and other relevant references to provide quantitative estimates of air and climate pollution from its Enefit280 process, whatever the precise design and engineering of the South Project may be.

Second, BLM's allegation that it is "unwilling" to provide any quantitative estimates for air or climate emissions stands in stark contrast to the agency's willingness and ability to quantify the impacts of the South Project for numerous resources even without detailed design and engineering specifications. BLM's ability to estimate such impacts while refusing to make even basic projections about air and climate pollution impacts is arbitrary and capricious.

For example, in assessing impacts to surface water, the Draft EIS notes that Enefit is still in a preliminary engineering design process for the South Project, and as such water supply amounts may vary. Draft EIS at 2-39. Yet the Draft EIS nonetheless provides detailed predictions for the South Project's water consumption, predicting water use for the South Project down to the one-hundredth of an acre foot for several different parts of project operations. *See id.* at 2-39 and 4-69 (estimating precisely the South Project's water consumption for the first four years of operation, as well as the following 30 years of operation, of the South Project for: (1) mining; (2) retorting and upgrading; (3) utility and power generation; and (4) "other uses"). While BLM qualifies its forecasts as "preliminary estimates," *id.* at 4-68, it nonetheless provides them as part of its obligation to take a hard look at the impacts of surface water.

The Draft EIS also makes projections quantifying the volume of the production of shale oil (50,000 barrels per day) and the amount of raw shale necessary to produce that volume of oil from the South Project (28.5 million tons per year). Draft EIS at 2-38; *see also id.* at 4-153 (estimating raw shale at 28 million tons per year). The Draft EIS also modeled the exact emissions of five air pollutants down to the one-tenth, and in some cases, down to the one-hundredth, of a ton that would result from trucking the South Project's shale oil product from that site to a pipeline under the "no action" alternative. *See id.* at 4-54, Table 4-7.

The Draft EIS also makes quantitative forecasts and projections concerning the number, and impacts, of workers required to build and operate the South Project. The Draft EIS estimates, with precision, the numbers of those likely to be directly employed by project construction (2,525) and operation (1,730). *Id.* at 4-134, Table 4-30. BLM also precisely estimates the impact of those employees on the local housing market. *Id.* at 4-136 – 4-137 (estimating that South Project employees will absorb 1.5% to 3.2% of the housing vacancy in the local area). The Draft EIS also contains specific numerical estimates for South Project's impact on the annual earnings the employees would receive (\$100 million), for the number of additional students in the school system (485), for the additional number of government employees required due to the increased demand for government-provided services, such as police, fire, medical services and schools (30 during the construction phase, and 64 during South Project operations),

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and for the increase in local government expenditures (1.2% during construction and 2.6% during South Project operations). *Id.* at 4-135 – 4-136.

The details that the Draft EIS was able to provide concerning the South Project’s impacts to water, production, employment, housing and government services demonstrate that BLM and Enefit can and did make reasonable quantitative predictions, even if the company has not completed all South Project engineering and design. Federal courts have struck down EISs where BLM failed to address climate impacts while disclosing the economic benefits of decisions regarding coal. *High Country Conservation Advocates*, 52 F.Supp.3d at 1196. In any subsequently prepared NEPA document, BLM must disclose quantitative forecasts for climate pollution from the South Project.

Finally, that Enefit is “unwilling” to provide additional information is irrelevant to BLM’s NEPA obligations. As noted above, federal courts require an EIS in this situation to “explor[e] . . . alternative scenarios based on . . . external contingencies.” *City of Davis*, 521 F.2d at 676. BLM must discharge its duty to undertake the necessary analysis of the potential for air and climate emissions under all alternatives.

b. *Disclosure of Climate and Air Pollution from the South Project Is “Essential to a Reasoned Choice Among Alternatives.”*

The Draft EIS’s contention that air and climate pollution data are “not essential to a reasoned choice between alternatives because the South Project will proceed to full buildout regardless of the BLM’s decision,” Draft EIS at 4-39, is unsupported and incorrect. Further, because BLM can provide quantitative data, as discussed above, BLM cannot decline to provide that data by availing itself of the provisions of 40 C.F.R. § 1502.22.

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As noted above, BLM is wrong because it *cannot* be certain that the South Project will be built without the considerable subsidies provided by the public lands rights-of-way. *See supra* at III(1). By lowering Enefit’s costs, the rights-of-way make the South Project more likely; without the rights-of-way, Enefit’s costs will rise, making it less likely constructing the South Project will be financially feasible.

The future of human and other life on the planet is being and will continue to be impacted for centuries by decisions – like this one – that we make today. Understanding the nature and scope of those impacts, and trade-offs among alternatives, is critical to public debate and agency decisionmaking. Failing to attempt to quantify these potential impacts – especially while minutely detailing impacts like the number of government employees, a number which would be similar under both alternatives – is contrary to NEPA’s mandate to take a “hard look” at potential impacts.

N3v

c. *The Cost of Obtaining Climate and Air Pollution Estimates Is Not Exorbitant.*

BLM apparently intends to excuse its failure to forecast climate and air pollution from the South Project on the grounds that the cost of obtaining such information is “exorbitant” as used in 40 C.F.R § 1502.22. But BLM’s allegation that “obtaining the unknown emissions quantifications from the South Project would be cost prohibitive because it would require the Applicant to

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See the response to Comment N3r.

N3v

See the response to Comment N3r.

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design and engineer the entire South Project twice – once for the No Action and once for the Proposed Action alternatives,” Draft EIS at 4-39, finds no support in the EIS. BLM does not explain what “cost prohibitive” means, who defined it, or whether it means the same thing as “exorbitant?” The mere fact that Enefit may prefer to spend no funds to design and engineer a project assuming the “no action” alternative is adopted is not a valid basis for ignoring NEPA’s hard look requirement, particularly given that the consideration of alternatives is the heart of the NEPA process.

And, as described above, BLM and Enefit could use data from Enefit’s Estonian plant to make reasonable projections to inform the public and other decisionmakers of likely impacts. The complete absence of any attempt to quantify these impacts is arbitrary.

- d. *BLM Cannot Rely on a Different Agency’s Subsequent Non-NEPA Review to Substitute for BLM’s Analysis Now.*

The Draft EIS’s suggestion that BLM need not attempt to forecast quantitatively climate and air pollution impacts from the South Project because a permitting process by another agency later will be “functionally equivalent” to a NEPA analysis lacks any legal or factual support.

The Draft EIS contradicts its own conclusion that EPA will undertake such an analysis when it admits that it is “*not known with certainty*” that the major source/PSD permitting process will apply to South Project emissions of GHGs or other regulated air pollutants.” Draft EIS at 4-39 – 4-40 (emphasis added).

Further, we are unaware of any caselaw concluding that a federal agency may avoid making reasonable projections about a federal action’s air and climate indirect or cumulative impacts because EPA may later issue a permit. To the contrary, federal appeals courts have repeatedly stated that “[a] non-NEPA document ... cannot satisfy a federal agency’s obligations under NEPA.” *Klamath-Siskiyou Wildlands Center v. BLM*, 387 F.3d 989, 998 (9th Cir. 2004); *see also South Fork Band Council v. Dept. of Interior*, 588 F.3d 718, 726 (9th Cir. 2009). And when a court was recently asked to conclude that an agency within the Interior Department need not address air quality impacts of a coal mining decision in a NEPA analysis because Clean Air Act permitting would ensure no violations of that law’s standards, the court flatly rejected that argument:

The question posed by the plaintiff is not whether the increased mining will result in a release of particulate matter and ozone precursors in excess of the NAAQS, but whether the increased emissions will have a significant impact on the environment. One can imagine a situation, for example, where the particulate and ozone emissions from each coal mine in a geographic area complied with Clean Air Act standards but, collectively, they significantly impacted the environment. It is the duty of [the federal Office of Surface Mining, or OSM] to determine whether a mining plan modification would contribute to such an effect, *whether or not the mine is otherwise in compliance with the Clean Air Act’s emissions standards*. During oral argument, even OSM’s counsel acknowledged that he does not read the Clean Air Act exemption to mean that OSM cannot or need not assess the impacts of mining activities on air quality.

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The South Project is outside the jurisdiction of the BLM and will proceed to full buildout regardless of the BLM decision to be made for the Utility Project. Therefore, environmental analysis of the South Project, which is outside the jurisdiction of BLM decision-making, will be subject to permitting by the appropriate federal, state, and local permitting agencies whose jurisdiction applies to those facilities.

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*WildEarth Guardians*, 104 F.Supp.3d at 1227-28. If BLM is aware of any legal support for its novel position, we request that the agency disclose it in any subsequently prepared NEPA document.

The requirement that BLM disclose and quantify the climate and air quality impacts in the Enefit rights-of-way EIS is further supported by NEPA's mandate that agencies must apply NEPA "early in the process." 40 C.F.R. § 1501.2 ("Agencies shall integrate the NEPA process with other planning at the earliest possible time to insure that planning and decisions reflect environmental values, to avoid delays later in the process, and to head off potential conflicts."). Declining to disclose the South Project's air and climate impacts until after BLM has approved subsidies for the project contradicts the letter and spirit of NEPA.

In any event, the statement that EPA's new source review is the "functional equivalent" of NEPA is false. New source review does not mandate the consideration of all reasonable alternatives; does not require the consideration of mitigation measures; and does not address scores of other NEPA mandates. NEPA is primarily a disclosure statute; new source review primarily ensures that a new source will not cause violations of ambient air quality standards. As the *WildEarth Guardians* court explained, NEPA requires far more than a conclusion that a given project will not violate the law.

- e. *The Fact That the South Project Is Not Subject to BLM Licensing Does Not Eliminate BLM's Duty to Disclose Climate and Air Pollution Impacts.*

BLM's argument that "as a connected action on private land, the South Project is not subject to BLM licensing and specific review under the NEPA process," Draft EIS at 4-39, is also incorrect. The South Project is, as BLM admits, a "connected action." Draft EIS at 2-37. As such, NEPA requires that BLM disclose the South Project's climate and air quality impacts as indirect, or at a minimum, cumulative effects. See *supra* at IV.

Even if BLM was correct that the South Project will be built without the subsidy of BLM's rights-of-way, an assumption we dispute, BLM guidance still requires disclosure of climate and air pollution impacts from the South Project. See Draft EIS at 1-5 – 1-6. That guidance states:

If the connected non-Federal action cannot be prevented by BLM decision-making, but its effects can be modified by BLM decision-making, then the changes in the effects of the connected non-Federal action must be analyzed as indirect effects of the BLM proposed action.

BLM, National Environmental Policy Act Handbook H-1790-1 (Jan. 2008) at 47, available at [http://www.blm.gov/style/medialib/blm/wo/Information\\_Resources\\_Management/policy/blm\\_ha\\_ndbook\\_Par\\_24487\\_File.dat/h1790-1-2008-1.pdf](http://www.blm.gov/style/medialib/blm/wo/Information_Resources_Management/policy/blm_ha_ndbook_Par_24487_File.dat/h1790-1-2008-1.pdf) (last viewed June 13, 2016). Here, BLM has admitted that the South Project will involve "different design requirements" if the rights-of-way are not approved. Draft EIS at 2-37. It seems likely that a different project design could result in different climate and air emissions. Therefore, BLM's own guidance requires the agency to disclose air and climate impacts in any subsequently prepared NEPA document.

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N3x

The South Project is outside of the jurisdiction of the BLM and will proceed to full buildout regardless of the BLM decision to be made for the Utility Project. Therefore, environmental analysis of the South Project, which is outside the jurisdiction of BLM decision-making, will be subject to permitting by the appropriate federal, state, and local permitting agencies whose jurisdiction applies to those facilities.

Where possible, additional information has been added to the EIS to more clearly describe the potential impacts to GHG and air quality from the Utility Project and the South Project, as appropriate.

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- f. *BLM Failed to Comply with NEPA Regulations Concerning Incomplete or Unavailable Information.*

BLM failed to comply with NEPA regulations concerning incomplete or unavailable information when addressing air and climate pollution impacts. NEPA requires that if the “incomplete information relevant to reasonably foreseeable significant adverse impacts is essential to a reasoned choice among alternatives and the overall costs of obtaining it are not exorbitant, the agency shall include the information in the environmental impact statement.” 40 C.F.R. § 1502.22(a).

As demonstrated above in Section (IV)(6)(a)(b) &(c), BLM is able to forecast air and climate pollution impacts using publically available data, and this information is essential to a reasoned choice among alternatives. The underlying problem is not the availability of the data but rather Enefit’s unwillingness to provide the relevant data to BLM. Moreover, BLM has not shown that the costs of obtaining this information would be “exorbitant.”

However, even if the costs of obtaining this information were “exorbitant,” an assumption we doubt, the Draft EIS fails to include the information required by NEPA in such situations. 40 C.F.R. § 1502.22(b)(1). Specifically, the Draft EIS fails to include “(3) a summary of existing credible scientific evidence which is relevant to evaluating the reasonably foreseeable significant adverse impacts on the human environment, and (4) the agency’s evaluation of such impacts based upon theoretical approaches or research methods generally accepted in the scientific community.” *Id.*

It is relevant that in BLM’s other analyses of oil shale impacts, most notably the 2012 OSTs PEIS, numerous test studies, relevant data, and international examples to forecast impacts were referenced as required by NEPA. There is ample data – ranging from Estonian oil shale studies, to the Alberta oil sands, to studies in the Colorado River Basin itself – that would meet the criteria of “existing credible scientific evidence” relevant to evaluating air and climate impacts of the South Project. Even if BLM proves that the cost of obtaining this information is exorbitant, it still must make forecasts based on available and relevant data in subsequently prepared NEPA documents.

7. BLM Must Either Foreclose Enefit’s RD&D Activities and Expansion on its Preferential Lease Right or Analyze the Reasonably Foreseeable Impacts of Those Activities

As discussed above, Enefit states that it plans to carry out its RD&D activities on the South Project parcel. Upon demonstrating commercial viability, Enefit then plans to expand its oil shale mine onto the adjacent 4,960-acre preferential lease right that accompanies its 160-acre RD&D lease. Enefit’s application indicates that its mining activities on the preferential right expansion area would impact the full 4,960 acres that make up the preferential right area and result in production of 528.3 million barrels of oil. Enefit Application at 6.

For the same reasons that activities carried out on the South Project are connected actions to and

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See the response to Comment N3m.

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cumulative impacts of the right-of-way utility corridor, Enefit's RD&D activities and expansion onto its preferential right are also connected actions and cumulative impacts of the rights-of-way utility corridor. Indeed, BLM has previously described the utility pipelines at issue in the rights-of-way applications as "necessary" for development activities on the 160 acre RD&D lease. Environmental Assessment and Biological Assessment for the Oil Shale Research, Development, and Demonstration Project, White River Mine, Uintah County, Utah (EA #UT-080-2006-280) at 5 attached as Exhibit 30. This same characterization extends to the preferential lease right area both due to geography (the preferential right is adjacent to the RD&D lease) and regulatory framework (expansion is dependent on successful RD&D). As such, the utility corridor is also necessary to activities on the preferential lease right area.

However, BLM failed to provide analysis of impacts of both the RD&D activities and expansion onto preferential right lease area in the DEIS. BLM explains that the RD&D project "was not included in the quantitative analysis because there are no currently proposed projects on this lease. This project is only discussed qualitatively." Draft EIS at 4-153.

Enefit cannot have it both ways. The only way this rationale can be supported is if BLM cancels Enefit's RD&D lease. At the end of 2016, Enefit can and likely will apply to extend its RD&D lease term. BLM may grant a five-year extension if Enefit can demonstrate "that a process leading to production in commercial quantities is being diligently pursued, consistent with the schedule specified in the approved plan of development." Oil Shale, RD&D Round 1 Lease Form, Section 4. The comments made by BLM in the DEIS indicate a lack of diligent pursuit of a process leading to production in commercial quantities. If that is the case, then BLM should decline to grant a five-year extension of Enefit's RD&D lease at the end of 2016.

If, on the other hand, BLM plans to grant an extension of the RD&D lease term through 2021 and preserve Enefit's ability to expand oil shale operations onto federal land because Enefit is diligently pursuing a process leading to production on the RD&D lease and preference area, then it is incumbent on BLM to also analyze the impacts of Enefit developing the full 5,120 acres in the DEIS. Enefit cannot have it both ways – its current attempts to avoid analysis are another example of the company's attempts to game the RD&D program and the federal environmental review process.

**V. The Draft EIS Fails to Take a Hard Look at Numerous Impacts of the Proposed Action.**

**1. The BLM Failed to Take A Hard Look at Climate Impacts**

**a. BLM's "Analysis" of Climate Impacts Is Arbitrary and Capricious.**

As discussed above, the Draft EIS fails to address the climate impacts of the South Project. See *infra* at IV (4)-(6). What analysis the Draft EIS does contain, however, is flawed and fails to take the hard look that NEPA requires.

For example, the Draft EIS estimates greenhouse gas emissions for construction of the utilities permitted by the rights-of-way under the proposed action, and the purported additional emissions if Enefit builds the South Project without the rights-of-way. Draft EIS at 4-38, 4-43. In both

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instances, the Draft EIS assumes that the global warming potential of methane is 25 times that of CO<sub>2</sub>. *Id.* This assumption is outdated and incorrect.

BLM should use multipliers that reflect the latest science concerning the short- and long-term impacts of methane pollution. In 2014, the IPCC – the world’s leading scientific organization addressing climate change – calculated the global warming potential of one ton of methane as 34 times that of one ton of CO<sub>2</sub> on a 100-year time scale (up from 25 in IPCC’s Fourth Assessment Report (“AR4”) from 2007) and 86 times that of one ton of CO<sub>2</sub> on a 20-year time scale (up from 72 in AR4). IPCC, *Climate Change 2013: The Physical Science Basis*, Ch. 8- Anthropogenic and Natural Radiative Forcing (2013), at 714, available at [http://www.ipcc.ch/pdf/assessment-report/ar5/wg1/WG1AR5\\_Chapter08\\_FINAL.pdf](http://www.ipcc.ch/pdf/assessment-report/ar5/wg1/WG1AR5_Chapter08_FINAL.pdf) (last viewed June 13, 2016). The methane multipliers include climate-carbon feedbacks in response to methane emissions. *Id.* Because methane remains in the atmosphere for an average of 8 to 12 years, the 20-year figure is the most relevant, and BLM should apply this multiplier in any subsequently prepared NEPA document.

In addition, the Draft EIS makes several assertions that demonstrate a lack of understanding of the nature of climate change. The EIS alleges: “There are no irreversible commitments of air quality resources for the Utility Project construction, primarily because GHG emissions are limited in magnitude and duration.” Draft EIS at 4-43. That document also states: “The short-term GHG emissions expected to occur as a result of construction of the Utility Project are not expected to result in adverse impacts on the long-term productivity of public land resources in the area.” *Id.* at 4-44. These statements misconstrue entirely the nature of climate change and CO<sub>2</sub> emissions. Each pound of carbon dioxide added to the atmosphere makes climate change worse, regardless of the “duration” of those emissions. Carbon dioxide can persist in the atmosphere for as long as two centuries, heating the climate for that period and beyond. Intergovernmental Panel on Climate Change, Working Group 1: The Scientific Basis (stating that carbon dioxide has an atmospheric lifetime of 5 to 200 years), available at <https://www.ipcc.ch/ipccreports/tar/wg1/016.htm> (last viewed June 13, 2016). The impacts of climate change – loss of polar ice caps, changes to habitat, species extinctions, increased human disease and death, warming atmosphere and oceans, sea level rise – are all potentially irreversible on a human time-scale. Further, climate change is already impacting BLM lands in the American West, Utah, and the Uinta Basin, and will do so indefinitely into the future. BLM’s attempt to ignore or downplay these impacts is contrary to the facts. Any subsequently prepared NEPA document must rectify these errors.

Related statements in the Draft EIS, implying that the impacts of greenhouse gas emissions will end when emissions end, also lack support. See Draft EIS at 4-44. (“The operation of the South Project facilities under the Proposed Action or No Action Alternative would result in increased GHG emissions throughout the operating life of the facility (projected to be 30 years). However, these emissions would cease when the oil shale resource is depleted.”). Again, the impacts of climate pollution will likely last for centuries beyond the end of emissions. Any implication to the contrary ignores the scientific basis underpinning climate change, so these statements must be removed from the EIS.

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The Draft EIS's discussion of cumulative climate change impacts is also inaccurate. The EIS states:

The Utility Project would not contribute to cumulative effects for GHG emissions, as it is of relatively short duration, and limited GHG emissions. Future changes in climate would not affect the operation or purpose of the completed utility corridors. The existence of the utility corridors would not affect other projects in the region, or promote GHG emissions other than the South Project operation. Therefore, operation of the Utility Project would not affect or promote the growth in cumulative GHG emissions elsewhere in the Uinta Basin.

Draft EIS at 4-155. Every sentence in this paragraph is either false or misleading. As noted, each pound of additional CO<sub>2</sub> adds to the impacts of climate change; the Draft EIS's statement to the contrary is false. And even if "[f]uture changes in climate would not affect the operation ... of the utility corridors," this statement is misleading because worsening climate change could increase damage caused by utility corridor and the South Project. For example, worsening climate change caused by the proposed action, when added to other sources of climate pollution, may cause reduced snowpack in the Rockies, and reduced flow in the White and Green Rivers, thus increasing the potential for the proposed action, and other cumulative actions, to harm endangered Colorado River fish. Hotter temperatures may make restoration of plant life in the utility corridors and reclamation of the strip-mined landscape at the South Project more difficult, and so worsen or prolong impacts to sage grouse and other wildlife. Climate change may also magnify the energy demand of the South Project and communities that house construction and other workers as hotter summers will require more demand for air conditioning. Any subsequently prepared NEPA document must address these types of potential cumulative impacts.

The Draft EIS's statement that "[t]he existence of the utility corridors would not affect other projects in the region, or promote GHG emissions other than the South Project operation," *id.*, is irrelevant and misses the point. GHG emissions from actions other than the utility corridor and South Project operation will, cumulatively with other proposed actions, worsen climate change even more than the proposed action alone. Therefore, the Draft EIS is incorrect in alleging that "operation of the Utility Project would not affect or promote the growth in cumulative GHG emissions elsewhere in the Uinta Basin." By adding carbon to the atmosphere, the utility project will clearly be promoting the growth of GHG emissions, which, cumulatively with other projects in the area, will make climate change worse.

b. *The Draft EIS Fails to Disclose the Climate Pollution Impacts of Combustion of Shale Oil Produced by the South Project.*

As discussed in section IV above, the Draft EIS fails to forecast, project, or in any way estimate the foreseeable climate pollution from the construction and operation of the South Project. Just as important, the Draft EIS also fails to address another key and long-term impact of the rights-of-way: the climate pollution that will result from the *combustion* of the 550 million barrels of fuel that will be produced by the South Project, as made possible by the rights-of-way.

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[E]missions from activities that have a reasonably close causal relationship to the Federal action, such as those that may occur as a predicate for the agency action (often referred to as upstream emissions) and as a consequence of the agency action (often referred to as *downstream emissions*) should be accounted for in the NEPA analysis.

....

For example, a particular NEPA analysis for a *proposed open pit mine* could include the reasonably foreseeable effects of various components of the mining process, such as clearing land for the extraction, building access roads, transporting the extracted resource, refining or processing the resource, and *using the resource*.

Council on Environmental Quality, Revised Draft Guidance for Federal Departments and Agencies on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in NEPA Reviews, 79 Fed. Reg. 77,802, 77,826 (Dec. 24, 2014) (emphasis added). CEQ's guidance is consistent with federal court decisions mandating that federal agencies address downstream combustion impacts of decisions that facilitate increased fossil fuel mining. *See High Country Conservation Advocates v. U.S. Forest Serv.*, 52 F.Supp.3d 1174, 1196-98 (D. Colo. 2014); *Mid States Coalition for Progress v. Surface Transportation Board*, 345 F.3d 520, 549 (8th Cir. 2003).

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The foreseeable impacts of the South Project include combustion of the South Project's fossil fuel product, and these impacts are likely to be massive. EPA estimates that combustion of one barrel of shale oil will release 0.43 tons of carbon. *See* EPA, GHG Equivalencies Calculator - Calculations and References, available at <https://www.epa.gov/energy/ghg-equivalencies-calculator-calculations-and-references> (last viewed June 13, 2016). Thus, combustion of the 550 million barrels of shale oil the South Project proposes to produce will release approximately 240 million tons of CO<sub>2</sub> into the atmosphere, about the same as running a large coal-fired power plant for 30 years.

BLM cannot fail to disclose the combustion impacts because they are remote or speculative. The purpose of the rights-of-way is to facilitate the mining, processing, sale and use of the shale oil Enefit seeks to produce. Even if BLM incorrectly assumes that the South Project would be constructed without the rights-of-way, the agency must still disclose the foreseeable impacts of the combustion of the South Project's produced fuel as an indirect or foreseeable cumulative impact of the proposed action.

BLM may argue that there will be no GHG impacts from burning Enefit's product because the same amount of oil will be consumed whether Enefit produces the oil or not. Any such argument would be arbitrary and capricious for two reasons. First, nearly doubling the amount of crude oil from the Uinta Basin will induce more consumption because it will increase supply, which will incrementally lower price, and thus induce more combustion of oil. The combustion of more oil will add to global climate pollution. This is the very dynamic that *High Country* court noted in its decision. *See High Country Conservation Advocates*, 52 F.Supp.3d at 1197-98.

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N3aa	<p>Second, even if Enefit’s production induced no additional oil consumption at all, and merely replaced other crude oil that otherwise would have been consumed, that consumption will result in more GHGs because shale oil is more carbon intensive than conventional oil or even tar sands, according to Enefit’s own studies. Thus, even in the unlikely event that Enefit’s production merely replaced other oil production, Enefit’s product would still result in increased climate pollution because oil shale fuel is more carbon intensive.</p> <p>c. <i>The Draft EIS Fails to Disclose the Impacts of Climate Pollution on the Environment.</i></p> <p>The Draft EIS contains some attempt to quantify climate emissions from utility project construction, Draft EIS at 4–38, although, as noted above, it fails to project climate impacts from South Project construction and operation or from the end use of the shale oil produced there. Even if BLM quantifies the <i>amount</i> of additional emissions that result from the alternatives, as it must, that would not, by itself, disclose the <i>impacts</i> of those emissions on the environment.</p> <p>The Draft EIS dismisses any attempt to characterize the impacts of additional climate emissions, stating that “there is no reliable way to quantify whether or to what extent local GHG emissions can contribute to the larger phenomenon,” Draft EIS at 4-41, and stating that “carbon costs” are “not quantifiable.” <i>See id.</i> at 4-43 (making similar statement), 4-155 (“The added “carbon cost” of these additional inputs represent a greater adverse effect than that of the Proposed Action, even though the <i>actual magnitude of the effect is not quantifiable.</i>” (emphasis added)), 4-156 (“While gradually increasing GHG emissions across a particular large region or sector could in theory be connected to incremental climate effects, there is no established methodology to do so.”). These statements are incorrect. There is at least one robust, peer-reviewed methodology that BLM regularly has employed to quantify and characterize the environmental and financial impacts of adding a ton of carbon to the atmosphere: the federal interagency social cost of carbon protocol.</p>	
N3ab	<p>The social cost of carbon protocol for assessing climate impacts is a method for estimating the damages associated with a small increase in CO2 emissions, conventionally one metric ton, in a given year and represents the value of damages avoided for a small emission reduction (<i>i.e.</i> the benefit of a CO2 reduction). U.S. Environmental Protection Agency (“EPA”), “Fact Sheet: Social Cost of Carbon” (Nov. 2013) at 1, attached as Exhibit 31 available at <a href="http://www.epa.gov/climatechange/Downloads/EPAactivities/scc-fact-sheet.pdf">http://www.epa.gov/climatechange/Downloads/EPAactivities/scc-fact-sheet.pdf</a> (last viewed June 14, 2016). It is intended to include changes in net agricultural productivity, human health, property damages, and the value of ecosystem services, all of which climate change can degrade. <i>See</i> Interagency Working Group on Social Cost of Carbon, “Technical Support Document: Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866” (Feb. 2010), attached as Exhibit 32, available at <a href="https://www.whitehouse.gov/sites/default/files/omb/inforeg/for-agencies/Social-Cost-of-Carbon-for-RIA.pdf">https://www.whitehouse.gov/sites/default/files/omb/inforeg/for-agencies/Social-Cost-of-Carbon-for-RIA.pdf</a> (last viewed June 13, 2016); <i>see also</i> Cass R. Sunstein, <i>The Real World of Cost-Benefit Analysis: Thirty-Six Questions (and Almost as Many Answers)</i>, 114 Colum. L. Rev. 167, 171-73 (Jan. 2014) (describing origins of interagency agreement on the social cost of carbon). As such, the social cost of carbon includes not only socioeconomic harm but also harm to the</p>	<p>N3ab See the response to Comment N3r.</p>

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environment. The protocol was developed by a working group consisting of a dozen federal agencies, including the U.S. Department of Agriculture, with the primary aim of implementing Executive Order 12866, which requires that the costs and benefits of proposed regulations be taken into account.

The Interagency Working Group's protocol was published in 2010. Interagency Working Group on Social Cost of Carbon (Feb. 2010) (Exhibit 32 at 1. It was then revised and updated in 2013. Interagency Working Group on Social Cost of Carbon, "Technical Support Document: Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866" (May 2013), attached as Exhibit 33, available at [https://www.whitehouse.gov/sites/default/files/omb/inforeg/social\\_cost\\_of\\_carbon\\_for\\_ria\\_2013\\_update.pdf](https://www.whitehouse.gov/sites/default/files/omb/inforeg/social_cost_of_carbon_for_ria_2013_update.pdf) (last viewed June 13, 2016). The social cost of carbon protocol includes a range of values for the cost of each additional ton of carbon, based on varying discount rates. In this way, the protocol addresses uncertainty by providing a range of values to assess the cost of carbon. Interagency Working Group (2010) (Exhibit 32) at 1 ("The main objective of this process was to develop a range of SCC [social cost of carbon] values using a defensible set of input assumptions grounded in the existing scientific and economic literatures. In this way, key uncertainties and model differences transparently and consistently inform the range of SCC estimates ....").

Depending on the discount rate and the year during which the carbon emissions are produced, the Interagency Working Group estimates the cost of carbon emissions, and therefore the benefits of reducing carbon emissions, to range from \$11 to \$220 per metric ton of carbon dioxide. In July 2014, the U.S. Government Accountability Office ("GAO") confirmed that the Interagency Working Group's estimates were based on sound procedures and methodology. General Accounting Office, "Regulatory Impact Analysis, Development of Social Cost of Carbon Estimates," GAO-14-663 (July 2014), attached as Exhibit 34, available at <http://www.gao.gov/assets/670/665016.pdf> (last viewed June 13, 2016).

The social cost of carbon has been recommended or utilized in the NEPA process to evaluate the impacts of project-level decisions. For example, the EPA recommended that an EIS prepared by the U.S. Department of State for the proposed Keystone XL oil pipeline include "an estimate of the 'social cost of carbon' associated with potential increases of GHG emissions." EPA, Comments on Supplemental Draft EIS for the Keystone XL Oil Pipeline (June 6, 2011) attached as Exhibit 35. In addition, BLM has utilized the social cost of carbon protocol. In environmental assessments for oil and gas leasing in Montana, the agency estimated "the annual SCC [social cost of carbon] associated with potential development on lease sale parcels." BLM, "Environmental Assessment for October 21, 2014 Oil and Gas lease Sale," DOI-BLM-MT-0010-2014-0011-EA (May 19, 2014) at 76, excerpts attached as Exhibit 36, available at [http://www.blm.gov/style/medialib/blm/mt/blm\\_programs/energy/oil\\_and\\_gas/leasing/lease\\_sale/2014/oct\\_21\\_2014/july23posting.Par.25990.File.dat/MCFO%20EA%20October%202014%20Sale\\_Post%20with%20Sale%20\(1\).pdf](http://www.blm.gov/style/medialib/blm/mt/blm_programs/energy/oil_and_gas/leasing/lease_sale/2014/oct_21_2014/july23posting.Par.25990.File.dat/MCFO%20EA%20October%202014%20Sale_Post%20with%20Sale%20(1).pdf) (last viewed June 13, 2016). In conducting its analysis, the BLM used a "3 percent average discount rate and year 2020 values," presuming social costs of carbon to be \$46 per metric ton. *Id.* Based on its estimate of greenhouse gas emissions, the agency estimated total carbon costs to be "\$38,499 (in 2011 dollars)." *Id.* In Idaho, BLM also utilized the social cost of carbon protocol to analyze and assess the costs of oil and gas leasing. Using a 3% average discount rate and year 2020 values, the agency estimated the cost of carbon

N3	<b>COMMENT(S)</b>  <b>Grand Canyon Trust and Multiple Nongovernmental Organizations (cont.)</b>	<b>RESPONSE(S)</b>
N3ab	<p>to be \$51 per ton of annual CO<sub>2</sub>e increase. BLM, “Little Willow Creek Protective Oil and Gas Leasing,” EA No. DOI-BLM-ID-B010-2014-0036-EA (February 10, 2015) at 81, excerpts attached as Exhibit 37 available at <a href="https://www.blm.gov/epl-front-office/projects/nepa/39064/55133/59825/DOI-BLM-ID-B010-2014-0036-EA_UPDATED_02272015.pdf">https://www.blm.gov/epl-front-office/projects/nepa/39064/55133/59825/DOI-BLM-ID-B010-2014-0036-EA_UPDATED_02272015.pdf</a> (last viewed June 13, 2016). Based on this estimate, the agency estimated the total carbon cost of developing 25 wells on five lease parcels to be \$3.7 million annually. <i>Id.</i> at 83. (This is not to endorse as complete either the Little Willow EA analysis or the Montana lease sale analysis.)</p> <p>The social cost of carbon is a simple tool that is easy for federal agencies to use and easy for the public to understand. Putting a dollar figure on each ton of CO<sub>2</sub> emitted as a result of a federal project places climate impacts in a context that both decision makers and the public can readily comprehend. It is backed by years of peer-reviewed scientific and economic research, it is designed to be updated to reflect the most current information, and it has already been used by federal agencies in both rulemaking decisions and project-level reviews under NEPA. Therefore, BLM should use the social cost of carbon to disclose the impacts of Enefit’s rights-of-way applications. Additional information supporting the utility and necessity of using the social cost of carbon in NEPA analysis, <i>see</i> letter of Center for Biological Diversity <i>et al.</i> to Council on Environmental Quality (Mar. 25, 2015) at 4-10, attached as Exhibit 38; N. Shoaff &amp; M. Salmon, Sierra Club, “Incorporating the Social Cost of Carbon into National Environmental Policy Act Reviews for Federal Coal Leasing Decisions,” (April 2015), attached as Exhibit 39.</p> <p>It is important to note that the social cost of carbon protocol presents a <i>conservative</i> estimate of damages associated with the environmental impacts climate change. As the EPA has explained, the protocol “does not currently include all important [climate change] damages.” EPA, “Fact Sheet: Social Cost of Carbon” (Exhibit 31).</p> <p>The models used to develop [social cost of carbon] estimates do not currently include all of the important physical, ecological, and economic impacts of climate change recognized in the climate change literature because of a lack of precise information on the nature of damages and because the science incorporated into these models naturally lags behind the most recent research.</p> <p><i>Id.</i> Scientific reviews have similarly concluded that the interagency social cost of carbon estimates do not account for, or poorly quantify, certain impacts, suggesting that the estimated values are conservative and should be viewed as a lower bound. <i>See</i> Peter Howard, <i>et al.</i>, Environmental Defense Fund, Institute For Policy Integrity, Natural Resources Defense Council, OMITTED DAMAGES: WHAT’S MISSING FROM THE SOCIAL COST OF CARBON, (March 13, 2014) (explaining, for example, that damages such as “increases in forced migration, social and political conflict, and violence; weather variability and extreme weather events; and declining growth rates” are either missing or poorly quantified in SCC models), attached as Exhibit 40; Frank Ackerman &amp; Elizabeth A. Stanton, CLIMATE RISKS AND CARBON PRICES: REVISING THE SOCIAL COST OF CARBON (2010), attached as Exhibit 41 (concluding that the 2010 Interagency social cost of carbon “omits many of the biggest risks associated with climate change, and downplays the impact of current emissions on future generations,” and suggesting that the social cost of carbon should be almost \$900 per ton of carbon); Frances C. Moore and Delavane B.</p>	

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Diaz, Temperature impacts on economic growth warrant stringent mitigation policy, NATURE CLIMATE CHANGE (Jan. 12, 2015), attached as Exhibit 42 (identifying a central value of \$220 for one ton of additional CO<sub>2e</sub>).

Despite uncertainty and likely underestimation of carbon costs, nevertheless, “the SCC is a useful measure to assess the benefits of CO<sub>2</sub> reductions,” and thus a useful measure to assess the costs of CO<sub>2</sub> increases. EPA, Fact Sheet: Social Cost of Carbon (Exhibit 31).

A 2014 White House report warned that delaying carbon reductions would yield significant economic costs, underscoring the fact that the impacts of climate change, as reflected by an assessment of social cost of carbon, should be a significant consideration in agency decisionmaking. Executive Office of the President of the United States, Council of Economic Advisers, “The Cost of Delaying Action to Stem Climate Change” (July 2014), attached as Exhibit 43 available at [https://www.whitehouse.gov/sites/default/files/docs/the\\_cost\\_of\\_delaying\\_action\\_to\\_stem\\_climate\\_change.pdf](https://www.whitehouse.gov/sites/default/files/docs/the_cost_of_delaying_action_to_stem_climate_change.pdf) (last viewed June 13, 2016). As the report states:

[D]elaying action to limit the effects of climate change is costly. Because CO<sub>2</sub> accumulates in the atmosphere, delaying action increases CO<sub>2</sub> concentrations. Thus, if a policy delay leads to higher ultimate CO<sub>2</sub> concentrations, that delay produces persistent economic damages that arise from higher temperatures and higher CO<sub>2</sub> concentrations. Alternatively, if a delayed policy still aims to hit a given climate target, such as limiting CO<sub>2</sub> concentration to given level, then that delay means that the policy, when implemented, must be more stringent and thus more costly in subsequent years. In either case, delay is costly.

*Id.* at 1. The requirement to analyze the social cost of carbon is supported by the general requirements of NEPA, specifically supported in federal case law, and by Executive Order 13514.

To this end, courts have ordered agencies to assess the social cost of carbon pollution, even before a federal protocol for such analysis was adopted. In 2008, the U.S. Court of Appeals for the Ninth Circuit ordered the National Highway Traffic Safety Administration to include a monetized benefit for carbon emissions reductions in an Environmental Assessment prepared under NEPA. *Center for Biological Diversity v. National Highway Traffic Safety Administration*, 538 F.3d 1172, 1203 (9th Cir. 2008). The Highway Traffic Safety Administration had proposed a rule setting corporate average fuel economy standards for light trucks. A number of states and public interest groups challenged the rule for, among other things, failing to monetize the benefits that would accrue from a decision that led to lower carbon dioxide emissions. The Administration had monetized the employment and sales impacts of the proposed action. *Id.* at 1199. The agency argued, however, that valuing the costs of carbon emissions was too uncertain. *Id.* at 1200. The court found this argument to be arbitrary and capricious. *Id.* The court noted that while estimates of the value of carbon emissions reductions occupied a wide range of values, the correct value was certainly not zero. *Id.* It further noted that other benefits, while also uncertain, were monetized by the agency. *Id.* at 1202.

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More recently, the *High Country* court reach the same conclusion for a federal coal lease approved by BLM. That court began its analysis by recognizing that a monetary cost-benefit analysis is not universally required by NEPA. *High Country Conservation Advocates v. U.S. Forest Serv.*, 52 F.Supp.3d 1174, 1182 (D. Colo. 2014), citing 40 C.F.R. § 1502.23. However, when an agency prepares a cost-benefit analysis, “it cannot be misleading.” *Id.* (citations omitted). In that case, the NEPA analysis included a quantification of benefits of the project. However, the quantification of the social cost of carbon, although included in earlier analyses, was omitted in the final NEPA analysis. *Id.* at 1190-91. The agencies then relied on the stated benefits of the project to justify project approval. This, the court explained, was arbitrary and capricious. *Id.* at 1191. Such approval was based on a NEPA analysis with misleading economic assumptions, an approach long disallowed by courts throughout the country. *Id.* at 1191-92.

Here, BLM quantifies numerous economic impacts of the proposal, including numbers of jobs, tax revenues and earnings. Draft EIS at 4-134 – 4-135. It also states that the “South Project is ... expected to have significant positive economic benefits in the study area.” *id.* at 4-135, without assessing or characterizing the likely significant and greater costs imposed by climate change. This is the approach found arbitrary and capricious and a violation of NEPA by the *High Country* court.

For all of these reasons, BLM must include the social cost of carbon in any subsequently prepared NEPA document as a way of disclosing the scope and nature of climate pollution impacts – including but not limited to the increase in climate pollution from combustion of shale oil from the South Project – on the human environment.<sup>5</sup>

BLM should also use the EPA-developed “social cost of methane” to evaluate the climate impacts of the methane emissions from the utility project and the South Project. In 2012, EPA economists Alex L. Marten and Stephen C. Newbold published a peer-reviewed analysis estimating the social cost of methane. *See* Marten, A.L., and Newbold, S.C., Estimating the social cost of non-CO<sub>2</sub> GHG emissions: Methane and nitrous oxide, 51 Energy Policy 957 (2012) at 18, attached as Exhibit 44, available online as EPA Working Paper No. 11-10 at [http://yosemite.epa.gov/ee/epa/eed.nsf/ec2c5e0aaed27ec385256b330056025c/f7c9fc6133698cc38525782b00556de1/\\$FILE/2011-01v2.pdf](http://yosemite.epa.gov/ee/epa/eed.nsf/ec2c5e0aaed27ec385256b330056025c/f7c9fc6133698cc38525782b00556de1/$FILE/2011-01v2.pdf) (last viewed May 22, 2015). The study authors largely followed the methodology used by the Interagency Working Group to estimate the social cost of carbon, and their results should serve as a starting point for any climate impact analysis involving methane emissions. Like the social cost of carbon, the social cost of methane estimates the global economic cost of adding one additional ton of methane to the atmosphere (the social cost of carbon does the same thing, but for carbon dioxide). In August 2015, EPA

<sup>5</sup> Draft guidance from the Council on Environmental Quality fails to properly address the social cost of carbon. *See* letter of Center for Biological Diversity (Mar. 25, 2015) (Exhibit 38) at 4-10. However, even CEQ’s draft guidance recognizes that where an agency chooses to disclose the economic and financial benefits of an action – as BLM does here, the social cost of carbon represents an appropriate tool to disclose the costs of the agency’s action, including the social cost of carbon. *See* Council on Environmental Quality, Revised Draft Guidance for Federal Departments and Agencies on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in NEPA Reviews, 79 Fed. Reg. 77,802, 77,827 (Dec. 24, 2014).

N3	<p style="text-align: center;"><b>COMMENT(S)</b></p> <p style="text-align: center;"><b>Grand Canyon Trust and Multiple Nongovernmental Organizations (cont.)</b></p>
N3ab	<p>used the Marten <i>et al.</i> social cost of methane estimate in the Regulatory Impact Analysis for the proposed New Source Performance Standard for methane from oil and gas production. U.S. Environmental Protection Agency, Regulatory Impact Analysis of the Proposed Emission Standards for New and Modified Sources in the Oil and Natural Gas Sector, 4–12 to 4–17 (August 2015), attached as Exhibit 45 available at <a href="http://www3.epa.gov/airquality/oilandgas/pdfs/og_prop_ria_081815.pdf">http://www3.epa.gov/airquality/oilandgas/pdfs/og_prop_ria_081815.pdf</a> (last viewed June 13 2016). This study estimates that methane emissions in 2015 result in global economic damages that range from \$490 to \$3,000/ton, depending on the discount rate used. <i>Id.</i> at 4–14. EPA explained why using Marten <i>et al.</i> (2014) is a sound, justifiable methodology. Following the Marten protocol, EPA disclosed the social cost estimates under four different discount rates, just as the Interagency Working Group (“IWG”) does for the social cost of carbon. <i>Id.</i></p> <p>BLM has also applied EPA’s social cost of methane and described why it is the preferred method to disclose the benefits of reducing methane emissions. On January 22, 2016, BLM published a proposed rule to reduce waste of natural gas from venting, flaring, and leaks during oil and natural gas production. BLM used EPA’s social cost of methane metric to evaluate the costs and benefits of the proposed rule, relied on the metric throughout its analysis, and explicitly concluded that the benefits of the proposed natural gas rule outweighed the costs based on the monetized benefits of methane reduction as calculated via the social cost of methane. Bureau of Land Management, Proposed Rule, 43 CFR Parts 3160 and 3170, Waste Prevention, Production Subject to Royalties, and Resource Conservation (Jan. 22, 2016) (proposed methane rule) at 35–36, 223, 230–31 (estimating the monetized benefits of the rule in terms of methane emissions reduced, based on the social cost of methane, and displaying those benefits as a range of millions of dollars), attached as Exhibit 46; Bureau of Land Management, Regulatory Impact Analysis for: Revisions to 43 C.F.R. 3100 (Onshore Oil and Gas Leasing) and 43 C.F.R. 3600 (Onshore Oil and Gas Operations) (RIA) (Jan. 14, 2016) at 5, 7, 32–36 (specifically citing and using the Marten <i>et al.</i> 2014 social cost of methane figures), 130 and 149, attached as Exhibit 47</p> <p>The Regulatory Impact Analysis (“RIA”) for the rule explains BLM’s use of the metric, stating:</p> <p style="padding-left: 40px;">[BLM] estimated the social cost of methane using the values presented by Marten <i>et al.</i> (2014) and used by the EPA in its analysis of its Subpart OOOOa proposed regulation . . . and its proposed rule New Source Standards of Performance for Municipal Solid Waste Landfills. . . . [BLM] calculated the global social benefits of methane emissions reductions expected from the proposed NSPS [New Source Performance Standards] using estimates of the social cost of methane (SC-CH<sub>4</sub>), a metric that estimates the monetary value of impacts associated with marginal changes in methane emissions in a given year. It includes a wide range of anticipated climate impacts, such as net changes in agricultural productivity and human health, property damage from increased flood risk, and changes in energy system costs, such as reduced costs for heating and increased costs for air conditioning.</p> <p>RIA (Ex. 47) at 32–33. BLM also discussed an alternative approach to evaluating the social cost of methane—a process that involves using the global warming potential (GWP) to convert emissions to CO<sub>2</sub> equivalents. <i>Id.</i> at 35–36. The agency ultimately rejected the GWP approach</p>

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in favor of the social cost of methane metric, stating “[t]he GWP is not ideally suited ... to approximate the social cost of non-CO<sub>2</sub> GHGs because it ignores important nonlinear relationships beyond radiative forcing in the chain between emissions and damages.” *Id.* at 36.

It would be arbitrary and capricious for BLM to fail to disclose the social cost of methane resulting from construction and operation of the utility project and construction and operation of the South Project, while at the same time using the social cost of methane to justify its natural gas waste rulemaking.

- d. *BLM Must Disclose the Proposal’s Conflict with National Greenhouse Gas Emission Reduction Targets and Climate Policy.*

BLM must analyze whether the proposed rights-of-way and construction and operation of the South Project would conflict with national policies and goals, including efforts to meet federal greenhouse gas emission reduction targets. As explained by the Council on Environmental Quality in its 2014 Draft Climate Guidance, federal agencies evaluating the climate impacts of their decisions should “incorporate by reference applicable agency emissions targets such as applicable Federal, state, tribal, or local goals for GHG emission reductions to provide a frame of reference and make it clear whether the emissions being discussed are consistent with such goals.” Council on Environmental Quality, Revised Draft Guidance on the Consideration of Greenhouse Gas Emissions, 79 Fed. Reg. at 77,826. This Guidance, while in draft form, does not set out any new legal obligations under NEPA, but rather explains and clarifies those obligations that already exist under the statute, regulations, and the case law interpreting the two; as such it is helpful to guide BLM’s analysis. *Id.*; see also 40 C.F.R. § 1508.27(b)(10) (identifying “[w]hether the action threatens a violation of Federal, State or local law or requirements imposed for the protection of the environment” as one measure of the “intensity” of an action for purposes of NEPA review).

N3ac

In particular, BLM must address whether the proposed rights-of-way, and the connected action of the construction and operation of the South Project, conflict with national goals and policies, including the Paris agreement, discussed above, by unlocking more half a billion barrels of particularly carbon-intensive shale oil for combustion. BLM’s approval may conflict with other policies and rules, by, for example, undermining progress in reducing carbon emissions by the Clean Power Plan, which calls for reducing power sector emissions to 30 percent below 2005 levels by 2030. And, in November 2014 the President announced a joint U.S.-China agreement aimed at reducing climate pollution that calls for even more aggressively cutting net greenhouse gas emissions to 26-28 percent below 2005 levels by 2025. White House Fact Sheet, U.S.-China Joint Announcement on Climate Change and Clean Energy Cooperation (November 11, 2014), available online at <https://www.whitehouse.gov/the-press-office/2014/11/11/us-china-joint-announcement-climate-change> (last viewed June 13, 2016). The huge amount of carbon that Enefit will release the South Project, precipitated by BLM’s proposed subsidy of public lands, will make it more difficult for the United States to achieve that goal, a conflict that BLM must address.

N3ad

2. BLM Failed to Take A Hard Look at Air Quality Impacts

N3ac

See the response to Comment N3r.

N3ad

See the response to Comment N3r.



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BLM's failure to take a hard look at the air quality impacts from the Utility Corridor project has serious implications. The commenting parties commissioned an expert analysis of the air quality analysis in the DEIS, which is included as Exhibit 23 and has been sent to BLM separately with full exhibits. A summary of concerns from the expert analysis is included below.

The qualitative air analysis included in the DEIS does not represent an adequate assessment of the environmental and public health impacts resulting from an increase in air pollution in an area already impacted by the adverse effects of increasing development and does not fully account for the indirect, future impacts from Enfit's commercial oil shale mining, retorting, and upgrading operation. The lack of quantitative analysis of the utility corridor project and of the South Project development undercuts the BLM's ability to assess the proposed action's significant air quality impacts.

Moreover, BLM's analysis in the ROW DEIS fails to ensure compliance with the National Ambient Air Quality Standards (NAAQS). The BLM's analysis also does not ensure that the project will prevent significant deterioration of air quality. In short, the DEIS does not satisfy the BLM's obligations under NEPA and FLPMA to disclose whether the proposed development will cause Clean Air Act (CAA) violations, to consider alternatives that better mitigate air pollution under NEPA, to adopt mitigation under FLPMA, to prevent CAA violations, and to prevent unnecessary or undue degradation of public lands and the environment. *See* 43 U.S.C. § 1732(b).

These failures threaten both public and environmental health in a region that can little afford further impacts. Ozone concentrations in Uinta Basin have exceeded the NAAQS in recent years, particulate matter concentrations near resource development continue to be a concern and visibility impairment is an issue at Class I areas nearby. Essentially, there is no room for growth in emissions that contribute to these harmful levels of ozone pollution in the area—namely, NO<sub>x</sub> and VOC emissions. The same is true for PM<sub>2.5</sub>. The Utility Corridor and South Project will add to these emissions, but BLM cannot allow further development that would contribute to exceedances of the NAAQS because FLPMA prohibits it.

This is particularly true in light of BLM's prior analysis of potential air quality impacts from an above-ground oil shale strip mine and retort facility at the scale Enfit is proposing. In 2012, BLM estimated that a 50,000 barrel per day oil shale facility would result in 1,243 tons of NO<sub>x</sub>, 347 tons of SO<sub>x</sub>, 346 tons of PM<sub>10</sub>, and 244 tons of VOCs over the course of Enfit's Phase 3. *See* Exhibit 23 at 26-27.

To put this in perspective, these estimated emissions from a 50,000 bbl/day production phase are roughly equivalent to: (1) NO<sub>x</sub> emissions from all on-road diesel light duty vehicles in the state of Utah; (2) PM<sub>10</sub> emissions from all petroleum refineries in the state of Utah; (3) SO<sub>2</sub> emissions from all oil and gas production in the state of Utah; and (4) VOC emissions from all commercial and institutional fuel oil combustion sources in the state of Utah. These emissions certainly have the potential to cause significant impacts to air quality – including to the already unhealthy levels of ozone and fine particles in the Uinta Basin and to the impaired visibility in nearby Class I areas – and must be considered in BLM's cumulative impact assessment for the ROW DEIS. Emissions of this magnitude have the potential to significantly exacerbate the existing air quality problems in the impacted area and do not conform with BLM's obligation under FLPMA.

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N3ad

BLM could use data from its 2012 OSTIS PEIS to disclose to the public the general nature of the predicted air quality impacts of the South Project, even absent specific design features. The agency must include this data in any subsequently prepared NEPA document. BLM must also use this data to assess the Project's impact on PSD increments, as part of meeting FLPMA's mandate that requires BLM to require compliance with the CAA.

3. BLM Failed to Take a Hard Look at Impacts from Solid and Hazardous Waste

BLM has failed to provide an adequate analysis of the potential effects of the solid and hazardous waste impacts of Enefit's oil shale mining operation. In 2007, BLM estimated that a facility of the size Enefit proposes, with the expressed goal of a 50,000 bbl/d, would produce upwards of 23 million tons of spent shale waste each year. BLM. Draft: OSTIS PEIS. 4.9.1.1.2.4, p. 119. Notably, the Enefit right-of-way draft EIS fails to contain any such estimate.

As noted above, after oil shale is retorted, the residual char, or spent shale, is chemically altered for the worse and preventing leaching into nearby waterbodies may be impossible. See II (2) *supra*. Notably, toxic levels of PAHs were found in Green River Basin spent shale that was produced in the early 1980's. International Agency for Research on Cancer, 35, *Polynuclear Aromatic Compounds, Part 4, Bitumens, Coal-Tars and Derived Products, Shale-Oils and Soots*, Evaluation of Carcinogenic Risks of Chemicals to Humans, 1985) last updated April 20, 1998. 1985, available at <http://monographs.iarc.fr/ENG/Monographs/vol35/volume35.pdf> (last viewed June 13, 2016) and attached as Exhibit 48.

N3ae

In prior PEIS review of oil shale impacts, the BLM expressed that there was a significant degree of uncertainty regarding the agency's wherewithal to properly manage and contain spent shale given the number of unknown issues:

Regardless of the disposal option selected, a number of issues need to be addressed, including the structural integrity of emplaced spent shale, an increase in volume (and decrease in density) over raw shale during the retorting process (this has become known as "the popcorn effect"), and the character of leachates from spent shale. Limited research has been conducted on each of these issues

BLM. Draft: OSTIS PEIS. A-4, P. A-49, 2007. (*emphasis added*).

The BLM has raised concerns about mobilization of contaminants in shale waste:

Field data evaluating the leachate character of spent shale have been collected by the EPA and others. Although the data are limited, there appears to be a clear indication that subjecting oil shale to retorting conditions can result in the mobilization of various ionic constituents contained in the mineral portion of the oil shale.

*Id.* These concerns are supported by past experience with oil shale waste in the Colorado River Basin. The abandoned Anvil Points retorting facility near Rifle, Colorado presents

N3ae

No impacts related to solid or hazardous waste are anticipated from the Utility Project. Discussion of solid and hazardous waste has been moved to Section 4.3 under cumulative impacts.

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N3ae

a case in point. The experimental retort facility processed shale from 1947 to 1984. During its run, Anvil Points created 61 tons of spent shale. R.B. Meade, *A No Action Alternative That Worked*, in Tailings and Mine Waste '02: Proceedings of the Ninth International Conference on Tailings and Mine Waste 427-431, 428 (CRC Press, Fort Collins Co. 2002). This modest amount of spent shale would be dwarfed by what has been proposed by Enefit.

It has been decades since the Anvil Points facility was abandoned, but those 60 tons have been leaching a number of critical inorganic elements into the region's surface water. *Id.* Foremost in the Anvil Points' leachate is the presence of arsenic - created during the retorting process - that continues to discharge at quantities exceeding Colorado Water Quality Standards. BLM, *Hazardous Materials Management/Abandoned Mine Land Management Applicable or Relevant and Appropriate Requirements*. TR-1703-1/TR-3720-1, 23 (2007). The mere existence of 60 tons of spent shale waste has become a significant environmental and financial liability for the state of Colorado and the federal government. Nearly \$65 million dollars have been allocated to remediate the spent shale waste pile and the surrounding site. "Club 20: Details sought on surplus cleanup funds," *The Daily Sentinel* (Grand Junction, CO; September 6, 2008) available at <http://www.gjsentinel.com/news/articles/club-20-details-sought-on-surplus-cleanup-funds>.

Despite the existence of reasonably foreseeable and significant adverse impacts from Enefit's oil shale operation, BLM fails to provide a meaningful analysis of oil shale waste impacts. BLM vaguely states that "[s]pent shale piles and mine tailings ... might be sources of contamination for salts, metals, and hydrocarbons for both surface and groundwater." Draft EIS at 4-68; *id.* at 4-70, 4-72, and 4-94 (making similar statements). BLM also declines to disclose any information about the public health or other impacts of spent shale, alleging that such data is "unknown, and cannot be obtained, due to the fact that design and engineering of the South Project will change based on whether or not the BLM allows the Applicant to build one or more of the proposed utilities. BLM believes this unknown information is not essential to a reasoned choice between alternatives." *Id.* at 4-138.

As discussed above, BLM's positions and lack of analysis violate NEPA's hard look requirement and are unacceptable for the purpose of the DEIS. BLM must require Enefit to provide information about its waste product and also must refer to available and relevant data on oil shale waste impacts from Anvil Point, Estonia, or EU studies.

4. BLM Failed to Take a Hard Look at Impacts of Ruptures of Pipelines Carrying Synthetic Crude Oil Derived From Oil Shale

N3af

One of the greatest environmental concerns associated with Enefit's project is the risk that Enefit will spill synthetic crude oil derived from oil shale into the White River and Evacuation Creek. There is an associated concern that BLM and state agencies will fail to respond quickly and thoroughly to such a disaster. This concern is compounded by the apparent lack of information about the chemical characteristics of Enefit's synthetic crude oil (SCO) products, the experience of American communities with other unconventional oil spills, and the oil industry's history of major spill disasters. Given that Enefit's product pipeline will cross the White River once and cross Evacuation Creek multiple times, analysis of a rupture is a critical component of the DEIS.

N3af

See the response to Comment N3ae.

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N3af	<p>There have been a number of recent pipeline spills that have devastated rivers and waterways in America. These ruptures include Enbridge's Line 6b rupture into the Kalamazoo River; Exxon's Silvertip Pipeline and Bridger's Poplar Pipeline ruptures into the Yellowstone River; and Exxon's Pegasus Pipeline rupture into the wetlands within the town of Mayflower, Arkansas. Each of these spills occurred within the last five years and demonstrates that the potential of a spill into the Upper Colorado River Basin waterways is a reasonably foreseeable occurrence.</p> <p>Each of these spills has had devastating impacts on public health within communities nearby and environmental implications downstream of the spill location. In the case of the Kalamazoo and Mayflower ruptures, the spills shed light on the serious complications and long-term damage inherent in spills of unconventional oil into waterways.</p> <p>Tar sands oil is the main source of the unconventional fuel that is currently transported via pipeline in the United States. Unlike conventional crude, tar sands oil is derived from sand that is impregnated with viscous, extra-heavy oil known as bitumen. Bitumen is the valuable component of tar sands because it can be refined into liquid fuels. Tar sands is a solid mass that cannot be pumped out of the ground under normal conditions. And, because it is so viscous and heavy, tar sands oil must be diluted with lighter hydrocarbons before it can be pumped through a pipeline (this is the derivation of term diluted bitumen). About Tar Sands, Oil Shale &amp; Tar Sands Programmatic EIS, <a href="http://ostseis.anl.gov/guide/tarsands/index.cfm">http://ostseis.anl.gov/guide/tarsands/index.cfm</a>.</p> <p>The synthetic crude oil derived from oil shale is also an unconventional fuel. In describing different unconventional fuels, the Carnegie Institute states, "...coal-like oils include semisolid extra-heavy oils such as bitumen in tar and oil sands, kerogen in oil shale, and liquid oils derived from coal itself." Deborah Gordon, <i>Understanding Unconventional Oils</i>, Carnegie Endowment for International Peace, 2012, 6. Like bitumen from tar sands, kerogen derived from oil shale must undergo an upgrading process.</p> <p>The process that transforms unconventional oil into synthetic crude renders spills of unconventional oil particularly threatening to communities, wildlife, and natural resources. These risks differ substantially from the risks associated with the spills of conventional crude oil. Swift, Anthony <i>et al.</i>, <i>Tar Sands Pipeline Safety Risks</i>, Natural Resources Defense Council, Feb. 2011, attached as Exhibit 49.</p> <p>Thus far, America's experience with unconventional oil spills has been limited to bitumen from tar sands oils. In examining the risks of cleaning up tar sand oil spills, the State Department has found that bitumen has a propensity to sink in water, attach itself to the bottom of waterbodies, and persist in the affected environment, polluting affected areas indefinitely. For example, the State Department has noted that:</p> <p>A notable difference between dilbit and other forms of crude is its capacity to precipitate out in water. After a period of several days in water, the diluent in dilbit will eventually volatilize into air or dissolve into water, leaving the heavy bitumen behind to sink or become suspended. This could occur with dilbit more so than with other forms of crude due to the higher percentage of heavy compounds present.</p>

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US State Department, *Final Supplemental Environmental Impact Statement for Keystone XL Project*, 3.13-10 2014, citing, (H. Tsapralis, *Properties of Dilbit and Conventional Crude Oils*, Alberta Innovates, 2013.)

Not only does tar sands oil sink to the bottom of waterbodies, it also does not biodegrade readily. Again the State Department noted that:

Dilbit...is largely comprised of branched hydrocarbon chains and heavy hydrocarbons, which are less readily biodegradable [than conventional crude]. A biodegradation study conducted by the USEPA in response to the 2010 Enbridge dilbit spill in the Kalamazoo River in Michigan concluded that only 25 percent of the residual hydrocarbons impacting the river could be reasonably removed by natural attenuation.

US State Department, *Final Supplemental Environmental Impact Statement for Keystone XL Project*, 3.13-10 2014 citing 2013. US EPA, *Response to Comments regarding Proposed Order to Enbridge Energy, Limited Partnership [pertaining to Proposed Order AR 1152 regarding July 27, 2010 oil release to the Kalamazoo River]*, March 14, 2013.

Due to the lack of synthetic crude being produced from oil shale in the United States, there is little information about the behavior of oil shale SCO in the event of a spill. However, the kerogen derived from oil shale in the Green River Formation requires upgrading like the bitumen from the Alberta tar sands. The risks of oil shale derived SCO spilling into rivers may be similar to those of diluted bitumen. These impacts must be fully understood before the oil shale industry is allowed to transport its product across the rivers of the Colorado River Basin.

However, BLM entirely fails to provide a meaningful analysis, or make reasonable forecasts and projections, of the potential risks of spills of SCO derived from Enfit's oil shale operations. Instead, the BLM notes that "[t]he chemical composition of the SCO product is not known by the BLM at this time." Draft EIS at 4-66. BLM's explanation is not acceptable and inadequate. BLM must require Enfit to provide a detailed analysis of the chemical composition of its SCO product. This information should be obtainable from a number of sources, including but not limited Enfit's oil shale operations in Estonia and Enfit's ongoing tests of Utah oil shale samples at its facilities in Germany.

This information is particularly critical given BLM's estimate of the likely volume of a potential spill from Enfit's operation. BLM forecasts that, if properly managed, a spill would have the potential to release between 33,000 and 83,000 gallons of petroleum product into the White River or Evacuation Creek. Draft EIS at 4-66. However, BLM concedes that "[t]he potential volume of oil that could be released before shutoff occurs is not known." *Id.* If shut-off did not occur or unexpected circumstances occurred, this volume could be significantly greater.

Even without information about the SCO make-up, BLM is able to state that "spills occurring in proximity to streams would potentially result in lethal levels of toxic substances affecting Colorado River Fish and other aquatic organisms." Draft EIS 4-66. These impacts to the imperiled fish and their critical habitat must also be assessed in BLM's consultation with the

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U.S. Fish and Wildlife Service, and disclosed and analyzed in the EIS, as noted below. Aside from a prediction of lethal impacts to fish, the Draft EIS contains almost no information regarding potential impacts to public health, recreational resources, land resources, or other resources that would be impacted by a pipeline rupture. Based on the American experience with tar sand oil spills, it is likely that the generalized impacts discussed in the Draft EIS are understatements of impacts, and that any spill would have long-lasting impacts on the survival of the Colorado River fish species, downstream water quality in the Colorado River Basin, and the future of the regional recreational river industry. BLM's failure to adequately analyze the impacts of product spill from Enefit's South Project must be remedied and addressed in future NEPA documents.

5. The BLM Failed to Take A Hard Look At Groundwater Impacts

The analysis on the potential effects on ground water of Enefit's proposal in the DEIS is completely inadequate. Despite acknowledging that Enefit installed seventeen monitoring wells in and around the South Project, no specific information related to those wells is contained within the Draft EIS. Nor does the Draft EIS consider the implications of the South Project on ground water in the area of the mine. It is insufficient for the DEIS to focus its evaluation of potential impacts exclusively on the right-of-way, and to provide no detailed ground water resource information and little to no analysis on possible impacts of either the right-of-way or the project. The Draft EIS must provide detailed information regarding ground water present at the mine site and must evaluate the cumulative impacts of Enefit's operations on those ground water resources. Such an analysis requires quantifying all accumulations of ground water within all of Enefit's active or potential lease areas and performing baseline analysis of that ground water.

Regarding the ground water analysis performed on the seventeen wells, BLM should have required Enefit to provide a detailed breakout of all seventeen wells, including the depth to aquifer encountered, the extent of that aquifer and the specific water quality test results related to each aquifer. Instead, the DEIS fails to provide the necessary information and erroneously applies the water quality standards for surface water rather than ground water.

Utah Administrative Code R317-6-3.1 classifies ground water into the following classes: Class IA – Pristine Ground Water; Class IB – Irreplaceable Ground Water; Class IC – Ecologically Important Ground Water; Class II – Drinking Water Quality Ground Water; Class III – Limited Use Ground Water; and, Class IV – Saline Ground Water. R317-2-6 classifies surface waters into various classes, depending on their usage. These consist of: Class 1 – protection for use as a raw water source for domestic water systems; Class 2 – protection for recreational use and aesthetics; Class 3 – protection for use by aquatic wildlife; Class 4 – protection for agricultural uses; and, Class 5 – protection for Great Salt Lake. Within these classes, a number of subclasses exist that apply to specific uses of surface waters.

In the DEIS, the surface water classifications were mistakenly used to quantify the quality of the ground water, and the DEIS contains no information related to the specific quality or classification of the water found in Enefit's monitoring wells. For instance, the DEIS states that "[t]otal phosphorous exceeded the Class 2B Recreation Standard in 11 of the 15 groundwater monitoring wells sampled[.]" Draft EIS 3-25. However, given that short of spelunking

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The Applicant has developed a general concept of the South Project to inform ongoing development activities related to the Utility Project. Due to the fact that design and engineering of the South Project will change based on whether or not the BLM allows the Applicant to build one or more of the proposed utilities, detailed engineering design for the South Project has not yet been prepared. However, the South Project is a reasonably foreseeable non-federal action that is outside of the jurisdiction of the BLM, thus outside the scope of this EIS. The South Project will proceed regardless of the BLM decision to be made regarding the Utility Project. The South Project water impacts that will accumulate with the Proposed Action impacts have been disclosed in section 4.3.3.5 to the extent they are known. When effects are unknown, the procedures in 40 CFR 1502.22 have been followed. The BLM is not obligated or able to require mitigation for the South Project because it is a private project. Further disclosure of impacts on ground water from the South Project are not necessary to inform a reasoned decision between the Utility Project alternatives.

The exact nature and magnitude of the impacts on the aquifer would depend on the detailed mine POD, which would be submitted to UDOGM for approvals. The South Project also will be subject to permitting through the NPDES and subject to compliance with the CWA.

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recreating underground is very challenging, the surface water standards simply do not apply to ground water. The remainder of the ground water quality results inappropriately apply the surface water classifications to the ground water samples. Clearly this is unacceptable.

The ground water quality standards are outlined in R317-6-2, and provide for a milligram per liter standard for each of the contaminants of concern. For instance, arsenic (a contaminant noted by the DEIS as being present in the ground water samples) has a standard of .05 milligram per liter. R317-6-2.1. These standards are applied differently depending on the class of ground water present. Ground water classifications are first broken out based on the level of total dissolved solids (TDS) present in the ground water, and then the contaminant standard is applied differently within each Class. See R317-6-3. For instance, Class IA ground water must have TDS levels less than 500 mg/l, and may not have any contaminant concentrations that exceed the ground water quality standards. R317-6-3.2. In order for the DEIS to provide the necessary baseline information regarding ground water in the area of the mine, it must first determine the TDS levels present in the various samples, classify those samples into the ground water classes based on those TDS levels, test for the contaminant of concern outlined in R317-6-2.1, determine if the concentrations present exceed those standards, and if any do exceed the standard determine if such an exceedance is acceptable based on the applicable ground water class.

Beyond the obvious error of applying the incorrect water quality standard to the samples derived from the monitoring wells, the DEIS must go further and contain actual baseline analysis, including conducting a thorough seep and spring survey of the area. This baseline analysis must take into account the ephemeral nature of groundwater recharge in that area, and therefore must be conducted at different times of the year. The DEIS contains no such documentation.

Because, given the nature of the waste stream, there is a significant potential for Enefit's operations to discharge pollutants into area ground water resources, such a baseline analysis is critical. Although Enefit's mine sites are within Indian Country and fall largely within EPA's jurisdiction, the Clean Water Act does not apply to ground water and therefore the company will be required to obtain a Ground Water Discharge Permit from Utah DWQ. See Utah Admin. Code R317-6-6.1 ("No person may construct, install, or operate any new facility or modify an existing or new facility...which discharges or would probably result in a discharge of pollutants that may move directly or indirectly into ground water, including, but not limited to land application of wastes; waste storage pits; waste storage piles; landfills and dumps; large feedlots; mining, milling and metallurgical operations, including heap leach facilities; and pits, ponds, and lagoons whether lined or not, without a ground water discharge permit[.]").

Under Utah law, a discharge into ground water "means the addition of any pollutant to any waters of the state," Utah Code Ann. § 19-5-102(7), and pollution is defined as "any man-made or man-induced alteration of the chemical, physical, biological, or radiological integrity of any waters of the state[.]" Utah Code Ann. § 19-5-102(13). The State of Utah has made it clear that "all" waters of the state, including "all" accumulations of ground water, must be protected from contamination. The Utah Water Quality Act defines waters of the state as:

All streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and **all other bodies or accumulations of water, surface**

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**and underground**, natural or artificial, public or private, which are contained within, flow through, or border upon this state or any portion of this state.

Utah Code Ann. § 19-5-102(23)(a) (emphasis added).

While Enefit attempted to sidestep this issue in its right-of-way application by stating that the “requirement [for a groundwater discharge permit is] dependent upon site design” and that any anticipated application or review for such a permit has yet to be determined, ROW application at 27, this position is unacceptable for the purposes of the DEIS. The DEIS must contain the required detailed information in order to determine both the baseline quality of the ground water in the area of the mine, and the potential for discharge from Enefit’s facility. The DEIS does neither.

Given that the DEIS contains almost no information regarding potential impacts to ground water resources in the area of Enefit’s proposed mining operation, that the information that *is* provided consists of nothing more than generalized statements regarding ground water in the area of the mine, and that even something as basic as applying the correct ground water classification standards was done erroneously, the ground water resource portion of the DEIS is clearly deficient and must be revised.

6. The BLM failed to take a hard look at impacts to Colorado River fish from water depletions (40 C.F.R. § 1508.27(b)(9)), and whether the action threatens a violation of federal environmental laws (40 C.F.R. § 1508.27(b)(10))

The EIS for the five ROWs must assess the significance factors at 40 C.F.R. § 1508.27(b), including impacts to threatened and endangered species and designated critical habitat, 40 C.F.R. § 1508.27(b)(9), and potential violations of the Endangered Species Act, 40 C.F.R. § 1508.27(b)(10). Any subsequently prepared NEPA document must be more robust and take a “hard look” at impacts to endangered fish and compliance with the ESA.

a. *Endangered Species Act Section 7’s procedural duty to re-consult on RD&D Lease*

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In 2011, Enefit acquired the 160-acre RD&D lease that BLM originally issued to Oil Shale Exploration Company (OSEC) on June 21, 2007. BLM had consulted formally with FWS on that agency action because water depletions associated with activities on the lease site were likely to adversely affect the Colorado pike minnow, bonytail chub, humpback chub and razorback sucker (the four endangered Colorado River fish), as well as their critical habitat. FWS concluded that consultation process with a biological opinion (dated December 22, 2006)) that reviewed impacts to the four endangered Colorado River fish and determined that such impacts would cause jeopardy to the fish and adversely modify their critical habitat.

On July 19, 2012, Enefit submitted a development plan for the RDD lease. The plan explains that the company will conduct development activities on its adjacent private land, known as the South Project, to satisfy the criteria (a showing of commercial viability, 43 C.F.R. § 3926.10) for expanding the RD&D lease to BLM’s over 4960-acre, preferential lease site. The plan states

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This comment applies to the South Project, which has been moved in whole to the cumulative impact section to address public confusion. Section 4.3.3.5 indicates the permitting processes that will be applied to the South Project to address potential water impacts. It is assumed that the commenter’s public interest comment is tied to the BLM’s public interest determination, which is a right-of-way processing step that allows the BLM to deny a right-of-way. See 43 CFR 2804.26 and 43 CFR 2884.23. These right-of-way regulations do not apply to the South Project, which will be located on private lands and private mineral estates. This comment is outside the scope of this EIS.



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specifically that “The RD&D Development Phase activities will be carried out on *both* the BLM RD&D lease property and [Enefit Oil Company]’s adjacent private Skyline property...” July 19, 2012 Plan at 2 (emphasis added). As discussed above, we do not believe this is legally permissible: BLM regulations provide that converting a RD&D lease to a commercial lease (*see* 43 C.F.R. § 3926.10) requires that the demonstration of commercial viability must occur on the 160-acre RD&D lease.

In any case, Enefit’s decision to expand the area upon which it will conduct RD&D activities requires BLM and FWS to re-initiate consultation. *See* 50 C.F.R. § 402.16. Enefit has changed the scope of the agency action upon which BLM and FWS consulted and the resulting impacts to the four endangered Colorado River fish. Either a change in the scope of activities or a change in the effects triggers the reconsultation duty. *Id.* § 402.16(b) (“If new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered”); *Id.* § 402.16(c) (“If the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in the biological opinion”). The scope of the 2006 consultation covered activities occurring on 160 acres of the RDD lease. Now, Enefit is changing the scope of the RD&D activities and consequently the effects by not limiting those research activities to the 160 acres associated with the RD&D lease. BLM and FWS must therefore reconsult to address the activities occurring at Enefit’s South Project site.

Underscoring the connection between the RD&D lease, upon which BLM and FWS consulted, and the South Project is further realized by the five rights-of-way. FWS’s 2006 biological opinion states that Enefit (OSEC at the time) “will also require rights-of-way for power, a natural gas pipeline, water lines, and existing roadways outside of the 160-acres lease area.” Exhibit 30. During that consultation process, BLM referred to these utility pipelines as necessary for development activities on the 160-acre RDD lease, Exhibit 30 at 5 (describing construction of natural gas pipeline and power line). These are the same rights-of-way that will serve Enefit’s South Project and that are currently the subject of this BLM NEPA process. BLM and FWS must reconsult to address impacts to the endangered fish and their critical habitat from the ROWs and South Project.

*b. Endangered Species Act Section 7’s procedural duty to consult on the ROWs*

Section 7(a)(2) prohibits federal agencies from undertaking actions that (1) are “likely to jeopardize the continued existence” of any listed species or (2) “result in the destruction or adverse modification of” critical habitat. 16 U.S.C. § 1536(a)(2). “Jeopardy” results when it is reasonable to expect that the action would “reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species.” 50 C.F.R. § 402.02. “Adverse modification” is defined as “a direct or indirect alteration that appreciably diminishes the value of critical habitat for ... the survival [or] recovery of a listed species.” *Id.*

To ensure compliance with these prohibitions, the ESA includes a “consultation” process with FWS. This process must occur when a federal agency, like BLM, proposes an “agency action” that “may affect” a listed species or its designated critical habitat. 16 U.S.C. § 1536(a)(2); 50

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FWS coordination is ongoing, Section 7 consultation will be completed prior to completion of the ROD.

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C.F.R. § 402.14(a); *Rio Grande Silvery Minnow v. Bureau of Reclamation*, 601 F.3d 1096, 1105 (10th Cir. 2010). Consultation must occur “at the earliest possible time.” 50 C.F.R. § 402.14(a); *Colo. Envtl. Coal. v. Dept. of Defense*, 819 F.Supp.2d 1193, 1222 (D. Colo. 2011).

FWS and BLM must use the best scientific and commercial data available throughout the ESA consultation process. 16 U.S.C. § 1536(a)(2). The type of consultation will vary depending on the degree of anticipated effects. Informal consultation is sufficient if FWS concurs in writing that the proposed action “may affect,” but “is not likely to adversely affect” the species or its critical habitat. 50 C.F.R. §§ 402.13, 402.14(b). “Formal” consultation occurs when the proposed action is “likely to adversely affect” a species or its critical habitat. *Id.* Formal consultation is completed when FWS issues a “biological opinion” that determines whether the agency’s action will jeopardize the species or adversely modify its critical habitat. 16 U.S.C. § 1536(b)(3)(A). FWS must also issue an “incidental take statement” to the federal action agency if FWS concludes that the action will neither jeopardize the species nor destroy or adversely modify critical habitat, but “may” incidentally “take” a listed species. 16 U.S.C. § 1536(b)(4)(A); 50 C.F.R. §§ 402.14(g)(7); 402.14(i)(1).

The meaning of “agency action” is broadly construed under ESA section 7(a)(2). *NRDC v. Houston*, 146 F.3d 1118, 1125 (9th Cir. 1998). An agency action is “any action authorized, funded, or carried out” by a federal agency. 16 U.S.C. § 1536(a)(2). The phrase is further defined in ESA regulations as “all activities or programs of any kind authorized, funded, or carried out, in whole or in part, by Federal agencies.” 50 C.F.R. § 402.02. These include: “(d) actions directly or indirectly causing modifications to the land, water or air.” *Id.* ESA consultation applies “to all actions in which there is discretionary involvement or control.” 50 C.F.R. § 402.03; *NRDC v. Jewell*, 749 F.3d 776, 784 (9th Cir. 2014) (*en banc*) (“Whether an agency must consult does not turn on the degree of discretion that the agency exercises regarding the action in question, but on whether the agency has any discretion to act in a manner beneficial to a protected species or its habitat.”).

Just as the five ROWs are major federal action subject to NEPA, they are also “agency actions” that require ESA consultation. They give permission to Enefit to use BLM lands for the company’s water supply lines, natural gas lines, buried pipelines to transport produced oil shale product, upgraded roads and powerlines. Each permitted use will provide services for Enefit to develop oil shale deposits on both private lands (South Project) and BLM’s RD&D and preferential lease site. Under the authority of FLPMA, 43 U.S.C. § 1761(a), BLM retains complete discretion over whether the ROWs should issue and, if so, what conditions can be imposed to address adverse effects caused by, for example, the water pipeline. *Id.* § 1761(b) (requiring applicant to submit information related to use of right-of-way so BLM can decide whether to issue ROW and what terms and conditions are necessary); see *Backcountry Against Dumps v. Jewell*, \_\_\_ F.3d \_\_\_, 2016 WL 3165630 (9th Cir. June 7, 2016) (describing conditions imposed on right-of-way to protect birds from wind turbines). The ROWs are thus agency actions within the meaning of the ESA section 7(a)(2), 16 U.S.C. § 1536(a)(2).

The ESA’s “may affect” threshold is low. *Colo. Envtl. Coal. v. Dept. of Defense*, 819 F.Supp.2d 1193, 1221-22 (D. Colo. 2011) (“This ‘may affect’ standard triggering the consultation requirement is low.”); see also *Wilderness Soc’y v. Wisely*, 524 F.Supp.2d 1285, 1298 (D. Colo.

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2007) (determining consultation necessary when “adverse effects are possible”). FWS explained that under the “may affect” standard, “[a]ny possible effect, whether beneficial, benign, adverse, or of an undetermined character, triggers formal consultation.” 51 Fed. Reg. 19,926, 19,949 (June 3, 1986). FWS’s Consultation Handbook similarly provides the ‘may affect’ standard is satisfied “when a proposed action may pose *any* effects on listed species or designated critical habitat.” ESA Consultation Handbook at xvi (emphasis added).<sup>6</sup> Courts have held that “[a]ctions that have any chance of affecting listed species or critical habitat—even if it is later determined that the actions are ‘not likely’ to do so—require at least some consultation under the ESA.” *Karuk Tribe of Cal. v. U.S. Forest Serv.*, 681 F.3d 1006, 1027 (9th Cir. 2012) (reasoning “may affect” threshold “must be set sufficiently low to allow Federal agencies to satisfy their duty to insure that their actions do not jeopardize listed species or adversely modify critical habitat.”).

The ROWs and the oil shale development activities these BLM actions facilitate “may affect” the four endangered Colorado River fish and their critical habitat in both the Green River and White River (DEIS at ES-27, 3-69), and thus require formal ESA consultation. BLM is legally required under the ESA to consider the impacts on endangered fish from the South Project and Enefit’s RD&D/Preferential Right leases. In deciding whether to consult with FWS (as well as the scope of consultation), agencies must consider the (1) action area, (2) the environmental baseline, and (3) the effects of the action. *See* 50 C.F.R. §§ 402.02; 402.14(h)(2). The “action area” includes “all areas to be affected directly or indirectly by the Federal action, and not merely the immediate area involved in the action.” 50 C.F.R. § 402.02. The “environmental baseline includes the past and present impacts of all Federal, State, or private actions and other human activities in the action area.” *Id.* The “effects of the action” include the direct, indirect, and cumulative effects to a species from the proposed agency action, as well as interrelated and interdependent action.” *Id.* Indirect impacts are those that are caused by the proposed action, but are later in time and reasonably certain to occur. *Id.* Cumulative effects include “those effects of future State or private activities, not involving Federal activities, that are reasonably certain to occur within the action area of the Federal action subject to consultation.” *Id.* Interrelated actions are those that are part of a larger action and depend on the larger action for their justification. *Id.* Interdependent actions are those that have no independent utility apart from the action under consideration. *Id.*

The 9,000-acre South Project and the 5,120-acre RD&D/Preferential Rights lease areas and the lands and waters impacted by oil shale development there are part of the “action area” for the ROWs. Developing oil shale on these private and public lands are also part of the “effects of the [ROW]” as defined under the ESA. Both of Enefit’s oil shale developments are indirect effects. ROW Application (11-26-12) at 23. The South Project is a connected action, indirect impact, and/or cumulative impact of the ROW. The ROWs are interrelated actions with both the South Project and the RD&D/Preferential rights leases. The ROWs are also interdependent on these oil shale projects. The company’s ROW application, dated November 26, 2012, states “Enefit requires a right-of-way grant from [BLM] in order to construct, own, and operate a utility

<sup>6</sup> Available at: [www.fws.gov/endangered/esa-library/pdf/esa\\_section7\\_handbook.pdf](http://www.fws.gov/endangered/esa-library/pdf/esa_section7_handbook.pdf).

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corridor [or corridors]” to its South Project site. ROW Application (11-26-12) at 1. The purpose of the ROW, according to Enefit, “is to supply natural gas, power, water, and other needed infrastructure through one or more utility corridors in order to produce and deliver shale oil from oil shale mined under Enefit’s South Project by uninterrupted operation of an economically viable mining oil shale retorting and upgrading industry.” *Id.* at 2; *id.* at 3 (contending granting right-of-ways will “enable[e] development of Enefit’s South Project”); *id.* (“[A] ROW from BLM VFO is anticipated to be required for a utility corridor(s) to support the South Project. Natural gas, power and water are required to be brought to the private property, and upgraded product is required to be distributed from the private property.”)

Oil shale development at the South Project site and Enefit’s RD&D and Preferential right leases will result in water depletions from the White or Green Rivers, which are part of the Colorado River Basin. One of the rights-of way is to convey water taken from the Green or White Rivers to the site of the South Project and Enefit’s RD&D and Preferential right leases. In the Draft EIS, Enefit contends it has a water right that totals 15 cfr, or 10,886 acre feet per year from either the Green or White River. Draft EIS at 4-111. Regardless of exactly where Enefit diverts water, it will be taken from the Colorado River system and impact habitat, including critical habitat, of the four endangered Colorado River fish. Draft EIS 4-110. Specifically, according to the Draft EIS, “[w]ithdrawal of water from the Green River that reduces its flow and degrades the water quality of the stream down gradient from the point of the withdrawal. *Id.*

Any water depletions from the basin, according to BLM and FWS, will cause “jeopardy” to the endangered Colorado River fish and therefore easily trip the “may affect” threshold that requires ESA consultation. Notably, BLM and FWS made these findings in the context of consulting on land management plans for energy development and RD&D leases for oil shale. *See* FWS, Biological Opinion for BLM’s Price and Vernal 2008 RMP Revisions. In fact, BLM determined that issuing the Enefit RD&D lease required formal consultation due to impacts to the Colorado River fish. The agency explained:

The surface water or ground water withdrawals associated with Phase 3 of the [RD&D lease] will result in very slight reduction (less than 0.3%) of total flow volume in the White River. However any reduction of flow is considered a depletion of water from the Colorado River Basin...and is automatically deemed by the USFWS to ‘likely jeopardize the continued existence of [the four endangered fish].’ Therefore, all proposed activities on BLM-managed lands that result in water depletion trigger formal Endangered Species Act Section 7 consultation with USFWS.

Exhibit 30 at 5. Moreover, “Phase 3 of the Proposed Action will use an average of 220,000 gallons of water per day for 2 years.” *Id.*

The NEPA process that accompanied BLM’s 2013 oil shale and tar sands amendments to resource management plan in Utah, Colorado and Wyoming details the impacts to Colorado River fish from the water depletions associated with oil shale development. As part of that process, the U.S. Government Accountability Office (GAO) reported that “water is needed for five distinct groups of activities that occur during the life cycle of oil shale development: (1) extraction and retorting; (2) upgrading of oil shale, (3) reclamation, (4) power generation, and (5)

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population growth associated with oil shale development.” Gov’t Accountability Office, Energy Development and Water Use (2011) at 7, attached as Exhibit 50. Enefit’s ROW Application states: “Water will be needed for various South Project processes, including dust suppression, sanitary use, mining activities, product upgrading and spent shale/ash handling.” ROW Application at 13. BLM’s EIS for the 2012 amendments to several resource management plans that designated lands available for developing oil shale and tar sands disclosed:

in addition to water that may or may not be needed to produce the oil shale, water uses could include water for mining and drilling operations, cooling of equipment, transport of ore and processed shale, dust control for roads and mines, crushers, overburden and source rock piles, cooling of spent shale exiting the retort, fire control for the site and industrial area, irrigation for revegetation and sanitary and potable uses.

BLM Protest Resolution for 2013 RMP Amendments for Oil Shale and Tar Sands at 116; 2012 DEIS at 4-31 – 4-42. The EIS went on to report:

On the basis of proximity of populations and critical habitat to potential lease areas, the greatest potential for direct impacts on endangered fishes is related to development in Utah, where the Green River and White River flow through oil shale areas. If these areas are available for leasing, there is a relatively high probability that these species would be directly or indirectly affected by oil shale development.

2012 DEIS at 4-126 – 4-127. As summed up by BLM in the 2012 EIS, *in situ* production requires 1-3 barrels of water per oil barrel, and underground mining and surface retorting require “2.6 to 4” barrels for one barrel of oil. 2012 DEIS at 4-9, 4-10.

The Draft EIS states that the “use of the Applicant’s existing water right is not anticipated to significantly reduce flows in the Green River or have effects on Colorado River Fish or habitat.” DEIS 4-111. BLM does not provide support or context for this assertion. Nor could it. At least for the endangered fish and their critical habitat within the Green and White Rivers, as stated above, “any water depletions” will jeopardize the continued existence endangered fish. Indeed, elsewhere in the Draft EIS, BLM concedes that “[i]t is anticipated that water depletions within the Colorado River system, including the Green and White Rivers, would affect Colorado fish and their habitat.” *Id.* at 4-173; *see also id.* at 4-173 – 4-174 (noting reducing water quantity can have impacts on spawning, nursery, rearing, feeding, and food supply). Moreover, the duty to consult under the ESA is triggered if action “may affect,” a far lower threshold than employed in the Draft EIS. And even if BLM properly characterizes the removal of 15 cfs from either river due to the South Project as insignificant standing alone, a characterization we dispute, the ESA requires the agency to evaluate to the environmental baseline as well as the cumulative effects associated with water withdrawals on the fish. *See* 50 C.F.R. §§ 402.14(h)(2), 402.02. So too does NEPA. 40 C.F.R. § 1508.7; 1508.27(b).

In contrast to BLM’s failure to consult on the ROWs and related oil shale development activities, it is notable that BLM consulted on the 2006 RD&D lease now held by Enefit and which is located on public lands adjacent to the South Project. When assessing the RD&D lease, BLM concluded that water depletions caused by lease issuance was “likely to adversely affect” the

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four endangered fish and accordingly formally consulted with FWS on lease issuance. Exhibit 30 at 5. BLM determined that oil shale development on the RD&D lease will require 220,000 gallons per day of water on average. *Id.* The relative size of the projects leaves no doubt that ESA formal consultation due to water depletions must occur for the ROWs as well. Impacts of oil shale development taking place on only 160 acres and producing 17.7 million barrels of oil shale satisfy, according to BLM and FWS, the ESA's "may affect" standard. Far more water is needed to develop the Enefit's private land and its BLM-leased parcels, as more acres will be developed and more oil produced at both the South Project site (13,441 acres and 1.2 billion barrels (Enefit Application at 6) and the preferential lease area (4,960 acres and 528.3 million barrels (*Id.*). BLM has sufficient information about water needs for both of Enefit's oil shale projects that will use the ROWs, and this information demonstrates the ROWs "may affect" the Colorado River fish and their critical habitat.

In sum, BLM is required to consult with the FWS over the ROWs and impacts to endangered fish and their critical habitat. Of note, Enefit anticipated ESA consultation on the ROWs. See ROW Application (11-26-12) at 25. BLM's failure to formally consult violates the ESA, as well as the authority in FLPMA to grant ROWs. BLM's reasons, if any, for not consulting must be included in the EIS for the ROWs. See 40 C.F.R. § 1508.27(b)(10).

7. BLM failed to take a hard look at impacts to waters of the U.S. and related wetlands (40 C.F.R. § 1508.27(b)(3)), and whether the action threatens a violation of a federal environmental law, including the permitting requirements under the Clean Water Act and consultation duty under the Endangered Species Act (40 C.F.R. § 1508.27(b)(10))

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The Draft EIS reveals that the construction along the rights-of way will involve the discharge of fill material into waters of the U.S. DEIS 4-112. Though not clear, this may be due to building pipelines spanning the White River and burying pipelines under the River. *Id.* The Draft EIS acknowledges that permits under the Clean Water Act will be required, suggesting that a general permit may be necessary. Draft EIS at 1-16, 3-18, App. H 5-6; *White River Technical Pre-feasibility Study*, at 4-19 and ES-11. Regardless of whether an individual or general permit is necessary, the EIS fails to fully analyze the impacts to waters of the U.S., including wetland resources, or disclose that the requirement to obtain a CWA 404 permit will itself likely trigger the duty to consult under the ESA and comply with the ESA's substantive prohibitions against jeopardizing listed species and adversely modifying designated critical habitat, including the Colorado River fish

8. BLM Failed to Take a Hard Look at Impacts to Imperiled Plant Species

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In the DEIS, BLM failed to take a hard look at impacts that Enefit's oil shale strip mine will have on the imperiled Graham's beardtongue (*Penstemon grahamii*) and White River beardtongue (*P. scariosus* var. *albifluvis*), and did not comply with its duty to prevent unnecessary and undue degradation with regard to those resources. See 43 U.S.C. § 1732(b). Instead of protecting these imperiled plants and preserving ecosystem integrity using best available science, BLM defers to

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The Applicant has developed a general concept of the South Project to inform ongoing project development activities for the Utility Project. Due to the conceptual nature of this design, no data is available regarding the South Project's need for a Section 404 Permit. However, the USACE is a cooperating agency on the EIS for the Utility Project and rights-of-way decision.

The South Project is located on private land and minerals. Therefore, analysis of the potential impacts and need for environmental analysis for the construction and operation of the South Project is outside of the jurisdiction of the BLM and the scope of this EIS.

However, the Applicant is aware that NEPA may be required to facilitate the South Project CWA and Section 404 Permitting process. The BLM invited cooperators to assist with the EIS preparation in the hopes of being able to identify and address any additional NEPA requirements.

Specifically, the USACE participated as cooperator on this EIS with the understanding that they would be able to use the EIS for any future permitting that may be necessary. Based on a delineation completed by Enefit, USACE representatives verbally indicated their belief that the Utility Project would qualify for a nationwide permit. No additional NEPA requirements have been identified by cooperators or the public during scoping or public comment.

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Text has been revised to potential effects to special status plant species in Sections 4.2, 4.3, and 4.4 of this EIS.

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an inadequate conservation agreement that fails to protect the beardtongue species and allows oil shale strip mining to occur at the likely expense of the species' survival.

The Fish and Wildlife Service has previously provided data that indicate that Enefit's project in combination with other oil shale projects will lead to the likely extinction of the beardtongue species. FWS has determined that the beardtongues would be vulnerable to extinction if just 21% and 26% of known Graham's and White River beardtongue populations, respectively, were destroyed. 78 Fed. Reg. 47,590, 47,600 (Aug. 6, 2013). Enefit's oil shale operations will occur on state and private lands that are home to approximately 15% and 24% of the known Graham's and White River beardtongue populations, respectively. 79 Fed. Reg. 46,042, 46,076 (Aug. 6, 2014). Moreover, FWS has also concluded that foreseeable oil shale development, including the Enefit Project, threatens the beardtongues, despite conservation measures that protect the plants by 300 feet. Specifically, FWS found that "the[] indirect effects are likely to impact 40 and 56 percent of all known plants of Graham's and White River beardtongues, respectively. Neither species is likely to be able to sustain this amount of impact and still be able to persist into the future." 78 Fed. Reg. at 47,599.

BLM has ignored this information despite its duty to take a hard look at impacts to sensitive species and to prevent unnecessary and undue degradation on public lands, and has instead relied on an inadequate conservation agreement. However, BLM ignores the fact that the conservation agreement does not impose any limits whatsoever on Enefit's development of the South Project: the agreement's "conservation areas"—where mitigation measures apply—were drawn to avoid any overlap with the areas that Enefit plans to develop in the South Project area. *See* Farouche Declaration, attached as Exhibit 51 (showing that all habitat within the development area were designated as private non-conservation areas with no protections). BLM must analyze how destruction of Graham's and White River beardtongue plants and habitat in the project area will affect the species.

Even for those areas outside of the South Project development area, the conservation agreement's mitigation measures do not provide adequate protections to the beardtongues. First, Enefit's development timeframe of at least 30 years far exceeds the conservation agreement's 15-year term. Second, the conservation agreement limits new surface disturbance, such as that from drilling pads or roads, to 5% of remaining undisturbed land area per landowner per unit in Graham's beardtongue conservation areas and 2.5% of remaining undisturbed land area per landowner per unit in White River beardtongue conservation areas, and prohibits ground-disturbing activities within 300 feet of beardtongue plants in conservation areas. However, both the best available science and FWS's conclusions its listing proposal demonstrate that these mitigation measures will not adequately protect the beardtongues. *See* 78 Fed. Reg. at 47,599 (FWS concluding that 300-foot buffers are not sufficient to protect the species). In short, the conservation will not protect the beardtongue species and BLM should not defer to this agreement as adequate protection for the imperiled species.

BLM's analysis of the impacts to the imperiled beardtongue in the DEIS are also unexplained and unsupported. For example, BLM makes the unsupported conclusions that the Enefit project will result in 1% cumulative disturbance to the beardtongue species, ES-21; and that no direct impacts to either species are anticipated as a result of the Utility Project, DEIS 2-35. Yet, at the

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same time, BLM notes that 118 Graham's penstemon and 256 White River beardtongue species occur on the South Project and suitable habitat overlaps significantly with the Utility Project area. DEIS 3-39, 3-40. BLM also fails to explain how it identified suitable habitat.

BLM provides no support for its claim that ground disturbing activities will not occur within 300 feet of the identified Graham's and White River beardtongue plants in the South Project area. *See* DEIS 3-40, 4-82 to -83. BLM fails to even identify the location of ground disturbance. BLM also fails to analyze the indirect impacts of mining activities.

BLM also fails to analyze the impacts of the project on beardtongue habitat that FWS identified as "essential" to the conservation of the species in its critical habitat proposal. 78 Fed. Reg. at 47,832. Although FWS identified more than 75,846 acres of proposed critical habitat for the beardtongues, the conservation agreement applies mitigation measures to only 44,373 acres of beardtongue habitat—less than 60% of the total acreage. *See* 78 Fed. Reg. at 47,832, 47,838–39. The excluded acreage includes proposed critical habitat for both species within the South Project area. *See* Map A-5b. BLM must address what destruction and fragmentation of this habitat will mean for the beardtongues. For example, FWS recognizes that protection of the native plant communities identified in the critical habitat proposal is necessary to support pollinators that are crucial to the beardtongues successful reproduction. The DEIS ignores the important role of pollinators and fails to discuss the impacts of the project on their essential habitats. *See* DEIS at 4-80.

In light of the ample information available through FWS records that specifically detail Enefit's impacts on the beardtongue species and BLM's own data on species occurring on the area impacted by the Utility Corridor, BLM's analysis of impacts to the beardtongue species is arbitrary and capricious as well as a violation of NEPA and FLPMA's mandates.

9. The BLM Failed to Disclose Impacts to, or Ensure RMP Compliance Concerning, Sage-Grouse

The proposed rights-of-way would involve construction in a sage-grouse general habitat management area (GHMA), as defined in the Utah Greater Sage-Grouse Approved Resource Management Plan Amendment (Sage-Grouse RMP). Disturbed areas would include sagebrush ecosystems. *See* Draft EIS at 2-23 (identifying area requiring reseeding as "semi-desert big sagebrush" community).

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The sage-grouse population that would be affected by the Utility Project is the Deadman's Bench sage-grouse population, which occupies 134,650 acres. Draft EIS at 3-57 to 3-58. This area provides winter habitat, as well as nesting and brood rearing habitat for sage-grouse. *Id.* Some grouse use this area year round. *Id.* There are no known leks within the construction footprint but there is an unconfirmed lek location; the nearest known lek is about 5 miles north of the project area. *Id.* The Draft EIS states that there are 611.4 acres of sage-grouse habitat along the utility rights-of-ways, including occupied, winter, and brood habitat. *Id.* There are 34,347 acres of occupied and winter habitat in this GHMA area. *Id.* at 2-58, 4-97. BLM estimates there would be 446 acres of cumulative disturbance in the Cumulative Impact Assessment Area, or 4

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Section 1.6.2 has been revised to include reference to the Utah Greater Sage-Grouse Approved Resource Management Plan Amendment (September 2015). Appendix F2 addresses greater sage-grouse design features and applicable management actions.



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percent of the sage-grouse habitat; there would be 10,880 acres of estimated cumulative development in the project area. *Id.* at 4-168 – 4-169.

Overall, BLM predicts that there will be no “appreciable long-term negative changes to greater sage-grouse within the Utility Project area” as a result of this development, but that there could be temporary reductions in local populations and habitat. *Id.* at 4-98. The Draft EIS recognizes the Utility Project will cause short-term direct, and long-term indirect impacts to sage-grouse, but it asserts that specified mitigation measures would avoid direct impacts and reduce indirect impacts. *Id.* at 2-59 and 4-97.

The Draft EIS’s analysis, however, fails to account for cumulative impacts, and fails to comply with Sage-Grouse RMP provisions meant to ensure the persistence of Utah sage-grouse.

The relevant mitigation measures that will apply to sage-grouse in this area as specified in the Sage-Grouse RMP include:

MA-SSS-5: In GHMA, apply the following management to meet the objective of a net conservation gain for discretionary actions that can result in habitat loss and degradation:

A- Existing Management. Implement GRSG [greater sage-grouse] management actions included in the existing RMPs and project-specific mitigation measures associated with existing decisions.

B- Net Conservation Gain. In all GRSG habitat, in undertaking BLM management actions, and, consistent with valid existing rights and applicable law, in authorizing third-party actions that result in habitat loss and degradation, the BLM will require and ensure mitigation that provides a *net conservation gain* to the species, *including accounting for any uncertainty associated with the effectiveness of such mitigation*. This will be achieved by avoiding, minimizing, and compensating for impacts by applying beneficial mitigation actions. Exceptions to net conservation gain for GRSG may be made for vegetation treatments to benefit Utah prairie dog.

Mitigation will be conducted according to the mitigation framework contained in Appendix F.

Sage-Grouse RMP at 2-12 (emphasis added). The RMP also provides a table of habitat objectives related to mitigation. *Id.* at 2-4 to 2-5. These include a number of detailed specifications related to cover and food, such as providing 10-25 percent shrub cover. Further, the Record of Decision makes clear that “[a]ny compensatory mitigation will be durable, timely, and in addition to that which would have resulted without the compensatory mitigation.” DOI, Record of Decision and Approved Resource Management Plan Amendments for the Great Basin Region, Including the Greater Sage-Grouse Sub-Regions of ... Utah (Sept. 2015) at 1-25.

In addition, Objective SSS-3 of the Sage-Grouse RMP provides: “In all GRSG habitat, where sagebrush is the current or potential dominant vegetation type or is a primary species within the

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As indicated above, the Draft EIS notes that brood-rearing and wintering habitat in the Utility Project area will sustain some short-term direct and long-term indirect impacts, but claims that mitigation measures “would help avoid direct impacts and lessen indirect impacts.” Draft EIS at 2-59 and 4-97. Although the Draft EIS admits the project will result in habitat loss and degradation, *id.*, the document claims a net conservation benefit will result to the sage-grouse due to minimizing impacts through Applicant Committed Environmental Protection Measures (ACEPM) and due to BLM-specified compensatory mitigation. *Id.* See also *id.* at 2-34 (ACEPM are included in Table 4-1); 2-37 (for sage-grouse, applicant “would comply with mitigation measures identified in Table 4-1”). As a result, the Draft EIS alleges that there will be “no appreciable long-term negative changes to greater sage-grouse within the Utility Project area.” *Id.* at 4-98. Implementation of ACEPMs and mitigation measures described in Table 4-1, the Draft EIS asserts, would reduce affects to sage-grouse and result in a net conservation gain. *Id.* at 4-169.

Despite the Draft EIS’s characterizations, the mitigation measures the Draft EIS identifies fail to meet the requirements of MA-SSS-5 in the Sage-Grouse RMP. The proposed action thus violates the RMP. Further, the Draft EIS violates NEPA for failing to take the “hard look” at impacts to sage-grouse.

First, while BLM takes the view that the mitigation measures specified in the Draft EIS will provide a net conservation gain, the measures identified in the EIS fail to ensure that result. The Draft EIS, at Table 4-1, states: “the following mitigation measures *may* be applicable to the Proposed Action to achieve net conservation gain for the species.” Draft EIS at 4-25 (emphasis added). Thus, the specified mitigation is not mandatory by its very terms. It may or may not be applied, and so it cannot be sure to result in a conservation gain.

Second, BLM’s specified mitigation allows for both exceptions and modifications that weaken the mitigation. For example, one reason an exception can be applied is if, “the project would not impair the function of seasonal habitat, life-history, or behavioral needs of greater sage-grouse.” *Id.* Meeting this standard would likely require a formal biological opinion from a biologist. Yet the Draft EIS fails to provide for this level of analysis before this form of exception can be applied. BLM permits exceptions and modifications to mitigation measures but is silent on any details about how, when, or if they can be applied.

Third, BLM’s mitigation plan also allows for compensatory mitigation: a “monetary amount to be determined” for disturbance to GHMA habitat. *Id.* at 4-26. But the “amount determined” could be zero, and no timeline or any other specification for where, when and how the State of Utah should spend the funds, if any are allocated, is provided. No commitments are made, as the Utah Sage-Grouse RMP mandates, that compensatory mitigation be “durable” and “timely.” Further, the State of Utah has sued the Department of the Interior challenging the legality of the Sage-Grouse RMP’s “net conservation gain” requirement, indicating that the State is unlikely to agree with BLM on *any* amount for compensatory mitigation, or to implement any such measures. See Complaint, Gary R. Herbert v. Jewell (D. Utah Feb. 4, 2016), 2:016-cv-0101-DAK, at 29, 45, attached as Exhibit 52. In short, the Draft EIS does not ensure that any compensatory mitigation will ever occur, in violation of the RMP.

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Fourth, the MA-SSS-5 mitigation specified in the Sage-Grouse RMP states that under the net conservation gain provision, such mitigation will include “accounting for any uncertainty associated with the effectiveness of such mitigation.” The Draft EIS does not reflect any effort or commitment to take account of any uncertainty, which must be great in any wildlands habitat management and mitigation project. In fact, BLM ignores any uncertainty and essentially states the mitigation it plans will be uniformly and invariably effective. For example, the agency alleges that “[n]et conservation gain *would result* from implementation of minimization of impacts through ACEPM and through compensatory mitigation described in the BLM Utah Greater Sage Grouse Approved Resource Management Plan. For these reasons, implementation of the Utility Project is not expected to produce any appreciable long-term negative changes to greater sage-grouse within the Utility Project study area.” Draft EIS 4-97 to 4-98 (emphasis added). And, “[w]ith best management practices and applicant committed mitigation, impacts *would be minor*. *Id.* at 2-59 (emphasis added). Under the terms of MA-SSS-5, BLM should have put in place measures to account for and to address uncertainty (such as adaptive management provisions), or at least have discussed such measures. BLM’s failure to do so violates the RMP.

Fifth, the Deadman Bench sage-grouse population area traversed by the proposed rights-of-way is already significantly impacted by oil and gas development. Oil and gas wells now occupy more than one well location per section (640 acres) on 45 percent of the sage-grouse habitat in the Utility Project area. Draft EIS at 3-58. In the Cumulative Impact Assessment Area, past oil and gas exploration has disturbed 19,738 acres. *Id.* at ES-21. This level of existing development raises the question as to whether sage-grouse can tolerate *any* additional development in this area if the local population is to remain viable. BLM apparently failed to consider this existing oil and gas development issue when it concluded that its mitigation measures would be sufficient. The Draft EIS’s cumulative impacts analysis states: “Greater sage-grouse populations require large patches of continuous sagebrush habitat. Land clearing activities associated with any development could disturb existing sage-grouse habitat and may cause sage-grouse to displace to habitats that may not consist of adequate vegetative cover, which would indirectly increase the potential for predation.” *Id.* at 4-168. The Enefit Draft EIS fails to address these concerns in the context of cumulative impacts, thereby failing to take the hard look NEPA requires.

The only substantive mitigation measures that the Draft EIS analyzes are timing limitations that would prohibit construction during certain time periods in order to protect breeding and nesting habitat, brood rearing habitat, and winter habitat. The document fails to consider or analyze density limitations (such as no more than one new development per square mile), no surface occupancy requirements, or any other mitigation measures in order to comply with the Sage-Grouse RMP’s MA-SSS-5 and the net conservation gain requirement.

The vague, unenforceable mitigation measures in the Enefit Draft EIS violate NEPA one other way. NEPA requires that BLM discuss mitigation measures in an EIS. 40 C.F.R. §§ 1502.14, 1502.16. Simply identifying mitigation measures, without analyzing the effectiveness of the measures, violates NEPA. Agencies must “analyze the mitigation measures in detail [and] explain how effective the measures would be . . . . A mere listing of mitigation measures is insufficient to qualify as the reasoned discussion required by NEPA.” *Nw. Indian Cemetery Protective Ass’n v. Peterson*, 764 F.2d 581, 588 (9th Cir. 1985), *rev’d on other grounds*, 485

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N3a1	<p>U.S. 439 (1988). NEPA also directs that the “possibility of mitigation” should not be relied upon as a means to avoid further environmental analysis. Council on Environmental Quality, <i>Forty Most Asked Questions Concerning CEQ’s National Environmental Policy Act Regulations</i>, available at <a href="http://ceq.hss.doe.gov/nepa/regs/40/40p3.htm">http://ceq.hss.doe.gov/nepa/regs/40/40p3.htm</a>; <i>Davis v. Mineta</i>, 302 F.3d at 1125. Rather than evaluate in any meaningful way the effectiveness of any individual mitigation measure, the Draft EIS glibly, and in one sentence, asserts without support that the measures will succeed. See Draft EIS at 4-97 (“Net conservation gain <i>would result</i> from implementation of minimization of impacts through ACEPM and through compensatory mitigation described in the BLM Utah Greater Sage Grouse Approved Resource Management Plan.” (emphasis added)). Given that the Draft EIS fails to identify the nature and timing of, and the funds (if any) to be provided for, compensatory mitigation, the agency’s definitive statement that net conservation gains “would result” from such nowhere-described measures is arbitrary and capricious.</p> <p>The Draft EIS also contains potentially contradictory information and omissions concerning the impacts of rights-of-way construction and operation. In one place, BLM asserts that “the Utility Project could affect 611.4 acres (1.8 percent) of the 34,347 acres of occupied, brood, and winter habitat of the greater sage-grouse.” Draft EIS at 4-97. But the EIS also alleges that “the implementation of the Proposed Action of approving the Utility Project would be anticipated to incrementally affect 446 acres ....” Draft EIS at 4-168; see also <i>id.</i> at 4-169 (table using 446 acres). Any subsequently prepared NEPA document must rectify these contradictory numbers or explain why they differ. In addition, while the Draft EIS discloses (in a contradictory manner) the acreage impacted, the document provides no description of how those numbers were arrived at, whether they address only habitat directly disturbed by habitat destruction and removal, or whether they include habitat rendered un-useable due to, for example, the presence of large power lines and towers, structures that sage-grouse are known to avoid. Power lines can have long-term indirect effects by decreasing lek recruitment. Braun, C.E. 1998, Sage-grouse declines in western North America: what are the problems?, <i>Proceedings of the Western Association of State Fish and Wildlife Agencies</i> 78:139-15; Schroeder, M.A., 2010; Greater sage-grouse and power lines: reasons for concern, Washington Department of Fish and Wildlife, unpublished report, Bridgeport, WA. Power lines can also increase predation, facilitate the invasion of nonnative invasive annual plants that degrade habitat, cause behavioral avoidance, and act as a potential barrier to movement. See, e.g., Washington Wildlife Habitat Connectivity Working Group (WHCWG), 2010, Washington Connected Landscapes Project: Statewide Analysis, Washington Departments of Fish and Wildlife, and Transportation, Olympia, WA; Connelly, J.W., S.T. Knick, M.A. Schroeder, S.J. Stiver, 2004, Conservation Assessment of greater sage-grouse and sagebrush habitats, Western Association of Fish and Wildlife Agencies, Unpublished Report, Cheyenne, Wyoming. The indirect influence, or ecological footprint, of a power line extends out further than the physical footprint of the infrastructure. Knick, S. T., S. E. Hanser, and K. L. Preston, 2013, Modeling ecological minimum requirements for distribution of greater sage-grouse leks: implications for population connectivity across their western range, U.S.A. <i>Ecology and Evolution</i> 3:1539-1551. Any subsequently prepared NEPA document must disclose BLM’s methodology and results in greater detail, even if the action will comply with the Utah Sage-Grouse RMP, because NEPA requires the agency to disclose environmental effects, not just those that may violate the law.</p>	

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For all of these reasons the Enefit Draft EIS fails to meet the “hard look” requirements of NEPA and should be revised to ensure compliance with the Utah Sage-Grouse RMP. In making this revision, BLM should fully reconsider adopting the no action alternative as the best means available to ensure protection of the Greater sage-grouse.

10. The BLM Failed to Meet its Obligations under the National Historic Preservation Act.

Section 106 of the National Historic Preservation Act (NHPA) requires federal agencies, prior to approving any “undertaking,” such as approval of this Project, to “take into account the effect of the undertaking on any district, site, building, structure or object that is included in or eligible for inclusion in the National Register.” 16 U.S.C. § 470(f). Section 106 applies to properties already listed in the National Register, as well as those properties that may be eligible for listing. *See Te-Moak Tribe of Western Shoshone*, 608 F.3d 592, 611 (9th Cir. 2010); *Pueblo of Sandia v. United States*, 50 F.3d 856, 859 (10th Cir. 1995). Section 106 provides a mechanism by which governmental agencies may play an important role in “preserving, restoring, and maintaining the historic and cultural foundations of the nation.” 16 U.S.C. § 470.

If an undertaking is the type that “may affect” an eligible site, the agency must make a reasonable and good faith effort to seek information from consulting parties, other members of the public, and Native American tribes to identify historic properties in the area of potential effect. *See* 36 CFR § 800.4(d)(2); *Pueblo of Sandia*, 50 F.3d at 859-863 (agency failed to make reasonable and good faith effort to identify historic properties). Like NEPA, NHPA obligations should be commenced “as early as possible in the NEPA process” and be performed “in such a way that they can meet the purposes and requirements of both statutes in a timely and efficient manner.” 36 C.F.R. 800.8(a)(1).

The NHPA requires that consultation with Indian tribes “recognize the government-to-government relationship between the Federal Government and Indian tribes.” 36 CFR § 800.2(c)(2)(ii)(C). *See* Presidential Executive Memorandum entitled “Government-to-Government Relations with Native American Tribal Governments” (April 29, 1994), 59 Fed. Reg. 22951, and Presidential Executive Order 13007, “Indian Sacred Sites” (May 24, 1996), 61 Fed. Reg. 26771. *See also Muckleshoot Indian Tribe v. U.S. Forest Service*, 177 F.3d 800, 805 (9th Cir. 1999); *Pit River Tribe v. U.S. Forest Service*, 469 F.3d 768, 787 (9th Cir. 2006).

Based on the information in the DEIS, BLM has not met its NHPA obligations. A total of 13 sites would potentially be subject to direct impacts associated with the construction of the Utility Project, including two that are eligible for listing on the National Register. DEIS at 3-81. An additional 76 sites would be impacted by the South Project. *Id.* Despite the historic occupation of the area by indigenous tribes, the DEIS fails to identify any tribal cultural resources that would be affected – instead describing historic mining sites and one prehistoric site. While the lack of tribal cultural resources could potentially be an accurate description, it seems highly unlikely that there are no culturally important sites to tribal nations in Utah. Additionally, it is incumbent on BLM to work with tribal nations through the Section 106 process to identify the affiliation of the sites that will be impacted by the utility corridor. BLM’s vague note that the site has “unknown cultural affiliation” does not satisfy this obligation. DEIS 4-116. Indeed, there is no specific

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Text has been added to Chapter 3, 4, and 5 to better address the National Historic Preservation Act obligations as they apply to the Utility Project.

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information in the DEIS that BLM has satisfied its consultation obligations to Native American Tribes with cultural and historic ties to the impacted area.

Similarly flawed is BLM's treatment of mitigation measures. Under NHPA regulations, at the DEIS stage, the agency should have consulted with relevant parties, developed alternatives and proposed measures that might avoid, minimize or mitigate any adverse effects of the undertaking on historic properties, and described these measures in the DEIS. 36 C.F.R. 800.8(c)(1) (iii) & (iv). BLM must also submit the DEIS to the Advisory Council on Historic Preservation to relevant SHPO and THPOs. *Id.* at (c) (2)(1).

BLM's approach to timing of preparing mitigation measures fundamentally conflicts with its regulatory obligations. BLM states that "[p]ursuant to the requirements of Section 106 of the NHPA, the Applicant would work in consultation with the BLM Vernal Field Office to determine appropriate mitigation activities to document this site prior to construction and monitor the area during construction." DEIS at 4-116. However, as discussed above, the NHPA mandates that mitigation measures must be subject to public comment in the DEIS rather than being designed and implemented subsequent to a final decision. BLM's current approach violates NHPA regulations and NEPA and must be remedied.

11. The BLM Fails to Properly Disclose the Cumulative Impacts of the Proposed Action Together with Other Foreseeable Actions.

A 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. In taking a hard look at direct, indirect, and cumulative impacts, BLM must analyze all impacts that are "reasonably foreseeable." *Id.* § 1508.8. Further, "the purpose of an [EIS] is to evaluate the possibilities in light of current and contemplated plans and to produce an informed estimate of the environmental consequences." *See Kern v. U.S. Bureau of Land Management*, 284 F.3d 1062, 1072 (9th Cir. 2002).

NEPA requires BLM to take a hard look at the cumulative impacts on the *affected geographic area*, not just the immediate planning area. *See Grand Canyon Trust v. Federal Aviation Administration*, 290 F.3d 399, 342 (D.C. Cir. 2002); *see also NRDC v. Hodel*, 865 F.2d 288, 297-99 (D.C. Cir. 1988) (holding that agency violated NEPA when it considered only the effects within the planning area, rather than the interregional effect). BLM's cumulative impacts analysis "must be more than perfunctory; it must provide a 'useful analysis of the cumulative impacts of past, present, and future projects.'" *Ocean Advoc. v. U.S. Army Corps of Engrs.*, 402 F.3d 846, 868 (9th Cir. 2005). The agency must, therefore, "give a realistic evaluation of the total impacts [of the action] and cannot isolate the proposed project, viewing it in a vacuum." *Grand Canyon Trust*, 290 F.3d at 342.

Numerous proposed and reasonably foreseeable actions are planned within the Uinta Basin near the site of the proposed utility project and the South Project, and are likely to interact

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To address confusion expressed by the public during the Draft EIS comment period, those South Project impacts that may accumulate with the impacts of the Proposed Action have been moved to the cumulative impact analysis in the EIS. Since the No Action Alternative is to deny the requested rights-of-way, there is no accumulation of impacts under that alternative. However, given public interest in the South Project, Section 4.4 has been added to the EIS that describes the South Project if the BLM were to deny the Utility Project. Several clarifications to the assumptions in that section have been made.

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cumulatively with the proposal. However, the Draft EIS provides nothing beyond vague generalities concerning the potential for cumulative impacts, and fails to identify or disclose the potential for cumulative and synergistic effects with these other proposals. As a result, the Draft EIS violates NEPA.

For example, the Draft EIS identifies several large oil and gas development proposals within the Uinta Basin, including Questar's 1,368-well Deadman Gulch oil and gas project, the 3,675-well Greater Natural Buttes project, the 264-well North Chapita Wells natural gas project, and the 627-well Chapita Wells-Stagecoach Area natural gas development. See Draft EIS at 4-151. These projects, involving more than 5,900 oil or gas wells, will likely cause significant air pollution and emit hundreds of thousands if not millions of tons of climate pollution in the coming decades, at the same time that the South Project will be releasing quantities of air and climate emissions. Yet, despite the likelihood for cumulative and synergistic impacts of these projects' air and climate emissions with those of the proposed action and the South Project, the Draft EIS contains no attempt to quantify any air and climate emissions from any source. See Draft EIS at 4-155 – 4-156. For example, the Draft EIS addresses the cumulative air impacts by making the vaguest qualitative statements and deferring any disclosure of cumulative impacts until after the NEPA process is over.

The South Project facility, which includes operation of non-road vehicles and other fuel-burning equipment, will likely contribute to the overall observed air quality trends in Uinta Basin wintertime ozone. This potential can be evaluated by inclusion of these emissions, once they are defined, in the ARMS photochemical model.

Draft EIS at 4-156. Rather than take a hard look at the cumulative impacts of the proposed action together with reasonably foreseeable actions, the Draft EIS turns a blind eye, violating NEPA.

Further this analysis fails to address the cumulative impacts of the proposed action and the South Project together with the newly-proposed, nearly 4,000-well Crescent Point oil and gas project. See BLM, Bureau of Land Management Seeks Public Input on the Crescent Point Energy Utah Federal-Tribal Well Development Project (Apr. 7, 2016), available at [http://www.blm.gov/ut/st/en/info/newsroom/2016/April/bureau\\_of\\_land\\_management.html](http://www.blm.gov/ut/st/en/info/newsroom/2016/April/bureau_of_land_management.html) (last viewed June 13, 2016). In all, nearly 10,000 oil or gas wells are proposed within the Uinta Basin from the five projects mentioned above, a figure that does not include already approved and ongoing projects which will likely result in even thousands of more wells.

The BLM must also analyze reasonably foreseeable unconventional oil development in the Uinta Basin as cumulative impacts. This includes the RD&D leases of both Enfit's and American Shale Oil and the associated preferential expansion areas; the full list of projects described in the Draft EIS at 4-153; and oil shale and tar sand projects that BLM failed to consider such as US Oil Sands' operations at PR Spring and the proposed Asphalt Ridge Tar Sand lease whose application is currently pending before BLM. See BLM, *Asphalt Ridge Tar Sand Leasing Environmental Assessment* DOI-BLM-UT-G010-2010-0199-EA (May 2013).



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The analysis of cumulative impacts to surface water is similarly devoid of analysis or detail. As noted above, the South Project could remove as much as a hundred billion gallons of water from the Green or White rivers over 30 years. Yet the Draft EIS fails to identify any specific projects that may also remove water from those rivers, let alone attempt to disclose or analyze the total proposed water depletions likely to result from such projects, or to discuss in anything but the most nebulous terms the impacts those withdrawals are likely to have on river flows or aquatic life. See, e.g., Draft EIS at 4-160 (“Impaired waters in the [cumulative impact analysis area] CIAA are susceptible to past and other present projects and [reasonably foreseeable future actions] (including the South Project). Protective measures mandated through the NPDES would largely mitigate any adverse impacts on impaired waters from those projects”); *id.* at 4-174 (“Depletion from other energy and mining development projects, ranching, commercial, and residential water use *has the potential* to substantially reduce flow in the Upper Colorado River Basin. In addition to reducing the quantity of water with sufficient quality in a specific location, water depletions *can* also reduce a river’s ability to create and maintain the physical habitat for fish.” (emphasis added)). Again, the Draft EIS’s failure to disclose the scale or nature of the impacts of the proposed action, together with those past, present, and reasonably foreseeable actions violates NEPA. Any subsequently prepared NEPA document must identify and disclose in detail the potential for cumulative impacts, and address the serious deficiencies with regard to reasonably foreseeable impacts.

12. The BLM Failed to Properly Analyze Mitigation Measures, or Consider Terms and Conditions to Protect the Environment.

a. *NEPA Requires Agencies to Consider Mitigation Measures.*

NEPA’s statutory language implicitly charges agencies with mitigating the adverse environmental impacts of their actions. *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 351-52 (1989); *Holy Cross Wilderness Fund v. Madigan*, 960 F.2d 1515, 1522 (10th Cir. 1992). Mitigation measures are required by NEPA’s implementing regulations. 40 C.F.R. §§ 1502.14(f), 1502.16(h).

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The CEQ has stated: “All relevant, reasonable mitigation measures that could improve the project are to be identified, even if they are outside the jurisdiction of the lead agency or the cooperation agencies . . . .” Forty Most Asked Questions Concerning CEQ’s National Environmental Policy Act Regulations, 46 Fed. Reg. 18026, 18031 (March 23, 1981). According to the CEQ, “[a]ny such measures that are adopted must be explained and committed in the ROD.” Forty Questions, 46 Fed. Reg. at 18036.

The Tenth Circuit has held that an agency’s analysis of mitigation measures “must be ‘reasonably complete’ in order to ‘properly evaluate the severity of the adverse effects’ of a proposed project prior to making a final decision.” *Colo. Env’t Coalition v. Dombeck*, 185 F.3d 1162, 1173 (10th Cir. 1999) (quoting *Robertson*, 490 U.S. at 352). Mitigation “must be discussed in sufficient detail to ensure that environmental consequences have been fairly evaluated.” *City of Carmel-by-the-Sea v. U.S. Dep’t of Transp.*, 123 F.3d 1142, 1154 (9th Cir. 1997) (quoting *Robertson*, 490 U.S. at 353).

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Mitigation measures are described in Section 4.1 of this EIS. These mitigation measures will be incorporated into the Applicant’s POD to be carried forward as a Condition of Approval for the utility rights-of-way. BLM cannot impose or enforce mitigation on a non-federal action.

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“[O]mission of a reasonably complete discussion of possible mitigation measures would undermine the ‘action-forcing’ function of NEPA. Without such a discussion, neither the agency nor other interested groups and individuals can properly evaluate the severity of the adverse effects.” *Robertson*, 490 U.S. at 353. A “perfunctory description,” of mitigation, without “supporting analytical data” analyzing their efficacy, is inadequate to satisfy NEPA’s requirement that an agency take a “hard look” at possible mitigating measures. *Neighbors of Cuddy Mountain v. U.S. Forest Serv.*, 137 F.3d 1372, 1380 (9th Cir. 1998). An agency’s “broad generalizations and vague references to mitigation measures ... do not constitute the detail as to mitigation measures that would be undertaken, and their effectiveness, that the Forest Service is required to provide.” *Id.* at 1380-81. See also *Northwest Indian Cemetery Protective Association v. Peterson*, 795 F.2d 688, 697 (9th Cir. 1986), rev’d on other grounds, 485 U.S. 439 (1988) (“A mere listing of mitigation measures is insufficient to qualify as the reasoned discussion required by NEPA.”); *Idaho Sporting Congress v. Thomas*, 137 F.3d 1146, 1151 (9th Cir. 1988) (“Without analytical data to support the proposed mitigation measures, we are not persuaded that they amount to anything more than a ‘mere listing’ of good management practices.”). Moreover, in its final decision documents, an agency must “[s]tate whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted, and if not, why they were not.” 40 C.F.R. § 1505.2(c).

The CEQ also recognizes that the consideration of mitigation measures and reasonable alternatives is closely related. For example, CEQ’s guidance on mitigation and monitoring states that “agencies may commit to mitigation measures considered as alternatives in an EA or EIS so as to achieve an environmentally preferable outcome.” Council on Environmental Quality, *Appropriate Use of Mitigation and Monitoring and Clarifying the Appropriate Use of Mitigated Findings of No Significant Impact* (Jan. 14, 2011) at 1; see also *id.* at 6-7 (“When a Federal agency identifies a mitigation alternative in an EA or an EIS, it may commit to implement that mitigation to achieve an environmentally-preferable outcome.”).

- b. *FLPMA Requires BLM to Impose Terms and Conditions to Protect the Environment.*

FLPMA Title V mandates BLM will place terms and conditions into the right-of-way to protect the environment and public lands. The law states:

Each right-of-way shall contain--

- (a) terms and conditions which will ...
  - (ii) minimize damage to scenic and esthetic values and fish and wildlife habitat and otherwise protect the environment ... and
- (b) such terms and conditions as the Secretary concerned deems necessary to
  - (i) protect Federal property and economic interests; ...
  - (iii) protect lives and property; ...
  - and (vi) otherwise protect the public interest in the lands traversed by the right-of-way or adjacent thereto.

43 U.S.C. § 1765.

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See the response to Comment N3ao.

## COMMENT(S)

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The Draft EIS contains a table identifying potential mitigation measures as well as “applicant committed environmental protection measures.” Draft EIS 4-5 – 4-35. The table is little more than the type of “mere listing” of mitigation measures that courts have found insufficient to meet NEPA’s dictates. While the table does classify the mitigation by *type* of mitigation strategy (avoidance, minimization, rectification, “reduce/eliminate over[]time,” and compensation), the table fails to address the effectiveness of the mitigation. *Id.* Any subsequently prepared NEPA document must disclose whether the proposed action includes the mitigation measures as mandatory or not, and how effective the measures will be to limit damage.

The Draft EIS defines “applicant committed measures” as follows: “In order to avoid, minimize, and mitigate impacts to the human and natural environment, the Applicant has identified several actions that would be undertaken for the Utility Project.” *Id.* at 2-38.

BLM does not state that its rights-of-way will require any of the Enefit “committed measures” as enforceable conditions, or whether they are merely proposals that Enefit has said the company will undertake if BLM grants the proposed right-of-way applications, but that BLM cannot enforce. If the latter, BLM must disclose that the likelihood that these measures will be effective is low.

In addition, some of Enefit’s “committed measures” involve actions pertaining to the South Project. For example, the Draft EIS identifies a measure that would involve “[c]apture for beneficial use and/or destruction of [methane] released during oil shale extraction - to the extent that underground mining is conducted during operation of the South Project.” Draft EIS at 4-5. *See also id.* at 4-16 (mitigation measure re: special status plants and conservation agreement addressing South Project impacts). BLM does not explain how it will enforce this measure, or even how the measure would work. Elsewhere, for a single mitigation measure concerning weeds, BLM states:

Although this mitigation measure, if implemented would reduce impacts resulting from the South Project, implementation and enforcement of this measure on the South Project area is outside the authority of the BLM. The South Project, which contains private minerals and private surface, is subject to permitting through the State of Utah and other Federal Agencies. BLM has no jurisdiction over the South Project, so it is unknown if any of those agencies will incorporate this measure into their permit as a condition of approval.

Draft EIS at 4-35. It is unclear why BLM makes this statement with regard to a single mitigation measure concerning the South Project, while not addressing enforceability with respect to multiple other measures Enefit has voluntarily “committed” to regarding the company’s operations. Any subsequently prepared NEPA document must address this apparent contradiction. In any event, BLM has authority to adopt terms and conditions in rights-of-way to protect public lands and the environment, regardless of its “jurisdiction” over the South Parcel. BLM can enforce these provisions through suspension or termination of the rights-of-way. 43 U.S.C. § 1766 (failure to comply with terms or conditions of right-of-way is grounds for BLM to suspend or terminate the permit).

N3aq

See the response to Comment N3ao.

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Further, some of the mitigation measures are too vague to be meaningful. For example, one greenhouse gas mitigation measure would require “[d]ecreases in vehicle idling times during on-site activities.” Draft EIS at 4-5. The Draft EIS does not explain what mechanism would be used to “decrease” idling times; how much time the “decrease” would be; how any decrease would be monitored or enforced; etc. The measure is so vague that neither the decisionmaker nor the public can determine whether or how it would be effective. Other measures are similarly ill-defined. See, e.g., Draft EIS at 4-6 (“Vehicle speeds on unpaved roadways would be reduced as appropriate,” begging the questions: reduced from what to what? When and how much would be “appropriate?”); *id.* at 4-7 (“When feasible, working in areas with wet soils during the winter when the ground is frozen, or potentially in late summer when soils are drier would be the best practice,” begging the questions: who gets to decide what is “feasible?” Why “potentially” in late summer? If it “would be the best practice,” is it required?). Any subsequently prepared NEPA document must disclose how ineffective such vague measures are likely to be, or identify more enforceable measures.

d. *The Draft EIS Must Consider Terms and Conditions to Mitigate the Impacts of the Utility Project and the South Project.*

BLM must further consider and adopt at least two terms and conditions to limit the impact of construction and operation of the utility corridor, as well as the South Project, which the rights-of-way will subsidize.

First, BLM must consider, as a term or condition of the rights-of-way, that Enefit offset the reasonably foreseeable carbon emissions that will result from construction and operations of the rights-of-way and from construction and operation of the South Project, which the rights-of-way are meant to serve and will subsidize. Such a term or condition is *required* by FLPMA because it will help to “minimize damage to scenic and esthetic values and fish and wildlife habitat and otherwise protect the environment” that otherwise would occur due to the projects’ climate pollution, and because it will also help “protect Federal property and economic interests,” “protect lives and property” and “otherwise protect the public interest” in the public lands in and around the rights-of-way from the action’s and connected action’s climate pollution’s impacts. See 43 U.S.C. § 1765.

Carbon offsets are a tested, feasible, and practical alternative to allowing Enefit to produce massive amounts of climate pollution in the construction and operation of both the utility project and the South Project which the utilities will subsidize or make possible.

EPA has repeatedly urged land management agencies to assess carbon offsets in EAs and EISs as a way to reduce climate change impacts of agency actions. For example, EPA has specifically noted that offsets are a reasonable alternative to lessen the impacts of coal mine methane emissions from methane drainage wells (MDWs). In a 2007 letter concerning a proposal to permit MDWs at the West Elk Mine, EPA specifically rejected the Forest Service’s assertion that a carbon offset alternative was not reasonable: “[I]t is reasonable to consider offset mitigation for the release of methane, as appropriate. Acquiring offsets to counter the greenhouse gas impacts of a particular project is something that *thousands of organizations, including private corporations, are doing today.*” Letter of L. Svoboda, EPA to C. Richmond, Forest Service

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(Aug. 7, 2007) at 7 (emphasis added), attached as Exhibit 53. EPA specifically recommended that the Forest Service's Lease Modifications EIS "acknowledge that revenues for carbon credits are available via several existing markets." Letter of S. Bohan EPA to S. Hazelhurst, GMUG NF (July 11, 2012) at 5 (identifying four U.S. carbon exchanges creating a market for carbon credits), attached as Exhibit 54. Similarly, EPA has recommended that a Forest Service NEPA analysis of a forest health project "discuss reasonable alternatives and/or potential means to mitigate *or offset* the GHG emissions from the action." Letter of L. Svoboda, EPA, to T. Malecek, USFS, at 8 (Oct. 27, 2010), attached as Exhibit 55. Numerous state agencies already use offsets to control GHG emissions. *See, e.g.*, Settlement Agreement, ConocoPhillips and California (Sept. 10, 2007) (California agency requiring offsets as a condition of approving a project), attached as Exhibit 56; Minn. Stat. § 216H.03 subd. 4(b) (Minnesota law requiring offsets for certain new coal-fired power plants); Me. Rev. Stat. Ann. tit. 38, § 580-B(4)(c) (Maine law establishing greenhouse gas initiative that includes the use of carbon offsets).

As EPA noted, many entities exist that permit agencies and polluters to purchase carbon offsets that are third-party verified. For example, the Carbon Fund and the Climate Action Reserve both allow entities to purchase carbon "credits." In 2009, the total U.S. carbon offset market was worth \$74 million, with 19.4 million metric tons of CO<sub>2</sub>e in traded volume. Point Carbon Research, *US Offset Markets in 2010: The Road Not Yet Taken* 1 (2010), attached as Exhibit 57.

Second, BLM should adopt a term or condition requiring that Enefit protect all proposed critical habitat for the Graham's and White River beartongue within the rights-of-way and within the South Project. This is habitat that FWS recognized as "essential" to the conservation of these species. 78 Fed. Reg. 47,832 (Aug. 6, 2013). BLM should also protect any plants that have been discovered since FWS proposed critical habitat with a 500-meter buffer for White River beartongue and a 70-meter buffer for Graham's beartongue, which are the buffers that FWS used to determine critical habitat. *Id.* As discussed above, BLM must provide protections beyond those included in the conservation agreement for the beartongues because the conservation agreement does not provide adequate protection from oil shale development, including this project, and the conservation agreement represents only the minimum amount of protection that FWS thinks is needed to keep these species off the endangered species list. BLM is not limited to do the minimum required by the inadequate conservation agreement, which is currently being challenged in federal court.

**VI. BLM Must Prepare a Revised Draft EIS to Address the Draft EIS's Inadequacies.**

Although an EIS is prepared in two phases (*i.e.*, a draft and final phase), the draft EIS must fulfill and satisfy, to the fullest extent possible, the requirements established for an FEIS. 40 C.F.R. § 1502.9(a). NEPA regulations mandate that "[i]f a draft statement is so inadequate as to preclude meaningful analysis, the agency shall prepare and circulate a revised draft of the appropriate portion." *Id.*

The Draft EIS's failure to address, among other things, the potentially significant air quality and climate change impacts of the proposed action effectively undercuts "the twin goals of environmental statements: informed decisionmaking and full disclosure" by depriving the public and decisionmakers of the chance to understand those impacts, and to review and comment on an analysis of those impacts. *State of California v. Bergland*, 483 F. Supp. 465, 495 (E.D. Cal.

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The Proposed Action and No Action alternatives of this EIS are for the Utility Project. To reduce confusion that became apparent through public comment, impacts from the South Project, which is outside of the jurisdiction of the BLM and which will proceed to full buildout regardless of the BLM decision to be made for the Utility Project, has been moved to the cumulative impact analysis in the EIS. As a reasonably foreseeable non-federal action, the BLM is not required to compare or contrast alternatives for the South Project. Impacts are only disclosed to the extent that they accumulate with the Proposed Action, and to the extent that they are known. If they are not known, the procedures in 40 CFR 1502.22 were followed. However, because the South Project is non-federal, and because it will proceed to full build-out regardless of the Utility Project alternative selected by the BLM, the South Project impacts are not necessary for a reasoned choice between Utility Project alternatives in this EIS for the purposes of NEPA. Note that since the No Action Alternative is to deny the requested rights of way, there is no accumulation of impacts under that alternative. However, given public interest in the South Project, Section 4.4 has been added to the EIS that describes the South Project if the BLM were to deny the Utility Project.

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**Grand Canyon Trust and  
Multiple Nongovernmental Organizations (cont.)**

1980), judgment aff'd in part, rev'd in part *sub nom. State of California v. Block*, 690 F.2d 753 (9th Cir. 1982).

We therefore respectfully request that BLM prepare a revised draft EIS that addresses the inadequacies identified in this letter.

Sincerely,

/s/ Anne Mariah Tapp  
Energy Program Director  
Grand Canyon Trust  
2601 N. Fort Valley Rd  
Flagstaff, AZ 86001  
512.565.9906

/s/ Edward B. Zukoski,  
On Behalf of Grand Canyon Trust  
Earthjustice, Rocky Mountain Office  
633 17th Street, Suite 1600  
Denver, CO 80202  
303.996.9622

Rob DuBuc  
Staff Attorney  
Western Resource Advocates  
150 South 600 East, Ste 2A  
Salt Lake City, Utah 84102  
801.487.9911

Elly Benson  
Staff Attorney, Sierra Club  
2101 Webster Street, Suite 1300  
Oakland, CA 94612  
415.977.5723  
elly.benson@sierraclub.org

Bobby McEnaney  
Senior Deputy Director  
Western Renewable Energy Project  
Natural Resource Defense Council  
1152 15th Street NW Suite 300.  
Washington, D.C. 20005  
202.289.6868.

Lesley Adams  
Senior Regional Coordinator  
Waterkeeper Alliance  
ladams@waterkeeper.org  
541.821.3882

Bruce Pendery  
Energy & Climate Policy Specialist  
The Wilderness Society  
440 East 800 North  
Logan, UT 84321  
435.752.2111

Matt Niemerski  
American Rivers  
Western Water & Public Lands  
Policy Director  
1101 14th Street, NW, Ste 1400  
Washington D.C. 20005  
202.243.7038

Taylor McKinnon  
Public Lands Campaigner  
Center for Biological Diversity  
tmckinnon@biologicaldiversity.org  
801.300.2414

Steve Bloch  
Legal Director  
Southern Utah Wilderness Alliance  
425 East 100 South  
Salt Lake City, UT 84111  
801. 428. 3981

**COMMENT(S)**

**RESPONSE(S)**

**N3**

**Grand Canyon Trust and  
Multiple Nongovernmental Organizations (cont.)**

John Weisheit  
Conservation Director  
Living Rivers  
PO Box 466 Moab, UT 84532  
john@livingrivers.org  
435.260.2590

Jeremy Nichols  
Climate and Energy Program Director  
WildEarth Guardians  
2590 Walnut Street  
Denver CO, 80205  
303.437.7663

Denni Cawley  
Executive Director  
Utah Physicians for a Healthy Environment  
423 W. 800 South, Suite A108  
SLC, UT 84101  
415.937.3887  
dcawleyuphe@gmail.org

Kaitlin Butler  
Program Director, Extreme Energy Program  
Science and Environmental Health Network

Marc Thomas  
Sierra Club - Utah Chapter Chair  
Moab, Utah

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N3

**Grand Canyon Trust and  
Multiple Nongovernmental Organizations (cont.)**
List of Exhibits

Exhibit Number	Exhibit Description
Exhibit 1	Eesti Energia 1 <sup>st</sup> Quarter 2016 Interim Report
Exhibit 2	Natalya Irha & Erik Teinmaa. <i>Behavior of Three- to Four-Ring PAHs in the Presence of Oil Shale Ash and Aluminosilicate Matter</i> , 22 Polycyclic Aromatic Compounds, 663 – 671, (2002).
Exhibit 3	Anne Karhu, <i>Environmental Hazard of the Waste streams of Estonian Oil Shale Industry: An Ecotoxicological Review</i> , 23 Oil Shale 53-93 (2006)
Exhibit 4	Adam Brandt, <i>Greenhouse gas emissions from liquid fuels produced from Estonian oil shale</i> . Prepared for European Commission - Joint Research Center, 2010
Exhibit 5	Simon Mui et al., GHG Emission Factors for High Carbon Intensity Crude Oils. Natural Resources Defense Council, 2010.
Exhibit 6	Indrek Aarna, & T. Lauringson, <i>Carbon intensity, water use and EROI of production of upgraded shale oil products using the Enefit280 technology</i> . October 2011. Presentation, Golden, CO
Exhibit 7	Email of R. Clerico, Enefit American to R. Rymerson, BLM (Mar. 22, 2015) re: Response to data gaps
Exhibit 8	Barack Obama, President of the United States, Weekly Address (Apr. 18, 2015)
Exhibit 9	U.S. Department of State, S&ED Joint Session on Climate Change Remarks (June 6, 2016).
Exhibit 10	Christophe McGlade & Paul Ekins, <i>The Geographical Distribution of Fossil Fuels Unused When Limiting Global Warming to 2°C</i> , NATURE Vol. 517, pp. 187-190 (Jan. 7, 2015)
Exhibit 11	United Nations, Framework Convention on Climate Change, Paris Agreement, Article 2 ¶ 1(a) (Dec. 11, 2015)
Exhibit 12	IPCC, Working Group I Contribution to the IPCC Fifth Assessment Report: Climate Change 2013: the Physical Science Basis: Summary for Policy Makers (2013)
Exhibit 13	Bill McKibben, <i>Global Warming's Terrifying New Math</i> , Rolling Stone (Aug. 2, 2012)
Exhibit 14	Bill McKibben, <i>Obama and Climate Change: The Real Story</i> (Dec. 17, 2013)
Exhibit 15	Hansen, <i>et al.</i> , <i>Climate Sensitivity, Sea Level and Atmospheric Carbon Dioxide</i> , 371 Phil. Trans. R. Soc'y (2013),
Exhibit 16	Global Carbon Project, Global Carbon Budget 2014 (Sept. 14, 2014).
Exhibit 17	D. Crouch, "Estonia sees a bright future for oil shale," Financial Times (June 15, 2015)



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## Grand Canyon Trust and Multiple Nongovernmental Organizations (cont.)

Exhibit 18	"Enefit's Utah Project," available at <a href="http://enefitutah.com/">http://enefitutah.com/</a>
Exhibit 19	Enefit Utah, "Next-Generation Enefit280 Plant is Nearing Peak Performance"
Exhibit 20	Enefit, "Estonia shale oil industry."
Exhibit 21	Enefit, Retorting Enefit280.
Exhibit 22	Letter of R.L. Hrenko, Enefit American Oil to K. Hoffman, BLM (July 19, 2012)
Exhibit 23	Megan Williams, Expert Opinion on Air Quality Impacts of Enefit's Oil Shale Project, June 2016.
Exhibit 24	L. Schafer, Conservation Colorado <i>et al.</i> , to E. McCullough, BLM (June 10, 2016)
Exhibit 25	J.M. Laats, "Utah project frozen, says Eesti Energia CEO," Estonian Public Broadcasting (Nov. 4, 2015)
Exhibit 26	J.M. Laats, "Daily: Eesti Energia preparing to devalue Utah and Auvere investments," Estonian Public Broadcasting (Nov. 25, 2015),
Exhibit 27	BNS, "Low oil price affects Eesti Energia," (Jan. 19, 2016),
Exhibit 28	Email of R. Clerico, Enefit to S. Howard, BLM (July 14, 2014)
Exhibit 29	BLM Oil Shale RD&D First Round Lease Form
Exhibit 30	Environmental Assessment and Biological Assessment for the Oil Shale Research, Development, and Demonstration Project, White River Mine, Uintah County, Utah (EA #UT-080-2006-280).
Exhibit 31	U.S. Environmental Protection Agency ("EPA"), "Fact Sheet: Social Cost of Carbon" (Nov. 2013)
Exhibit 32	Interagency Working Group on Social Cost of Carbon, "Technical Support Document: Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866 Feb. 2010)
Exhibit 33	Interagency Working Group on Social Cost of Carbon, "Technical Support Document: Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866" (May 2013),
Exhibit 34	General Accounting Office, "Regulatory Impact Analysis, Development of Social Cost of Carbon Estimates," GAO-14-663 (July 2014),
Exhibit 35	EPA, Comments on Supplemental Draft EIS for the Keystone XL Oil Pipeline (June 6, 2011)
Exhibit 36	Excerpts From BLM Environmental Assessment for October 21, 2014 Oil and Gas lease Sale," DOI-BLM-MT-0010-2014-0011-EA (May 19, 2014)
Exhibit 37	Excerpts From BLM, "Little Willow Creek Protective Oil and Gas Leasing," EA No. DOI-BLM-ID-B010-2014-0036-EA (February 10, 2015)
Exhibit 38	letter of Center for Biological Diversity <i>et al.</i> to Council on Environmental Quality (Mar. 25, 2015)
Exhibit 39	N. Shoaff & M. Salmon, Sierra Club, "Incorporating the Social Cost of Carbon into National Environmental Policy Act Reviews for Federal Coal Leasing Decisions,
Exhibit 40	Peter Howard, <i>et al.</i> , Environmental Defense Fund, Institute For Policy Integrity, Natural Resources Defense Council, OMITTED DAMAGES: WHAT'S MISSING FROM THE SOCIAL COST OF CARBON, (March 13, 2014)

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**Grand Canyon Trust and  
Multiple Nongovernmental Organizations (cont.)**

Exhibit 41	Frank Ackerman & Elizabeth A. Stanton, CLIMATE RISKS AND CARBON PRICES: REVISING THE SOCIAL COST OF CARBON (2010).
Exhibit 42	Frances C. Moore and Delavane B. Diaz, Temperature impacts on economic growth warrant stringent mitigation policy, NATURE CLIMATE CHANGE (Jan. 12, 2015)
Exhibit 43	Executive Office of the President of the United States, Council of Economic Advisers, “The Cost of Delaying Action to Stem Climate Change” (July 2014)
Exhibit 44	Marten, A.L., and Newbold, S.C., Estimating the social cost of non-CO <sub>2</sub> GHG emissions: Methane and nitrous oxide, 51 Energy Policy 957 (2012)
Exhibit 45	U.S. Environmental Protection Agency, Regulatory Impact Analysis of the Proposed Emission Standards for New and Modified Sources in the Oil and Natural Gas Sector, 4 –12 to 4 –17 (August 2015)
Exhibit 46	Bureau of Land Management, Proposed Rule, 43 CFR Parts 3160 and 3170, Waste Prevention, Production Subject to Royalties, and Resource Conservation (Jan. 22, 2016)
Exhibit 47	Bureau of Land Management, Regulatory Impact Analysis for: Revisions to 43 C.F.R. 3100 (Onshore Oil and Gas Leasing) and 43 C.F.R. 3600 (Onshore Oil and Gas Operations) (RIA) (Jan. 14, 2016)
Exhibit 48	International Agency for Research on Cancer, 35, <i>Polynuclear Aromatic Compounds, Part 4, Bitumens, Coal-Tars and Derived Products, Shale-Oils and Soots</i> , Evaluation of Carcinogenic Risks of Chemicals to Humans, 1985 )last updated April 20, 1998
Exhibit 49	Swift, Anthony <i>et al.</i> , <i>Tar Sands Pipeline Safety Risks</i> , Natural Resources Defense Council, Feb. 2011
Exhibit 50	Gov’t Accountability Office, Energy Development and Water Use (2011)
Exhibit 51	Declaration of Ava C. Farouche
Exhibit 52	Complaint, Gary R. Herbert v. Jewell (D. Utah Feb. 4, 2016), 2:016-cv-0101-DAK
Exhibit 53	Letter of L. Svoboda, EPA to C. Richmond, Forest Service (Aug. 7, 2007)
Exhibit 54	Letter of S. Bohan EPA to S. Hazelhurst, GMUG NF (July 11, 2012)
Exhibit 55	Letter of L. Svoboda, EPA, to T. Malecek, USFS, at 8 (Oct. 27, 2010)
Exhibit 56	Settlement Agreement, ConocoPhillips and California (Sept. 10, 2007)
Exhibit 57	Point Carbon Research, <i>US Offset Markets in 2010: The Road Not Yet Taken</i> 1 (2010)

COMMENT(S)

RESPONSE(S)

N4

National Oil Shale Association



National Oil Shale Association

To: Lisa Bryan

From: Brad McCloud, NOSA

RE: NOSA comments Enefit American Oil Utility Corridor Project Draft Environmental Impact Statement (EIS)

Date: 6-3-2016

Lisa Bryant,

The National Oil Shale Association (NOSA) was formed in the 1970s, with the goal of educating the public about oil shale in the United States. NOSA represents the interests of its members and the oil shale industry, taking an active role in encouraging the safe and responsible development of this vast natural resource. Enefit American Oil (EAO) is a sustaining member of NOSA, and their parent company, Eesti Energia AS, is one of the pioneers of the oil shale industry worldwide.

NOSA commends the BLM on preparing a well-reasoned, clear and defensible draft environmental impact statement and provides the following comments to improve the final environmental impact statement and record of decision:

- In Section 1.2.1 Scope of Analysis, the BLM describes a process by which the agency, together with their cooperators, initially determines that the South Project *is not* a Connected Action (page 1-5, first paragraph) and then subsequently changes position and concludes that the South Project *is* a Connected Action (page 1-5, third paragraph). The BLM provides a series of bullets that are the conclusions of that final Scope of Analysis document, but there is no clear explanation of *how* or *why* the BLM arrived at their conclusion. A review of the relevant CEQ NEPA implementing regulations and the BLM's own NEPA Handbook appears to indicate that the South Project should have been considered a cumulative, non-federal action rather than a non-federal Connected Action. The FEIS, as well as the public, would be well-served by providing a more detailed explanation of how the BLM arrived at the conclusion that the South Project was a non-federal Connected Action rather than a cumulative action.
- In Section 1.4 Applicant's Interests and Objectives, the BLM correctly identifies that the Energy Policy Act of 2005 (EPAct2005) directs the Secretary of the Interior to, "make public lands available to support oil shale development activities." While NOSA recognizes that this application is for a utility corridor and access road improvement only, that utility corridor and access road across public lands would support oil shale development by one of our sustaining members. A denial of the request made by EAO would be in direct conflict with EPAct 2005, and it would set a dangerous precedent for our other industry members, essentially indicating that the BLM is unwilling to comply with this important agency mandate. The BLM should not understate the importance of their role in implementing EPAct 2005.
- The BLM is correct in identifying, in Section 4.2.17, that direct socioeconomic impacts as a result of the Utility Corridor Project would be temporary and minimal to Uintah Basin community. The

National Oil Shale Association

P.O. Box 411, Rifle, CO

N4a

The BLM agrees with this comment. The discussion in question has been removed from the EIS, and all impacts from the South Project have been moved to the cumulative analysis in Section 4.4 of the EIS. The commenter is correct that the South Project is a non-federal action over which the BLM has no jurisdiction and, is therefore, not a connected action.

N4b

Comment noted.

N4c

The Proposed Action and No Action alternatives are for the Utility Project. To reduce confusion, the impacts from the South Project, which is outside of the jurisdiction of the BLM and which will proceed to full buildout regardless of the BLM decision to be made for the Utility Project, has been moved to the cumulative impact analysis in the EIS. As a reasonably foreseeable non-federal action, the BLM is not required to compare or contrast alternatives for the South Project. Also, since the No Action Alternative is to deny the requested rights-of-way, there is no accumulation of impacts under that alternative. However, given public interest in the South Project, Section 4.4 has been added to the EIS that describes the South Project if the BLM were to deny the Utility Project. Estimates of the costs associated with trucking are included in this section. The Applicant has indicated that reliance on trucking is a viable option for the South Project.

COMMENT(S)

RESPONSE(S)

N4	National Oil Shale Association (cont.)
N4c	<p>BLM also correctly discloses beneficial indirect and cumulative socioeconomic effects to the region as a result of the South Project in Section 4.2.17.1.2. However, while the BLM assumes that there is no difference in socioeconomic effects between the Proposed Action and No Action alternatives, NOSA does not concur. As a representative of our members and the oil shale industry as a whole, the positive effects on employment, purchase of local goods and services, housing development, and re-investment of local taxes into education and healthcare cannot be understated, and it is critical that Enefit American Oil be afforded the best opportunity at successful and responsible economic development of the Utah project. That “best opportunity” is clearly through selection of the Proposed Alternative; thus there <i>should</i> be a socioeconomic difference between the Proposed Action and the No Action alternative. Any understatement of these positive effects is a misrepresentation of our members, whose commitment to safe and responsible development of oil shale resources is a priority. The No Action alternative represents a less safe and less responsible project due to an over-reliance on trucking; therefore, the BLM should select the Proposed Action and grant a utility corridor right-of-way to EAO.</p> <p>NOSA feels that the Proposed Action would advance responsible development of oil shale resources in the state of Utah. EAO has proved themselves to be a welcome corporate citizen in the Uintah Basin, knowledgeable and competent in the industry, and this project has the potential to represent a significant source of jobs and economic development in the region and throughout the state. We encourage the BLM to complete the EIS and right-of-way grant process in a timely fashion, such that EAO can continue with their project development activities and further advance our industry.</p> <p>Respectfully,</p> <p><i>Brad McCloud</i></p> <p><b>Brad McCloud</b> Executive Director National Oil Shale Association PO Box 411, Rifle, CO 81650 970-250-7988 <a href="mailto:oilshaleus@gmail.com">oilshaleus@gmail.com</a>  <a href="http://www.oilshaleassoc.org">www.oilshaleassoc.org</a></p> <p>Roger Day, Chairman</p>
National Oil Shale Association P.O. Box 411, Rifle, CO	

**COMMENT(S)**

**RESPONSE(S)**

**N5**

**National Wildlife Federation**



June 14, 2016

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

Delivered to: [UT\\_Vernal\\_Comments@blm.gov](mailto:UT_Vernal_Comments@blm.gov)

RE: Enefit American Oil Utility Corridor Project

Thank you for the opportunity to provide comments on the Enefit American Oil (Enefit) Utility Corridor Project Draft Environmental Impact Statement, DOI-BLM-UT-G010-2014-0007-EIS (Utility Corridor DEIS). These comments are submitted on behalf of the National Wildlife Federation (NWF) and its six million members and supporters. NWF's members and supporters use lands and resources that will be impacted by actions under consideration in the DEIS. This DEIS represents the first real opportunity for BLM to analyze a proposal for a commercial oil shale project in the United States.

The Colorado River Basin is home to important fish and wildlife resources; it also contains the nation's largest deposits of unconventional fuels, both oil shale and tar sands. Pursuant to the Federal Land Policy and Management Act (FLPMA) and the Energy Policy Act of 2005 Section 369, the Bureau of Land Management (BLM) has made over 800,000 acres of land in Utah, Colorado, and Wyoming available for oil shale and tar sand mining. *BLM, Approved Land Use Plan Amendments/Record of Decision (ROD) for Allocation of Oil Shale and Tar Sands Resources on Lands Administered by the Bureau of Land Management in Colorado, Utah, and Wyoming and Final Programmatic Environmental Impact Statement (March 2013)*. In Utah alone, more than 360,000 acres of BLM land are available for research and development of oil shale and another 89,000 acres of state school trust lands are under active lease for development. *Id.*

Still, little progress has been made to develop oil shale in the Colorado River Basin. Decades of industry promises have led to little more than expensive, toxic clean-up sites. Over the last two

## COMMENT(S)

## RESPONSE(S)

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## National Wildlife Federation (cont.)

years, Shell, Exxon, and Chevron have abandoned as futile their oil shale research, development, and demonstration (RD&D) leases in Colorado.

Estonian energy company, Eesti Energy, however, acting through its subsidiary Enefit American Oil (Enefit), continues to pursue an oil shale strip mine and retort facility in Utah. Enefit's plans for commercial-scale oil shale development are hinged to private landholdings on its "South Project" parcel. The 13,000-acre South Project property lies along the Utah-Colorado border and is adjacent to Enefit's 160-acre federal RD&D lease and the 4,960-acre federal preferential right lease area (PRLA) that Enefit could develop once the company proves the commercial viability of its extraction process. Enefit's South Project, as proposed, would involve the strip mining of more than 9,000 acres and the construction and operation of a 50,000-barrel-per-day oil shale retort facility. It is this project that currently requires, rights-of-way (ROWs) across BLM land for utilities—19 miles of water supply pipeline, eight miles of natural gas supply pipeline, 10 miles of oil product line, 29 miles of powerlines, and five miles of upgrading to Dragon Road.

Enefit has stated that it will expand operations to nearby federal land following development of the South Project. *DEIS* at 3-97. The requested ROWs could have profound implications for the Colorado River Basin with regard to water resources, carbon emissions, air quality, and fish and wildlife. Yet, none of those impacts is fully addressed in the *DEIS*. They are not addressed, in large part, because Enefit has refused to provide needed information regarding the South Project and because BLM has failed to discuss the full environmental consequences of issuing the ROWs and the chain of events that will be set into motion, including development of Enefit's RD&D and PRLA sites.

Each of the requested ROWs is being sought in order to help Enefit lower its costs for the South Project. Absent this public subsidy of Enefit's private operation, it is less likely that Enefit will choose to invest in what could clearly become a money-losing proposition to produce oil from oil shale here in the United States. BLM's repeated statements to the effect that "the South Project will proceed to full buildout regardless of the BLM's decision" on the ROWs, *DEIS* at 4-39, is not supported by the evidence before the agency.

Complicating this matter, Enefit has refused to provide BLM or any other regulatory authority with a plan of development for the South Project. Without that plan, BLM cannot understand or analyze the impacts even of the South Project *before* deciding whether to approve the requested utility corridors. Because BLM cannot conduct the environmental review required by the National Environmental Policy Act (NEPA) or provide the public with a full and fair opportunity to understand the potential impacts of the requested ROWs and provide meaningful input, NWF encourages BLM to deny Enefit's ROW requests.

#### BLM MUST REJECT THE RIGHT-OF-WAY APPLICATIONS

BLM has the authority, but not the obligation, to grant ROWs for a variety of uses across federal lands. 43 U.S.C. §1761(a); *see also* 43 C.F.R. §2802.10(a) ("In its discretion, BLM may grant rights-of-way on [its] lands" (emphasis added)). BLM regulations identify a number of specific circumstances in which BLM may deny an application, including the following:

2

N5a

Both the South Project and the nearby federal RD&D project are independent of the Utility Project. The South Project is independent of the Utility Project because it is on private land and private minerals, and therefore is outside of the BLM's jurisdiction, and will proceed to full buildout regardless of the BLM alternative selected. Therefore, BLM is not required to compare or contrast alternatives for the South Project. The "nearby Federal lands" is assumed to refer to the White River Oil Shale Mine project, which is following the 2003 BLM oil shale research, development, and demonstration (RD&D) program requirements, which were later incorporated into subsection 369 of the 2005 Energy Policy Act. The RD&D project is independent of the Utility Project because the RD&D process is being followed regardless of the Utility Project outcome. Likewise, the Utility Project is being pursued regardless of the outcome of the RD&D lease. Due to their independence, the South Project and RD&D project do not meet the definition of a connected action, nor is their analysis essential for a reasoned choice between alternatives for the purposes of the Utility Project NEPA. However, the impacts of both the South Project and the RD&D lease are included to the extent that they accumulate with the impacts of the Proposed Action Alternative. Since the No Action Alternative is to deny the rights-of-way, there will be no accumulation of impacts under it.

N5b

The South Project will proceed even if the rights-of-way application are denied.

N5c

The regulations cited apply to the BLM's realty regulations and apply to review of a right-of-way application. Please note that the realty regulations are separate from the NEPA process.

It is unclear from the comment what information the National Wildlife Federation (NWF) believes has been withheld that pertains to the right-of-way application. Based on the other NWF comments, the BLM assumes that the NWF deficiency concern is regarding the South Project design and environmental impacts. The BLM realty regulation does not apply to the South Project because the BLM has no jurisdiction over the South Project. In addition, the South Project information is not necessary for a reasoned choice between alternatives for the purposes of NEPA because the South Project will continue to full buildout regardless of the BLM decision on the Utility Project.

Regarding the Utility Project, the Applicant has compiled all data deficiency notices and responded to all BLM requests for additional information necessary to process the rights-of-way application.

Environmental analysis of the South Project, which is outside the jurisdiction of BLM decision-making, will be subject to permitting by the appropriate federal, state, and local permitting agencies whose jurisdiction applies to those facilities.

Also, BLM is following 40 CFR 1502.22, which provides guidance for instances when information is incomplete or unavailable.

COMMENT(S)

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N5

National Wildlife Federation (cont.)

- 1) the applicant “do[es] not have or cannot demonstrate the technical or financial capability to construct the project or operate facilities within the right-of-way.” 43 C.F.R. §2804.26(a)(5); or
- 2) the applicant “do[es] not adequately comply with a deficiency notice ... or with any BLM requests for additional information needed to process the application.” 43 C.F.R. § 2804.26(a)(6).

**1. The DEIS Does Not Show That Enefit Has Demonstrated Financial Capability to Construct the ROW Facilities.**

BLM may deny an application if the applicant “do[es] not have or cannot demonstrate the technical or financial capability to construct the project or operate facilities within the right-of-way.” 43 C.F.R. §2804.26(a)(5). The DEIS contains no evidence that Enefit has the financial capability or willingness to construct the requested ROW facilities. The fact that Enefit has prepared no mine plan, has not explored the availability of other options for utility access and refuses to provide requested information regarding its production process casts substantial doubt on the company’s wherewithal to complete these proposed facilities. Moreover, as reported in December 2015 in the Moab Sun News, “CEO Hando Sutter told an Estonian broadcaster that Enefit has no business plan to continue its Utah operations, noting that the area is far from civilization and decent power grids. Moreover, he said, it would take the company a long time to transport the oil from the remote site to the nearest markets.”<sup>1</sup> Enefit has not refuted these claims but has instead argued that its lack of progress is a reflection of low oil prices. This response merely raises the question of whether low oil prices have, in fact, undermined Enefit’s financial capability and the soundness of now committing more public resources.

**2. Enefit Has Failed to Provide BLM and the Public with Necessary Information Regarding the Impacts of the ROW Applications.**

BLM may deny a right-of-way application if the applicant “do[es] not adequately comply with a deficiency notice ... or with any BLM requests for additional information needed to process the application.” 43 C.F.R. §2804.26(a)(6). Enefit, however, has chosen to withhold information critical to understanding the impacts of the proposed action and the evaluation of alternatives, and, in doing so, Enefit has undermined BLM’s ability to consider or disclose potentially significant impacts of the proposal. BLM acknowledges these deficiencies stating that Enefit is simply “unwilling” to provide the needed information:

The Applicant has provided BLM with all the information it has for the South Project mine plan and is *unwilling to expend further resources* to develop the mine plan and engineering specifications until it receives a decision on the utility corridor rights-of-way application due to the different design requirements between the Proposed Action and No Action Alternatives.

DEIS at 2-37.

<sup>1</sup> [http://www.moabsunnews.com/news/article\\_3e4b3a8a-a4d5-11e5-aa18-379b19a4a89c.html](http://www.moabsunnews.com/news/article_3e4b3a8a-a4d5-11e5-aa18-379b19a4a89c.html) .

N5d

This comment refers to the BLM’s technical and financial capability determination, which is a FLPMA requirement and a BLM right-of-way processing step that allows the BLM to deny a right-of-way. See 43 CFR 2804.26 and 43 CFR 2884.23. This EIS is being prepared under NEPA to help the BLM make a decision based on an understanding of the environmental consequences, and take actions that protect, restore, and enhance the environment (40 CFR 1500.1(c)). There are no technical and financial capability requirements in either the Act itself or CEQ’s implementing regulations. Therefore, this EIS analysis may inform the BLM’s final right-of-way technical and financial capability determination for the Utility Project, but it will not make that determination. Technical and financial capability is demonstrated in the right-of-way permit application process (Standard Form 299, Item 12). Please note that the South Project is located entirely on private lands and minerals and therefore does not require a BLM right-of-way, so there is no requirement or authority for the BLM to make a technical or financial capability determination for the South Project.

COMMENT(S)

RESPONSE(S)

N5

National Wildlife Federation (cont.)

N5e

Withholding information about how it might design the South Project until after its ROW applications are granted or rejected, Enefit has made BLM's job of comparing alternatives hopeless. Yet, a comparison of alternatives is the "heart" of the NEPA process. 40 C.F.R. §1502.14. In this instance, Enefit has made it impossible for BLM to assess the availability and practicality of alternatives that could reduce the use of public lands for these ROWs. Based on Enefit's failure to provide information, BLM should deny the ROW applications.

CONCLUSION

N5f

Water is a precious resource in the arid upper Colorado River Basin. To turn rock into synthetic crude oil, the South Project will consume up to 15 cubic feet per second of the Green River – nearly 11,000 acre-feet per year. *DEIS* at 4-62. Yet, any water depletions from the Basin, let alone the quantities proposed by Enefit, will have enormous implications for other water uses, from recreation and agriculture to drinking water. It will, most likely cause "jeopardy" to endangered Colorado River fish. These resources are also threatened by pollution of both surface and ground water stemming from mining and production facilities associated with the South Project. The *DEIS* admits that impacts of the ROWs and South Project may include "[w]ithdrawal of water from the Green River that reduces its flow and degrades the water quality of the stream down gradient from the point of the withdrawal." *DEIS* at 4-110.

NWF does not believe that it is in the public interest to deplete the dwindling flow of the Upper Colorado and threaten these water resources with contamination in order to subsidize production of such a carbon intensive, dirty fuel via a process that the proponent refuses to reveal.

Sincerely,



Kathleen C. Zimmerman  
Policy Director – Public Lands  
National Wildlife Federation  
303 East 17<sup>th</sup> Avenue, Suite 15  
Denver, Colorado 80203  
(303) 441-5159  
[zimmerman@nwf.org](mailto:zimmerman@nwf.org)

4

N5e

The BLM independently considered 31 initial alternatives before preparing the Draft EIS with the Proposed Action and No Action alternatives considered in detail. See the alternative discussion in the EIS Appendix D.

The regulations cited apply to the BLM's realty regulations and apply to review of a right-of-way application. Please note that the realty regulations are separate from the NEPA process.

Regarding the Utility Project, the Applicant has compiled all data deficiency notices and responded to all BLM requests for additional information necessary to process the right-of-way application.

Environmental analysis of the South Project, which is outside the jurisdiction of BLM decision-making, will be subject to permitting by the appropriate federal, state, and local permitting agencies whose jurisdiction applies to those facilities.

Direct and indirect impacts from the two alternatives are known and fully disclosed. Cumulative impacts have been assessed to the extent the information is available. When information was not available, the BLM followed the procedures in 40 CFR 1502.22.

N5f

Comment noted, no change to document. Section 4.2.5.1.1.1 indicates the permitting processes that will be applied to the South Project to address potential water impacts.



COMMENT(S)

RESPONSE(S)

N6

Utah Mining Association



May 27, 2016

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

Re: Draft Environmental Impact Statement for the Enefit American Oil Utility Corridor Project

Dear Stephanie:

The Utah Mining Association (UMA) exists to tell the story of a foundational industry at the beginning of the supply chain for everything we use and everything we do as a society. Enefit American Oil (EAO) has been a welcome member to our industry since their inception, taking an active role in public outreach and industry advocacy. Just as UMA represents an industry at the “beginning” of the supply chain, so EAO finds themselves at the “beginning” of their regulatory process to realize the first commercial oil shale project in the United States.

UMA commends the BLM on preparing a well-reasoned, clear and defensible draft environmental impact statement and provides the following comments to improve the final environmental impact statement and record of decision:

In Section 1.2.1 Scope of Analysis, the BLM describes a process by which the agency, together with their cooperators, initially determines that the South Project *is not* a Connected Action (page 1-5, first paragraph) and then subsequently changes position and concludes that the South Project *is* a Connected Action (page 1-5, third paragraph). The BLM provides a series of bullets that are the conclusions of that final Scope of Analysis document, but there is no clear explanation of *how* or *why* the BLM arrived at their conclusion. A review of the relevant CEQ NEPA implementing regulations and the BLM’s own NEPA Handbook appears to indicate that the South Project should have been considered a cumulative, non-federal action rather than a non-federal Connection Action. The FEIS would be well-served by providing a more detailed explanation of how the BLM arrived at the conclusion that the South Project was a non-federal Connected Action rather than a cumulative action.

Continuing in that vein, UMA is concerned that the BLM appears to be overreaching with regard to their consideration of South Project mining impacts. The BLM correctly discloses that South Project mining and mineral processing activities will be regulated as a Large Mine Operation by the State of Utah’s Department of Natural Resources, Division of Oil, Gas and Mining. That is the correct venue for analyzing and regulating environmental impacts from EAO’s planned mining activities, not a utility corridor EIS. If EAO was proposing to mine federal minerals, then the BLM would certainly be

N6a

N6a

The discussion in question has been removed from the Final EIS, and the South Project has been moved to Section 4.4 of the EIS. The commenter is correct that the South Project is a non-federal cumulative action over which the BLM has no jurisdiction and it therefore does not qualify to be a connected action.

COMMENT(S)

RESPONSE(S)

N6	Utah Mining Association (cont.)
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N6b

expected to analyze mining impacts in the EIS, but that is not the case here. EAO is simply requesting a right-of-way across federal land for industrial-scale utilities. The BLM should provide more sound reasoning for why impacts from South Project mining activities – either under the Proposed Action or the No Action alternative – are even discussed in the manner they are. In the absence of that sound reasoning, the BLM may be at risk of unnecessarily (or even illegally) expanding their authority under NEPA.

N6c

The BLM is correct in identifying, in Section 4.2.17, that direct socioeconomic impacts as a result of the Utility Corridor Project would be temporary and minimal to the Uintah Basin community. The BLM also correctly discloses beneficial indirect and cumulative socioeconomic effects to the region as a result of the South Project in Section 4.2.17.1.2. While the BLM assumes there is no difference in socioeconomic effects between the Proposed Action and No Action alternatives, UMA does not concur. The positive effects on employment, purchase of local goods and services, housing development, and re-investment of local taxes into education and healthcare cannot be understated. It is critical that EAO be afforded the best opportunity at successful and responsible economic development of the Utah project. That “best opportunity” is clearly through selection of the Proposed Alternative; thus there *should* be a socioeconomic difference between the Proposed Action and the No Action alternative. UMA recommends the BLM reconsider their stance that there is no difference in socioeconomic effects between the Proposed Action and No Action alternatives, as this is clearly not the case.

N6d

UMA is proud to call Enefit American Oil a member of our organization, and we feel that the Proposed Action would advance responsible development of energy and mineral resources in the state of Utah. EAO has proved themselves a welcome corporate citizen in the Uintah Basin, and this project has the potential to represent a significant source of jobs and economic development in the region and throughout the state. UMA welcomes the potential for continued investment into the state of Utah’s economic future, and approval of the Utility Project furthers that goal. We encourage the BLM to complete the EIS and right-of-way grant process in a timely fashion, such that EAO can continue with their project development activities.

Sincerely,



Mark D. Compton  
UMA President

N6b

BLM acknowledges that it has no jurisdiction over the South Project. The South Project has been moved to the cumulative section to address this comment and other commenters’ confusion over the BLM’s lack of jurisdiction over the South Project. The disclosure contained under this document is only to meet the requirements of NEPA regarding cumulative impacts so BLM can reach an informed decision, and implies no jurisdiction or expansion of authority.

N6c

The Proposed Action and No Action alternatives are for the Utility Project. To reduce confusion, the impacts from the South Project, which is outside of the jurisdiction of the BLM and which will proceed to full buildout regardless of the BLM decision to be made for the Utility Project, has been moved to the cumulative impact analysis in the EIS. As a reasonably foreseeable non-federal action, the BLM is not required to compare or contrast alternatives for the South Project. Also, since the No Action Alternative is to deny the requested rights-of-way, there is no accumulation of impacts under that alternative. However, given public interest in the South Project, Section 4.4 has been added to the EIS that describes the South Project if the BLM were to deny the Utility Project. Estimates of the costs associated with trucking are included in this section. The Applicant has indicated that reliance on trucking is a viable option for the South Project.

N6d

Comment noted.

COMMENT(S)

RESPONSE(S)

N7

Utah Native Plant Society

From: [kbuckner@blm.gov](mailto:kbuckner@blm.gov) on behalf of Vernal Comments, BLM UT  
To: [Dana.Holmes@enefit.com](mailto:Dana.Holmes@enefit.com)  
Subject: Fwd: Enefit American Oil Utility Corridor Project  
Date: Tuesday, June 14, 2016 1:47:59 PM

----- Forwarded message -----

From: Utah Native Plant Society <[unps@unps.org](mailto:unps@unps.org)>  
Date: Tue, Jun 14, 2016 at 12:15 PM  
Subject: Enefit American Oil Utility Corridor Project  
To: [blm\\_ut\\_vernal\\_comments@blm.gov](mailto:blm_ut_vernal_comments@blm.gov)

We would strongly support the "no action" alternative with respect to the above proposal for numerous reasons, two of which are in more detail outlined below.

(1) Inadequate protection for sensitive plant species

We note that the Federal Register notice to prepare a DEIS was published on July 1, 2013. The White River Penstemon (soon to again be recognized again at the species level, *Penstemon albidiflorus*) and Graham's penstemon (*Penstemon grahamii*) were proposed to be listed by the US Fish & Wildlife Service (FWS) on August 6, 2013. Subsequently that listing was withdrawn by August 2014 due to an agreement that involved, among others, Enefit representatives but without any participation by the public. That agreement was further mandated by SITLA, lessor of the property to Enefit and others in the area, to be limited to 15 years.

This letter to the editor by Rio Blanco Co. commissioner Jon Hill clearly shows that Enefit (and Red Leaf) were driving forces behind the creation of the Penstemon Conservation Agreement and the derailing of the proposed listing:

<http://www.theheraldtimes.com/letter-to-the-editor-enefit-oil-project-may-benefit-rangely-local-help-needed/rangely/>

Hill even tried to get Enefit to move to Rangely. Hill states:

"Soon after the EIS scoping meetings, the U.S. Fish and Wildlife Service announced they were considering listing two plants, the White River Penstemon and Grahams Penstemon, as endangered. Commissioner McKee called and asked if I would represent Rio Blanco County in writing a Candidate Conservation Plan. The purpose of the plan would be to allow grazing, oil and gas drilling, and oil shale development to proceed while at the same time ensuring the Penstemon population would remain stable and viable. On July 22, 2014, Rio Blanco County, Uintah County, the White River Field Office BLM, Vernal District BLM, U.S. Fish and Wildlife Service and Utah State Lands signed the agreement. A little over a month later, U.S. Fish and Wildlife announced the plants would not be listed because the agreement was in place."

N7a

In addition to the fact that the Penstemon Conservation Agreement in general provides

COMMENT(S)		RESPONSE(S)	
N7	Utah Native Plant Society (cont.)		
N7a	<p>inadequate protections and has no required funding, it is inappropriate for the BLM, who was a party to the Penstemon Conservation Agreement, to have accepted a 15 year term (from August 2014) but now in this proposed action it is recommending an action alternative to be approved that that will span some 34 years.</p> <p>From the document:</p> <p>"The South Project is anticipated to produce 50,000 barrels of oil per day at full build out for a period of up to 30 years utilizing oil shale ore rock mined from the Applicant's private property holdings." (introduction, ES-1)</p> <p>Section 2.2.10:</p> <p>"The right(s)-of-way as currently planned would continue for at least 30 years; at a minimum, the water, natural gas, product, and transmission lines would be in place for that duration. "</p> <p>Section: 2.2.12.1.4</p> <p>"These water use estimates for 34 years . . . "</p> <p>The current Penstemon "conservation" agreement may only have 10 years left before this project even starts that is in turn expected to last 34 years! While the Penstemon Conservation Agreement has an optional renewal period, it is well-known that the reason for the 15 year period was so that parties could "destroy whatever they want."</p> <p>John Andrews to SITLA board of trustees April 16, 2014 meeting:</p> <p>"You are getting the ability to mine where you're going to want to be mining anyway and you are protecting something that wouldn't be disturbed. So that's the basic concept is you've got a 15-year agreement that's going to buy for all of our miners the ability to strip mine and destroy any penstemon that are located on those sites in exchange for some conservation on federal, SITLA and private lands."</p> <p>Andrews was including Enefit in the reference to "our miners." The record clearly shows the extensive involvement of Enefit's Ryan Clerico in establishing "no mining" zones when established plant conservation areas from roughly late 2013 through the first quarter of 2014 that were then used to scuttle the listing proposals.</p> <p>We've heard the argument that if the 15 year agreement was not renewed in 2029, and that threats remained, that the FWS could/would proceed to then re-propose these species. That is little comfort in that the FWS has in the 15+ years has only listed a single plant species that occurs in Utah and even that was involuntary. It would further take the FWS years to propose for the third time (in the case of Graham's penstemon, and second for White River) and conduct their findings in order to get to the point of recommending these species for listing again. If Enefit and the other parties had been truly sincere about long term protection knowing in advance that they had filed a documents to start a DEIS review (i.e. this proposed corridor project) and that the term of that project was going to be in excess of 30 years and that it would indeed be intending to destroy habitat for these species, it should have been more</p>	N7a	<p>The terms of the Penstemon Conservation Agreement are outside the scope of this document. However, estimated impacts on the species for the length of the project have been included in this EIS.</p>

COMMENT(S)

RESPONSE(S)

N7

Utah Native Plant Society (cont.)

than willing to agree to term of 35 years when adopting this agreement via SITLA. Yet this term was forced on the FWS and BLM (and we strongly also feel inappropriately agreed to and contrary to the requirements of the Endangered Species Act and contrary to FWS's own policies and procedures). And, the SITLA stakeholders (future school children) have absolutely no voice in this process which amounts to a privatization of state-owned public lands.

The job of the BLM is not to "beat listings" as has been stated by several of your Vernal area managers. ESA listings are not designations that should be feared. It would be completely inappropriate for you to approve a project lasting 34 years knowing full well that the threats to these two species will not be abated during the course of the 15 year agreement (based on nothing more than idle speculation), and that the lines were drawn for conservation areas simply because the strip mining companies don't plan to mine in those areas for the initial now 12 or so years left under the agreement, but wanted the ability to change their mind and be able to mine elsewhere without those stipulations in place, and that the very applicant in this project was fully allowed to designate what areas would or would not be included.

Conservation areas should instead be permanently established and not limited to what amounts to ridiculously short periods of time. Almost one-third of the length of that agreement will have expired because this project even starts. Instead actions have been taken to circumvent laws established to prevent species from becoming extinct and to help to preserve some small amount of remaining natural open space in an area with incredible biodiversity (i.e. the Uinta Basin generally). And instead SITLA, Uintah Co., Rio Blanco Co., PLPCO, and the energy companies seem to think that they can "grow" their way out of this problem and figure out how to grow these species back on completely bulldozed lands, and that is their ultimate answer. That is a completely distorted and incorrect view of the protection of natural ecosystems. This is not a horticultural project. SITLA's promise to fund horticultural work is utterly meaningless and inappropriate and shows a complete lack of understanding by them of ecology and basic science. We talk about the importance of education and STEM programs in the state of Utah ad nauseam and yet individuals making decisions lack the requisite background to make those decisions.

So the no action alternative should be adopted for this reason alone.

(2) The reclamation plan is completely inadequate and lacking proper controls.

The seed mix table outlined in Section 3-2 is, quite simply, terrible.

The Siberian wheatgrass, Russian wildrye and crested wheatgrass are completely unacceptable species to even consider. Why?

Under Section 3.5 reclamation plan

"The postconstruction seed mix may also be augmented with salvaged sensitive species seed in accordance with the Agreement. "

This is again operating under the illusion that this is a proper way to mitigate impacts. It is not.

Why have a weed plan when you introduce weeds in the process of reclamation?

N7b

N7b

See the response to Comment N7a.

N7c

N7c

The Applicant's proposed reclamation seed mixture has been revised and no longer reflects the mixture presented in Table 2-4. The revised seed mix will be developed in coordination with BLM reclamation specialists and will follow the recommendation of the Penstemon Conservation Team, including possible seed collection and increase. The methods for developing the reclamation seed mixture(s) are described in greater detail in the POD.

**COMMENT(S)**

**RESPONSE(S)**

N7	Utah Native Plant Society (cont.)
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N7d [ You are really going to introduce crested wheatgrass growing with Graham's penstemon?

Seeds should obviously be obtained solely from local genotypes only and not purchased from the typical, terrible commercial sources. That isn't a purist standpoint but the right thing to do ecologically and one which has been very well-documented. If the appropriate materials have not been acquired due to lack of foresight, the project simply cannot be approved. Enefit's CEO has a botany degree and should know better. Otherwise, what exactly is the point of the BLM's Seeds of Success program?

N7e [ A five year monitoring period is also highly inadequate. In the Uinta Basin a realistic period would be more likely at least 10 years to ensure successful establishment. It will likely take two to three years (many references/studies are available to support that) before establishment might even start to occur. The region has experienced continual episodes of drought over the past decade. If little establishment initially occurs, it could take another two to three years or in other words at least six years before any measurable recruitment success is even achieved which would still then require additional monitoring from that point forward.

N7f [ Enefit should also be bonded at a multi-million dollar level to ensure compliance. In the event Enefit decides to pull out of the state or in the event of Enefit Utah's bankruptcy, the things that they have agreed to do in terms of any proper reclamation must still be completed and can't be based simply on promises and goodwill.

N7g [ In light of a completely inadequate reclamation plan and the lack of acquired resources (that could have been accumulated while this request was made in 2013), the no action alternative is also appropriate and should be adopted in this matter.

Tony Frates  
Utah Native Plant Society  
conservation co-chair  
<http://www.unps.org>

Utah Native Plant Society  
P. O. Box 520041  
Salt Lake City UT 84152-0041

The Utah Native Plant Society is a Utah non-profit corporation and an IRS qualified 501(c)(3) organization with over 400 members.

N7d [ See the response to Comment N7c.

N7e [ Reclamation and monitoring would follow the guidelines described in the Green River District Reclamation Guidelines. This document establishes cover criteria to determine reclamation success and sets an objective of successful reclamation within 5 years. However, monitoring and additional reclamation would occur until the cover criteria are met and reclamation determined successful.

N7f [ Bonding would be addressed in the rights-of-way permit and stipulations for construction, if an the Proposed Action alternative is selected by the BLM.

N7g [ Comment noted.

COMMENT(S)

RESPONSE(S)

N8

Utah Petroleum Association



June 13, 2016

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

Phone: (801) 364-1510  
Email: upa@utahpetroleum.org  
Web: www.utahpetroleum.org

RE: UTAH PETROLEUM ASSOCIATION COMMENTS ON ENEFIT AMERICAN OIL UTILITY CORRIDOR PROJECT DEIS

The Utah Petroleum Association (UPA) is a statewide, Utah based, petroleum trade association representing companies involved in all aspects of Utah's petroleum industry, including upstream (i.e. exploration and production), midstream (i.e. transport), and downstream (i.e. refining). UPA's mission is to advocate for and promote the safe and responsible development of Utah's vast natural resources. Enefit American Oil (EAO) has been a welcome addition to our industry, taking great care to educate our members and the public about their company and its proposed activities.

UPA commends the BLM on preparing a well-reasoned, clear and defensible draft environmental impact statement and provides the following comments to improve the final environmental impact statement and record of decision:

- In Section 1.2.1 Scope of Analysis, the BLM describes a process by which the agency, together with their cooperators, initially determines that the South Project *is not* a Connected Action (page 1-5, first paragraph) and then subsequently changes position and concludes that the South Project *is* a Connected Action (page 1-5, third paragraph). The BLM provides a series of bullets that are the conclusions of that final Scope of Analysis document, but there is no clear explanation of *how or why* the BLM arrived at their conclusion. A review of the relevant CEQ, NEPA implementing regulations and the BLM's own NEPA Handbook appears to indicate that the South Project should have been considered a cumulative, non-federal action rather than a non-federal Connected Action. The FEIS would be well-served by providing a more detailed explanation of how the BLM arrived at the conclusion that the South Project was a non-federal Connected Action rather than a cumulative action.
- In Section 1.5.3 Issues Considered Out of Scope and Eliminated from Detailed Analysis, the BLM correctly identifies that potential air quality and public health effects in Salt Lake and Davis counties as a result of potential processing of South Project shale oil are outside the scope of this EIS. UPA regularly works with, and represents the interests of, each of the refineries in Salt Lake and Davis counties, and it would be entirely unreasonable for the BLM to expand their scope of analysis to these facilities. While UPA certainly hopes to see EAO

10714 South Jordan Gateway, Suite 260, South Jordan, UT 84095-3922

N8a

N8a

This comment is correct. The South Project is outside the jurisdiction of the BLM and will proceed to full buildout regardless of the BLM decision to be made for the Utility Project. It is therefore not a connected action. Upon further review, and in response to public confusion evidenced in the comments on the Draft EIS, the BLM has clarified that the South Project is a non-federal cumulative action and has moved those impacts to the cumulative discussion. To address confusion expressed by the public during the Draft EIS comment period, those South Project impacts that may accumulate with the impacts of the Utility Project Proposed Action have been moved to the cumulative impact analysis in the Final EIS. Since the No Action Alternative is to deny the requested rights-of-way, there is no accumulation of impacts under that alternative. However, given public interest in the South Project, Section 4.4 has been added to the EIS that describes the South Project if the BLM were to deny the Utility Project. Section 1.2.1 has been changed to reflect this clarification.



COMMENT(S)

RESPONSE(S)

N8

Utah Petroleum Association (cont.)

send their produced shale oil to the greater Salt Lake City area, there is no reason for the BLM to assume that would be the case. The final refining location for EAO's product oil will most certainly be driven by refinery capacity, market conditions, regional and national infrastructure improvements, and other factors at the time of production, all of which are well beyond the BLM's decision space and scope of responsibility under NEPA. It is important to note that, even though the pipeline that EAO is proposing to connect to runs to Salt Lake City, this does not require that their shale oil be processed there. EAO could choose to transload their product onto rail for processing in a variety of other markets, such as the U.S. West Coast or U.S. Gulf Coast.

- Also in Section 1.5.3, the BLM finds that it is certainly feasible that South Project shale oil could be processed in the Salt Lake and Davis county refining facilities, but this "is an independent action that could occur regardless of whether the utility rights-of-way are approved..." The BLM goes so far as to cite BLM NEPA Handbook 1790-1 and 40 CFR 1508.25 regarding their determination that offsite refinery processing is not connected. However, the same argument could be made for the South Project itself, as the BLM indicates in Section 2.3.1.1. This continues the issues raised in our first bullet – should the South Project even be considered a Connected Action? Or should it rather be considered a cumulative action? The refineries are obviously well outside the BLM's cumulative impacts assessment area and are correctly excluded from that analysis. But the BLM should ensure that the rationale for calling the South Project a Connected Action is consistent with the rationale for dismissing the refineries from the same. The latter is correct; the prior is questionable at best, and certainly not substantiated in the EIS.

UPA believes the Proposed Action would advance responsible development of energy and mineral resources in the State of Utah. EAO has proven themselves to be a welcome corporate citizen in the Uinta Basin, knowledgeable and competent in the industry, and this project has the potential to represent a significant source of jobs and economic development in the region and throughout the State. We encourage the BLM to complete the EIS and right-of-way grant process in a timely fashion, such that EAO can continue with their project development activities.

Thank you for the opportunity to comment on this important matter.

Sincerely,



Lee J. Peacock  
President

N8b ☐ See the response to Comment N8a.

N8c ☐ Comment noted.



COMMENT(S)	RESPONSE(S)
<b>N9</b>	<b>Utah Physicians for a Healthy Environment</b>
	<p>Enefit American Oil Utility Corridor Project Draft Environmental Impact Statement (EIS)</p> <p>COMMENTS OF UTAH PHYSICIANS FOR A HEALTHY ENVIRONMENT ON THE ENEFIT AMERICAN OIL UTILITY CORRIDOR PROJECT DRAFT ENVIRONMENTAL IMPACT STATEMENT</p> <p>(July 14, 2016)</p> <p>Utah Physicians for a Healthy Environment (UPHE) is an association of more than 400 physicians and other health care professionals, but it also includes industrial and environmental engineers. All of its members share a concern that the health of the residents of Utah, and the viability of its environment, are suffering ever greater adverse impacts from pollution and climate disruption that are largely the result of relying on fossil fuels as our main source of energy. Many of the illnesses that our health professionals treat are caused by, or exacerbated by, environmental pollution. For this reason, we offer our expertise to inform the debate about how society should deal with the threat that air pollution presents to human health.</p> <p>I. INTRODUCTION AND SUMMARY</p> <p>Enefit plans to mine oil shale and extract 1.2 billion gallons of synthetic crude oil from its lease holdings in the Uinta Basin over the next 30 years. In providing comments on environmental issues, UPHE'S primary concern is normally to identify impacts on human health of pollution, environmental degradation, and climate disruption of which the general public might not be aware. We had initially planned to focus our comments on the potentially large impact of Enefit's project on the air quality and water resources of the Uinta Basin, and adjacent areas, and on the Obama Administrations efforts to limit climate disruption and meet its commitments made at the Paris Climate</p>

COMMENT(S)

RESPONSE(S)

N9

Utah Physicians for a Healthy Environment (cont.)

2

Conference (COP21). Before doing so, however, the approach taken by the BLM in its draft EIS raises a threshold question of whether the environmental impact of Enefit's project is even an issue eligible to be addressed by the draft EIS.

N9a

The BLM apparently has concluded that the environmental impacts of Enefit's proposed project are not incremental to its decision to grant or deny Enefit's request for a utility right of way over BLM land, and therefore need not receive the thorough, fact-based evaluation and analysis that NEPA normally requires of major Federal actions. This position appears to rest on the BLM's assumption that its decision to grant or deny the requested utility right of way would have no affect the economic viability of the project, and, therefore would not drive Enefit's decision to build or not build the project.

N9b

We believe that this assumption is invalid, and should have been supported by a thorough, fact-based evaluation of Enefit's cost structure under the No Action Alternative and its cost structure if the requested utility right of way is granted. We make a back-of-the-envelope estimate of the likely impact of the utility right of way on Enefit's project costs, and compare them to current and likely future prices in the world crude oil market. We conclude that Enefit's project is not economically viable at current market prices and could be non-viable under future, higher world market prices as well, if the requested utility right of way is not granted. This leads to the conclusion that the BLM's decision to grant or deny the requested right-of-way is likely to heavily impact Enefit's decision to build or not build the South Project. All of the environmental impacts of that project, therefore, should be viewed as incremental to the BLM's right-of-way decision. If they are incremental to the BLM's right of-way decision, NEPA requires that they be carefully and fully evaluated in this EIS.

N9c

Our analytical approach is patterned after the Environmental Impact Statement that the Department of State prepared to evaluate the likely impact of granting the Keystone XL Pipeline right of way on the level of production of the Canadian tar sand oil industry. In the Keystone EIS, the potential of the Canadian tar sand industry to emit greenhouse gases and affect the earth's climate was linked to the effect that granting the Keystone right of way would likely have on the competitiveness, and therefore, the level of production of the Canadian tar sand oil industry.

N9d

N9a

The BLM is following the BLM NEPA Handbook guidance for cumulative effects since the South Project is a reasonably foreseeable non-federal action outside of the jurisdiction of the BLM that has impacts that may accumulate with the Utility Project Proposed Action alternative. These effects are disclosed to the extent that they are known.

N9b

Approval or disapproval of the South Project is outside the BLM's authority because it is located on private lands and minerals. However, non-federal actions that potentially have a cumulatively significant impact together with the Proposed Action must be considered in the same NEPA document (40 CFR 1508.25). Therefore, the South Project is considered to be a reasonably foreseeable non-federal action outside of the jurisdiction of the BLM which has impacts that may accumulate with the Proposed Action alternative. These effects are disclosed in this EIS to the extent that they are known.

N9c

The EIS is not required to include an economic feasibility study for the South Project, since it is a non-federal action. Enefit has sufficient information to determine that the South Project will go forward regardless of the BLM's decision. Therefore, the economics of the South Project is immaterial to the BLM decision to be made in this EIS.

The BLM is following the BLM NEPA Handbook guidance for cumulative effects since the South Project is a reasonably foreseeable non-federal action outside of the jurisdiction of the BLM which has impacts that may accumulate with the Proposed Action alternative. These effects are disclosed to the extent that they are known.

N9d

Environmental analysis of the South Project would be considered by the appropriate permitting agencies during final design and siting. This includes permitting under the CAA and CWA through local permitting agencies and the EPA. Estimations or qualitative analysis of climate change and GHG from the South Project have been included to the extent the effects are known and are considered cumulate effects of the Proposed Action per the BLM's NEPA Handbook.

COMMENT(S)	RESPONSE(S)
N9	Utah Physicians for a Healthy Environment (cont.)
	<p data-bbox="598 337 611 358">3</p> <p data-bbox="287 431 510 453">II. THE SOUTH PROJECT</p> <p data-bbox="287 509 909 836">Enefit is the international subsidiary of Eesti Energia, an Estonia company that has extracted synthetic crude oil from Estonian oil shale for the past 30 years. In Estonia, It currently produces 1.3 million barrels a year.<sup>1</sup> Enefit wants to develop a major mine near the Colorado state line on private, state-owned, and Federal land about 40 miles south of Vernal, in Uintah County. Enefit has secured leases to 30,000 acres, of which only 7,000 to 9,000 acres of the southern rim of the Uintah Basin would be mined over 30 years. The draft EIS refers to this as the Project. The South Project is intended to extract 1.2 and the 2.6 billion potential barrels of crude oil that are estimated to lie under Enefit's leases. According to Enefit, it plans to begin producing 25,000 barrels a day of synthetic crude oil by 2020, and to scale up to 50,000 barrels a day by 2024.<sup>2</sup></p> <p data-bbox="287 862 919 1066">An integral part of the South Project is Enefit's RD&amp;D lease of BLM land, which is estimated to contain another 545 million potential barrels of crude oil. Enefit intends to conduct RD&amp;D activities on its BLM lease to commercialize its "Enefit 280" technology, a proprietary technology that coproduces oil, natural gas, and electricity. Enefit will use the combined sites, including the BLM RD&amp;D lease, to demonstrate the commercial feasibility of its proprietary surface retort technology, which would be a scaling up of its "Enefit 280" technology.<sup>3</sup></p> <p data-bbox="287 1092 919 1143">"Enefit 280" uses an enhanced solid heat carrier retorting technology surrounding a horizontal kiln retort. As depicted in the schematic below, Enerfit claims that this</p> <p data-bbox="287 1183 550 1203"><sup>1</sup> See <a href="https://www.enefit.com/en/technology">https://www.enefit.com/en/technology</a>.</p> <p data-bbox="287 1219 909 1287"><sup>2</sup> It should be noted that in order to reach its arget of 1.2 barrels in the 30-year expected life of the South Project, Enefit would have to extract oil at the rate of more than 100,000 a day. [1,200,000,000/30/365 = 109,589 barrels per day.] This is only one of numerous ambiguities about the basic parameters of the South Project.</p> <p data-bbox="287 1304 905 1356"><sup>3</sup> See BLM RD&amp;D Lease Paper 1 Final 04/29/12,Assessment of Plans and Progress on US Bureau of Land Management Oil Shale RD&amp;D Leases in the United States, Peter M. Crawford, Christopher Dean, and Jeffrey Stone, INTEK, Inc. James C. Killen, US Department of Energy.</p>

COMMENT(S)

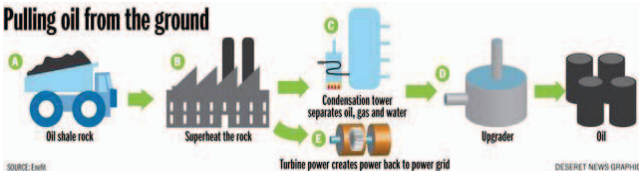
RESPONSE(S)

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Utah Physicians for a Healthy Environment (cont.)

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process is more energy efficient than other oil shale extraction techniques because it recovers heat from both the hot spent shale ash and flue gases and reuses it in the extraction process.



source: Deseret News, July 13, 2013.

The residual carbon on the spent shale is burned in a circulating fluidized bed boiler, which results in cleaner flue gases. The oil would then be upgraded to synthetic crude and transported by pipeline to refineries in Salt Lake City for further refining.

When built, Enefit will evaluate its Enefit 280 plant to see if it can be scaled up to achieve the South Project's production goals of 1.2 billion barrels. It hopes to initiate production in 2020 at a level of 25,000 barrels per day and implement a second retort to achieve full capacity of 50,000 barrels per day in 2024. That phase is expected to support 1,200 temporary construction jobs and 2,000 full-time employees once full production begins.

As reported in the Deseret News,<sup>4</sup> Enefit claims that its "Enefit 280" technology will harm the environment less than most other oil shale processing technologies in

<sup>4</sup> See *Estonia Company Wants To Pull 2.6 Billion Barrels Of Oil From Utah*, by Amy Joi O'Donoghue, Deseret News, Saturday, July 13, 2013, available at <http://www.deseretnews.com/article/865583090/Estonia-company-wants-to-pull-26-billion-barrels-of-oil-from-Utah.html?pg=all>.

COMMENT(S)

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N9	Utah Physicians for a Healthy Environment (cont.)
	<p>5</p> <p>several respects. It says that it will mine only a few hundred feet of surface area at one time, and then reclaim it as the mine advances.<sup>5</sup> It asserts that by super heating the shale, it extracts virtually all the organic material so it can eventually be returned to the land and the topography reclaimed. Its project will lay claim to 10,480 acre feet of water annually, which is enough to support a city of 50,000 residents.<sup>6</sup> It says, however, that this water would not be used to process oil shale, but only for dust suppression and supporting routine plant operations.<sup>7</sup> Enefit says that it may find that it needs to use only 4,000 acre-feet of water per year.</p> <p>III. THE UTILITY PROJECT</p> <p>To service the South Project, Enefit requests that BLM grant rights of way (ROWS) over over more than 700 acres of BLM land for the following:</p> <ol style="list-style-type: none"><li>1) 19 miles of water pipeline 30 inches in diameter, with a total volume of 493,222 cubic feet;</li><li>2) 8 miles of natural gas pipeline, 8 inches in diameter,with a total volume of 16,366 cubic feet;</li><li>3) 11 miles of crude oil product pipeline, 16 inches in diameter, with a total volume of 82,569 cubic feet. (4-62)</li><li>4) 29 miles of single or dual overhead 138-kilovolt H-frame powerlines, and</li><li>5) 5 miles of widened and upgraded Dragon Road on BLM-administered lands in the Vernal Field Office.</li></ol> <p>The draft EIS refers to these requested rights of way as "the Project." For clarity, these comments will refer to them as the Utility Project. A majority of the development associated with the South Project is intended to to occur on private land. Therefore, the</p> <p><sup>5</sup> Enefit says that it has yet to decide how much mining will be strip mining, and how much will be done underground.</p> <p><sup>6</sup> An acre-foot of water is enough to supply a family or four to five for a year.</p> <p><sup>7</sup> Enefit says it has rights to take 10,480 acre-feet of water to the White River, which it may seek to trade for rights to take water from the Green River or from ground water, but has yet to decide where it will get its water.</p>

**COMMENT(S)**

**RESPONSE(S)**

**N9**

**Utah Physicians for a Healthy Environment (cont.)**

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BLM cannot directly approve or disapprove of development of that portion of the South Project. However, NEPA obligates Federal agencies to identify and evaluate the environmental impact of major Federal actions, and impacts that are “connected to” major Federal actions. The purpose of the Utility Project is to facilitate the South Project. This “connects” the South Project to the Utility Project and the BLM’s decision whether to grant the requested right of way (ROW) permits. Since the purpose of the Utility Project is to service the South Project, the South Project is also considered to be a “cumulative effect” of the Utility Project, and the BLM’s decision whether to grant the requested ROW permits. NEPA requires the BLM to analyze the environmental impact of the South Project as an impact that it “connected to,” and “cumulative with,” its decision to grant or deny Enefit’s requested Utility Project on Federal land.

In BLM’s own summary description of its obligation under NEPA<sup>8</sup> it states (emphasis added):

“REGULATION: 40 CFR 1500-1508. The Council on Environmental Quality developed these regulations to complement and implement NEPA. Key points from the regulations include the following:

Agencies must integrate NEPA into their planning processes as early as possible

EISs must highlight reasonable alternatives that would avoid or minimize adverse impacts or enhance the quality of the environment. *They are used to inform decisions – not to justify already-made decisions.*

The format for EISs should include the following:

Purpose and need

Alternatives including the proposed action

Affected environment

*Environmental consequences (of each alternative)”*

<sup>8</sup> See <http://www.blm.gov/wo/st/en/info/nepa.html>.

## COMMENT(S)

## RESPONSE(S)

N9

## Utah Physicians for a Healthy Environment (cont.)

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N9e

In its draft EIS, the BLM assumes that granting the requested rights of way would have less environmental impact than withholding them. UPHE contends that this assumption rests on so little evidence or analysis that does not meaningfully analyze the likely environmental impact of denying the requested rights of way.

N9f

As will be explained below, it is not plausible that the South Project would be economically viable if it were built today because Enefit's likely costs of producing and transporting its synthetic crude oil are at least 30% above the prevailing price of competing conventional crude oil on the world market. For the South Project to become economically viable in the future, one of two things would have to happen. The South Project would have to reduce its likely production and transportation costs by at least 30%, or the price of competing conventional crude oil would have to rise by at least 30% and stay there.

As explained below, not granting Enefit's requested rights of way would increase its likely costs of producing and transporting its synthetic crude oil by nearly two-thirds. It would also eliminate Enefit's opportunity to sell the surplus energy generated by its production process into the electrical grid. Therefore, withholding the rights of way that Enefit requests is likely to change its cost structure so drastically that the South Project is unlikely to become economically viable in the foreseeable future. The BLM's decision to grant the requested rights of way to Enefit, therefore, appears to be a one that will determine whether the South Project will ever be built. If it is never built, it will have no impact on the environment.

N9g

There is so little evidence or analysis of the economic consequences of not granting Enefit's requested rights of way in the draft EIS that the draft does not begin to meet the BLM's obligation to thoroughly analyze the No Action Alternative of not granting Enefit's requested rights of way. In fact, its assumption that Enefit would have economically viable alternative ways of meeting its need to service the South Project with utilities is so perfunctory that it raises the question whether the draft EIS has been an effort to justify an "already-made decision" rather than an effort to inform that

N9e

To clarify the impact of approving or denying the requested rights-of-way, the BLM moved the South Project, a reasonably foreseeable non-federal action, to the cumulative impacts section. Analysis regarding the difference between the Proposed Action and No Action Alternative are now clearly presented in Chapter 4 of the EIS for each resource considered. The No Action Alternative will have the least impact as the requested rights-of-way will not be approved or constructed. The South Project impacts are presented in the cumulative impacts section to the degree that they accumulate with the impacts of the Utility Project Proposed Action. Since there are no direct or indirect impacts from the No Action Alternative, there are no cumulative impacts under that alternative. However, given public interest in the South Project that will proceed to full buildout regardless of the BLM's decision on the Utility Project, Section 4.4 has been added to the EIS describing the South Project concept should the Utility Project be denied. Please note that any decisions regarding the South Project are outside of the scope of the BLM decision to be made and jurisdiction.

N9f

The economic impact of the Utility Project Proposed Action and No Action alternatives are disclosed in Section 4.2.17. The cumulative economic impacts are disclosed in Section 4.3.3.17. However, this comment is regarding the South Project, which is a reasonably foreseeable non-federal action that is included in the cumulative effects of the Utility Project to the degree that those effects accumulate with the effects of the Proposed Action. Economics of the South Project have been estimated to the degree that they may accumulate with the impacts of the Utility Project Proposed Action, and to the degree that they are known. However, the EIS for the utility corridors is not required to include an economic feasibility study for the South Project because it is out of the scope of the decision to be made. Enefit has reiterated that the South Project will move forward regardless of BLM's ultimate decision on the rights-of-way, so a South Project economic feasibility analysis is a business function conducted by Enefit independent of this EIS effort.

N9g

See the response to Comment N9e.

**COMMENT(S)**

**RESPONSE(S)**

**N9**

**Utah Physicians for a Healthy Environment (cont.)**

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**N9g**

decision. That use of an EIS is barred by the BLM's own interpretation of its NEPA obligations.

The general method that the draft EIS should have used to analyze the critical question of the economic impact of granting or withholding utility rights of way to the unconventional crude oil industry is illustrated by the Environmental Impact Statement that the Department of State prepared for the Keystone XL Pipeline, as discussed in the Appendix to these comments.

**N9h**

IV. THE BLM HAS AN OBLIGATION TO IDENTIFY AND THOROUGHLY EVALUATE THE ENVIRONMENTAL IMPACT OF THE SOUTH PROJECT

In its draft EIS, the BLM acknowledges its obligation under NEPA to document and analyze the environmental impact of the South Project. Specifically, the draft EIS says that "the potential indirect and cumulative effects associated with the South Project are analyzed and disclosed in this EIS." But the draft EIS sidesteps this obligation. In an apparent effort to distance itself from its obligation to analyze the environmental impact of the South Project, the draft EIS cover letter states

The BLM is aware that no mine plans are currently filed with the State of Utah; therefore, design of the mine is conceptual. If a mine plan is filed with the State, it would be reviewed, approved, or denied by the Utah Division of Oil, Gas and Mining. The Draft EIS was prepared pursuant to NEPA, as well as other regulations and statutes, to address possible environmental and social and economic impacts that could result from implementation of the [Utility] Project.

This statement implies that the lack of any mine application, or any mine design below the conceptual level is immaterial to its NEPA duty to gather the basic facts to make a decision on the permits because the mine and its possible environmental impacts do not "result from implementation" of the Utility Project. The BLM offers this reasoning:

4.1.1.1.1 Non-federal Connected Action South Project

**N9h**

The South Project is a reasonably foreseeable non-federal action, the effects of which are included in the cumulative effects of the Utility Project to the degree that those effects accumulate with the effects of the Proposed Action, and to the degree that they are known. Where they are not known, the BLM followed the procedures in 40 CFR 1502.22. The No Action Alternative constitutes denial of the Utility Project rights-of-way. Since there are no direct or indirect impacts from the No Action Alternative, there are no cumulative impacts under that alternative. However, given public interest in the South Project, which will proceed to full buildout regardless of the BLM's decision on the Utility Project, Section 4.4 has been added to the EIS describing the South Project concept should the Utility Project be denied. Please note that any decisions regarding the South Project are outside the scope of the BLM decision to be made and jurisdiction.



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Utah Physicians for a Healthy Environment (cont.)

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Because the South Project is outside the BLM's authority to approve and could proceed regardless of the BLM's Utility Project decision, the South Project is considered, for purposes of this analysis, as a nonfederal connected action. Impacts from the South Project are considered to be an indirect effect of the Utility Project. The BLM has no jurisdiction over the South Project; therefore, no decision regarding the South Project will result from this EIS. **Because the South Project is considered a non-federal connected action, the effects of the South Project do not count toward the significance of the BLM's Proposed Action to approve the rights-of-way associated with the Utility Project. Therefore, the effects of the South Project would not be part of the incremental difference in effects between the No Action Alternative and the Proposed Action.**

N9i

If the economic viability of the South Project depends on granting Enefit's requested ROWs, in other words, if the ROWs determine whether the project does or does not get built, one wonders how that would not "be part of the incremental difference in effects" of granting or denying the requested ROWs.

The draft EIS cover letter continues:

Under the No Action Alternative, the BLM would deny Enefit's application for utility rights-of-way and road improvement, and Enefit would pursue securing natural gas, electricity, and water utilities and product delivery via alternative means for the South Project.

The draft mentions that Enefit's alternatives for "securing natural gas, electricity, and water utilities and product delivery" are trucking water and crude oil product in the absence of pipelines, and building a stand-alone power plant in the absence of a high-voltage power line. The draft EIS says:

4.2.1.1.2 Non-federal Connected Action South Project 4.2.1.1.2.1 Greenhouse Gas Effects

Emissions data for the construction and operation of the South Project are not available at the time of this study; 40 CFR 1502.22 provides guidance for disclosing unknown information. It is not known what quantity of GHG emissions would result from the South Project because it has not yet been fully designed and engineered. This information is unknown, and cannot be obtained, due to the fact that design and engineering of the South Project will change based on whether or not the BLM allows the Applicant

N9i

Enefit has reiterated that the South Project will move forward regardless of BLM's ultimate decision on the rights-of-way. The South Project is outside the jurisdiction of the BLM and will proceed to full buildout regardless of the BLM decision to be made for the Utility Project. To address confusion expressed by the public during the Draft EIS comment period, the impacts from the South Project have been moved to the cumulative impact analysis in the Final EIS. As a reasonably foreseeable non-federal action, the BLM is not required to compare or contrast alternatives for the South Project. Also, since the No Action Alternative is to deny the requested rights-of-way, there is no accumulation of impacts under that alternative. However, given public interest in the South Project, Section 4.4 has been added to the EIS that describes the South Project if the BLM were to deny the Utility Project.

COMMENT(S)

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N9

Utah Physicians for a Healthy Environment (cont.)

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to build one or more of the proposed utilities. **The BLM believes this unknown information is not essential to a reasoned choice between alternatives because the South BLM qualitatively knows that emissions under the No Action alternative from the South Project are generally going to be higher than under the Proposed Action alternative due to the need for the Applicant to generate their own electricity and utilize trucks to deliver water and product to and from the South Project.** In addition, obtaining the unknown emissions quantifications from the South Project would be cost prohibitive because it would require the Applicant to design and engineer the entire South Project twice - once for the No Action and once for the Proposed Action alternatives. (emphasis added).

The draft EIS, therefore, limits its examination of the No Action Alternative to its "qualitative knowledge" that there would be more air pollution if it withheld the requested ROW permits rather than granted them. It makes no effort to determine what the South Project's production and transportation costs would be with the requested rights of way, or how much withholding the requested rights of way would change them. It doesn't even ask the question how much more it would cost Enefit to truck water in and truck its crude oil product out rather than to do both via pipeline. Nor does it make an effort to determine how much more it would cost Enefit to build its own power plant.

Even more basically, it makes no effort to compare the South Project's production and transportation costs to the current price for competing conventional crude oil on the world market, or to determine how the South Project's ability to compete in that market would be affected by having to absorb the additional costs of trucking in huge quantities of water, trucking out huge quantities of product, and building a free-standing power plant. As explained below, the fate of the South Project very likely turns on whether Enefit's requested ROWs are granted.

Elsewhere in its draft EIS, the BLM says that it is not obligated to analyze alternatives available to Enefit and says that it refrains from doing it. But that is exactly what the draft EIS does when it rests its decision to grant the permits on its assertion that trucking in services, trucking out product, and building a free-standing power plant would generate more air pollution than allowing Enefit to import inputs and export its

N9j

N9k

N9j

The Applicant reiterated to the BLM that the use of trucking to transport product is economically feasible, as it is the method commonly used in the region for transport of 77,000 barrels per day by other companies. In addition, since there are no direct or indirect impacts from the No Action Alternative, there are no cumulative impacts. However, given public interest in the South Project regardless of the BLM's decision on the Utility Project, Section 4.4 has been added describing the South Project concept should the Utility Project be denied. This comment applies to that disclosure, but is outside of the scope of the BLM decision to be made.

N9k

The South Project has been moved to the cumulative impact section to clarify that the BLM has no jurisdiction over it. The BLM is not required to analyze alternatives to non-federal actions. Also, no decision is made in this EIS - it only discloses impacts anticipated from the alternatives. See also the response to N9j.

**COMMENT(S)**

**RESPONSE(S)**

**N9**

**Utah Physicians for a Healthy Environment (cont.)**

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N9k

product via the requested rights of way. The unexamined assumption underlying the draft EIS is that the South Project will be built one way or the other, regardless of the outcome of Enefit's permit request. This assumption is made from whole cloth, rather than an analysis based on evidence. BLM implicitly assumes that however much it might raise the South Project's costs to annually truck in over 10,000 acre-feet of water, and annually truck out 18.3 million barrels of its synthetic oil product, it would not raise Enefit's costs enough to prevent it from earning a profit at current or projected market prices for competing conventional crude oil.

N9l

This assumption is not credible. Thomas Tunstall, a research director with the University of Texas at San Antonio, says that the general rule of thumb used in the petroleum industry is that it costs \$20 per barrel to move crude oil by truck, \$10 by rail and \$5 by pipeline, although the cost varies by geography.<sup>9</sup> Although haul lengths servicing the South Project are shorter than average, this rule of thumb suggests that there is likely to be an annual cost increment of up to \$15 per barrel if Enefit is not able to transport its product via pipeline.

N9m

So far in 2016, the benchmark price for conventional crude oil has averaged \$40 per barrel. Given where the world crude oil market has recently been, Enefit's production costs would have to be less than \$40 per barrel for it to be an economically viable project. Therefore, if Enefit must pay an extra \$15 per barrel to transport its oil by truck rather than pipeline, that factor, by itself, could raise its production/transportation costs by 38%. Expressed in absolute terms, this could increase the South Project's break-even costs by \$278,760,000 each year.<sup>10</sup>

Presumably, the cost of transporting water by truck rather than pipeline would be comparable to the cost of transporting crude oil by truck rather than pipeline. Enefit has water rights to 10,480 acre feet annually. Enefit is known to be searching for additional water rights, which implies that it may need all of its current allotment. If so, its need would amount to over 84 million barrels. According to newspaper accounts, Enefit

<sup>9</sup> See <http://fuelfix.com/blog/2013/07/28/crude-oil-will-continue-rolling-by-train/>.

<sup>10</sup> This is the arithmetic: 50,000 bpd x 365 days = 18,250,000 barrels; 18,250,000 barrels x \$15 = \$278,760,000.

N9l

See the response to Comments N9j and N9k.

N9m

See the response to Comment N9k.

**COMMENT(S)**

**RESPONSE(S)**

**N9**

**Utah Physicians for a Healthy Environment (cont.)**

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hopes to get its water needs down to 4,000 acre feet annually. If it succeeds, that would come to 31,032,000 barrels. That implies an additional \$496,512,000 each year to its break-even costs each year just to transport water.<sup>11</sup>

In its draft EIS, the BLM states that if Enefit does not gain access to a natural gas pipeline and a high-voltage power line, it will build its own power plant.. It implies that this, too, would be immaterial to the economic viability of the South Project. Uch an assumption is inexplicable, given Enefit's description of its "Enefit 280" technology. The principle advantage of Enefit 280 technology purports to be it coproduces synthetic crude oil, natural gas, and electric power in such a way that it generates all of the power it needs to process oil shale, and leaves a substantial surplus that can be converted to electric power and sold, as it does in Estonia.

There is no indication in its draft EIS that the BLM sought data or an estimate of the revenues that Enefit would forego if it were not able to export its surplus power, and how much that would add to its breakeven costs of production to cover the lost revenue. This is a major omission from the economic feasibility analysis that the EIS should have performed. Analysts have described the sale of surplus electric power generated by its oil shale extraction process as the key to its ability to compete with conventional crude oil at current prices.<sup>12</sup>

**V. MARKET ANALYSIS THAT BLM SHOULD HAVE DONE FOR THIS EIS**

A spokesmen for Enefit, as well as the CEO of its parent company, have recently said that the Enefit 280 oil shale extraction technology can compete with benchmark conventional crude oil only when prices for conventional crude oil exceed \$60 to \$65 a

<sup>11</sup> The arithmetic is 31,032,000 barrels x 4,000 acre feet = \$496,512,000.

<sup>12</sup> See Postimees Estonia News, *Eesti Energia Squandered Dozens Of Millions Of Euros*, by Andres Reimer, September 5, 2015, available at <http://news.postimees.ee/3315429/eesti-energia-squandered-dozens-of-millions-of-euros> <http://news.postimees.ee/3315429/eesti-energia-squandered-dozens-of-millions-of-euros>.

**N9n**

See the response to Comment N9k.

**COMMENT(S)**

**RESPONSE(S)**

**N9**

**Utah Physicians for a Healthy Environment (cont.)**

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barrel and appear likely to remain there. In 2010, Sandor Liive, Chairman of Enefit, said <sup>13</sup>

Future energy projections from reputable sources show that even by 2030, the average oil price will more than support oil shale development. The figure varies by the specific deposit and technology, but Enefit is confident that its Enefit technology is a competitive alternative at an oil price of around \$65/bbl, including a reasonable return on invested capital.

He went on to say

Eesti Energia, which markets itself internationally as Enefit, estimates that the Jordanian venture, in which it owns a 65 percent stake, will be profitable as long as world oil prices stay above \$60 per barrel.

In 2013, Tarmu Aas, a member of the Board of Directors of Eesti Energia, observed that whether its oil shale industry survives or thrives over the next 50 years comes down to the level of world crude oil prices. He said "Everything depends on the oil price. The oil price moves this train."<sup>14</sup>

The estimates by Enefit itself of the break-even cost of production for oil shale-derived crude oil (\$60-\$65 per barrel) are generally consistent with other estimates within the oil shale industry. For example, Red Leaf Resources, Inc., has been developing the shale oil extraction technology EcoShale In-Capsule Process. In 2013, it intended to be producing 300,000 barrels of oil annually at its Seep Ridge project in the Uinta Basin by the end of 2015. Last fall, with conventional crude oil priced at \$50 per barrel, Red Leaf was forced to push back its development timeline. Its CEO, Adolph Lechtenburger, announced plans to postpone further construction on its mine and retort until 2017, with production intended to begin in late 2018. He said engineering changes to its Ecoshale process could lower Red Leaf's "break-even point" for oil

<sup>13</sup> World Energy Insight 2010, Oil Shale – The Unconventional Which Will Become Conventional, by Sandor Liive, World Energy Insight, at 24-26, available at <file:///C:/Users/Owner/Downloads/P24-26%20Sandor%20Liive.pdf>. m

<sup>14</sup> Quoted in *Estonia Eager To Teach World About Oil Shale*, Wilkes-Barre TimesLeader, May 30, 2013, available at <http://timesleader.com/archive/343886/news-apbusiness-3619643485710351-estonia-eager-to-teach-world-about-oil-shale-2.n>

COMMENT(S)	RESPONSE(S)
<b>N9</b>	<b>Utah Physicians for a Healthy Environment (cont.)</b>
<b>N9o</b>	<p data-bbox="596 337 615 358">14</p> <p data-bbox="287 393 905 475">production to between \$60 and \$80 a barrel. If conventional crude oil price rise above that level and stay there, its CEO expects the Seep Ridge project to become operational, producing 20,000 to 30,000 barrels a day.<sup>15</sup></p> <p data-bbox="287 500 915 889">The US Department of Energy estimated in 2012 that surface-mined oil shale becomes profitable at US\$54 per barrel.<sup>16</sup> INTEK, Inc., a private consulting firm, estimated in 2008 that for a mature 100,000 Bbl/d capacity plant, the average minimum economic prices would be \$47/Bbl for surface mining and \$57/Bbl for underground mined oil shale.<sup>17</sup> According to a survey conducted by the RAND Corporation in 2005, the cost of producing a barrel of oil at a surface retorting complex in the United States (comprising a mine, retorting plant, upgrading plant, supporting utilities, and spent shale reclamation), would range between \$70–95 (\$440–600/m3, adjusted to 2005 values). It estimated that this cost would fall by 35–70% after its first 500 million barrels of production to between \$35 to \$48 per barrel.<sup>18</sup> The International Energy Agency estimated, in 2010, based on the various pilot projects, that investment and operating costs would be similar to those of Canadian oil sands, meaning that oil shale projects would be economic at prices above \$60 per barrel at then-current costs.<sup>19</sup></p> <p data-bbox="287 959 915 1011">[[Further, the group argues, under all the Keystone-generated-emissions scenarios that were considered in the State Department's report, the U.S. would fail to meet the target</p> <p data-bbox="287 1045 915 1097"><sup>15</sup> Quoted in <i>In Utah, Scaled-Down Oil Shale Dreams Still Alive</i>, By Brian Maffly , The Salt Lake Tribune, Oct 07 2015, available at <a href="http://www.sltrib.com/home/3039902-155/in-utah-scaled-down-oil-shale-dreams?page=1">http://www.sltrib.com/home/3039902-155/in-utah-scaled-down-oil-shale-dreams?page=1</a>.</p> <p data-bbox="287 1115 915 1149"><sup>16</sup> "Fact Sheet: U.S. Oil Shale Economics" (PDF). DOE. Office of Petroleum Reserves. Retrieved 2012-04-22</p> <p data-bbox="287 1183 915 1252"><sup>17</sup> INTEK, Inc., Economics, Barriers, And Risks Of Oil Shale Development In The United States, Khosrow Biglarbigi, 2008, available at <a href="http://www.usaee.org/usaee2008/submissions/OnlineProceedings/7995-Biglarbigi%20-%20Oil%20Shale%20Economics.pdf">http://www.usaee.org/usaee2008/submissions/OnlineProceedings/7995-Biglarbigi%20-%20Oil%20Shale%20Economics.pdf</a>.</p> <p data-bbox="287 1253 915 1321"><sup>18</sup> Bartis, James T.; LaTourrette, Tom; Dixon, Lloyd; Peterson, D.J.; Cecchine, Gary (2005). Oil Shale Development in the United States. Prospects and Policy Issues. Prepared for the National Energy Technology Laboratory of the United States Department of Energy (PDF). RAND Corporation. ISBN 978-0-8330-3848-7.</p> <p data-bbox="287 1339 915 1357"><sup>19</sup> IEA (2010). World Energy Outlook 2010. Paris: OECD. pp. 165–169. ISBN 978-92-64-08624-1.</p>

N9o See the response to Comment N9k.

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N9

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of cutting emissions by 17 percent below 2005 levels by 2020, the goal the U.S. has established in the context of international climate negotiations. The emissions estimates are also not consistent with the goal of limiting global warming to no more than 2 degrees Celsius, which world leaders agreed to at the 2009 climate summit in Copenhagen.]]

Over the first half of 2016, the benchmark price for West Texas Intermediate Crude (WTI) has averaged \$40 per barrel—meaning that in the current market, it is highly unlikely that the South Project would be economically viable, even if it is granted its requested ROWs. In the future, however, if the price of conventional crude oil were to increase by more than a third (above \$60 per barrel) and stay there, the South Project might become economically viable. But this would only be true if the South Project were in a position to sell its surplus power as electricity (had the power line right of way) and if it could deliver its crude oil product via pipeline (had the oil pipeline right of way), and could receive its water via pipeline (had the water pipeline right of way). If these requested rights of way are not granted (the “No Action Alternative” in the EIS), the world benchmark price for crude oil might have to rise by more than two-thirds before the South Project would become economically viable. If the BLM’s is correct in its assumption that Enefit would build its own stand-alone power plant if its requested power line ROW were denied, then that cost would also have to be covered by the future benchmark price of competing conventional crude oil. All of these factors should have been included in the economic analysis of the No Action Alternative that the BLM was obligated to perform, but did not.

This “back of the envelope” analysis of the South Project’s likely position in relation to the world crude oil market demonstrates that under plausible future world crude oil market conditions (sustained price increases of from one-third to two-thirds), the BLM’s decision to grant or deny Enefit’s ROW request could decide whether the South Project gets built. Clearly, the BLM’s willingness to assume, without evidence or analysis, that Enefit could build its South Project regardless of whether its ROW request were granted or denied is not the detailed, evidence-based analysis that the BLM is

N9p

The South Project would be constructed entirely on private land and mineral and is outside the jurisdiction of the BLM. Approval or denial of the South Project would be considered by the appropriate mine permitting agencies as noted in Chapter 1 of the EIS. The impacts of the South Project have been moved to the cumulative impact section to eliminate this confusion. Enefit intends to pursue the South Project regardless of the BLM decision. Therefore, the South Project is not essential to a choice between Utility Project alternatives.

N9p

**COMMENT(S)**

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N9	Utah Physicians for a Healthy Environment (cont.)
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N9p

obligated to perform of the “No Action” alternative in this EIS. It is quite plausible that the South Project would not be built now, or in the foreseeable future, without obtaining the requested ROW. Therefore, the BLM is obligated to evaluate the large environmental impacts of the South Project itself before granting Enefit’s ROW request.

N9q

The BLM correctly argues that the South Project’s mine and processing complex exist only on “a conceptual level,” and that it hasn’t been provided with a detailed enough design to identify the project’s environmental impacts. This doesn’t give rise to an obligation on the BLM’s part to grant the requested ROW anyway. It gives rise to an obligation on the BLM’s part to require Enefit to provide a medium level of design detail that is sufficient to allow it and the public to have meaningful notice of such basic estimates with environmental significance as how many tons of rock would be mined, how many barrels of oil that rock would produce, how many cubic yards of solid waste would result, how it would be disposed of, how many barrels of water would be consumed in the process, how many gallons of liquid waste would generated and how it would be disposed of, how many tons of various category air pollutants would be added to the Uinta Basin airshed, and how many tons of CO2 would be added to the atmosphere.

N9r

Ball-park estimates of these very basic environmental variables shouldn’t be that hard for Enefit to provide in light of its 30 years of experience producing crude oil from oil shale, and its demonstrated ability to produce it on a large scale (1.3 million barrels a year). Because it purports to be on a timeline to begin large scale production from the South Project four years from now, one would think that Enefit would be far enough along in its design process to make reasonable ball-park estimates of these basic parameters of its project. Nevertheless, Enefit remains surprisingly non-committal regarding such basic features of the South Project as how much surface and how much underground mining is planned, how much waste rock will be produced, how it will be disposed of, how much waste water will be produced and how it will be disposed of, how much water it will consume, etc, These are the kind of parameters that would not seem to depend on whether it receives its requested ROWs. The fact that Enefit has not even attempted to provide reasonable ranges for these kinds of parameters makes one

N9q

The requested information will not change as a result of the BLM decision because the South Project proceed to full buildout regardless of the BLM decision. As such, the requested information is not essential to a decision between the BLM alternatives. The South Project has been moved to the cumulative impact section.

N9r

Preliminary design and construction information has been provided by Enefit and is incorporated in the EIS in the cumulative impacts section to the extent that they accumulate with the direct and indirect impacts of the alternatives. Approval or denial of the South Project would be considered by the appropriate mine permitting agencies as noted in Chapter 1 of the EIS.



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N9	Utah Physicians for a Healthy Environment (cont.)
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wonder whether it is choosing to "hide the ball," hoping that it will get the permits that it needs permanently approved before the actual environmental impact of its project can be analyzed and objected to.	
VI. NATIONAL POLICY, ENERGY SECURITY, AND CLIMATE DISRUPTION	
In addition to the threshold issue of whether the South Project and its general environmental impacts are incremental to the BLM's decision to grant or deny Enefit's request for ROWs, there is another threshold issue that requires a more thorough evaluation than the BLM has given it in its draft EIS.	
The draft EIS cites several Federal statutes, state statutes, and state executive actions that appear to make facilitating fossil fuel development generally, and oil share development in particular a national or state priority. It interprets its decision to grant the requested ROWs as an exercise of discretion that implements what it interprets as the pro-oil-shale-development goals of these laws and orders.	
N9s	For example, Section ES.6 of the draft EIS cites the language of Section 369 of the Energy Policy Act of 2005, which states that oil shale and tar sands deposits are "strategically important domestic resources that should be developed to reduce the growing dependence of the U.S. on politically and economically unstable sources of foreign oil imports" and mandates that development of oil shale "should occur, with an emphasis on sustainability" to benefit the United States. (Id at § 15927(b)). The draft EIS says that the Energy Policy Act "directs the Secretary to make public lands available to support oil shale development activities. The Applicant's request for granting of a right-of-way(s) from the BLM supports the purposes underlying the above provisions of the Energy Policy Act."
	The draft EIS also cites a document dated March 2011, released by Utah Governor Herbert entitled Energy Initiatives & Imperatives, Utah's 10-Year Strategic Energy Plan. The draft EIS characterizes this document as
	a structure and outline to guide the state's planning with regards to energy and transmission development, efficiency and conservation,

RESPONSE(S)

N9s

Comment noted.

**COMMENT(S)**

**RESPONSE(S)**

N9	Utah Physicians for a Healthy Environment (cont.)
	<p data-bbox="594 337 613 357">18</p> <p data-bbox="333 394 852 475">economic development, and the development and application of new technology to promote energy independence and sustainability for Utah. The draft asserts that there are five guiding principles and ten goals for energy strategy in the state.</p> <p data-bbox="285 535 915 647">Without naming those principles and goals, the draft concludes that “both the Utility Project and South Project are proposed with those principles and goals in mind in order to promote and sustain responsible energy and economic development in the State of Utah.”</p> <p data-bbox="285 673 915 971">As other statements of Utah state policy that encourage development of fossil fuels, the draft cites a February 2012, State of Utah Resource Management Plan for Federal Lands (URMPFL), that creates a Uintah Basin Energy Zone (UBEZ) whose purpose is to promote the development of the fossil fuels found there. In particular, it cites Utah Code Ann. §63J-8 105.5(5) (c) and (d) which exhort the Federal government to “allow continued maintenance and increased develop ment of roads, power lines, pipeline infrastructure, and other utilities necessary to achieve the goals, purposes, and policies described in this section” and “refrain from any planning decisions and management actions that will undermine, restrict, or diminish the goals, purposes, and policies for the [UBEZ].”</p> <p data-bbox="285 997 915 1325">First, it should be noted that the Energy Policy Act of 2005 and nearly all of its counterparts at the state level are based on a factual predicate that no longer holds, i.e., that the nation is so dependent on foreign sources of energy that it threatens our national security. Since the passage of the Energy Policy Act and its state-level counterparts, the fracked-shale oil and gas boom has flooded the domestic energy market and undercut the markets for coal and unconventional crude oil. The national policy has shifted in response. For the first time, it is now legal to export domestic oil in order to ease the glut of domestic oil that is making not just unconventional oil like oil shale and tar sands uneconomic, but is shutting down a growing percentage of existing, higher-cost conventional oil fields as well. According to recent analyses by the Department of Defense, the greater threat to national security is no longer reliance on</p>

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foreign oil, but the social and economic dislocations that will occur as climate change accelerates.

N9t

It should be noted that the analysis of national and state policy in the draft EIS is an example of "cherry picking" at its finest. The draft makes no mention of the fact that conservation of resources and of protection of natural systems and wildlife habitat are part of the BLM's own mandate. Nor does the draft EIS's discussion of policy mention the national policies that the Environmental Protection Agency was created to promote. Among these are making the air safe to breathe (the Clean Air Act), clearing the atmosphere so that the public may enjoy national parks and wilderness areas (the Regional Haze Rule), the Clean Water Act, the Clean Power Plan, which is designed to implement the EPA's finding that climate change caused by greenhouse gases has reached the point where it is a danger to public's health. The draft's policy section might have mentioned the international commitments that the United States has made at the Paris Climate Conference to keep the earth's climate from warming by more than 2° Celsius, and to that end, commit this country to reduce its greenhouse gas emissions by 26-28 percent below the 2005 level in 2025, and to make "best efforts" to reduce emissions by 28 percent. All of these policies clash with the obsolete and now counterproductive policy of the Energy Policy Act to prioritize the development of uneconomical and environmentally harmful unconventional oil industry.

N9u

The nation's conservation and environmental protection goals are embodied in Federal statutes and Executive Orders. They come into direct conflict with the fossil-fuel-promoting policies enunciated in the Energy Policy Act of 2005 and its state-level copycats, yet the draft EIS fails to note these countervailing policies and their relevance to its decision to promote one set of the public interests over rival public interests. The state statutes are primarily exhortations by the state to the Federal government to facilitate fossil fuel development at the expense of other values that Federal public lands provide. It is surprising that the draft EIS places so much emphasis on them, since they have no binding effect on the Federal government. A more balanced EIS would have acknowledged that there are many national policies that are countervailing to those of the Energy Policy Act, and should play a role in the BLM's decision.

N9t

The analysis of the proposed utility rights-of-way are in compliance with the policies set by the BLM and partner agencies. Approval or denial of the South Project is outside the jurisdiction of the BLM and will be considered by the appropriate mine permitting agencies. Table 1-2 of the EIS identifies all of the laws, regulations, and policies applicable to this project.

The Paris Agreement is not yet international law and will not be until 2018 or 2020. Also, the United States participation in the agreement is not certain at this time. Therefore, reference to this policy will not be included in this document. See Table 1-2 of the EIS for a listing of major federal authorizing laws, regulations, and policies. There is no violation of law anticipated under either alternative. The emissions expected from the Proposed Action and No Action alternatives are disclosed in Chapter 4.

N9u

Comment noted. See Table 1-2 of the EIS for a listing of major federal authorizing laws, regulations, and policies.

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VII. ENVIRONMENTAL ISSUES

Oil derived from oil shale has many environmental disadvantages relative to conventional oil, and those disadvantages should be reflected in the degree to which the BLM is willing to promote the development of oil shale. The first, and most obvious, is that the energy efficiency of extracting oil from oil shale is far below that of conventional oil. Where conventionally produced oil has an average return on energy invested of 20:1, oil from shale generally has a return on energy consumed of between 1:1 and 5:1. Consequently, oil from shale is much more carbon intensive than conventional oil, making it from four times to twenty times as harmful to the earth's climate. The South Project, for example, is expected to emit 450 million tons of carbon dioxide equivalent over its life cycle, which is roughly equal to the annual emissions of 100 coal-fired power plants.<sup>20</sup> A state in which the BLM actively promotes the development of oil shale will pay a stiff penalty when it comes time to reconcile that development with its mandatory carbon-reduction targets under the Clean Power Plan.

Oil from surface-mined shale erodes soil, tares up aquifers, pollutes ground water, and generates prodigious amounts of solid waste. The South Project, for example, is expected to generate 28 million tons of raw oil shale ore rock per day in order to produce 50,000 barrels of oil.

Water represents the major vector of transfer of oil shale industry pollutants. One environmental issue is to prevent noxious materials leaching from spent shale into the water supply. The oil shale processing is accompanied by the formation of process waters and waste waters containing phenols, tar and several other products, heavily separable and toxic to the environment. A 2008 programmatic environmental impact statement issued by the United States Bureau of Land Management stated that surface mining and retort operations produce 2 to 10 U.S. gallons of waste water per 1 short ton of processed oil shale.

<sup>20</sup> See Common Dreams, *Obama's Interior Department Pushes Oil Shale Plan Threatening Massive Climate Pollution, Water Use*, April 6, 2016, available at <http://www.commondreams.org/newswire/2016/04/06/obamas-interior-department-pushes-oil-shale-plan-threatening-massive-climate>.

N9v

N9v

This comment is outside the scope of this EIS. This EIS need is to respond to the right-of-way applications in accordance with policy and regulation. BLM has no decision to make regarding the South Project.

N9w

N9w

The EIS discloses the potential cumulative impacts on water resources in Chapter 4. This comment is focused on the South Project for which resulting impacts have been disclosed to the extent that (1) they are known and (2) they are considered cumulative effects of the Proposed Action in accordance with the BLM NEPA Handbook. The 2008 Programmatic EIS was referenced in preparation of this EIS.

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N9x

Oil shale extraction is also a prodigious user of water. The South Project has water rights to use 10,480 acre feet of water annually. If it uses that much, it will take as much water from tributaries of the Colorado as a city of 50,000 would use in a year. The Colorado River Basin is already expected to lose up to 27 percent of its April to July flows due to climate impacts. At a rate of up to four barrels of water per barrel of oil, Enefit's project would be a profligate use of this dwindling resource.

N9y

The South Project would be also add another significant source of added ozone precursors (oxides of nitrogen and oxygen, and Volatile Organic Compounds) to the Uinta Basin air shed, which is already on track to become an ozone "non-attainment area" for violating the EPA's 70 parts per billion ambient air standard. During winter, ozone in in the Uinta Basin already routinely rises to over 100 parts per billion—more than the ozone concentrations found in Los Angeles. Ozone at these levels impairs respiratory and cardiac function, and contributes to a generalized inflammation throughout the body, promoting diseases that range from diabetes to dementia. This fact, alone, may disqualify the South Project on the ground that it violates the EPA's rules that prohibit significant deterioration of air quality from point sources.

All of these disadvantages of obtaining oil from oil shale compared to obtaining it from conventional sources should be carefully weighed in any EIS that will likely decide whether the South Project is or is not built.

VIII. CLIMATE DISRUPTION

The draft EIS dismisses the need to evaluate the harm that granting the requested ROWs might to the climate with the following argument, ar 4-41:

**South Project Complex Greenhouse Gas Effects**

**Connection of project-specific GHG emissions to GHG emission effects at the state, regional, or global level would have no context and is a relatively meaningless exercise.** Although reasonable estimates for GHG emissions may be derived for a specific activity after

N9x

The EIS discloses the potential impacts on water resources in Chapter 4. The South Project water use is disclosed as a cumulative effect of the Utility Project. Since the South Project will proceed to full buildout regardless of the BLM alternative selected, the use of water by the South Project is not essential to a reasoned choice between alternatives.

N9y

Air quality impacts of the South Project are not fully known at this point in time. BLM analyzed air quality based on the best available information in accordance with 40 CFR 1502.22. The EPA will review the South Project's proposal for emissions when that application is submitted as part of the mine permitting process.

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N9	Utah Physicians for a Healthy Environment (cont.)
	<p>22</p> <p>engineering design, there is uncertainty in evaluating longer-term emissions levels and the relationship between GHG sources and sinks over a lengthy and uncertain timeframe. Since climate change effects resulting from GHG emissions are global in scale, there is no reliable way to quantify whether or to what extent local GHG emissions can contribute to the larger phenomenon. (emphasis added).</p> <p>The imperative of climate change mitigation is to urgently cap global warming at two degrees Celsius (2°C) in order to prevent catastrophic global change. In order to do this, global GHG emissions must level by 2020 and then reduce by half by 2050 (European Commission 2013). Yet scientists nearly unanimously predict that without urgent policy and multi-sectoral action the world will warm by 4°C above the preindustrial climate by the end of the century (World Bank 2012). Such a rise would instigate unprecedented heat waves, droughts, flooding, cyclones and wildfires in many of the world’s poorest regions (IPCC 2014) with serious impacts on infrastructure, ecosystems and human services that are likely to undermine development efforts and global development goals (World Bank 2012).</p> <p>The International Energy Agency emphasizes energy infrastructure investments generally are designed to have an economically useful life of 20-to-40 years. Therefore, significant additional investment in dirty-energy infrastructure going forward will doom the goal of limiting global warming to less than 2°C. An immediate shift of energy infrastructure investment to low or zero-carbon sources is the only way to curb CO2 emissions soon enough to meet that goal.</p> <p>The international agreement at COP21 to limit climate warming to less than 2°C means that signing governments can no longer commit public funds or, for that matter, take steps to facilitate private sector funding for carbon-intensive projects. Recognizing this, the Obama Administration has imposed a moratorium on granting new leases of Federally-owned coal. It has also denied a request by Canadian tar sands developers to build the Keystone XL pipeline to carry Canadian oil to American refineries in Gulf of Mexico.</p>

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N9z

On November 6, 2015, President Obama said "America is now a global leader when it comes to taking serious action to fight climate change, and, frankly, approving this project would have undercut that global leadership." For almost identical reasons, approving a right of way over Federal lands to facilitate this Canadian company's efforts to lower the cost of, and expand use of Canadian-owned shale oil and gas in the domestic American market would likewise undercut American leadership in the movement to bring climate change under control.

The BLM might validly argue that these are public policy arguments, and that such public policy decisions are made at a level above state BLM offices, and are made outside the context of drawing up Environmental Impact Statements. However, the decision in this docket is whether to grant a Federal right of way to a private fossil fuel extraction project. The Federal right-of-way is likely to be the only feasible alternative access to the project sites. Therefore, the BLM's decision to grant or deny the requested right of way will likely determine whether 450 million tons of CO<sub>2</sub> are emitted into the atmosphere over the life of the South Project. It is the BLM's moral duty, if not yet its legal duty, not to take actions that have the effect of promoting the use of carbon-dense energy relative to cleaner alternatives.

N9aa

In assessing the environmental impact of a decision to grant or deny the requested right-of-way, the BLM should not make the mistake here that it made in *High Country Conservation Advocates v. U.S. Forest Service*. The Forest Service and the BLM argued that the benefits of the leased coal were quantifiable, but the social costs were not because climate effects were merely cumulative, and no settled method for estimating them. Even though there was no explicit policy directive from the Secretary of the Interior to estimate the dollar value of costs and benefits in coal leasing NEPA's, the Court found that the BLM could not dismiss the impacts of both methane released from mining and CO<sub>2</sub> emissions from burning as "unquantifiable". Noting that the Administration's Social Cost of Carbon estimate "was expressly designed to assist agencies in cost-benefit analyses" the court held that BLM's failure to either use the Administration's Social Cost of Carbon (or explain why it was not appropriate) unjustifiably set the social cost of these emissions at zero.

N9z

The South Project air quality impacts are disclosed as a cumulative effect of the Utility Project to the extent that they are known. When the impacts are not known, the BLM has followed the procedures in 40 CFR 1502.22. Since the South Project will proceed to full buildout regardless of the BLM alternative selected, emissions from the South Project are not essential to a reasoned choice between alternatives.

N9aa

The BLM has estimated the GHG emissions from the Utility Project, as a proxy for determining effects to climate change. The total anticipated emissions were 9,427 metric tons, which is well below the EPA's monitoring requirement of 25,000 metric tons/year, above which quantitative analysis may be warranted. Likewise, the analysis of the social costs of carbon will be so small as to not meaningfully contribute to a reasoned choice between Utility Project alternatives. It is believed that this comment is primarily concerned with the South Project. Please note that the South Project is a reasonably foreseeable action that may accumulate with the Proposed Action, and as such has been included in the cumulative impacts section to the extent those impacts are known. However, since the South Project will proceed to full buildout regardless of the BLM decision to be made, its total accumulation of emissions will not meaningfully contribute to a reasoned choice between alternatives.

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N9ab

Federal courts have also required agencies to analyze the effects of an action on climate change under NEPA. In *Center for Biological Diversity v. National Highway Traffic Safety Administration*, the Ninth Circuit held that NEPA required the National Highway Traffic Safety Administration (NHTSA) to analyze the effects of its action on climate change, even though climate change is a global phenomenon and NHTSA's action would merely add to cumulative impacts.

N9ac

The Ninth Circuit also invalidated NHTSA's decision to monetize the benefits of GHG emission reduction as "zero," despite that the agency had considered a range of values, which did not include zero. NHTSA argued that any estimated value of GHG emissions reduction associated with its action were "too uncertain to support . . . their inclusion among the savings in environmental externalities." *Center for Biological Diversity v. Nat'l Highway Traffic Safety Admin.*, 538 F.3d 1172, 1217 (9th Cir. 2008). The court rejected this reasoning, holding that the failure to include a quantitative assessment of the benefits was arbitrary and capricious because the range of estimated values NHTSA considered were all above zero. 19 Id., 1202. Page 7 Director Mike Boots Comments for Docket ID No. 2014-30035.

N9ad

The Ninth Circuit's decision that a quantitative assessment of benefits is necessary in certain circumstances for an action to be upheld lends the most support to the conclusion that Federal Circuit Courts will follow in the *High Country* court's reasoning and require that SCC estimates, once used, must continue to be included in EISs. While SCC estimates are based on models and thus are not guaranteed to be precise, they do give agencies an estimate of the costs of increased carbon emissions or the benefits of decreased carbon emissions that could result from an action. Therefore, SCC estimates may be treated similarly to the range of values discussed in *Center for Biological Diversity*; that is, an agency's decision to ignore an SCC estimate would similarly be found arbitrary and capricious.

N9ab

There is no similarity between the actions of the National Highway Traffic Safety Administration (fuel economy regulation) upon which the Ninth Circuit ruled and the temporary construction activities comprising the Proposed Action. Specifically, the Ninth Circuit ruled that National Highway Traffic Safety Administration's reasoning to not monetize the benefits of GHG reductions as part of the underlying analysis of fuel economy regulations was arbitrary and capricious. This is not the same as a mandate to "analyze the effects of its action on climate change." See the response to Comment N9aa regarding the analysis of GHG emissions as a proxy for climate change impacts.

N9ac

Since the GHG emissions from the Utility Project are so small as to be well below the EPA's minimum threshold for monitoring, it was likewise determined the Social Cost of Carbon will be so small as to not meaningfully contribute to a reasoned choice between Utility Project alternatives. Therefore, a quantification was not presented in this EIS. See the response to Comment N9aa.

N9ad

The fact that a project is being analyzed in an EIS does not by itself necessitate a Social Cost of Carbon analysis. The need for any analysis in NEPA is determined by whether the information would meaningfully contribute to a reasoned choice between the alternatives. See the response to Comment N9aa.



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N9	Utah Physicians for a Healthy Environment (cont.)
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N9	Utah Physicians for a Healthy Environment (cont.)
	<p>26</p> <p>APPENDIX</p> <p>MARKET ANALYSIS IN THE DEPARTMENT OF STATE'S ENVIRONMENTAL IMPACT STATEMENT FOR THE KEystone XL PIPELINE</p> <p>In January, 2014, the Department of State (DOS) issued its Final Supplemental Environmental Impact Statement analyzing the impact of building the Keystone XL pipeline (FSEIS). In it, DOS concluded that building the Keystone pipeline would have no effect on the levels of crude produced from Canadian tar sands and therefore, would have no effect on greenhouse gas emissions and the earth's climate. Its conclusion was based on its analysis of the likely direction of the market for crude oil going forward. It projected future prices of conventional crude oil and compared them to the future cost of producing Canadian tar sand crude oil and delivering it to refineries. It concluded that prices for conventional crude oil were likely to remain high enough going forward that the comparatively modest reduction in transportation costs that would result from building the Keystone pipeline would not affect tar sand oil producers' decisions to invest in new capacity.<sup>21</sup></p> <p>Figure 1, below, was taken from the Department of State's FSEIS.<sup>22</sup> It depicts existing tar sand oil production capacity, the estimated unit cost of planned additional capacity, and how much capacity would have to be added to meet the estimates by the U.S. Energy Information Agency (EIA) and the Canadian Association of Petroleum Producers (CAPP) of future Canadian tar sand crude oil production.</p> <p>In its FSEIS, the Department of State (DOS) estimated that the cost savings that building the Keystone pipeline would achieve relative to rail transport were, at most, \$8 per barrel. It estimated production costs for virtually the entire tar sands oil industry to be \$75 per barrel or less. It expected prices for conventional crude oil going forward to remain so far above the production breakeven level of \$75 per barrel that the</p> <p><sup>21</sup> See Department of State, Final Supplemental Environmental Impact Statement, Keystone XL Project, January 2014, Vol. 1, Ch. 1, 1.4 Market Analysis, pages 1.4-7 and 1.4-8.</p> <p><sup>22</sup> Id. at page 1.4-7.</p>

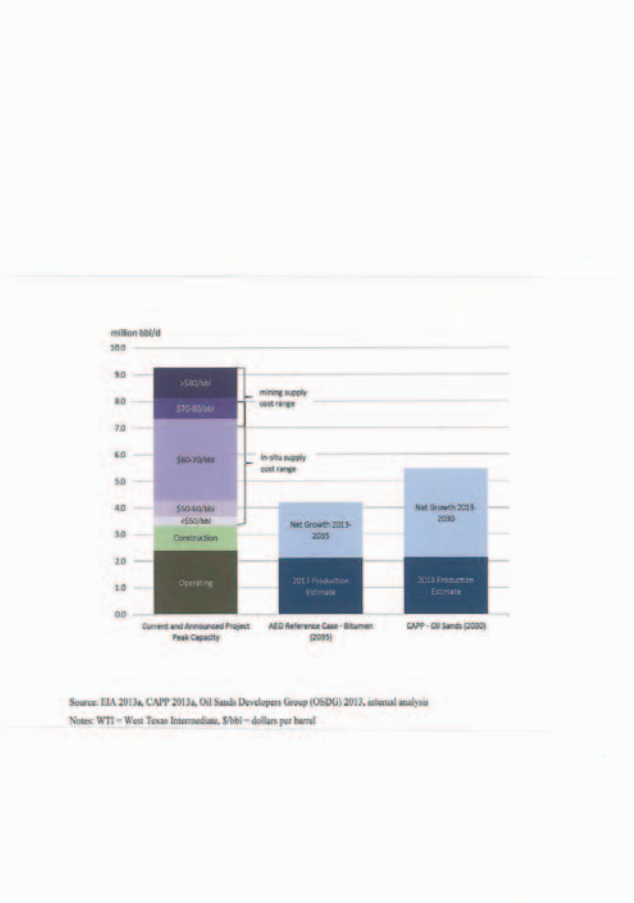
COMMENT(S)	
N9	Utah Physicians for a Healthy Environment (cont.)
<p>27</p> <p>comparatively modest transportation cost savings that the Keystone pipeline would make available would not affect producers' decisions to invest in additional tar sand capacity under any plausible alternative supply-demand scenario.</p>	

RESPONSE(S)

COMMENT(S)

RESPONSE(S)

N9	Utah Physicians for a Healthy Environment (cont.)
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**Figure 1** Projected Response of Supply of Crude Oil from Canadian Tar Sands to Price of Conventional Crude Oil (West Texas Intermediate, dollars per barrel)

COMMENT(S)

RESPONSE(S)

N9	Utah Physicians for a Healthy Environment (cont.)
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In reaching this conclusion, DOS dismissed the arguments made by a number of analysts and financial institutions commenting on its EIS who observed that rejecting the Keystone XL pipeline could add enough to unit transportation costs to substantially reduce production from tar sands if future prices for competing conventional crude oil were lower than expected. DOS conceded that over the long term, lower-than-expected oil prices could theoretically reduce oil sands production, and that higher transportation costs due to the unavailability of the pipeline “could exacerbate the impacts of low prices.” But DOS said that there was little chance of this happening because prices for conventional oil were not likely to fall below \$75 dollars a barrel. Here is DOS’s specific reasoning:

The primary assumptions required to create conditions under which production growth would slow due to transportation constraints include: that prices persist below current or most projected levels in the long run; and all new and expanded Canadian and cross-border pipeline capacity, beyond just the proposed Project, is not constructed. **Above approximately \$75 per barrel** (West Texas Intermediate [WTI]-equivalent), **revenues to oil sands producers are likely to remain above the long-run supply costs** of most projects responsible for expected levels of oil sands production growth. Transport penalties could reduce the returns to producers and, as with any increase in supply costs, potentially affect investment decisions about individual projects on the margins. However, **at these prices**, enough relatively low-cost in situ projects are under development that **baseline production projections would likely be met even with constraints on new pipeline capacity**. Oil sands production is expected to be most sensitive to increased transport costs in a range of prices around **\$65 to 75 per barrel**. **Assuming prices fell in this range, higher transportation costs could have a substantial impact on oil sands production levels**—possibly in excess of the capacity of the proposed Project—because many in situ projects are estimated to break even around these levels. **Prices below this range** would challenge the supply costs of many projects, regardless of pipeline constraints, but higher transport costs **could further curtail production**. Oil prices are volatile, particularly over the short term, and long-term trends, which drive investment decisions, are difficult to predict. Specific supply cost thresholds, Canadian production growth forecasts, and the amount of new capacity needed to meet them are uncertain. As a result, the price threshold above which pipeline constraints are likely to have a limited impact on future production levels could change if supply costs or production expectations prove different than estimated in this analysis.

COMMENT(S)	RESPONSE(S)
<b>N9</b>	<b>Utah Physicians for a Healthy Environment (cont.)</b>
	<p data-bbox="594 337 613 358">30</p> <p data-bbox="287 430 863 573">Because DOS assumed that conventional crude oil prices could not fall below \$75 per barrel going forward, it assumed that production of oil from Canadian tar sands would be shielded from the effects of an \$8-per-barrel increment in transportation costs that would result from a decision to accept or reject the Keystone XL pipeline.<sup>23</sup></p> <p data-bbox="287 597 863 802">Carbon Tracker is a Canadian NGO that analyzes fossil fuel markets and their impact on climate. Its basic analytical method was used by DOS in its FSEIS to estimate the sensitivity of tar sand oil production to transportation cost increments and to the future price of conventional crude oil. The FSEIS departs from Carbon Tracker's own market analysis only in its refusal to take seriously the possibility that the price of conventional crude oil going forward would fall below \$75 a barrel.</p> <p data-bbox="287 826 919 1125">DOS's assumption that prices for conventional crude oil would remain far above \$75 per barrel was quickly invalidated by the market, which experienced a glut of crude oil from domestic fracking and a refusal by OPEC to remove the glut by cutting its production. During the time that the Department of State was preparing its EIS (between summer of 2011 to the beginning of 2014), the price of the West Texas Intermediate Crude benchmark averaged nearly \$100/barrel. A year later, that price had been cut in half. By January of 2016, it had fallen below \$30, and since that time has hovered between \$30 and \$50 per barrel. These prices are far below DOS's expectations, and below the price at which most Canadian tar sands are economically viable.</p> <p data-bbox="287 1200 909 1255"><sup>23</sup> See Department of State, Final Supplemental Environmental Impact Statement, January 2014, Vol. 4, Ch. 5, Keystone XL Project, 5.3 Comparison of Alternatives, 5.3.2.2 Western Canadian Sedimentary Basin Oil Sands Production Indirect Lifecycle Effects, pages 5.3-5 and 5.3-6:</p> <p data-bbox="336 1271 871 1339">In all of the Alternatives scenarios, the same daily capacity of 830,000 barrels per day (bpd) of transported Western Canadian Sedimentary Basin crude oil is assumed. Therefore, the indirect lifecycle emissions are expected to be the same for all Alternatives scenarios as compared to the proposed Project.</p>

**COMMENT(S)**

**RESPONSE(S)**

**N9**

**Utah Physicians for a Healthy Environment (cont.)**

31

For example, as of February, 2016, producers of Canadian tar sand oil received \$20 a barrel when their oil was delivered to Gulf Coast refineries.<sup>24</sup> But producers were paying an estimated \$20.50 a barrel to ship the oil to Houston, first by truck and then by rail. When the cost of chemicals required to dilute the crude to make it less viscous were factored in, producers were losing \$2.74 a barrel, according an analysis by RBN Energy LLC, a Canadian tar sand industry consulting company. Producers able to ship by pipeline were making \$2.97 per barrel after transportation fees. By not having access to the Keystone pipeline, producers paid \$5.71 more to transport their oil by train.<sup>25</sup> That increment was nearly 30% of the total revenue that they earned by producing and transporting their product to market. A 30% increment in the delivered cost of a basic commodity like crude oil can have a large impact on producers' long-run decisions to stop production or cancel future expansion plans, especially when delivered costs exceed total revenue, as they have for many producers of Canadian tar sand oil in 2016.

If DOS had accurately forecast what the price of conventional crude oil would be a year after it issued its FSEIS, it would have had to reverse its finding that an \$8 per barrel increment in transportation cost would not affect production. In a report published shortly after the publication of the FSEIS, Carbon Tracker found that tar sand operations could be made unprofitable by having to transport product by rail rather than pipeline for producers whose breakeven production costs range from \$53 to \$60 dollars a barrel. This was estimated to represent 25% of total Canadian tar sand production, or 525,000 barrels a day. When diluted with light crude so that it can flow through a pipeline, this represents 730,000 barrels of crude blend per day.

The 730,000 barrels of crude blend per day that would become profitable if the Keystone pipeline were built equals the entire capacity of the Keystone pipeline that was to be allocated to transporting Canadian tar sand oil. When burned, Carbon

<sup>24</sup> The price of tar sand-derived crude at the production site sells at a substantial discount (averaging over \$14/barrel in 2016) to WTI benchmark crude because the heavy tar sand crude contains less energy per barrel, and is expensive to refine, and is more remote from refineries capable of handling it.

<sup>25</sup> "See RBN Energy, LLC, "Desperadoes – Part 2 – Canadian Heavy Crude Oil Producers Can't Make It Up On Volume," published 02/15/2016, appearing at <https://rbnenergy.com/desperadoes-part-2-canadian-heavy-crude-oil-producers-can-t-make-it-up-on-volume>.

**COMMENT(S)**

**RESPONSE(S)**

**N9**

**Utah Physicians for a Healthy Environment (cont.)**

32

Tracker estimates that this "Keystone-enabled" increment would produce from 4.9 to 5.3 billion metric tons of carbon dioxide-equivalent over the 35-year life of the pipeline. Carbon Tracker notes that this would equal the amount of greenhouse gases emitted annually by a billion passenger cars. Carbon Tracker suggests that this "Keystone-enabled" increment of greenhouse gases would constitute a "significant" effect on the earth's climate under the rejection test formulated by the Obama Administration.<sup>26</sup>

The FSEIS was likely correct that if conventional crude oil prices had remained substantially above \$75 a barrel, tar sands expansion would have happened at the same rate with or without the Keystone pipeline. But the analyses by RBN Energy LLC and Carbon Tracker show that at prices below \$75 a barrel, the existence of cheap transport capacity can drive the decision by investors to develop or not develop an unconventional oil resource. The closer that prices for conventional crude oil fall toward the production cost of unconventional crude oil, the less likely that projects to develop unconventional crude oil will go forward, and the more impact the availability of low-cost transportation alternatives will have on those decisions.

The FSEIS DOS prepared for the Keystone XL Pipeline project and the basic approach that it took to analyzing the impact that transportation alternatives can have on decisions to invest in unconventional crude oil projects is directly applicable to BLM's Environmental Impact Statement for Enfit's Right of Way Request.

In both the Keystone pipeline EIS and an Enfit EIS, the immediate issue is whether the Federal government should grant a right of way whose potential effect is to make a project to develop an unconventional crude oil resource economically viable that might not be viable without the right of way. If granting a right of way is found likely to affect the economic viability of the project, or to substantially increase the amount of oil produced, the ultimate issue that needs to be resolved in Enfit's EIS as in the Keystone pipeline EIS, is to what extent the carbon intensity of producing the unconventional crude oil exceeds that of conventional crude oil on a per-Btu basis, and

<sup>26</sup> See Carbon Tracker, Keystone XL Pipeline (KXL): The "Significance" Trap, published March 3, 2014, available at <http://www.carbontracker.org/wp-content/uploads/2014/03/Kxl-The-Significance-Trap-FINAL-03-03-20141.pdf>.



	COMMENT(S)
N9	Utah Physicians for a Healthy Environment (cont.)
	<p data-bbox="594 337 613 358">33</p> <p data-bbox="285 394 919 570">to what extent the air, water, and land pollution caused by producing the unconventional crude oil exceeds that of producing conventional crude oil on a per-barrel basis. Only when the immediate issue (market impact) and the ultimate issue (environmental impact) are both addressed and resolved in the EIS, can those officials with the proper authority make an informed decision whether it is in the public interest to grant or withhold the right of way.</p> <p data-bbox="285 592 919 1167">The BLM's draft EIS on the Enefit right of way impermissibly waives aside the immediate issue of whether granting the requested right of way over Federal land would potentially make Enefit's project economically viable when it otherwise might not be. The BLM's EIS does not discuss the current glut of conventional crude oil on world markets and the historically low prices of that oil. It simply assumes that Enefit's project would be economically viable whatever the price of competing conventional crude might be. Similarly, the BLM's EIS does not estimate how much it would reduce Enefit's production costs to be allowed to use Federal land to build pipelines and transmission lines to bring in gas and electricity to its project rather than have to construct its own heat and power plants on site, nor does it estimate how much it would save Enefit to construct pipelines to bring in water and ship out crude oil, rather than have to resort to trucks to fill both needs. It simply assumes that Enefit's project would be economically viable no matter how much the right of way might change its production costs. Unlike the Keystone pipeline EIS, the BLM here makes no effort to analyze the expected supply and demand of competing conventional crude oil going forward, to identify Enefit's breakeven cost of production, or to estimate the impact that alternative ways of transporting crude oil (not to mention transporting water, natural gas, and electric power) might have on Enefit's cost of production to see if the choice of those alternatives might influence Enefit's decision to pursue the project.</p>

RESPONSE(S)

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## **Appendix I7**

### **Corporations**

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COMMENT(S)

RESPONSE(S)

CP1

Chevron Pipe Line Company



Northwest Rockies  
Chevron Pipe Line Company  
651 South Redwood Road  
North Salt Lake, UT 84054  
Tel 801-975-2334  
TDNR@Chevron.com

May 26, 2016

Bureau of Land Management  
Green River District  
Vernal Field Office  
Attention : Stephanie Howard  
170 South 500 East  
Vernal, UT 84078

**Notice of Enefit American Oil (Enefit) 1790 LLUTG01000 DOI-BLM-UT-G010-2014-0007 - EIS**

Dear Ms. Howard:

Recently Chevron Pipe Line Company received notification regarding the Draft Environmental Impact Statement (EIS) for the Enefit American Oil Utility Corridor Project (Utility Project). Please be advised that Chevron Pipe Line Company (CPL) holds several right-of-way easements in the area, namely easement number UTU-89449, UTU-89451, UTU-89452, UTU-89453 & UTSL-0-067001.

In the event that Enefit will be encroaching upon CPL's easement consent to cross the CPL pipeline cannot be granted until more detailed information is obtained about pipeline depths and the impact the Utility Project will have on CPL's facilities. An evaluation of your project will proceed upon receipt of the necessary engineering design drawings or supporting information.

As you are aware, CPL operates and maintains two pipelines that traverse the property. The pipelines are maintained in accordance with the Department of Transportation Pipeline Safety Regulations (40 CFR 195) and must be protected from external damage at all times.

Accordingly, we are providing you with the following information along with the enclosed pipeline crossing standards to assist you in planning your project:

1. CPL has a right-of-way which crosses the subject property proposed for development/improvement. The easement in particular provides that all rights granted therein shall not be impaired or interfered with. In addition, CPL's pipelines must be protected from external damage at all times.
2. Specific details of any foreign line crossings (water, sewer, power, telephone, natural gas lines, etc.) should be worked out in advance with CPL. It is recommended that all buried

CP1a

Because the Utility Project area is very large, the EIS may not currently identify all easements crossed by the Utility Project. However, Section 3.2.14 does indicate that two Chevron Pipelines are crossed. Text has been added to Section 4.2.14 as follows "As indicated in Section 3.2.14, the Utility Project would cross two petroleum pipelines owned by Chevron Pipeline Company. The Applicant will coordinate with pipeline owners and avoid existing facilities to the extent possible."

CP1b

See the response to Comment CP1a.

COMMENT(S)

RESPONSE(S)

CP1	Chevron Pipe Line Company (cont.)
CP1c	<p>utility lines crossing CPL's pipeline maintain a minimum of 24 inches between the pipeline and the utility line. The utility shall maintain the same depth of cover across the entire right-of-way. At no time shall the clearance between CPL's pipeline and the utility be less than 12 inches except where approval is granted from the Field Team Leader or designee for allowable D. O. T. specifications. Utility poles will not be permitted within CPL's right-of-way. <b>Any crossing will require a line crossing agreement to be signed by the owner/developer.</b></p>
CP1d	<p>3. CPL requests that detailed engineering drawings showing proposed finished grades, building locations and layout of utilities be submitted for CPL's review and approval. The detail required shall include plan and profile view drawings showing the location of CPL's pipeline in relationship to any utility crossings and/or finished grade improvements.</p> <p>4. Proper ground cover over our pipeline is required for maintaining a safe pipeline operation. <b>Ground cover must meet current Department of Transportation regulations specified in CFR 49, Parts 195.200, 195.210, and 195.248.</b> At the present time, cover over our pipeline through this development is not known. CPL personnel will assist the owner/developer in locating the pipeline and obtaining depth measurements. If it is determined by the CPL Engineering Department that adequate cover cannot be reached in the facility design especially as it relates to the crossing of the pipelines by heavy equipment, CPL would then require its lines to be lowered or additional fill placed over the lines. This work will be at the expense of the owner/developer to the satisfaction of CPL.</p>
CP1e	<p>5. CPL's pipelines are cathodically protected. If the owner/developer is proposing any metal pipes or structures in the vicinity of the right-of-way, it is absolutely necessary that arrangements be made with CPL for the protection of those facilities in order to prevent electrical interference problems.</p>
CP1f	<p>6. Under no circumstances will CPL allow any work on its easement prior to discussing line locations with the contractors and marking its line. CPL shall be notified a week in advance of any and all work on our pipeline right-of-way.</p> <p>As stated earlier, it is recommended that Enefit contact a Chevron representative to more closely examine the project area. Chevron's local Facility Inspector is Joseph Nielsen. Joe can be reached at (970) 675-3778. You may also call me at 801-975-2334 for more information concerning the Chevron Right- of- Way.</p> <p>Sincerely,</p> <p>Tom Denison Senior Land Representative</p> <p>ecc:</p> <p>Joe Nielsen/ CPL</p>

CP1c	Enefit has indicated that it is fully aware of and respects Chevron Pipeline's valid existing right-of-way/easements and existing pipeline infrastructure. Enefit has told the BLM that it has coordinated with CPL and will continue to work with Chevron Pipeline to ensure that all buried utilities are adequately protected and maintained in accordance with the U.S. Department of Transportation Pipeline Safety Regulations (40 CFR 195).
CP1d	Comment noted. See the response to Comment CP1c.
CP1e	Comment noted. See the response to Comment CP1c.
CP1f	Comment noted. See the response to Comment CP1c.

COMMENT(S)

RESPONSE(S)

CP2

Enefit American Oil



June 10, 2016

Ms. Stephanie Howard  
Bureau of Land Management  
170 South 500 East  
Vernal, UT 84078

Via email to [UT\\_Vernal\\_Comments@blm.gov](mailto:UT_Vernal_Comments@blm.gov)

Dear Ms. Howard,

On April 8, 2016, the U.S. Department of the Interior, Bureau of Land Management (“BLM”) published the Draft Environmental Impact Statement for the Enefit American Oil Utility Corridor Project (“DEIS”), project identification code DOI-BLM-UT-G010-2014-0007-EIS, pursuant to the National Environmental Policy Act of 1973 (“NEPA”). Enefit American Oil (“EAO”; referred to as “the Applicant” in the DEIS) appreciates the opportunity to review and comment on the BLM’s DEIS and respectfully submits these comments and requests that this letter and its attachments be included in the administrative record for the matter.

I. GENERAL COMMENTS

The general comments provided in this section are larger topics that may affect multiple sections of the final EIS and/or record of decision. It is important to note that these comments should not be construed as implying that the BLM’s DEIS is deficient or warrants supplemental revision and publication. Rather, they are intended to improve the clarity of the BLM’s final impact analysis, as well as the defensibility of the BLM’s final decision on the proposal.

*Connected Action*

There are two issues surrounding the BLM’s treatment of the South Project as a connected action and cumulative action. The first issue is regarding *how* the BLM came to the conclusion that the South Project is a connected action, and the second issue is, once that decision was made, how that determination affected the environmental impact analysis. Both issues are discussed in addition detail below.

Regarding the first issue, it is important that the BLM initially makes clear for the lay-reader what the difference is between a connected action, a non-federal connected action, and a cumulative action (prior to even broaching the specifics surrounding the South Project). Following that general explanation and categorization, the BLM then needs to explain why the South Project is being treated as a connected action, and how the agency came to the conclusion that this is the proper treatment. The BLM alludes to this process in Section 1.2.1 Scope of Analysis, on page 1-5. However, it is not fully clear on what basis – the Council on Environmental Quality (“CEQ”) NEPA implementing regulations, the BLM NEPA Handbook (H-1790-1), relevant case law and/or other reference – the BLM made this decision. It is incumbent upon the BLM to disclose the basis for this determination, such that the reader has context as to how and why the South Project is analyzed in the manner that it is throughout the document.

Under Section 1.2.1 Scope of Analysis, the DEIS states,

CP2a

CP2a

Because the South Project is on private lands and minerals, it is outside the jurisdiction of the BLM. In addition, the BLM understands that the South Project will proceed to full buildout regardless of its decision on the Utility Project. To address confusion expressed by the public during the Draft EIS comment period, those South Project impacts that may accumulate with the impacts of the Proposed Action have been moved to the cumulative impact analysis in the Final EIS. Since the No Action Alternative is to deny the requested rights-of-way, there is no accumulation of impacts under that alternative because there are no impacts from the No Action Alternative. However, given public interest in the South Project, Section 4.4 has been added to the EIS that describes the South Project if the BLM were to deny the Utility Project. Section 1.2.1 has been changed to reflect this clarification.

ENEFIT AMERICAN OIL  
307 West 200 South, Suite 4005  
Salt Lake City, UT 84101  
USA  
americanoil@enefit.com  
www.enefitutah.com  
Tel 801 363 0206  
Tel +372 715 2372

## COMMENT(S)

## RESPONSE(S)

CP2

## Enefit American Oil (cont.)

CP2b

"The South Project's relationship to the Utility Project and the extent to which the South Project and its effects can be prevented or modified by the BLM decision-making on the Utility Project will be described in Chapter 2."

CP2c

Unfortunately, there is no obvious description of this in Chapter 2. The CEQ's regulations for implementing NEPA define *connected actions* as those actions that are closely related and that should be discussed in the same NEPA document<sup>1</sup>. Cumulative actions are proposed actions that potentially have a cumulatively significant impact together with other proposed actions, and they should be discussed in the same NEPA document<sup>2</sup>. The BLM NEPA Handbook goes into further detail and recognizes non-federal connected actions<sup>3</sup> and non-federal cumulative actions<sup>4</sup>, focusing on the effects that can and cannot be modified by BLM decision-making. This leads into the second issue, regarding how the determination that the South Project is a non-federal connected action (and, in some aspects, a cumulative action) affects the analysis.

As the reader progresses to Chapter 4, it appears that the BLM did not discriminate between effects of the South Project that can be modified by the BLM decision (indirect effects) vs. those that cannot be modified (cumulative effects), and thus the document appears to include all effects as indirect impacts. Because there is not enough detail available about the South Project to determine what can be affected by BLM decision-making, the "cleanest" way to deal with this issue is to say that the South Project as a whole would be affected by BLM decision-making. This would make the entire project a non-federal connected action and remove the need to analyze it separately as a cumulative action. This would serve to remove any perceived conflict with the BLM guidance cited above.

CP2d

These changes likely require clarification in Section 1.2.1, as the section is currently somewhat confusing in the manner in which it leads the reader to believe the analysis will be presented. This can be easily rectified by simply revising Section 1.2.1 to indicate that, since it beyond the BLM's ability to parse those effects that can and cannot be modified by the decision, the BLM assumes all South Project effects are indirect. As such, the South Project should be removed from the cumulative impacts section, so as not to unnecessarily "double-count" the effects of the South Project (under either the Proposed Action or the No Action alternatives). This would also serve to ensure consistency in how the potential impacts of the non-federal connected action are analyzed.

CP2e

Further, under the No Action Alternative, the South Project cannot be considered a connected action, because there can be no connected action where there is no proposed action. As defined in the CEQ NEPA regulations, actions are "connected" if "they automatically trigger other actions which may require environmental impact statements" or "cannot or will not proceed unless other actions are taken previously or simultaneously" or "are interdependent parts of a larger action for their justification"<sup>5</sup>. The No Action Alternative would not automatically trigger the South Project, is not required in order for the South Project to proceed, and is not an interdependent part or justification for the South Project, or vice versa. Therefore, there should not be two "No Action" headings. The South Project doesn't need to be "categorized" in the No Action Alternative analysis. It can simply be referred to as the South Project in the No Action Alternative analysis, and as a "non-federal connected action" in the Proposed Action analysis. This could be accomplished in the NEPA document without compromising the South Project's status as a non-federal connected action under the Proposed Action or as a source of indirect impacts under the No Action Alternative, so as to preserve the impact analysis already completed (which appears to be adequate). An example of the recommended ordered headings in Chapter 4 to address this issue is as follows (using soil resources):

<sup>1</sup> 40 Code of Federal Regulations (CFR) 1508.25(a)(1)

<sup>2</sup> 40 CFR 1508.25(a)(2)

<sup>3</sup> BLM NEPA Handbook H-1790-1, Section 6.5.2.1

<sup>4</sup> BLM NEPA Handbook H-1790-1, Section 6.5.2.2

<sup>5</sup> 40 CFR 1508.25(a)(1)

CP2b

Text has been added to Section 4.3.2.1 to describe the relationship between the BLM right-of-way grant and the South Project. Because the South Project is on private land and private minerals, it is outside the BLM's jurisdiction. BLM understands that the South Project will proceed to full buildout regardless of the BLM alternative selected. Therefore, it is not necessary for the BLM to request a full South Project design or include a full south Project analysis to make a reasoned choice between alternatives for the purposes of NEPA. Likewise, the Utility Project is being pursued regardless of the outcome of either the South Project or the RD&D lease. Due to their independence and because the South Project is not a federal action, the South Project is not a connected action, nor is its analysis essential for a reasoned choice between alternatives for the purposes of the Utility Project NEPA. Therefore, the impacts of both the South Project and RD&D lease are included to the extent that they accumulate with the impacts of the Proposed Action. Since the No Action Alternative is to deny the rights-of-way, there will be no accumulation of impacts under it.

CP2c

Text has been reorganized to reflect this comment.

CP2d

See the response to Comment CP2a.

CP2e

See the response to Comment CP2a.



## COMMENT(S)

## RESPONSE(S)

CP2

## Enefit American Oil (cont.)

## 4.2 Direct and Indirect Effects of Resources Analyzed

## 4.2.3 Soil Resources

## 4.2.3.1 Proposed Action – Utility Project

## Soil Contamination

## Destruction of Biological Crusts

## Indirect Effects from Non-federal Connected Action (South Project)

## 4.2.3.2 No Action

This should be corrected throughout the final document as appropriate, and it should serve to simplify the ordered headings in order to make the document more readable.

*Relationship to Policies and Plans*

The DEIS is lacking in a discussion of conformance with the Vernal Resource Management Plan ("RMP"). This is an important part of any BLM NEPA document, to ensure that the proposal "fits" with the goals and objective of the field office management area.

The DEIS also fails to accurately capture the BLM's Greater Sage-Grouse Approved Resource Management Plan Amendment ("ARMPA"), which modified the Vernal RMP's treatment of greater sage-grouse and the species habitat. The ARMPA was released in September 2015, which coincided with the withdrawal of the listing proposal by the United States Fish and Wildlife Service for the greater sage-grouse. The DEIS incorrectly still assumes the greater sage-grouse is a candidate for listing under the Endangered Species Act. Given the significant changes to greater sage-grouse management that resulted from the ARMPA and withdrawal of the listing proposal, the BLM must accurately capture the new agency policy. Currently, the DEIS states that a "net conservation gain" would result from compensatory mitigation described in the ARMPA. However, the ARMPA requires compensatory mitigation but does not describe the compensatory mitigation. The document needs to describe how the BLM would comply with the compensatory mitigation requirement.

*Project Description and Alternatives*

Section 2.3.1 should provide a more clear and thorough discussion of the feasibility of the No Action Alternative options. The DEIS's discussion of the potential alternative utility supply means (i.e. description of the natural gas supply, water supply, product delivery, and no Dragon Road improvements) includes several caveats (e.g. "Note the technical feasibility and willingness of these facility owners of this conversion is unknown. Therefore this option was dismissed from the assumptions under the No Action Alternative." page 2-41), and it is not fully clear what set of assumptions about the South Project the BLM took under the No Action Alternative. Multiple potential alternatives to the Proposed Action were listed (e.g. for natural gas supply, contracting with existing providers or trucking), and it is unclear what the BLM assumed for the No Action Alternative impact analysis. The impact analysis in Chapter 4 would benefit from a clear description of what the BLM has assumed under the No Action Alternative.

*Impact Analysis*

The DEIS includes a "Utility Project study area" that is shown on project maps and mentioned frequently, but it never explains how or why this study area was chosen. The use of the study area and its rationale for use in the impact analyses should be explicitly stated. Further, there is some confusion regarding the study area and how it relates to the quantification of impacts. The study area identified on Map 1-1, the study area described in the text, and the areas used for quantification of resources and impacts are clearly not the same. For example, there are more impacts to some vegetation types reported in Chapter 4 than are described as present in Chapter 3. This inconsistency creates confusion and calls into question the results of the analyses.

The document should use the most up-to-date and relevant data and guidance. For example, the DEIS references incorrect/out-of-date data for the Graham's penstemon, indicating on page 3-35 that

CP2f

Text has been added to Section 1.6.2 to describe conformance with the Vernal RMP.

Section 1.6.2 has been revised to include reference to the Utah Greater Sage-Grouse Approved Resource Management Plan Amendment (September 2015).

The status of the greater sage-grouse has been changed from Endangered Species Act (ESA) candidate species to BLM Special Status throughout the document.

Moved discussion of greater sage-grouse from Section 3.2.9.3.1 to Section 3.2.9.3.2

- Revised greater sage-grouse status in Table 3-19 from S-ESA (C) to SS.
- Revised greater sage-grouse status in Appendix F1 – Biological Resources Supporting Data from S-ESA (C) to SS.
- Moved discussion of greater sage-grouse from Section 4.2.9.1.1.1 to Section 4.2.9.1.1.2.
- Moved discussion of greater sage-grouse from Section 4.2.9.1.2.1 to Section 4.3.3.9.2.1.

CP2g

Mitigation described in Table 4-1, Section 4.2.9.1.1.2, and Section 4.3.3.9.3 complies with the Utah Greater Sage-Grouse Approved Resource Management Plan (2015c). A draft mitigation report has been attached as Appendix F2. It cannot be finalized until the ROD is signed given that pending vegetation projects are used for assessment of mitigation requirements. The vegetation projects used in this example will likely be completed before the BLM is ready to prepare a ROD for the Utility Project. When the BLM is ready to issue a ROD, if the Utility Project Proposed Action is selected in the ROD, the BLM will update the mitigation report with a new vegetation project(s).

CP2h

To address confusion expressed by the public during the Draft EIS comment period, those South Project impacts that may accumulate with the impacts of the Proposed Action have been moved to the cumulative impact analysis in the EIS. Since the No Action Alternative is to deny the requested rights-of-way, there is no accumulation of impacts under that alternative. However, given public interest in the South Project, Section 4.4 has been added to the EIS that describes the South Project if the BLM were to deny the Utility Project. Several clarifications to the assumptions in this section have been made.

CP2i

See next page for response to Comment CP2i.

## COMMENT(S)

## RESPONSE(S)

CP2

## Enefit American Oil (cont.)

CP2j

"[d]esignated critical habitat...occurs in the Conservations Units and lands not covered under" the Conservation Agreement and Strategy for the Graham's and White River penstemon species. There was no designation of critical habitat for either species, as both species' listing and designated critical habitat proposals were withdrawn by the United States Fish and Wildlife Service in August 2014. This brings into question whether the acreages of impact provided in Section 4.2.7.1.1.2 are accurate.

CP2k

The impacts analysis should be consistent through the document. The BLM appears – correctly – to have taken the approach of characterizing the difference in environmental effects between the Proposed Action and the No Action Alternative, where the direct effects are taken together with the indirect effects of the South Project. This makes for a reasoned decision between the alternatives by the decision-maker. However, the impact analysis wanders in its presentation (see Table 2-8 as an example) of direct and indirect effects to resources, sometimes disclosing fully and sometimes only describing the "delta" between alternatives. An initial presentation of direct and indirect effects due to the Proposed Action and the non-federal connected action South Project, followed by a description of the difference (or no difference) in effects from the No Action Alternative, would make the document more clear.

Finally, the document should clearly state, when there are data limitations, what the best available information is for the resource and any assumptions used in the analysis.

## II. SPECIFIC COMMENTS

EAO has prepared a detailed table, attached at the end of this comment letter, that includes specific comments on the DEIS. The table is organized in a manner such that the specific section (or figure/table) number and title, page number, paragraph number, and line number (as applicable) are identified, followed by the comment and EAO's recommendation to resolve the issue. The specific comment table elaborates and expounds upon the general comments identified above. It is important to note that there are a number of comments that are editorial in nature (e.g. noting typographical, grammatical or similar) and/or minor and do not affect the analysis. In the event a full re-print of the document is not prepared by the BLM, these can simply be noted and made part of the administrative record for the project.

## III. SUMMARY

Overall, the DEIS appears thorough and well-reasoned – a complicated effort considering the nexus of the Utility Project and the South Project. Although it is not fully clear how the BLM arrived at the conclusion that the South Project is a non-federal connected action (to both the Proposed Action and the No Action Alternative), it appears that the BLM acted conservatively with this approach. As with any NEPA document of this size, there are some inconsistencies and gaps in logic that may cause the reader to ponder other analyses or conclusions; however, none are so severe as to warrant a supplemental DEIS or to bring into question the BLM's preferred alternative. Resolving and clarifying the key issues described above in the final EIS would improve the defensibility of the analysis and any decision made by the BLM using these materials.

Please feel free to contact me at 801.363.0206 or [Ryan.Clerico@energia.ee](mailto:Ryan.Clerico@energia.ee) if you have any additional questions or are in need of any additional information.

Kind regards,



Ryan Clerico  
Head of Development and Environment  
Enefit American Oil

CP2i

The study area is described in Chapter 3 as follows: "The area of the affected environment for individual resources was assessed based on the area of potential direct and indirect environmental impacts. For most resources, the study area for resource data inventory and analysis generally includes a 2-mile-wide area comprising one mile in each direction from the proposed right-of-way for the utility corridors, the South Project, and any new access roads or existing roads that would require improvement. Resource analysis that incorporates a larger (e.g., regional) study area, such as air quality and social and economic analysis, is identified as appropriate in the particular resource section in the EIS."

Explanation is provided for those resources that differ from this description.

No other change has been made to document as there are no other species discussed in Chapter 4 that are not identified in Chapter 3.

CP2j

Text has been revised to clarify the extent of Penstemon Conservation Agreement Areas in relation to the proposed critical habitat, the designation of which was withdrawn on August 6, 2014.

Section 4.2.7.1.1.2 has been revised to clarify the datasets used to determine acreages of impact.

CP2k

To address confusion expressed by the public during the Draft EIS comment period, those South Project impacts that may accumulate with the impacts of the Proposed Action have been moved to the cumulative impact analysis in the EIS. Since the No Action Alternative is to deny the requested rights-of-way, there is no accumulation of impacts under that alternative. However, given public interest in the South Project, Section 4.4 has been added to the EIS that describes the South Project if the BLM were to deny the Utility Project.

The data limitations are associated with the South Project. Section 4.3.2.1 clarifies that there were two main sources of information for South Project accumulating impact assumptions: the BLM's 2012 Oil Shale and Tar Sands EIS, and the Integrated Environmental Permit issued to Enefit by the Estonian Environmental Agency for the early-generation Enefit 140 and new-generation Enefit 280 oil plants in Narva, Estonia. Assumptions are specified whenever they were used. Since there are no specific examples of unclear assumptions or data source omissions, no further response to this comment is possible.

Comment Number	Chapter	Section/Table/Figure Number	Section/Table/Figure Title	Comment	Enefit Recommendation	BLM Response
1	Cover Sheet	N/A	Abstract	The cover sheet exceeds the one-page maximum, as prescribed under 40 CFR 1502.11.	One option would be to provide the shortened project Web page link. Another would be to edit the abstract by deleting the last two paragraphs, which are unnecessary.	No change.
2	Table of Contents	N/A	Table of Contents	Page number shows as "Index-I".	Correct Index page number to "Index-1".	Text revised.
3	Table of Contents	N/A	List of Tables	Table 2-2 has incomplete title.	Correct Table 2-2 listing to include complete title, "Miles Crossed, Permanent Surface Disturbance Acreage, and Percentage By Land Jurisdiction For Each Utility Corridor Facility."	Text revised.
4	Table of Contents	N/A	Appendices	Appendix listings are out of order and mislabeled. There are two "Appendix D" listings - the second Appendix D - Interdisciplinary Team Checklist appears as Appendix H at the end of the document. Further, the page number orderings are incorrectly matched to the listed appendix.	Correct Appendices listings in the Table of Contents.	Text revised.
5	Executive Summary	ES.1	Introduction	There is a typographical error in the form of an extra comma. There should be no comma between the words <i>Utah</i> and <i>County</i> .	Correct typographical error.	Text revised.
6	Executive Summary	ES.2	Bureau of Land Management's Purpose and Need for the Federal Action	The BLM correctly identifies direction in FLPMA as justification for the agency's purpose and need. However, Section 369 of the Energy Policy Act of 2005 (EPAct) specifically directs the Secretary of the Interior to, "make public lands available to support oil shale development activities." This is a clear Congressional mandate to the BLM, and it should be referenced as such as part of the agency's purpose and need for responding to EAO's application.	Add a new paragraph identify Section 369 of EPAct as part of the BLM's purpose and need for responding to EAO's right-of-way application.	No change. EPAct is not applicable because the South Project is a connected action.
7	Executive Summary	ES.3	Scope of Analysis	The BLM indicates that the South Project's detailed design and engineering are being delayed pending a BLM decision on the Utility Project. Only some aspects of South Project detailed engineering and design are affected by the BLM's decision, not the entire facility. This should be clarified for the reader. For the record, engineering for the South project has indeed continued during the DEIS analysis process.	Revise language to reflect that only some aspects of the South Project detailed design and engineering are affected by the BLM's Utility Project decision. Remove language that the South Project's engineering has been delayed.	Text revised.
8	Executive Summary	ES.4	Decision to Be Made	This section indicates that possible terms and conditions are to be part of the BLM's decision to be made. However, terms and conditions are not further addressed in the DEIS. While terms and conditions are certainly within the BLM's decision space, they should be clearly identified in the DEIS if they are to be made part of the final decision.	The BLM should clearly disclose any terms and conditions that would be part of the final decision on the agency preferred alternative, such that the reader can best understand what circumstances and assumptions the decision was made under.	Final terms and conditions will be identified in the Record of Decision.
9	Executive Summary	ES.5	Decision Framework	There is an unnecessary close-parentheses following "...the Proposed Action)".	Remove unnecessary close-parentheses.	Text revised.
10	Executive Summary	ES.6	Applicant's Interest and Objectives	This section indicates that the South Project property contains "approximately 1.2 billion barrels of shale oil." This value is an estimate of in-place barrels of oil; recoverable barrels depends upon the method of extraction. Further, the South Project property is only one of several private parcels that Enefit acquired. The 1.2 billion barrels of shale oil applies only to the South Project parcel, and not all properties within Enefit's resource portfolio.	Clarify that the approximately 1.2 billion barrels of shale oil is an in-place estimate, and that this value applies only to the South Project parcel (and not Enefit's property as a whole).	Text revised.
11	Executive Summary	ES.6	Applicant's Interest and Objectives	The text indicates that, "Granting the federal rights-of-way <i>and enabling development of the South Project</i> would advance implementation of the goals of the State's energy policy" (emphasis added). To be clear, the BLM is neither enabling nor disabling development of the South Project by granting or not granting federal rights-of-way. The South Project is not dependent upon the BLM's	Remove the phrase "and enabling development of the South Project" from this paragraph, as it implies that the agency is endorsing and aiding development of the South Project, and/or that the South Project is dependent upon the BLM's issuance of federal rights-of-way. Neither is the case.	Revised per BLM input.

Comment Number	Chapter	Section/Table/Figure Number	Section/Table/Figure Title	Comment	Enefit Recommendation	BLM Response
				granting of a right-of-way for utilities and access road improvement.		
12	Executive Summary	ES.8.1.1.5	Water Resources	These two paragraphs are inconsistent with regard to depletion, with the first stating that the project "may include surface water depletion" and the second stating that "No anticipated water depletion is expected because the Applicant would use an existing water right." It is true that EAO would use an existing water right, and as such, this section should indicate that no depletion would occur.	Revise the first paragraph to correctly indicate that no surface water depletion would occur due to the use of an existing water right.	Revised to indicate that surface water depletion would only occur for construction activities.
13	Executive Summary	ES.8.1.1.5	Water Resources	This section indicates that impacts to the White River would be avoided "by use of Horizontal Directional Drilling (HDD)..." Although the White River would indeed be avoided by trenchless construction methods, the selected method, as correctly indicated in Section 2.2.8.11.6 Waterbody Crossings, would be microtunneling.	Delete all references to HDD and correct text to reflect White River impact avoidance by microtunnel construction method.	Text revised.
14	Executive Summary	ES.8.1.1.9	Special Status Wildlife	The BLM Utah Greater Sage-grouse Approved Resource Management Plan Amendment (ARMPA) amended the Vernal RMP. As such, the conservation measures referenced in the document are actually in the Vernal RMP; there is no "Utah Greater Sage-grouse RMP".	Recommend making this technical clarification throughout the document.	Section 1.6.1 has been revised to include reference to the Utah Greater Sage-Grouse Approved Resource Management Plan Amendment (September 2015). The status of the greater sage-grouse (GRSG) has been changed from ESA Candidate species to BLM Special Status throughout the document. <ul style="list-style-type: none"> <li>Moved discussion of GRSG from 3.2.9.3.1 to 3.2.9.3.2</li> <li>Revised GRSG status in Table 3-19 from S-ESA (C) to SS.</li> <li>Revised GRSG status in Appendix F – Biological Resources Supporting Data from S-ESA (C) to SS.</li> <li>Moved discussion of GSRG from 4.2.9.1.1.1 to 4.2.9.1.1.2.</li> <li>Moved discussion of GSRG from 4.2.9.1.2.1 to 4.2.9.1.1.2.</li> </ul> Mitigation described in Table 4-1, Section 4.2.9.1.1.2, and Section 4.3.3.9 complies with the Utah Greater Sage-Grouse Approved Resource Management Plan (2015c) and accurately describes the BLM's options for implementing reasonable mitigation. Per Appendix F of the Utah Greater Sage-Grouse Approved Resource Management Plan (2015c), BLM will require and ensure mitigation provides a benefit to greater sage-grouse through avoiding or minimizing impacts to greater sage-grouse by requiring reasonable mitigation actions. A draft mitigation report has been attached as Appendix F. It cannot be finalized until the ROD is signed given that pending vegetation projects are used for the evaluation of mitigation requirements. The vegetation project used in this example will likely be completed before the BLM is ready to prepare a Record of Decision for the Utility Project. When the BLM is ready to issue a ROD, if the Utility Project proposed action is selected in the ROD, the BLM will update the mitigation report with a new vegetation project.
43	Executive Summary	ES.8.1.5.13	Visual Resources, Viewing Locations	This section indicates that full build-out of the South Project would begin to dominate views from Key Observation Point (KOP) #5, which is located at the intersection of Highway 45 and Dragon Road. This is unlikely. The South Project is located approximately 5 miles southeast of KOP #5, including a preliminary plant site elevation that is approximately 700 vertical feet higher than KOP #5 (based on existing topography).	The BLM should provide scientific evidence supporting the conclusion that the South Project would dominate views from KOP #5. If no such evidence is available, the BLM should revise the conclusion to either indicate that the South Project is not likely to be visible from KOP #5, or that there is insufficient data available to determine if the South Project would be visible from KOP #5.	Text was updated to more directly match the description in the environmental consequences section. Based on viewshed analysis in Appendix G, this KOP is located at the edge of the area where the South Project may be visible (final design of the South Project, including location of spoil piles, may result in the South Project being completely screened). Through blending the geometric landforms and the change in soil color associated with excavation of the mine and spoil piles, the South Project would not dominate views if visible after final design.
62	1	1.6.1	Conformance with Bureau of Land Management Plans and Policies	This section should provide discussion of the relationship to the BLM's Greater Sage-grouse ARMPA and how it affects the Proposed Action. Section 2.2.11.3.3 may be another place to address the requirements of the ARMPA in more detail.	Include discussion of the Greater Sage-grouse ARMPA as a relevant BLM plan.	See response to comment 14 above.
66	2	Table 2-1	Design Characteristics and Surface Disturbance of the Utility Corridor Facilities and	Table 2-1 uses the phrase, "Estimated permanent surface disturbance" when referring to the water supply pipeline, natural gas supply pipeline, product delivery pipeline, and transmission lines. However, this is somewhat misleading for the reader. "Permanent surface disturbance" has the connotation of a building, or a parking lot, or some other "hard feature" that permanently removes vegetation, soils and habitat. This is not the case with these proposed	The document should clarify, in a table footnote or similar, that the acreages of "permanent surface disturbance" are rather total right-of-way acreages, not areas in which permanent disturbance would occur. Once reclaimed, the true permanent disturbance is actually quite minimal. This is particularly important for the transmission lines, where it appears that there is a large	There were no disturbance calculations prepared for this project. All impacts are based on the footprints of the utility rights-of-ways. The numbers in Table 2-1 are taken from the POD and are based on the rights-of-way width and length, not what is actually proposed for surface disturbance.  Note 1 in Table 2-1 currently explains that 'permanent surface disturbance' is associated with the proposed rights-of-way and project components that would occupy land over the long

Comment Number	Chapter	Section/Table/Figure Number	Section/Table/Figure Title	Comment	Enefit Recommendation	BLM Response
			Dragon Road Improvements	rights-of-way. Following reclamation (as described in DEIS Appendix B), because the pipelines are buried features and the transmission lines are suspended, there is actually very minimal "permanent surface disturbance." True permanent disturbance is limited to above-ground features, such as switchyards, vault access points, booster pump stations, and transmission tower footings.	amount of permanent surface disturbance (501.4 acres), but little actual permanent surface disturbance.	term. However, to clarify further, the text has been revised throughout table from “estimated permanent surface disturbance” to “estimated right-of-way acreage”.  Footnote 1 was also changed to read “Permanent surface disturbance is calculated using the total ROW width regardless of degree of initial disturbance or reclamation since that total width can be used for future ROW maintenance without agency notification.”
86	2	2.2.8.11.6	Waterbody Crossings	The text indicates that EAO would use dry-ditch pipeline crossing techniques in the event water is present in one of the ephemeral drainages at the time of construction, "...to maintain flow and not disturb regional hydrology <i>in consultation with FWS</i> [the U.S. Fish and Wildlife Service]" (emphasis added). Is the intent here to require consultation with FWS anytime any flowing ephemeral drainage needs to be crossed during construction? Or does this only apply to drainages that have a direct discharge to a surface water that contains endangered Upper Colorado River basin fish? It is unclear the BLM's reasoning for this inclusion.	The BLM should consult with the Applicant regarding the intent of this requirement, such that it can be included in the FEIS as either an Applicant-committed mitigation measure or a separate mitigation measure required by the agency. If there is a specific recommendation or requirement by FWS for this measure, that should be disclosed in this section.	The phrase “in consultation with FWS” has been deleted. Consultation will be conducted as necessary before the ROD is signed. Additional consultation is not anticipated to be necessary since this is a site-specific proposal. However, BLM remains committed to reinstate consultation whenever changes and circumstances warrant it.
		Table 2-8	Summary of Comparison of the Proposed Action and No Action Alternatives	The method of reporting impacts, more specifically the difference (or "delta") between the Proposed Action and No Action Alternative, and the Connected Action South Project under each, is not consistent throughout this table. For some resources, impacts are fully stated in each column (e.g. Public Health and Safety - Hazardous Materials and Waste), while in other instances, impacts are only reported once and then are simply indicated to be, "the same as..." (e.g. Wildlife).	The reporting method should be consistent between all resources, and that method should focus on clearly disclosing the delta between the Proposed Action and No Action Alternative, to better justify the BLM's selection of the agency-preferred alternative. This method should utilize "the same as..."-type language, so any differences between the Proposed Action and No Action Alternative are easy to identify.	To address confusion expressed by the public during the Draft EIS comment period, those South Project impacts that may accumulate with the impacts of the Utility Project Proposed Action have been moved to the cumulative impact analysis in the Final EIS. Since the No Action alternative is to deny the requested rights-of-way, there is no accumulation of impacts under that alternative. However, given public interest in the South Project, Section 4.4 has been added to the EIS that describes the South Project if the BLM were to deny the Utility Project.
110	2	Table 2-8		The first bullet under Impacts indicates that surface water depletion for use during construction would occur, then the first sentence after the bullets indicates that no depletion is anticipated due to the use of an existing water right. These two points are inconsistent.	The first bullet should be revised to indicate that no surface water depletion impacts would occur because of the use of an existing water right.	Existing water rights can be depleting. The two sentences do not conflict because they have different subjects. The bullet refers to Utility Project construction, and water use may occur for hydrostatic testing as disclosed in the EIS. The sentence being questioned refers to long term operation of the Rights of Ways. The phrase “use of existing water right” has been deleted to clarify the meaning.
113	2	Table 2-8	Summary of Comparison of the Proposed Action and No Action Alternatives	The text indicates that, "[d]epending on the depth of groundwater in the area of the spill, large spills may reach the groundwater table."	As stated above, this is speculative and does not appear to be based on any specific information. A brief discussion of the geologic stratigraphy and/or aquifer condition(s) supporting this statement must be included, lest the disclosure of this potential impact remain purely arbitrary. In the absence of more rigorous scientific data and/or analysis, this statement should be removed from the document.	Geologic information has been included in section 3.2.5.3.2, which states that alluvial aquifers are found along Evacuation Creek and the White River, and are recharged by streamflow infiltration. This section also includes information about the Birds Nest aquifer which in places within the project area boundary occurs within a few feet of the surface and is recharged by Evacuation Creek infiltration. Therefore, spills may reach groundwater via these infiltration points. Qualitative analysis was added to chapter 4 explaining the variables more clearly. A quantitative analysis cannot be done because there are too many variables and because the project is designed to prevent spills of any size. See section 4.3.3.5.3.3.
116	2	Table 2-8	Summary of Comparison of the Proposed Action and No Action Alternatives	The text indicates that the <b>Inventory</b> for this resource is the same as the Utility Project. However, the Utility Project inventory indicates very specific acreage covered by wildlife habitat within the proposed utility corridor. This cannot be true for alternatively-sourced utilities. While the presence of wildlife species habitat in the area may be the same, the acreages cannot.	Revise the text to indicate that general wildlife habitat is still present under this alternative, but that the actual inventory will vary.	Due to the moving of the South Project to the cumulative effects section, this concern is no longer relevant because the South Project no longer appears in Table 2-8.
118	2	Table 2-8	Summary of Comparison of the Proposed Action and No Action Alternatives	The text indicates that highly sensitive resources (Traditional Cultural Properties [TCPs] and General Land Office [GLO] roads/trails) have the potential to be intersected by the Utility Project. However, this is in direct conflict with Section 3.2.11.5.1, which states that "there are no NRHP-listed properties, NHTs or potential NHTs, TCPs, or ACECs with cultural components in the [Area of Potential Effect] or in its vicinity.	The table should be revised to remove any reference to highly sensitive resources. Indeed, the table would be well-served to clearly state that there are <i>no</i> highly sensitive resources in the study area.	Clarified as suggested. Text in Section 2.5, Table 2-8 Utility Project has been modified to read:  There are no known highly sensitive resources in the study area.  There is the potential for unrecorded, significant archaeological sites to occur in the study area.  Text in Chapter 3, Section 3.2.11.5.2 (Cultural Resources, South Project) has been moved to the Cumulative Impacts section of the EIS and also modified to read:

Comment Number	Chapter	Section/Table/Figure Number	Section/Table/Figure Title	Comment	Enefit Recommendation	BLM Response
						<p>“There are no known highly sensitive resources within the South Project. There is the potential for unrecorded, significant archaeological sites to occur within the South Project.”</p> <p>Text in Chapter 3, Section 3.2.11.5.2 (Cultural Resources, South Project) has been modified to read:</p> <p>“There are no known highly sensitive resources within the South Project. There is the potential for unrecorded, significant archaeological sites to occur within the South Project.”</p>
119	2	Table 2-8	Summary of Comparison of the Proposed Action and No Action Alternatives	The text indicates that impacts could include "auditory intrusions that could compromise aspects of site integrity." However, there are no audible aspects or features of the proposed utility project, with the exception of the water supply booster pump station, and there are no sensitive cultural resources proximal to this location. The table should remove <i>auditory intrusions</i> as a potential impact source unless the BLM has evidence to suggest otherwise.	Remove reference to potential for auditory intrusion impacts to cultural resources, in the absence of scientific data that indicates otherwise.	<p>The text states that impacts could include auditory intrusions as the potential for these types of impacts does exist. There is potential for long term auditory intrusions resulting from sounds associated with equipment such as the water supply booster pump station. Though there are no known sensitive cultural resources sites in proximity to the booster pump station, the potential to encounter such sites exists. Short-term auditory intrusions could occur during construction of the Project. Construction sounds, earth moving, and movement of large equipment can result in significant auditory intrusions with regard to cultural resources sites. Though these intrusions may be of a temporary nature (short-term impacts) they are still disclosed as a part of the potential impacts resulting from the Project. The text has been modified to include reference to short-term auditory intrusions as follows:</p> <p>“...Potential impacts on sites adjacent to the Project APE could be direct and indirect permanent disturbances due to changes in public accessibility; and direct and indirect long-term, and/or short-term, visual, atmospheric, and auditory intrusions that could compromise aspects of site integrity, such as setting, feeling, and association, which are components of NRHP eligibility. These types of disturbance could damage or destroy cultural resources if not mitigated.”</p>
120	2	Table 2-8	Summary of Comparison of the Proposed Action and No Action Alternatives	Under <b>Impacts</b> , the text indicates that potential impacts "would not be minimized through the No Action Alternative." It is more to clear to say that the impacts would be no different under the No Action Alternative, in order to better disclose the delta (or rather, the lack thereof) between the Proposed Action and the No Action Alternative.	Revise text to indicate that there would be no difference in cultural resource impacts as a result of the South Project between the Proposed Action and the No Action Alternative.	This comment is no longer applicable since the South Project has been moved to the cumulative effects section.
125	3	3.2.2.1.3	Prevention of Significant Deterioration Permitting	This section states, regarding the 250 tons per year or 100 tons per year criteria pollutant thresholds that, "Neither of these thresholds will apply to the construction of the Utility Project and South Project." But then the text goes on to say EAO will apply for a Clean Air Act Prevention of Significant Deterioration (PSD) permit from EPA Region 8. It is therefore unclear which threshold will apply to the Utility Project and/or the South Project.	This section should be revised to indicate that one of these two thresholds - either 250 tons per year or 100 tons per year - is likely to apply to the South Project, with the final determination to be made by EAO and EPA as part of the PSD application/permitting process.	This comment is no longer applicable since the South Project has been moved to the cumulative effects section.
126	3	Table 3-4	Existing and Proposed Future Air Emission Sources - Northeast Utah	The table indicates that Red Leaf Resources' Red Leaf Project is an existing air emission source. While Red Leaf Resources has a pilot facility that is no longer in operation, and a commercial demonstration plant partially constructed, there are no actively-emitting facilities; therefore, this should be categorized as "Future".	Revise table to correctly indicate the state of Red Leaf Resources' facilities with regards to air emissions.	Text revised.
127	3	3.2.2.4.2	Existing Air Pollutant Monitoring Data	The text indicates an air monitoring station "near the intersection of U.S. Highway 145 and Dragon Road". This same location is referenced in Table 3-5. U.S. Highway 145 is located near Lehi, Utah County, Utah. The reference in the EIS is likely to State Road 45, rather than U.S. Highway 145.	Verify correct air monitoring station locational description and correct in this section and Table 3-5, as appropriate.	Text revised. Correct location of the monitor is at State Road 45 and Dragon Rd. Table 3-5 and related text corrected accordingly.
130	3	3.2.4.2	Issues Identified for Analysis	This section states that no issues were identified for mineral resources; however, the IDT checklist provided in Appendix H lists mineral resources as "PI" and discusses potential conflicts with gilsonite leases.	This section should be revised to reflect the identified issue(s). If indeed this is not an issue, then the IDT checklist should be corrected and this section/resource should be dismissed from detailed analysis.	Text revised to include gilsonite mines as identified in the IDT table.
131	3	3.2.5.2	Surface Water Occurrence and Use	The text states, "...Municipal and Industrial of 16,000 acre-feet, surface evaporation from reservoirs of 101,700 acre-feet..." It seems unlikely that surface evaporation from reservoirs exceeds all municipal and industrial uses	Confirm data sources and specific water volumes, as well as the geographic and/or drainage area associated with these values. Since water use is likely to be a topic of	This information is directly from the UDaWR document titled "Uintah Basin, Planning for the Future", dated February 2015.

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				in the Uintah Basin by this magnitude. Based on these values, EAO's projected water use is of the same magnitude as all existing municipal and industrial sources in the Uinta Basin. This number is mentioned again on page 4-174.	interest with the public, ensuring accurate data is used in the analysis is of high importance.	
134	3	Table 3-9	Approved Water Rights in the Utility Project Study Area	This table only appears to be showing water rights and allocations for the White River. The Proposed Action involves withdrawal of water from the Green River.	Table 3-9 should also address water rights and allocations for the Green River, in addition to the White River. Alternately, the BLM should provide an explanation of why Green River water rights and allocations have been excluded from the affected environment, if they indeed have purposefully been.	Text clarified to include both the White and Green Rivers.
136	3	3.2.5.4.4	Groundwater Resources	This section fails to distinguish between groundwater resources underlying the Utility Project vs. those underlying the South Project. Further, it appears to be missing the alluvial aquifer associated with the Green River, which is where the installation of new collector wells and withdrawal of water would occur.	This section should be updated to clearly distinguish those groundwater resource conditions that are present and associated with the Utility Project vs. those associated with the South Project, as these are not necessarily one in the same. Regarding the Green River alluvial aquifer, even if the effects are such that they can be discounted in the analysis, the aquifer itself should be mentioned as part of the affected environment.	Section 3.2.5.3.2 has been updated to include reference to the Green River alluvial aquifer. The South Project was moved to the cumulative impact section, so no differentiation between the present resource conditions for the South Project are necessary. The collector wells would only be installed as a part of the South Project, so is not discussed in chapter 3 because it is part of the cumulative impact area, not the project area. The Utility Project will use the existing DGT rainy collector well system, described in Section 2.2.1.1, therefore no new impacts will occur.
137	3	3.2.5.4.5	Groundwater Quality	It is important to note that the State of Utah has not officially designated an aquifer class for the Bird's-nest aquifer. While the data results have been presented in comparison to various groundwater class designations, this is done for perspective only and should not be construed as an official groundwater aquifer regulatory designation.	Include a statement regarding the regulatory status of the groundwater aquifers underlying the Utility Project and South Project areas, clarifying that data is presented in comparison to class designations for information purposes only.	This comment is noted. The Class system is referenced for context only.
139	3	3.2.5.5	Groundwater Quality	The United States Army Corps of Engineers (USACE) has issued a jurisdictional determination for the project, a copy of which was submitted by EAO to the BLM. This section would benefit from an inclusion of that determination letter, notating the date of issuance, as an appendix or reference to the project administrative record.		Reference to letter added. This is included as an appendix to the POD.
140	3	3.2.6.3.1	Vegetation Communities	The text indicates that "the SWReGAP land cover data were not representative of vegetation community distribution or composition in the study area" but the DEIS continues to use these data for the analysis and conclusions drawn. As written, BLM's assumptions, data limitations, and train of thinking in preparing the DEIS are not clear. In situations where there are data limitations, the NEPA analysis should clearly state what the best available information is for the resource and any assumptions used in the analysis.	Revise the text in this section, and any relevant subsequent sections, to clearly indicate what data was used, how it was used, and any assumptions taken where there was questionable available data.	Text has been revised to clarify the differences between the SWReGAP vegetation cover data and the vegetation cover as determined during 2013 surveys as well as the decision to use only the 2013 vegetation cover data in the EIS. Section 3.2.6 has been revised to discuss the extent of vegetation communities as identified during the 2013 vegetation cover surveys, and any tables or text discussing the extent of the SWReGAP data in the Project area removed.  The text has also been revised to discuss the use of the 2013 vegetation cover data in the analysis, why the data was used, and how the data is not extensive across the two-mile study corridor.
141	3	3.2.6.3.1	Vegetation Communities	The vegetation communities listed in this table and described in this section do not match the vegetation communities described in Chapter 4 (e.g., Tables 4-16 and 4-17). For example, sparsely vegetated sand dunes and white shale badlands are introduced in Chapter 4 but are never mentioned in Chapter 3. Furthermore, some acres of impact described in Chapter 4 are greater than the quantity of resource identified as present in the study area in Chapter 3 (e.g., 61 acres of impact on Invasive Annual Grassland reported in Table 4-16; 5.8 acres of this cover type reported present in Table 3-10).	These acreages for SWReGAP data need to be reconciled in the document and with the cited SWCA report. Table 3-10 references SWCA 2013e as the source; however, the SWCA report does not contain these acreages. It is important that the BLM accurately present data associated with both the affected environment and the environmental consequences, lest the results of the analysis and the decision be raised in question.	Text discussion vegetation communities in Section 3.2.6 has been revised to discuss vegetation communities consistent with the vegetation communities analyzed in Section 4.2.6.
142	3	3.2.7.1.2	Conservation Agreement and Strategy for Graham's Beardtongue	The text indicates that " <i>designated critical habitat</i> for Graham's penstemon occurs in the Conservation Units and lands not covered under the Agreement" (emphasis added). <i>Designated critical habitat</i> is an Endangered Species Act (ESA) term, and neither Graham's nor White River penstemon are listed under the ESA. The United	The text should be revised to avoid usage of the terminology <i>designated critical habitat</i> , as this could be confusing to readers by intimating that the species is indeed listed under the ESA. The document should reference the Penstemon Conservation Areas, and these areas should be referred to and displayed based on the	Text revised to discuss suitable habitat, identified as White Shale Badlands during 2013 vegetation cover surveys, rather than proposed critical habitat.  Text also revised to discuss Penstemon Conservation Areas, as well as identify the designation of each area potentially affected.

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			and White River Beardtongue	States Fish and Wildlife Service withdrew both proposed listings, as well as the proposals to designate critical habitat, following enactment of the conservation agreement. This is noted in the last paragraph of Section 3.2.7.3.1.2 on page 3-39.	designations in the conservation agreement (e.g., federal conservation area, non-federal conservation area, etc.), as those designations identify the allowable activities in each area.	
143	3	3.2.7.1.2	Conservation Agreement and Strategy for Graham's Beardtongue and White River Beardtongue	Map references in this section are incorrect; references are to Appendix C instead of Appendix A.	Correct map references.	Text revised.
144	3	3.2.7.3	Affected Environment	The text indicates that occurrences of federally-listed and BLM sensitive plant species "were limited and confined to the south and east portions of the <i>South Project Area</i> " (emphasis added). The South Project is located on private land, and therefore individuals located on this property cannot be considered either federally-listed under the ESA or BLM sensitive, as the ESA does not apply to plants located on private land nor does the BLM have jurisdiction over non-federal land. It is possible that the text was intended to mean the south and east portions of the <i>study area</i> , rather than the South Project Area; however, it is unclear from the subsequent sections if this is the case.	The text should be revised to state that special status plants were identified in the south and east portions of the <i>study area</i> , or other appropriate geographic reference. If this is not the case, the text should be revised to reflect the fact that there is no jurisdictional case for sensitive plants located on private land, and references to federally-listed or BLM sensitive plant species should be removed. References to BLM sensitive species on South Project private property should be removed (e.g. Barneby's Catseye [daisy], Strigose Easter-daisy).	Text has been revised to clarify the known distributions of special status plant occurrences that may be impacted by the Utility Project. Affected Environment discussion of the South Project has been moved to Section 4.4 of the EIS.
145	3	3.2.7.3.1.1	Federally Threatened, Endangered, or Proposed Species	This section references FWS policy regarding consideration of candidate species. There are no candidate species in the project study area. Therefore, references to this policy are not necessary.	Remove all references to FWS policy regarding candidate plant species.	Text revised to say "It is FWS policy to consider candidate species when making natural resource decisions." However, no candidate species occur in the Utility Project study area and therefore will not be included for consideration in this EIS.
146	3	3.2.7.3.1.2	BLM Sensitive Plant Species, Graham's Penstemon	The Utility Project and South Project sub-sections in this section reference "Penstemon Conservation Agreement Area". To appropriately identify the areas as designated in the final conservation agreement, this section should reference and identify the amount of each designation in the study area (i.e. area of Federal Conservation Areas, Non-Federal Conservation Areas, etc.), not just generic "Penstemon Conservation Agreement Areas", which is inclusive of all of the different designations and management prescriptions.	Correctly identify the study area acres of each of the penstemon conservation area categories, as the different categories have differencing management prescriptions, allowable activities, and disturbance procedures.	Text has been revised to correctly identify the designation of each Penstemon Conservation Area potentially affected.
147	3	3.2.7.3.1.2	BLM Sensitive Plant Species, Graham's Penstemon, South Project	The text indicates that "none of the surveyed plants would fall within 300 feet of proposed ground disturbance areas." To be clear, disturbance areas submitted to the BLM by EAO and associated with the South Project are preliminary in nature and have been provided for informational purposes only. No applications associated with the South Project have been proposed, submitted or are pending with any other regulatory agencies at this time.	The text should be revised to clarify that South Project disturbance areas are not <i>proposed</i> , but rather are preliminary in nature to aid in informing the connected action analysis. Actual site layouts and surface disturbances are subject to change as ongoing engineering design progresses.	The South Project has been moved to the cumulative impact section. Text has been revised to remove discussion of special status plant occurrences relative to South Project disturbance areas.
148	3	Table 3-14	Wildlife Habitat in the Utility Project Study Area	The study area for the quantifications provided in this table should be included for the reader to understand the context of this quantification.	Describe the study area to provide context.	The South Project has been moved to the cumulative impact section. Text has been revised to remove discussion of special status plant occurrences relative to South Project disturbance areas.
149	3	3.2.8.3.1.1	Wildlife, Big Game	The reference <i>BLM 2006c</i> is a reference to big game habitat definitions in the BLM Rock Springs RMP. These habitat definitions are not relevant to the BLM Vernal RMP or the project area and should be removed.	Correct and/or remove reference.	The reference has been changed to BLM 2008f, Vernal RMP.
150	3	3.2.8.3.1.1	Wildlife, Pronghorn Antelope	Unclear statements are made about pronghorn antelope herd size. The text states, "In 2014, herd size for pronghorn consisted of about 113 individuals. According	Clarify the statement regarding pronghorn herd size to provide context for this description of effects.	The statement has been clarified. Reference to pronghorn herd size and name of herd was added.



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				to UDWR, the local herd was with 50 additional pronghorns that were trans-located from southern Utah." Is this referring to the Uinta Basin herd, or a smaller herd in the project study area?		
151	3	3.2.8.3.1.1	Wildlife, Rocky Mountain Elk	The text indicates that, according to UDWR, the elk population in Utah is estimated at 5,500 individuals. However, according to the UDWR Statewide Elk Management Plan, there are approximately 80,000 elk in Utah. Therefore, the 5,500 appears to be referring to a smaller geographic population - the Uinta Basin or Tavaputs Plateau, for example?	Provide correct geographic reference for the value of 5,500 individuals.	The correct herd, Book Cliffs, and reference was added.
152	3	3.2.8.3.1.1	Wildlife, Bison	It is important to not that, while habitat has been identified by UDWR, the typical location of the Uinta Basin bison herd is far away from either the Utility or South Projects. The citation for total herd size (150 individuals) is likely to be a herd size for the Uinta Basin, no the state of Utah, as several hundred bison roam on Antelope Island.	Context should be provided regarding the location and size of the Uinta Basin bison herd, as question is raised as to whether this is even relevant for the Utility Project.	The general location of the resident Bison herd, the Book Cliffs, and context on herd size is provided. The text has been revised to clarify the resident herd size.
153	3	3.2.9.1	Regulatory Framework	There are several incorrect references in this section. WO IM 2012-043 is no longer relevant with the completion of the BLM Sage-grouse RMP Amendments. Wyoming IM 2013-005 is Wyoming-specific guidance and is not applicable to the study area. There are no Management Framework Plans in the study area, as all public lands are administered under the BLM Vernal RMP. Three of the four Utah Sage-grouse Local Working Groups listed are not relevant to the study area. There is no "BLM Utah Greater Sage-grouse Approved Resource Management Plan". Rather, the Approved Resource Management Plan Amendments modified the BLM Vernal RMP. The conservation measures are now contained in the BLM Vernal RMP.	These regulatory framework references should be updated and clarified with regard to the current status of each.	The regulatory framework references have been revised.
154	3	Table 3-19	Special Status Species with Potential to Occur in the Utility Project Study Area	Greater sage-grouse is no longer a candidate for listing under the ESA. There is no status provided for mountain plover.	Correct status for greater sage-grouse, and include status for mountain plover.	The status of the greater sage-grouse (GRSG) has been changed from ESA Candidate species to BLM Special Status throughout the document. The status of the mountain plover has been added to Table 3-19.
155	3	3.2.9.3.1	Federally Listed Species	This section indicates the greater sage-grouse as a wildlife species that is federally listed under the ESA. In September 2015, the USFWS issued a determination that the greater sage-grouse was not warranted for listing under the ESA.	This section must be revised to indicate that the greater sage-grouse only warrants special status wildlife species consideration under the BLM/USFS Utah Greater Sage-Grouse: Proposed Land Use Plan Amendment and Final Environmental Impact Statement (2015) and the State of Utah's Utah Conservation Plan for Greater Sage-grouse, lest the reader be confused about the federal status and requirements (or rather, lack thereof) under ESA Section 7.	The status of the greater sage-grouse (GRSG) has been changed from ESA Candidate species to BLM Special Status throughout the document.
156	3	3.2.9.3.1	Federally Listed Species, Greater Sage-grouse	There is a typographical error in the form of an incorrect word. The word <i>know</i> , between the words <i>nearest</i> and <i>lek</i> , should be <i>known</i> .	Correct typographical error.	Correction has been made.
157	3	3.2.9.3.1	Federally Listed Species, Greater Sage-grouse	The text indicates that the nearest known lek occurs "approximately 5 miles north of the <i>project area</i> " (emphasis added). It is not clear if this is referring to the <i>Study Area</i> , the <i>Utility Project area</i> , or the <i>South Project area</i> .	Clarify which geographic reference the nearest known lek is 5 miles from.	The nearest known lek is located approximately 5 miles north of the Utility Project area. The text has been corrected.
158	3	3.2.9.3.1	Federally Listed Species, Greater Sage-grouse	The text indicates that, "BLM is responsible for identifying sage-grouse habitat within the project areas as General Habitat Management Areas (GHMA). This includes the Deadman Bench area and the South Project." The BLM/USFS Utah Greater Sage-Grouse: Proposed	This section should be revised to correctly reflect the current status of greater sage-grouse habitat designation and management by the BLM.	The status of the greater sage-grouse (GRSG) has been changed from ESA Candidate species to BLM Special Status throughout the document. Clarification was made to BLM's jurisdiction and management of Greater sage-grouse and their habitat.

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				Land Use Plan Amendment and Final Environmental Impact Statement (2015) has already identified GHMAs for this area; therefore, the BLM should not need to further identify areas. Second, the BLM cannot designate GHMA, or any other greater sage-grouse habitat category, on the South Project private property, as the BLM has no jurisdiction over non-federal lands.		
159	3	3.2.9.3.1	Federally Listed Species, Greater Sage-grouse	The text indicates that greater sage-grouse are reported to exist within the study area and that there is an unconfirmed lek location report, however, there is no scientific documentation or reference for this information provided.	The BLM should provide a technical reference regarding the source of this data. If no such source is available, the text should be removed from the FEIS.	Reference to the source of this information has been added. The source of the information is SWCA's 2013 Special Status Wildlife Species Technical Report.
160	3	3.2.9.3.2	BLM Sensitive Species	As with BLM sensitive plant species, BLM sensitive wildlife species cannot be designated on non-federal land. Thus, references to BLM sensitive species on South Project private property should be removed from this section.	Revise section accordingly.	All BLM Sensitive Species described in the EIS are also Utah State Species of Concern. The discussion of these species is limited to available suitable habitat, not species occurrence. Therefore, it is appropriate to retain a discussion of the effects to Utah State Species of Concern.
161	3	3.2.9.3.2	BLM Sensitive Species, Ferruginous Hawk	This statement appears to have been included erroneously: "The data referenced was not included in the SWCA or CH2M Hill, 2013. Per direction by the BLM, EPG is to base the analysis on the resource data provided in the 2013 resource reports; no additional data collection has been authorized by BLM."	Delete statement.	The statement has been deleted.
162	3	3.2.9.3.2	BLM Sensitive Species, Big Free-tailed Bat, Utility Corridor	This section states that no surveys were conducted for the big free-tailed bat. This is incorrect. The report <i>Special Status Species Technical Report Addendum: Big Free-tailed Bat</i> was prepared by SWCA and submitted to the BLM in August 2013. This report details field surveys conducted for the species, and results of the same. The report also discusses other bat species identified as part of the survey effort.	This section should be revised to reflect the bat field surveys that were completed for the Utility Project in 2013. Any impact analysis in Chapter 4 related this species should also be revised accordingly.	Sections 3.2.9.3.2 and 4.2.9.1.1.2 have been revised to discuss the results of the bat surveys.
163	3	3.2.10.3	Affected Environment	The text states that Evacuation Creek is a perennial water source that provides habitat for aquatic species. However, this conflicts with the flow status of Evacuation Creek as described in Section 3.2.5.4.1, which states that Evacuation Creek "maintains an intermittent base flow." Evacuation Creek has several reaches which periodically do not have any surface flow, as evidenced by quarterly and annual field data submitted by EAO. As such, while Evacuation Creek may support habitat for aquatic invertebrates, it should not be described as "perennial" in the EIS section discussing federally-listed fish species, as this would lead the reader to believe that Evacuation Creek harbors habitat for these fish species.	This section should be revised to reflect that only some portions of Evacuation Creek have perennial surface water present, and that Evacuation Creek is unlikely to provide habitat for federally-listed fish species, unless BLM has scientific data to support the contrary.	The text has been revised.
164	3	3.2.10.3.3	Federally Listed Threatened and Endangered Fish, Bonytail Chub	There is a typographical error in the form of a misspelled word. The word <i>alternation</i> should be <i>alteration</i> .	Correct typographical error.	Text revised.
165	3	3.2.10.3.4.1	Special Status Fish Species	This sentence references conservation easements for BLM-sensitive fish. BLM has conservation <i>agreements</i> with UDWR, who also identifies these species as sensitive, but there are no conservation <i>easements</i> in place.	Correct wording.	Text revised.
166	3	3.2.11.5.1	Class I and Class III Inventory	The text indicates that site counts and site types cannot be distinguished between the Utility Project area and the South Project area, as these data are not available. All cultural resource data, site forms, GIS files, etc. have been submitted by EAO's cultural resource consultant, SWCA, directly to the BLM (EAO does not have direct	This section should be revised to indicate which sites are associated with the Utility Project and which are associated with the South Project.	Class I and Class III Cultural resources data for use in the EIS analysis was collected by SWCA and extracted from the Class III Cultural Resources Inventory of the Utah Oil Shale Project in Uintah County, Utah, prepared for the Enefit Project (Lechert et al. 2013). However, Class I Site locations were collected and mapped by SWCA within the boundaries of the Enefit Contractual Survey Area only (Lechert et al. 2013, Appendix B). Site locations for those Class I sites located within the 1-mile-wide Class I buffer that were located

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				access to said data due to confidentiality requirements). Therefore, the BLM should be able to readily distinguish between the two areas.		outside of the Enefit Contractual Survey Area boundary were not collected or mapped by SWCA. As a result, the SWCA Class III report provides a general discussion of Class I site counts, site types, and site NRHP eligibility status with no distinction between the Utility Project area and the South Project area. Site location data was only collected by SWCA for those Class I sites located within the Enefit Contractual Survey Area boundary that might be reencountered during the Class III field surveys. BLM was not provided the level of data required to differentiate which Class I sites within the 1-mile buffer are associated with the Utility Project and which are associated with the South Project.
167	3	3.2.11.5.2	Utility Project	The text indicates that TCPs have the potential to be intersected by the Utility Project; however this is in direct conflict with the statement at the top of page 3-83 that indicates no TCPs are present in the APE or its vicinity. This same issue occurs in the very next section, 3.2.11.5.3 South Project.	This language must be consistent, particularly due to the sensitive nature of TCPs. If there are indeed no TCPs in the APE or its vicinity, this must be corrected throughout the document.	<p>Clarified as suggested. Text in Section 2.5, Table 2-8 Utility Project has been modified to read:</p> <ul style="list-style-type: none"> <li>• There are no known highly sensitive resources in the study area.</li> <li>• There is the potential for unrecorded, significant archaeological sites to occur in the study area.</li> </ul> <p>Text in Chapter 3, Section 3.2.11.5.3 (Cultural Resources, South Project) has been modified to read:</p> <p>“There are no known highly sensitive resources within the South Project. There is the potential for unrecorded, significant archaeological sites to occur within the South Project.”</p> <p>Text in Chapter 3, Section 3.2.11.5.2 (Cultural Resources, South Project) has been moved to the Cumulative Impacts analysis section of the document and also modified to read:</p> <p>“There are no known highly sensitive resources within the South Project. There is the potential for unrecorded, significant archaeological sites to occur within the South Project.”</p>
194	4	Table 4-1	Applicant Committed Environmental Protection Measures (Design Features) and BLM Mitigation Measure	There is an incorrect unit of measure for water flow rates. The mitigation measures indicates (15 acre-feet). The correct value and unit should be 15 cubic feet per second.	Correct unit of measure.	This comment is no longer applicable since the South Project was moved to the cumulative impacts section. The referenced measure is associated with the South Project, so is out of the scope of the Utility Project EIS and has been removed from Table 4-1.
195	4	4.2.1.1.2.1	Greenhouse Gas Effects	The text states that "...the South Project <i>will</i> conduct underground mining to extract some or all of the oil shale resource" (emphasis added). There is certainly a point at which it becomes more practical and economic to underground mine the oil shale resource vs. surface mine; however, that depends on a number of factors, and that transition (spatially or temporally) has not yet been determined for the South Project mine plan. It is thus more accurate to say that "...the South Project <i>may</i> conduct underground mining to extract some or all of the oil shale resource, over the life of the Project, such mining methods are expected to have lower GHG [greenhouse gas] emission levels per unit of production <i>than surface mining</i> ."	Clarify text accordingly.	Revised as suggested. This section has been moved to 4.3.3.1.3.
196	4	4.2.1.1.2.1	Greenhouse Gas Effects	Regarding PSD permitting, the text states that, "...it cannot be guaranteed at this time that BACT [best available control technology] will be required." However, it is unclear if the BLM has <i>assumed</i> that BACT will be required for the purposes of this impact analysis.	Clearly state what assumption(s) regarding BACT has been taken to inform the GHG impacts analysis for the South Project.	Additional sentence added to clarify that for analysis purposes BLM has not assumed that GHG BACT will be required. This section has been moved to 4.3.3.1.3.
197	4	4.2.1.1.2.1	Greenhouse Gas Effects	The text indicates that "CH4 can be released from the active mine surface." Is this implying that methane will volatilize from the oil shale mining surface into the	Cite technical source that supports the theory that methane volatilizes from exposed oil shale into the atmosphere. If there is no such supporting source, then	There is some evidence in literature that oil shale mining can result in the release of rock-bound methane. However, it is not a well-established theory, and revised text states this

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				atmosphere? If so, the BLM should provide a technical reference supporting this assumption.	this statement (and the assumed associated impacts) should be removed from the analysis.	point. Some new literature has been published since the initial draft EIS, and will be referenced. This section has been moved to 4.3.3.1.3.
198	4	4.2.1.1.2.1	Greenhouse Gas Effects	As indicated above, the South Project <i>may</i> conduct underground mining, rather than <i>is expected to</i> . The extent of underground mining associated with the South Project has not yet been defined.	Clarify text accordingly, here and throughout the remainder of the document.	Revised as suggested.
199	4	4.2.1.1.2.1	Greenhouse Gas Effects	This bullet indicates that the retorts would combust natural gas fuel to providing the heating necessary for retorting. This is incorrect and is not part of the Enefit proprietary retorting technology. The retorting process utilizes combustion of oil shale (and retort gas, if necessary) to provide the heating necessary to reach retorting temperatures.	There is publicly-available data on the Enefit retorting process that describes the heating conditions. This bullet should be revised accordingly, and the GHG impact analysis subsequently adjusted. The same change should be made throughout the document, as appropriate.	Reference to the combustion of oil shale/retort gas as part of Enefit proprietary retorting technology added to this section. This section has been moved to 4.3.3.1.2.
200	4	4.2.1.1.3.1	No Action Alternative - Non-Federal Connected Action South Project	Alternate water supply scenario is missing from this set of bullets.	Include GHG emission sources for South Project water supply alternative accordingly, depending on No Action Alternative assumption(s) taken by BLM.	Text will be revised per this comment. The BLM assumed daily/weekly delivery of water by truck for purposes of analysis. This section has been moved to Section 4.4.3.2.2.
201	4	4.2.1.1.3.1	No Action Alternative - Non-Federal Connected Action South Project	It is also important to note that power generation for the South Project would not only be required during the initial commissioning and startup of the facility, but also for startup following regular maintenance activities and emergency shutdowns. These occurrences would also result in GHG emissions from on-site generators in the absence of a transmission line.	Include startup following regular maintenance and emergency shutdowns as additional South Project sources of GHG emissions in the absence of a transmission line.	Section revised per this comment. This section has been moved to Section 4.4.3.2.2.
216	4	4.2.5.1.1.1	Surface Water	The potential effects on the Green River are not disclosed in this section; the project description is merely reiterated. This section does not describe or analyze the effects (e.g. reduced flow, any associated changes in water quality, etc.) of installing new collector wells in the Green River alluvial aquifer and using those wells to withdraw up to 15 cubic feet per second (cfs) under the existing water right, which would be a result of authorizing the Utility Project.	The direct and indirect effects on Green River surface water resources need to be disclosed. If the effects are anticipated to be negligible due to the relatively small rate and the fact that the water right is existing and senior, then this should be clearly stated.	No change as this point is mentioned in the first sentence of this section and reiterated throughout the document. The South Project has been moved to the cumulative impact section to increase the clarity of effects. Section 4.3.3.5.3.2 states that the 15 cfs water right use is not expected to affect flows or users of a 3,897 cfs river.
219	4	4.2.5.1.1.1	Surface Water, Pipeline Leaks and Spills	The second-to-last sentence in this paragraph appears to be contradictory to the last sentence. The second-to-last sentence indicates that natural gas condensate is highly volatile and likely to evaporate within 8 hours of spilling, while the last sentence then says that spills would potentially result in lethal levels of toxic substances affecting Colorado River fish and other aquatic organisms. How are these two sentences linked? There appears to be a gap in logic, or a missing transitional sentence.	This section should address the contradictory language and be made more clear, ideally by providing a reference to a technical literature source that indicates toxicity exposure time for Colorado River fish.	No change to document. The paragraph is written as follows: The toxicity of an accidental natural gas condensate or petroleum product spill to a particular stream or river would depend on the amount spilled, the level of attenuation before reaching the water, and the flow volume (and dilution) of the stream or river. Natural gas condensate is highly volatile and likely to evaporate within approximately 8 hours of spilling (BLM 2005a). Thus, spills occurring in proximity to streams would potentially result in lethal levels of toxic substances affecting Colorado River Fish and other aquatic organisms.
220	4	4.2.5.1.1.3	Wetlands and Riparian Areas	It would be useful to the reader to disclose that crossings of federally-jurisdictional waters of the United States would be authorized by the USACE under Nationwide Permit No. 12, Utility Line Activities.	Include reference to the USACE's regulatory programs.	Text revised to include reference to USACE regulatory programs.
222	4	4.2.5.1.2	Non-federal Connected Action South Project	The reference BLM 2013b is not included in the literature cited for the DEIS; though, presumably, it is the BLM Oil Shale and Tar Sands Programmatic Environmental Impact Statement and Record of Decision (OSTS PEIS and ROD). The list of common impacts provided in this section is overly broad and not representative of the information available for EAO's South Project based on water use and the resources present in the area. In this case, BLM knows the source, approximate volume, and anticipated use of water sufficient to complete at least some level of site-specific analysis, which should be	The reference should be corrected accordingly. The bullet list of "common impacts" should be revised to more accurately represent potential impacts as a result of EAO's proposal, taking into account the information provided by EAO regarding water source and use.	Bullet list revised to more accurately represent potential common impacts. This section has been moved to 4.3.3.5.3.

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				included in this document location, such that the reader is not lead to believe that all the impacts listed here are likely.		
223	4	4.2.5.1.2.1	Water Use	There are several geographic reference errors in this first sentence. The text should read, "...including all private land and state/federal leases, cover nearly 30,000 acres and are transected from south to north by the White River, a perennial river that flows into the Green River located west of the South Project area." Italicized words are the correct geographic references for this sentence.	Revise text accordingly.	Text revised as suggested. This section has been moved to 4.3.3.5.3.1.
224		4.2.5.1.2.1	Water Use	The DEIS contrasts BLM estimates (presumably from the OSTs PEIS) with the estimates of water use provided by EAO. EAO's estimates of water required (5,607 acre-feet/year for 50,000 bbl/day production) is less than BLM's estimate (3,050 to 5,640 ac-ft/yr for 25,000 to 30,000 bbl/day). However, it never states which estimate of water use was used for the analysis, nor does it indicate what, if any, assumptions were taken.	The BLM should clearly identify which estimate of water use is used in the impact analysis and should clearly state any assumptions that BLM made in this analysis or determination.	Information was taken from the OSTs Programmatic EIS. No change to document. This section has been moved to 4.3.3.5.3.1.
225	4	4.2.5.1.2.1	Water Use	The Applicant would only need to submit a new SF-299 to the BLM for the rights-of-way if the proposed route from the water diversion point to the South Project crossed BLM land. This should be indicated in the document.	Revise text accordingly.	The first sentence in the last paragraph of Section 4.3.3.5.3.1 has been revised to indicate a new SF-299 would only be needed if the proposed route from the water diversion point to the South Project crossed BLM land.
226	4	4.2.5.1.2.2	Surface Water	There are several mentions of in situ technologies and production in the section, as well as again in the second paragraph on page 4-71. These are irrelevant to the Utility Project or the South Project, as EAO is not proposing in situ retorting or oil shale processing. It appears that the BLM was using analysis previously conducted in the OSTs PEIS and simply copy/pasted that material into the DEIS; this gives the reader an inaccurate representation of the potential South Project effects.	The BLM should remove all references to in situ technologies and production, here and elsewhere in the document, as they have no relevance to the Utility Project or the South Project. The BLM should also carefully consider any generalized impact analyses that have been drawn from the OSTs PEIS, as these may provide an inaccurate representation of EAO's planned development.	Text revised.
227		4.2.5.1.2.2	Surface Water	This section makes reference to discharges from the project site. EAO has made multiple public presentations indicating that the South Project will be a "zero liquid discharge" facility; therefore, these potential impacts should be removed.	Remove references to impacts associated with controlled discharges from the South Project, as these have not been proposed by EAO. If proposed in the future, they would be regulated by the appropriate federal and/or state agencies.	Text revised as suggested. See Section 4.3.3.5.3.3.
228		4.2.5.1.2.2	Surface Water	There is a typographical error in the form of a missing terminal punctuation mark. A period should be placed following the word approvals.	Correct typographical error.	Text revised.
229	4	4.2.5.1.2.3	Groundwater	This section analyzing the potential groundwater effects of the South Project wanders between describing surface water and groundwater impacts, without providing a reason or connection for describing the two water resources in the same section. The analysis mentions impacts associated with practices that are not (or at least have not yet been) proposed for the mine (e.g. dewatering) and speculates about the surface water impacts of wastewater discharge into surface waters (again, not proposed, as the South Project would be "zero liquid discharge"), and the impacts on surface water from increasing population (which appears speculative and would suggest that the analysis area should be much larger). Furthermore, the analysis states, "water rights may be affected well into the future", which conflicts with previous (and more accurate) statements that water right would not be impacted by the project. After several paragraphs of speculation about potential impacts of the South Project, with no reference to studies or scientific literature or the resource conditions present at the South	This section should be revised to state assumptions regarding the UDOGM mine permitting process first, followed by a discussion of potential groundwater impacts. In instances where there is anticipated to be interaction between groundwater and surface water impacts, it should be made clear why both are being discussed in this section. Finally, the analysis should tier to the information that is currently available regarding EAO's mine plan (and any other aspects of the South Project), and it should delineate what information is not available and that BLM has assumed, such that the reader is aware of the differences.	Text revised to reflect new organization of the document, South Project is discussed in Section 4.4.

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				Project site, the BLM states that, "Development and enforcement of mitigation measures is outside of the purview of BLM for the South Project. The exact nature and magnitude of the impacts would depend on the detailed mine plan of development, which would be submitted to UDOGM for approvals." The UDOGM mine plan approval process is rigorous and will serve to avoid many of the impacts that BLM has speculated about in the analysis. It would be a more accurate analysis to state this and any other assumptions first, and then analyze the potential impacts based on these assumptions, available literature and geologic information on this topic, and information available about UDOGM's mine permitting standards.		
230	4	4.2.5.1.2.3	Groundwater	The text indicates that, depending on the depth of groundwater in the area of a spill, large spills may reach the groundwater table. However, no threshold of spill size is mentioned that would be anticipated to reach the groundwater table, nor is the Applicant's Spill Prevention, Containment and Countermeasure plan (Appendix F in the DPOD).	The BLM should provide some estimate of spill size that, based on the geology and groundwater table(s) in the area, would be expected to affect groundwater. Otherwise, this impact assumption seems overreaching and arbitrary.	See the response to comment 113.
231	4	4.2.7.1.1.2	BLM Sensitive Species and Utah State Species of Concern, Graham's Penstemon (Beardtongue)	This section uses the "Penstemon Conservation Agreement Areas" to quantify effects on this species. However, the conservation agreement areas are not broken out by type (i.e. Federal Conservation Area, Non-Federal Conservation Area, Private Non-conservation area, etc.), which makes the quantification provided of lower value when considering impacts on the species.	The BLM should delineate the penstemon conservation area acreages and impacts in each of the area categories, in order to provide the reader context as to which areas are actually being affected.	Text revised. See Section 4.2.7.1.1.2, Table 4-11, and Section 4.3.3.7.3.
232	4	4.2.7.1.1.2	BLM Sensitive Species and Utah State Species of Concern, Graham's Penstemon (Beardtongue)	Agreement 2014 is not a valid reference. The Conservation Agreement and Strategy for Graham's Beardtongue ( <i>Penstemon grahamii</i> ) and White River Beardtongue ( <i>P. scariosus</i> var. <i>albifluvis</i> ) is referenced throughout the DEIS as SITLA et al 2014.	Correct reference citation.	Text revised.
233	4	4.2.7.1.1.2, 4.2.7.1.4	BLM Sensitive Species and Utah State Species of Concern, Barneby's Catseye, Strigose Easter-daisy	While it may be reasonable to use SWReGAP data to estimate the amount of habitat that could be affected for these species, the analysis in Chapter 4 needs to match the description of the Affected Environment in Chapter 3. In general, Chapter 3 discloses that "no potential habitat data are available" or that habitat is similar to the penstemon species. If SWReGAP data is to be used for this analysis, it should be introduced in Chapter 3 as the best available information.	Reconcile the use of SWReGAP data for special status plant species in Chapters 3 and 4. Any use of SWReGAP data, for vegetation, wildlife or other resources, should be reviewed for accuracy.	The text in Section 3.2.7.3.1.2 has been revised to include an estimated habitat extent for each sensitive species using the 2013 vegetation cover survey. Section 4.2.7.1.1.2 has also been revised according to the same comment to discuss extent of potential impacts on sensitive species habitat as estimated by the 2013 vegetation cover survey data.
235	4	4.2.8.1.1.1	General Wildlife and Wildlife Habitat, Bison	The Book Cliffs bison herd typically is located far away from the Utility and South Projects, although this is never mentioned in this section. While it is reasonable to disclose the habitat impacts, it is also important to note that there is little likelihood of impact to individuals.	Revise section accordingly. This fact, which is relevant to the analysis presented in this section, should be described and used to quantify the analysis for this species throughout the document.	The text in this section has been revised to indicate the likelihood of collisions is very low. Information regarding the specific location of the Book Cliffs bison herd is not available to cite in the EIS. According to the UDWR ( <a href="https://wildlife.utah.gov/hunting/biggame/pdf/bison_10.pdf">https://wildlife.utah.gov/hunting/biggame/pdf/bison_10.pdf</a> ) the bison herd is located within the Book Cliffs Management Unit, which is a very large area that encompasses both the Utility and South Projects. Sections 3 and 4 state that no bison were observed in either the Utility and South Projects.

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238	4	4.2.8.1.1.1	General Wildlife and Wildlife Habitat, Migratory Birds	This section frequently references "standards from the APLIC." The text should be specific and reference the standards in "Reducing Avian Collisions with Power Lines, The State of the Art in 2012" (APLIC 2012) or "Suggested Practices for Avian Protection on Power Lines: The State of the Art in 2006 (APLIC 2006) depending on the avian hazard and standards to be applied. The two publicaitons address a different range of avian threats and present different standards to address these threats.	Provide references to specific avian protection standards, and which APLIC version they arise from.	Reference to the appropriate APLIC document has been added.
239	4	4.2.8.1.1.1	General Wildlife and Wildlife Habitat, Migratory Birds	It is unclear how the BLM's strategic plan would help avoid direct impacts and lessen indirect impacts on migratory birds at the project level. The conclusion in the second sentence seems more appropriate for the Raptors sub-section, not the Migratory Birds sub-section where it is currently located.	The specific measures from this plan that would be implemented at the project level should be identified and disclosed. If there are no specific measures that can be identified as applicable at the project level, then reference to this plan should be removed.	A more detailed description of BLM's Strategic Plan has been added. Specific measures from the Strategic Plan have already been included in Table 4-1. The information about raptors has been moved to the raptors section.
240	4	4.2.8.1.2	Non-federal Connected Action South Project, Big Game	This section, and other wildlife sections addressing the South Project, do not describe or address the phased/successional nature of mining in the South Project area. The analysis quantifies the total amount of resources that would be impacted (e.g., approximately 6,585.7 acres of UDWR-designated winter crucial mule deer habitat), but fails to note that only a portion of this habitat would be disturbed at any one time as mining and post-mining reclamation occur. As a result, the DEIS substantially overestimates the impact on these resources at any one time without qualifying or describing the effects.	Modify the analysis to account for the successional nature of the South Project development.	The EIS discloses the number of acres impacted over the 30-year life of the project. Text describing the phased/successional nature of mining in the South Project area has been inserted into 4.3.3.8.3.
241	4	Table 4-24	Percent Surface Disturbance to Vegetation Communities in the South Project Area Over Time	The SWReGAP acreages reported in Table 3-10 are less than the acreages of impacted cover types in Tables 4-17 and 4-24. These need to be reconciled. Table 3-10 references SWCA 2013e as the source; however, the SWCA report does not contain these acreages.	Reconcile acreage tables between Chapters 3 and 4.	Previous Table 3-10 was deleted. Section 3.2.6.3.1 was revised to discuss only the extent of vegetation communities as identified during the 2013 vegetation cover surveys. Table 3-10 summarized the extent of vegetation communities identified in the raw SWReGAP data and was removed in the Administrative Final EIS.  Table 4-17 was moved and is now 4-28. Table 4-24 was moved and is now 4-31.
242	4	4.2.9.1.1.1	Species Listed as Federally Threatened, Endangered, or Proposed, Greater Sage-grouse	The Greater sage-grouse is no longer proposed for listing under the Endangered Species Act. This entire sub-section should be moved to Section 4.2.9.1.1.2 BLM Sensitive Species.	Relocate Greater sage-grouse sub-section accordingly.	Text has been relocated to BLM special status species sections.
243	4	4.2.9.1.1.1	Species Listed as Federally Threatened, Endangered, or Proposed, Greater Sage-grouse	The text indicates that, "Helicopter surveys and a preliminary habitat evaluation conducted in 2012 documented potential greater sage-grouse or sage-grouse leks..." This appears to be a typographical error that is missing the word <i>no</i> between <i>documented</i> and <i>potential</i> , as this conflicts directly with the next sentence in that section.	Correct typographical error.	Typographical error has been corrected.
244	4	4.2.9.1.1.1	Species Listed as Federally Threatened, Endangered, or Proposed, Greater Sage-grouse	The text states, "The Utility Project is unlikely to affect active sage-grouse leks; however the Utility Project could affect 611.4 acres (1.8 percent) of the 34,347 acres of occupied, brood, and winter habitat of the greater sage-grouse within the GHMA [General Habitat Management Area]." This statement is lacking geographic context.	It would be more appropriate to reference a quantification of "the contiguous GHMA crossed by the Utility Project", "the GHMA used by the Deadman's Bench sage-grouse population", or similar.	Text was revised to include reference to the Deadman's Bench greater sage-grouse population.
245	4	4.2.9.1.1.1	Species Listed as Federally Threatened, Endangered, or Proposed,	The text states, "Specifically, MA-SSS-5 applies to the Utility Project because project activities would result in habitat loss and degradation to sage-grouse GHMA. Net conservation gain would result from implementation of minimization of impacts through ACEPM and through	Additional detail regarding the intended mechanism for sage-grouse plan amendment compliance should be coordinated with EAO and disclosed here.	Additional clarifying text has been added to Section 4.3.3.9.3.2 and Appendix F.

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			Greater Sage-grouse	compensatory mitigation described in the BLM Utah Greater Sage Grouse Approved Resource Management Plan." The BLM Utah Greater Sage-grouse ARMPA describes the requirement for sage-grouse compensatory mitigation to meet the net conservation gain requirement; it does not, however, describe specific compensatory mitigation that is appropriate for the Utility Project. Further, ACEPM Special Status Wildlife - 5 describes a monetary contribution that would be made to UDWR for sage-grouse mitigation associated with disturbance in GHMA. This measure does not address the durability or timeliness of this mitigation required to demonstrate compliance with the net gain standard and Approved RMP Amendment.		
246	4	4.2.9.1.1.2	BLM Sensitive Species, White-tailed Prairie Dog	The text states, "Of the 616.5 acres of mapped (active and inactive) white-tailed prairie dog colonies, implementation of the Utility Project would result in the direct disturbance to 20.2 acres." The context of this statement is confusing - are these colonies mapped in the study area, the disturbance area, the Vernal Field Office area, or some other geographic boundary?	The statement should be clarified, to provide the reader context as to the extent of the mapped white-tailed prairie dog colonies.	The statement has been clarified. Active and inactive colonies in the study area were mapped by SWCA. Reference to SWCA technical report has been added.
247	4	4.2.9.1.2.1	Species Listed as Federally Threatened, Endangered, or Proposed, Greater Sage-grouse	The greater sage-grouse is no longer proposed for listing under the Endangered Species Act. This entire sub-section should be moved to Section 4.2.9.1.2.2 BLM Sensitive Species.	Relocate greater sage-grouse sub-section accordingly.	Text has been moved.
248	4	4.2.9.1.2.1	Species Listed as Federally Threatened, Endangered, or Proposed, Greater Sage-grouse	No occupied habitat or leks have ever been identified within the South Project area, as is clearly stated in the following paragraph. Thus, direct impacts to greater sage-grouse should not be assumed. Indirect impacts to habitat are reasonable, however.	The text in this section should clarify that no leks or individuals have been observed during site-specific surveys; therefore, the likelihood of direct impacts to individuals is negligible.	The South Project has been moved to the cumulative impact section, therefore impacts to habitat from the South Project are neither direct or indirect.
249	4	4.2.9.1.2.1	Species Listed as Federally Threatened, Endangered, or Proposed, Greater Sage-grouse	Given that the black-footed ferret release site is on the other side of the White River and there are no white-tailed prairie dogs known to be present in the South Project area, a simple "no effect" statement for this species would likely be more appropriate than the discussion presented here.	Consider simplifying the discussion regarding impacts to black-footed ferrets to "no effect".	The text in Section 4.3.3.9.2 has been changed to reflect there would be no contribution of effects to black-footed ferret from the South Project because there are no white-tailed prairie dog colonies in the South Project area and the experimental population of black-footed ferrets is located far from the South Project area. The correct impact language for the Utility Project proposed action is in section 4.2.9.1.1.1.
251	4	4.2.9.1.2.2	BLM Sensitive Species, Golden Eagle	The text states, "...implementation of the South Project is not likely to contribute to golden eagles being listed." This is an overly broad conclusion. It would be difficult to imagine any scenario where actions at one site could result in a broad-ranging species like golden eagle being listed under the ESA. While measures in the BLM Vernal RMP do not apply to the South Project, golden eagles are protected under the Bald and Golden Eagle Protection Act and Migratory Bird Treaty Act regardless of land ownership. In part because of the regulatory processes, impacts on the species at the South Project site would not be anticipated to rise to the level that take may occur.	Recommend revising the analysis to clarify the anticipated level of impacts to the species.	The impacts of the South Project that may accumulate with the Utility Project proposed action have been moved to the cumulative impact section. Since the South Project is a reasonably foreseeable non-federal action that is outside the jurisdiction of the BLM, the determination language has been removed. The effects from the Utility Project proposed action is included in section 4.2.9.1.1.2.
255	4	4.2.10.1.1.1	Species Listed as Federally Threatened, Endangered, or Proposed	The analysis of the Proposed Action and No Action Alternative in this section does not acknowledge or differentiate the effects to the fish species that would occur depending on whether the water is withdrawn from the Green River (Proposed Action) or White River	The difference in withdrawal location is a primary source of the differences in resource impacts among alternatives for this resource, as well as for water resources, and should be described and differentiated throughout the document.	The withdrawal of water from the White River was an alternative considered but dismissed from detailed analysis. See section 2.4.2.2.3. This comment was made in reference to the DEIS discussion of the South Project should the BLM deny the Utility Project proposed action. To address confusion expressed by the public during the DEIS comment period, those South Project impacts that may accumulate with the impacts of the Utility Project proposed action have been moved to the cumulative impact analysis in the FEIS. Since the No Action



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				(possibly No Action Alternative, depending on water supply assumption taken by BLM).		alternative is to deny the requested rights of way, there is no accumulation of impacts under that alternative. However, given public interest in the South Project, Section 4.4 has been added to the EIS that describes the South Project if the BLM were to deny the Utility Project. Some language has been added in that section to differentiate the effect of water withdrawal from diversion points on the White River. All six species of special status fish species are known to occur in the White River.
256	4	4.2.10.1.1.1	Species Listed as Federally Threatened, Endangered, or Proposed	These two paragraphs appear to be conflicting to the lay-reader. The second paragraph indicates that the project is <i>unlikely</i> to have adverse effects based on the ACEPMs and implementation of the Conservation Measures for Colorado River fishes, while the third paragraph indicates that the project is <i>likely</i> to adversely affect the listed Colorado River fish species.	The language in these two paragraphs should be reconciled. Between the ACEPMs and implementation of the fish conservation measures, <i>not likely to adversely affect</i> the listed fishes appears to be the correct determination. If the water right would be subject to the Upper Colorado fish recovery plan, and if the BLM anticipates payments into the recovery plan at the time of diversion, the effects on the affected water resources and fish species should be disclosed, along with the proposed mitigation (e.g., payments into the recovery program).	The second paragraph refers to sedimentation effects, which are minimal due to the Utility Project’s proposal to bore the pipelines under the river. These impacts would be far greater under the open cut crossing method, which was considered but dismissed in section 2.4.2.2.2.2.  The third paragraph refers to water depletion effects, which are likely to adversely affect the listed species. However, given the small amount of withdrawal associated with the Utility Project proposed action (8.56 acre-feet which is below the 100 acre-feet per year minimum withdrawal that necessitates a payment into the recovery plan), no payments into the recovery plan are anticipated. However, the Fish and Wildlife Service will make this determination in their Biological Opinion for this EIS.  Please note that to reduce confusion, the withdrawal impacts associated with the South Project have been moved to the cumulative impact section of the EIS to the extent that they accumulate with the Utility Project proposed action impacts. These impacts are outside of the BLM’s jurisdiction.
257	4	4.2.13	Visual Resources	These sections need a discussion of visual contrasts as related to the Visual Resource Management (VRM) Management Classes and whether or not contrasts exceed VRM objectives. It is not sufficient to simply reference the Contrast Rating Sheets and visual simulation in Appendix G and indicate that the actions would not exceed VRM objectives.	Summarize the visual contrasts in a meaningful way, disussing them in terms of the VRM Management Classes and whether or not they exceed the VRM objectives.	Text was added to describe by KOP visual contrast and compliance with BLM VRM Class objectives.
258	4	4.2.13.1.1.1	Scenery	The text uses the phrase, "...begin to locally dominate the character of the White River..." This is not common language for the lay-reader, and the document would benefit from a footnote (or similar) explanation of what this phrase means.	Provide an explanation, in common terms, of what it means for the Utility Project to "locally dominate the character of the White River..." This provides context for the reader to better understand what kind of impact is being contemplated here.	Texted added to explain these impacts. Text instead states the Utility Project would dominate the setting adjacent to the crossing but the majority of the landscape would not be impacted.
263	4	4.2.17.1.1.6	Environmental Justice	There is no analysis present in this section.	The BLM needs to demonstrate one of the following: 1) There are no disadvantaged populations; 2) There are no impacts that can be ascribed to any population; or 3) The impacts apply equally to all populations.	Text revised.
264	4	4.2.17.1.2.8	Environmental Justice	There is no analysis present in this section.	The BLM needs to demonstrate one of the following: 1) There are no disadvantaged populations; 2) There are no impacts that can be ascribed to any population; or 3) The impacts apply equally to all populations.	Text revised.
267	4	4.3.1	Cumulative Impacts for the Proposed Action	The South Project is included, it seems, in its entirety as an RFFA and analyzed as a cumulative action. It is <i>also</i> analyzed, in its entirety, as a connected action (i.e. indirect effects to the Proposed Action) in Chapter 4. It cannot be analyzed as both, as this is "double-counting" the environmental consequences. Section 1.2.1 states that those effects that can be changed by the BLM's decision should be analyzed as indirect effects of the Proposed Action. Those effects than cannot be changed by the BLM's decision should be analyzed as cumulative actions. Right now, the DEIS does both. Since there is no description of the South Project that discriminates between the two (as expected from Chapter 1), it is likely that this information is not available because of the current conceptual description of the South Project. If this is the case, this needs to be stated in Section 1.2.1. The	This issue has unnecessarily complicated the structure and analyses in the EIS for both the public and the decision maker. The more conservative route for the BLM, due the current status of available information regarding the South Project, is to assume that all aspects of the South Project could be modified by BLM decision-making and to analyze the South Project, in its entirety, as a connected action - which the BLM has already done. As such, the South Project should be removed from the Cumulative Impacts section so as to avoid "double-counting" of effects.	This comment is correct that the Draft EIS treatment of the South Project double counted its effects. The South Project is outside of the jurisdiction of the BLM and will proceed to full buildout regardless of the BLM decision to be made for the Utility Project. It is therefore not eligible to be a connected action. Upon further review of the project, public comment, and case law, the BLM has determined that the South Project is a non-federal cumulative action. To address confusion expressed by the public during the DEIS comment period, those South Project impacts that may accumulate with the impacts of the Utility Project proposed action have been moved to the cumulative impact analysis in the FEIS. Since the No Action alternative is to deny the requested rights of way, there is no accumulation of impacts under that alternative. However, given public interest in the South Project, Section 4.4 has been added to the EIS that describes the South Project if the BLM were to deny the Utility Project. Section 1.2.1 has been changed to reflect this clarification.

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				South Project can be analyzed completely as a connected action (which it is) <i>or</i> a cumulative action (which it is), but not both.		
268	4	Table 4-31	Cumulative Impact Analysis Area by Resource	The text, "(Note: for key plant species such as White River and Graham's penstemon, the area might be expanded to the range-wide distribution of the plans.)" appears to be a remnant from a preliminary version of the document. Was the analysis area expanded?	Clearly indicate the cumulative impact analysis area for special status plants.	Text revised to show the cumulative impact area for some plants is the whole range of the species.
271	4	4.3.3.1	Greenhouse Gases	The cumulative impacts analysis of GHG/climate change does not appear to be consistent with the CEQ's guidance on analyzing GHG/climate change. EPA will likely require that the GHG/climate change analysis be consistent with CEQ guidance. Table 4-31 summarizes the approach to GHG cumulative impact analysis and mentions reviewing project GHG emissions in the context of other existing sources in the region. However, the cumulative impacts analysis in Section 4.3.3.1 is overly qualitative, with no estimates of regional sources of GHG emissions.	The GHG emissions from the Proposed Action should be compared to the GHG emissions from other regional sources. If GHG emissions from regional sources cannot be estimated quantitatively, the document should provide a rationale for why that is the case. It may just be because not enough detail is known about the regional sources to provide an estimate. If so, this should then be stated.	Text in Sections 4.3 and 4.4 has been updated to reflect regional sources, where applicable.
272	4	4.3.3.2.3	Results	In addition to trucking, air quality impacts would also likely be increased under the No Action Alternative due to the need for onsite power generation via fuel combustion.	Include onsite power generation as an additional source of air quality impacts in this CIAA section.	Since the No Action alternative is to deny the requested rights of way, there is no accumulation of impacts under that alternative. However, given public interest in the South Project, Section 404 has been added to the EIS that describes the South Project if the BLM were to deny the Utility Project.
274	4	4.3.3.6.2	Existing Conditions	There is no description of existing conditions for vegetation provided, only a geographic description of the assessment area.	Provide existing conditions for vegetation resources within the CIAA.	Since the cumulative impact area is the project area, please refer to chapter 3 for a description of the existing condition.
275	4	4.3.3.8	Wildlife	This analysis presented in this section spends a significant proportion of the text describing the effects of the Proposed Action and mitigation measures to reduce these effects, which have already been described in other sections of the DEIS. The analysis does little to describe the other recommended elements of a cumulative effects analysis, and it jumps to conclusions (e.g., local populations within the CIAA would be likely to continue to occupy their ranges and to reproduce, thus, the overall impact of the Proposed Action of approving the Utility Project on habitat for mule deer within the CIAA would be minor) without providing adequate analysis or support for these statements.	This is likely a result of considering the South Project both a connected and cumulative action simultaneously, resulting in a "double counting" or "double disclosure" of impacts. As mentioned above, the more conservative approach for the BLM is likely to simply refer to the South Project as a connected action and remove it from the CIAA altogether.	This comment is correct that the DEIS treatment of the South Project double counted its effects. The South Project is outside of the jurisdiction of the BLM and will proceed to full buildout regardless of the BLM decision to be made for the Utility Project. It is therefore not eligible to be a connected action. Upon further review of the project, public comment, and case law, the BLM has determined that the South Project is a non-federal cumulative action. To address confusion expressed by the public during the DEIS comment period, those South Project impacts that may accumulate with the impacts of the Utility Project proposed action have been moved to the cumulative impact analysis in the FEIS. Since the No Action alternative is to deny the requested rights of way, there is no accumulation of impacts under that alternative. However, given public interest in the South Project, Section 4.4 has been added to the EIS that describes the South Project if the BLM were to deny the Utility Project. Section 1.2.1 has been changed to reflect this clarification.
276	4	4.3.3.8.3	Results, Big Game	Cumulative effects are only analyzed for mule deer, though quantitative results for other big game species are presented in the direct and indirect analysis. The different level of analysis is not explained or described in the DEIS.	This discrepancy should either be explained or additional analyses should be included in the document.	An analysis of cumulative effects to pronghorn antelope, Rocky Mountain bighorn sheep, Bison, and Rocky Mountain elk has been inserted in Section 4.3.3.8.3.
277	4	4.3.3.10.2	Existing Conditions	There is no description of existing conditions for special status fish provided, only a geographic description of the assessment area.	Provide existing conditions for special status fish resources within the CIAA.	A description of existing conditions for special status fish has been added.
278	4	4.3.3.14.1	Issues Identified for Analysis	There is a grammatical error in the form of an incorrect word. The word <i>use</i> should be <i>used</i> .	Correct grammatical error.	Text revised.
279	4	4.3.3.14.3	Results	There is no such legal entity as Enefit Resources Inc. EAO's lands are held by EAO Real Estate Corp.	Correct corporate entity title.	Text revised.
280	4	4.3.3.15	Travel Management	There are no sub-sections addressing Issues Identified for Analysis, Existing Conditions and Results. This is inconsistent with the other cumulative impacts sections.	Include relevant sections, or provide adequate justification for why these sections have been omitted.	Text revised.
281	4	4.3.3.16	Recreation	There are no sub-sections addressing Issues Identified for Analysis, Existing Conditions and Results. This is inconsistent with the other cumulative impacts sections.	Include relevant sections, or provide adequate justification for why these sections have been omitted.	Text revised.
282	5	Title Page	N/A	The title page reads, "Appendix 5 Consultation and Coordination". This should be Chapter 5.	Correct title page.	Text revised.

Comment Number	Chapter	Section/Table/ Figure Number	Section/Table/ Figure Title	Comment	Enefit Recommendation	BLM Response
283	5	Table 5-2	Bureau of Land Management Preparers and Contributors	The decision maker listed in this table is no longer employed by the BLM, and there are several more individuals listed in this table that are no longer with the BLM and/or the Vernal Field Office.	The text in this section would benefit from an explanation of the transient nature of staff within the agency and, in particular, it should explain that the decision maker role is held by the Green River District Manager position rather than a specific individual name.	Text revised to reflect current staff as of June 2017.

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CP3	COMMENT(S)	RESPONSE(S)
	<p data-bbox="485 219 747 248"><b>Norwest Corporation</b></p> <p data-bbox="285 354 432 394"><b>NORWEST</b> CORPORATION</p> <p data-bbox="485 440 573 459">May 12, 2016</p> <p data-bbox="485 505 674 583">Vernal Field Office, BLM Attention: Stephanie Howard 170 South 500 East Vernal, UT 84078</p> <p data-bbox="485 605 919 644"><b>Subject: Draft Environmental Impact Statement – Enefit American Oil Utility Corridor Project</b></p> <p data-bbox="485 667 554 686">Reviewers:</p> <p data-bbox="485 709 905 829">Norwest Corporation (Norwest) appreciates the opportunity to provide comments in support of the Draft Environmental Impact Statement (EIS) process and the Enefit American Oil Utility Corridor Project. Norwest recommends BLM issue a Record of Decision (ROD) granting the requested rights-of-way for the Utility Project on land administered by the BLM.</p> <p data-bbox="485 852 919 1034">Our review of the documents presented in the Scoping review and the subsequent comments presented during that phase were addressed in the draft EIS document. This draft EIS illustrates both the diligent review by the BLM and cooperating agencies, and the effort and forethought by the applicant to look for the best practices and selection of the least impactful utility routes to accomplish the guidelines and parameters established by multiple levels of governmental interactions, while still minimizing potential environment impacts through attainable mitigations.</p> <p data-bbox="285 1079 436 1115"><b>GOVERNMENTAL PLAN CONFORMANCE</b></p> <p data-bbox="485 1079 898 1138">The request by the applicant for a utility corridor to their private property and the BLM decision within the draft EIS conform to governmental plans on multiple levels.</p> <p data-bbox="485 1161 537 1177"><b>Federal</b></p> <p data-bbox="485 1180 911 1281">Two major government documents [Energy Policy Act of 2005 (Pub. L. 109-58) and the BLM’s Vernal Field Office Approved Resource Management Plan (RMP)] contain direction and guidance supportive of a decision favorable to the installation of a utility corridor.</p> <p data-bbox="388 1365 816 1411">American Plaza II - 57 West 200 South, Suite 500 • Salt Lake City UT 84101 USA Tel 801.539.0044 • USA 800.268.6351 • Fax 801.539.0055 • www.norwestcorp.com SALT LAKE CITY / CALGARY / DENVER / VANCOUVER / SASKATOON / CHARLESTON WV</p>	<p data-bbox="1079 922 1325 951">CP3a <input type="checkbox"/> Comment noted.</p>

COMMENT(S)

RESPONSE(S)

CP3

Norwest Corporation (cont.)

**NORWEST**  
CORPORATION

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Vernal Field Office, BLM

The Energy Policy Act (Act) “declares” that the United States oil shale and tar sands deposits are “strategically important domestic resources that should be developed to reduce the growing dependence of the U.S. on politically and economically unstable sources of foreign oil imports”. The Act also mandates development of oil shale “should occur, with emphasis on sustainability” to benefit the United States [Id at § 15927(b)]. The Act directs the Secretary of the Interior to make public lands available to “support” oil shale development activities. In this light the sustainability emphasis is on reducing negative impacts to the environment.

The BLM’s Vernal Field Office Approved RMP’s goals and objectives include the following:

- Meet local and national non-renewable and renewable energy and other public mineral needs.
- Support a viable long-term mineral industry related to energy development while providing reasonable and necessary protections to other resources.
- The following principles will be applied:
  - Encourage and facilitate the development by private industry of public land mineral resources in a manner that satisfies national and local needs and provides for economical and environmentally sound exploration, extraction and reclamation practices.
  - Process applications, permits, operating plans, mineral exchanges, leases, and other use authorizations for public lands in accordance with policy and guidance.
- The plan will recognize and be consistent with the National Energy Policy by:
  - Recognizing the need for diversity in obtaining energy supplies
  - Conserving sensitive resource values
  - Improving energy distribution opportunities.

The draft EIS decision in support of the utility access corridor conforms to the RMP’s goals and objectives for mineral development.

COMMENT(S)

RESPONSE(S)

CP3

Norwest Corporation (cont.)



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**State**

The State of Utah’s Energy Initiatives & Imperatives, Utah’s 10-Year Strategic Energy Plan provided guiding principles and goals for energy strategy in the state. One of the key guiding principles is the following:

*Energy development in Utah will carefully consider the impacts on human health, environmental impacts and impacts on wildlife habitat. An effort to avoid, minimize or mitigate these impacts will be made regardless of energy resource.*

The Applicant provided diligent study and forethought in locating the utility corridors to their property to minimize the impact and mitigate any impacts generated in this action. The EIS review agencies completed their responsibilities by reviewing both possible decisions, alternative routes, and weighed potential impacts and mitigations to reach the decision presented in the draft EIS.

One of the key goals of the state’s plan:

*Facilitate the expansion of responsible development of Utah’s energy resources, including traditional, alternative and renewable sources.*

The draft EIS decision in support of the utility access corridor specifically conforms to this goal.

**Local**

The State of Utah Resource Management Plan for Federal Lands (Title 63J, Chapter 8, Section 105 of the Utah State Code) and the Uintah County General Plan, 2012, created and will implement the Uintah Basin Energy Zone (UBEZ). Key portions of this Utah State Code call upon federal agencies to “allow continued maintenance and increased development of roads, power lines, and pipeline infrastructure and other utilities necessary to achieve the goals, purposes, and policies” and “refrain from planning decisions and management actions that will undermine, restrict, or diminish the goals, purposes, and policies for the UBEZ.”

The utility corridor and the Applicant’s property are within the UBEZ. The draft EIS decision in support of the utility access corridor conforms to the goals, purposes, and policies for the UBEZ.

COMMENT(S)

RESPONSE(S)

CP3

Norwest Corporation (cont.)

**NORWEST**  
CORPORATION

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Section 8.17 of the Uintah County General Plan outlines the county's plan for Managing and Developing Oil Shale and Oil Sands Resources within the Borders of Uintah County. There are four key statements included in the Plan:

1. Representatives from Uintah County have observed economically viable technologies for extracting and processing oil shale and oil sands and know that they exist and are applied every day. Similar applicable technologies should immediately be applied today to oil shale and oil sands resources within Uintah County.
2. All lands approved for oil shale and oil sands leasing and development in the 2008 BLM Oil Shale and Tar Sands Programmatic Environmental Impact Statement (2008 OSTs PEIS) should be fully leased and developed for those resources.
3. Further, additional lands in Uintah County should also be approved for full oil shale and/or oil sands leasing and development if they either have a minimum resource thickness of 15 feet, or are estimated to produce a minimum yield of 15 gallons of oil per ton of ore. Lands with these minimum resource thicknesses and gallon yield estimates were approved for oil shale and/or oil sands development in Wyoming within the Green River Formation. Similarly situated resources should be subjected to the same approval process.
4. Uintah County requires all applicable Federal agencies to fully comply with The Federal Land Policy and Management Act of 1976, as amended (hereinafter "FLPMA"), by being consistent with State and local plans to the maximum extent possible in managing public lands within Uintah County, in coordination with duly elected officials of the County. Uintah County is committed to insure management of public lands is subject to consistent objective policy and not the political vagaries of the day. Sound consistent management will increase the energy independence of the United States of America and provide local economic stability. Any attempts by a federal agency to not adhere to the plain language of FLPMA requiring consistency with State and local plans will be challenged and if necessary legal action will ensue.



COMMENT(S)		RESPONSE(S)
CP3	Norwest Corporation (cont.)	
	<div><div><div><div><div><div><b>NORWEST</b> CORPORATION</div></div></div><div><div><div><div><div>Page 5</div><div>May 13, 2016</div><div>Vernal Field Office, BLM</div></div></div><div><div><div>The draft EIS decision in support of the utility corridor is in conformance with the Uintah County’s General Plan including the UBEZ and the management and development of oil shale and oil sand resources in Uintah County.</div></div></div></div></div></div><div><div>ENVIRONMENTAL SUSTAINABILITY</div><div><div>The draft EIS document clearly outlines the responsibilities of the agencies involved in the review and decision process. Implementing the proposed action and associated planned mitigation measures would cause minor impacts for the environmental categories reviewed. The EIS did not identify an alternative route to further reduce this minor impact.</div><div>The “no action” alternative would eliminate the environmental impacts of the corridor construction, but this non-action would increase the long-term environmental impact on this area. Rather than allowing the required utilities to be supplied by power lines and pipelines, truck transportation would be required to bring the water and natural gas to the site, and transport product leaving the site. This long-term impact on the air quality, soils, vegetation, land and access, travel management, recreation, and public health and safety would not be the best decision for environmental sustainability.</div><div>Norwest also believes that increasing the truck traffic volume also impacts wildlife and special status wildlife along with raptors. The increased number of vehicle-wildlife accidents and the raptors preying on the victims places the raptor population at a higher risk of vehicular accidents.</div><div>The draft EIS decision in support of the utility access corridor conforms to environmental sustainability in the government plans and policies previously mentioned.</div><div>Sincerely,</div><div>NORWEST CORPORATION</div></div></div></div></div>	<div><div>CP3b</div><div>Comment noted.</div></div> <div><div>CP3c</div><div>Comment noted. The Draft EIS does not constitute a decision; it only discloses environmental impacts.</div></div>

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## **Appendix I8**

### **Individuals**

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## COMMENT(S)

## RESPONSE(S)

I1

Beth Allen



ENEFIT AMERICAN OIL UTILITY CORRIDOR PROJECT  
DRAFT EIS  
COMMENT FORM

RECEIVED  
MAY 13 2016  
BLM Vernal UT

The BLM is actively seeking your written comments to help inform our future decision on whether or not we should grant the rights-of-way across federal land. Please provide specific comments related to the project, alternative, human or environmental resources impacted by the project, adequacy of the impact analysis, or additional ways to minimize or eliminate impacts from the project. Be clear, concise, and as factual as possible in your written comments.

If you wish to submit comments, please feel free to use this form or other correspondence. You can hand comments in at an open house or mail it to the address on the back of this form. In addition, you can provide comments using the following methods:

Online at <http://go.usa.gov/csa9j>

Email (subject line "Enefit Draft EIS") to [blm\\_ut\\_vernal\\_comments@blm.gov](mailto:blm_ut_vernal_comments@blm.gov)

## Please Print Clearly

Name: Beth Allen Date: 5/10/16  
Title: Retired Registered Nurse Organization you represent: \_\_\_\_\_ Self ☒  
Mailing Address: 3050 South Lake Circle City: SLC State: UT Zip: 84106  
Telephone (optional): \_\_\_\_\_ Email Address (optional): beth.allen1@comcast.net

Comments are due by June 14, 2016

*I strongly encourage the BLM to vote for the No Action Alternative. My reasons are as follows:*

- 1a *1. Some of the land goes through sacred Indian Reservations*
- 1b *2. Water, which is all too scarce, is being drawn from the Green River*
- 1b *3. Oil and natural pipe-lines threaten wilderness areas with the possibility of leaks that could pollute water supplies.*
- 1b *4. Oil shale is expensive to extract and refine. It is no longer a cost effective resource for energy production.*
- 1c *5. Why would Utah jeopardize its fragile environment and ecosystems that effect all who live here to extract fossil fuels that are not needed in Utah. Further, why would Utah and the BLM defy science that clearly warns against continued extraction of fossil fuels?*
- 1d *6. Wild life corridors will be jeopardized by the building of more roads, more heavy vehicles, pipe-lines, etc.*

You can find the entire EIS and additional information on the BLM website at <http://go.usa.gov/csa9j>

11a

Text has been added to Section 1.6.2 to disclose that the entire Project area is located within the exterior boundary of the Uintah and Ouray Reservation. In addition, text has been added to Section 3.2.14 to disclose the presence of Indian Trust Asset lands that are located along the eastern and western edges of the Utility Project study area.

11b

Leak protection is described in Section 2.2.3.1 of the EIS. Due to the various habitat types in the Project area, potential impacts from leaks is discussed in Sections 4.2.5.1.1.1, 4.2.10.1.1, and 4.2.3.1.1.1. It is important to note that no wilderness areas exist in or near the Project area. A wilderness characteristics inventory was completed in January 2016 for some lands along the White River on the west side of State Route 45. Wilderness characteristics were found on some of those lands, and a portion of those lands do overlap with the Utility Project study area. However, no impacts on wilderness characteristics would occur because the rights-of-way are all located approximately 0.4 miles away from those areas and are on the opposite side (east side) of State Route 45. No disturbance will occur in those areas under either alternative.

11c

Comment noted. Fossil fuel extraction is outside the purpose and need of this EIS.

11d

As indicated in Section 4.2.15 Travel Management, existing roadways would be used to facilitate development of the Utility Project. Traffic volume increases under the Proposed Action alternative would be temporary—during the time of construction—as disclosed in Section 4.2.15.1.1.

COMMENT(S)

RESPONSE(S)

I2

B. Shane Brady



ENEFIT AMERICAN OIL UTILITY CORRIDOR PROJECT  
DRAFT EIS  
COMMENT FORM

The BLM is actively seeking your written comments to help inform our future decision on whether or not we should grant the rights-of-way across federal land. Please provide specific comments related to the project, alternative, human or environmental resources impacted by the project, adequacy of the impact analysis, or additional ways to minimize or eliminate impacts from the project. Be clear, concise, and as factual as possible in your written comments.

If you wish to submit comments, please feel free to use this form or other correspondence. You can hand comments in at an open house or mail it to the address on the back of this form. In addition, you can provide comments using the following methods:

Online at <http://go.usa.gov/csa9j>

Email (subject line "Enefit Draft EIS") to [blm\\_ut\\_vernal\\_comments@blm.gov](mailto:blm_ut_vernal_comments@blm.gov)

Please Print Clearly

Name: B. SHANE BRADY Date: MAY 7, 2016  
Title: \_\_\_\_\_ Organization you represent: \_\_\_\_\_ Self ☒  
Mailing Address: 302 W. RIO BLANCO AVE. City: RANGELY State: CO Zip: 81648  
Telephone (optional): 970-675-5237 Email Address (optional): NONE

Comments are due by June 14, 2016.

NOT ONLY YES, BUT HECK YES!!! THIS IS A GOOD THING!  
ALMOST ANYTHING IN GAS, COAL, & OTHER NATURAL RESOURCES, IS GOOD  
TO DEVELOPE AND PROVIDE MORE JOBS. MORE JOBS MEANS MORE  
GOOD TO THE ECONOMY. AND THIS AREA IS ALREADY DEVELOPING THESE  
RESOURCES, SO IT ISN'T A SURPRISE OR NEW KIND OF ENVIRONMENTAL  
IMPACT THAT WE DON'T ALREADY KNOW OR ARE NOT USED TO.  
6 MILES OF PAVEMENT ON COUNTY ROAD 23 SOUTH OF RANGELY  
WOULD BE POSITIVE ALSO. IT WOULD ELIMINATE 6 MILES OF MAGNESIUM  
CHLORIDE YEAR AFTER YEAR, GRADING AND GRAVEL REDUCTION OF TIME  
AND MATERIALS, AND SNOW REMOVAL WOULD BE QUICKER WITH SNOW PLOW  
INSTEAD OF MOTOR GRADER.

You can find the entire EIS and additional information on the BLM website at <http://go.usa.gov/csa9j>

I2a

I2a Comment noted.

I2b

I2b Future road use or improvements of County Road 23 south of Rangely are beyond the scope of this EIS.

COMMENT(S)

RESPONSE(S)

I3

Roxanne Bucaria

**From:** [kbuckner@blm.gov](mailto:kbuckner@blm.gov) on behalf of [Vernal Comments, BLM UT](#)  
**To:** [Dana Holmes](#)  
**Subject:** Fwd: Comments on Enefit project  
**Date:** Tuesday, June 14, 2016 9:11:08 AM

----- Forwarded message -----

From: **Roxanne Bucaria** <[rbucar25@hotmail.com](mailto:rbucar25@hotmail.com)>  
 Date: Thu, Jun 2, 2016 at 6:30 PM  
 Subject: Comments on Enefit project  
 To: [BLM\\_UT\\_Vernal\\_Comments@blm.gov](mailto:BLM_UT_Vernal_Comments@blm.gov)

Dear Ms. Stephanie Howard,

One reason that I am opposed to the Bureau of Land Management's Proposed Action in the Draft Environmental Impact Statement (EIS) for the Enefit American Oil Utility Corridor Project is because this project would mean digging some of the world's largest and deepest open pit mines.

Another reason for my opposition is that new power plants, also powered by fossil fuels, that would produce millions of tons of carbon emissions and other pollutants would need to be opened.

Oil shale production would put severe water strain on a region already in a water crisis. Did you know t hat four barrels of water are needed to produce one barrel of shale oil. This project would consume and contaminate about 200 million gallons of water per day. As a resident in a drought-stricken region, I can readily state that I would take clean water over dirty oil any day of the week.

We need to combat climate change, learn to use energy more wisely and redirect our forms of energy consumption now.

The Bureau of Land Management should protect the public interest and future generations and deny Enefit's rights-of-way applications.

Sincerely,

Roxanne Bucaria

95823

This email has been scanned by the Symantec Email Security.cloud service.  
 For more information please visit <http://www.symanteccloud.com>

I3a

I3b

I3a

This comment is out of the scope of the EIS.

I3b

Impacts on water resources from the Utility Project are disclosed in Chapter 4 of the EIS.

# COMMENT(S)

# RESPONSE(S)

I4

Constance Contreras

**From:** [kbuckner@blm.gov](mailto:kbuckner@blm.gov) on behalf of [Vernal Comments, BLM UT](#)  
**To:** [Dana Holmes](#)  
**Subject:** Fwd: Comments on Enefit project  
**Date:** Friday, June 17, 2016 1:37:56 PM

----- Forwarded message -----

From: **Constance Contreras** <[ccontreras7606@gmail.com](mailto:ccontreras7606@gmail.com)>  
 Date: Tue, Jun 14, 2016 at 10:25 AM  
 Subject: Comments on Enefit project  
 To: [BLM\\_UT\\_Vernal\\_Comments@blm.gov](mailto:BLM_UT_Vernal_Comments@blm.gov)

Dear Stephanie Howard,

I am writing to oppose the Bureau of Land Management's Proposed Action in the Draft Environmental Impact Statement (EIS) for the Enefit American Oil Utility Corridor Project. Granting the rights-of-way applications to Enefit would enable development of the South Project, the first commercial-level oil shale operation in the U.S. The federal government should not be in the business of enabling new, dangerous fossil fuel development on private or public lands.

The Draft EIS failed to analyze the significant climate and environmental impacts of the South Project. Processing the kerogen contained in oil shale into usable crude oil is a highly energy-intensive, destructive and wasteful process. The rock is first mined like coal, crushed, and heated to at least 700 degrees Fahrenheit to boil the kerogen into an extractable fuel. Producing this type of energy would require digging some of the world's largest and deepest open pit mines and operating multiple new power plants, also powered by fossil fuels, that would produce millions of tons of greenhouse gas emissions and other pollutants. Oil shale production also places incredible strain on the Colorado River Basin, which is already facing a water crisis and decreases in volume by as much as 27 percent. Four barrels of water are needed to produce one barrel of oil. Predictions are that full-scale production of oil shale at the South Project would consume and contaminate about 200 million gallons of water per day.

New oil shale development makes no sense in a carbon-constrained world. The latest climate science indicates that more public fossil fuels have already been leased than can be burned to stay below catastrophic levels of global warming. Any new fossil fuel development, therefore, should be precluded in order to mitigate the severe consequences to people and the planet of climate disruption. The South Project would cover approximately 13,441 acres of oil shale containing approximately 1.2 billion barrels of oil. At full production, the South Project is expected to produce 50,000 barrels of oil per day for up to 30 years, which could release half a billion tons of carbon emissions. Rather than increase dependence on dirty fossil fuels that will only harm people and destroy our planet, we should accelerate a just transition to a clean energy economy before it's too late.

To combat climate change, we can't permit dirty, unconventional fuels to gain a foothold in the U.S., or lock in that dirty fuel for decades. The claim that federal denial of the rights-of-way would not prevent development of the South Project is disingenuous. The Proposed Action amounts to a subsidy from the federal government to Enefit for oil shale development.

I4a

I4b

I4a

This comment is outside the scope of the EIS. The BLM has no jurisdiction on private lands.

I4b

The South Project is outside the jurisdiction of the BLM and will proceed to full buildout regardless of the BLM decision to be made for the Utility Project. To address confusion expressed by the public during the Draft EIS comment period, those South Project impacts that may accumulate with the impacts of the Proposed Action have been moved to the cumulative impact analysis in the Final EIS. Information on its contribution to the cumulative effects of the Utility Project has been included to the extent known. The plant and mine plan are not yet fully engineered or submitted to regulatory agencies so the best available data was used as a proxy.

Environmental analysis of the South Project would be considered by the appropriate permitting agencies during final design and siting. The potential need for additional power generation and utilization of water resources in the region is identified as an unquantifiable cumulative effect. As part of the PSD permitting for the South Project, the generation of GHGs must be quantified, and best available control options must be considered. This includes permitting under the CAA and CWA through local permitting agencies and the EPA.



**COMMENT(S)**

**RESPONSE(S)**

I4	Constance Contreras (cont.)
	<p>Why spend millions of dollars to produce a new fossil fuel using vast amounts of existing fossil fuels to exacerbate climate disruption and environmental degradation? The only answer can be corporate profits. The public interest in a safe climate future can only be met by keeping fossil fuels in the ground.</p> <p>The Bureau of Land Management should protect the public interest and future generations and deny Enefit's rights-of-way applications.</p> <p>I believe that the above speaks clearly for itself and for me; therefore, the only thing that I can add is my request that the BLM must uphold its obligation to protect not only human life but wildlife, and this can begin with the denial of Enefit's rights-of-way applications. Thank you.</p> <p>Sincerely,</p> <p>Constance Contreras</p> <p>45242</p> <hr/> <p>This email has been scanned by the Symantec Email Security.cloud service. For more information please visit <a href="http://www.symanteccloud.com">http://www.symanteccloud.com</a></p> <hr/>

COMMENT(S)

RESPONSE(S)

I5

J. Stephen Cranney

Page 1 of 1

Draft Environmental Impact Statement

Submission Successful

Your Submission ID is: EnefitCommentPeriodApril2016-1-36961

Names & Addresses

Mr. J Stephen Cranney  
2425 E 3500 S  
Vernal, Utah 84078, United States  
Email Address: [scranny\\_santacruz@hotmail.com](mailto:scranny_santacruz@hotmail.com)  
Day Phone: 1  
Evening Phone:  
Fax Number:  
Other Phone:  
Agency: Public Web Page

Comments

Comment ID: 1  
Comment Title: Two additional mammals classified as furbearers are found in the affected area  
Comment: Both gray fox (documented by trapping) and ringtails (trapped near this area) should be added to your list of mammals found in the area.

Submission Classification

Response Type: Front Office Submission Form  
Delivery Type: Front Office Submission Form  
Receipt Date: 04/16/2016  
Status: ACTIVE

Agreements

Yes - Withhold personally identifying information from future publications on this project?  
No - Please include me on the mailing list for this project?

Original Submission Files

I5a

I5a

These species (gray fox and ringtails) have been added to Table 3-15.

COMMENT(S)

RESPONSE(S)

I6	Julia Davis
----	-------------

From: [kbuckner@blm.gov](mailto:kbuckner@blm.gov) on behalf of [Vernal Comments, BLM UT](#)  
To: [Dana Holmes](#)  
Subject: Fwd: Enefit American Oil Utility Project  
Date: Thursday, May 12, 2016 9:39:03 AM

----- Forwarded message -----

From: **Julia Davis** <[yasamjulia@gmail.com](mailto:yasamjulia@gmail.com)>  
Date: Tue, May 10, 2016 at 9:28 PM  
Subject: Enefit American Oil Utility Project  
To: [blm\\_ut\\_vernal\\_comments@blm.gov](mailto:blm_ut_vernal_comments@blm.gov)

Could a plan be devised to make the site a "dark skies" site. While still maintaining a safe level of lighting, could the buildings and project site have downward directed lights, motion detection, and other means of mitigating the amount of night light?

Thank you.

Julia Davis


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I6a This comment is out of the scope of the EIS. BLM has no jurisdiction over the South Project.

COMMENT(S)

RESPONSE(S)

17	Tom Elder
----	-----------

 **ENEFIT AMERICAN OIL UTILITY CORRIDOR PROJECT**  
**DRAFT EIS**  
**COMMENT FORM**

The BLM is actively seeking your written comments to help inform our future decision on whether or not we should grant the rights-of-way across federal land. Please provide specific comments related to the project, alternative, human or environmental resources impacted by the project, adequacy of the impact analysis, or additional ways to minimize or eliminate impacts from the project. Be clear, concise, and as factual as possible in your written comments.

If you wish to submit comments, please feel free to use this form or other correspondence. You can hand comments in at an open house or mail it to the address on the back of this form. In addition, you can provide comments using the following methods:

Online at <http://go.usa.gov/csa9l>  
Email (subject line "Enefit Draft EIS") to [blm\\_ut\\_vernal\\_comments@blm.gov](mailto:blm_ut_vernal_comments@blm.gov)

Please Print Clearly

Name: Tom Elder Date: May 3, 2016  
Title: Mr. Organization you represent: Utah Trails WG Self ☐  
Mailing Address: Tom Elder City: Vernal State: UT Zip: 84078  
Telephone (optional): 435 621 3144 Email Address (optional): tomelder@easilink.com  
1826 N 1500W  
Vernal, UT 84078

Comments are due by June 14, 2016

1) "Off-Highway Vehicle Designated Area" is the descriptor for ~~area~~ hatched area on the map (177). THIS IS MISLEADING; a casual observer might conclude that this is an "open" area for unlimited ATV use. In reality, it is an "ATV use confined to existing routes" area. Please clarify this on maps.

2) The statement "off-highway vehicular use is the predominant recreational activity" is questionable. The White River is a permitted stream w/ 4 recreational uses, and has been cherished by river runners for decades. The put-in for the primary stretch is at Ignacio, in your study.

You can find the entire EIS and additional information on the BLM website at <http://go.usa.gov/csa9l>

17a

17a The legend has been changed to indicate "ATV use confined to existing routes."

17b

17b Comment noted. Text has been added to address recreation use of White River and canoeing put-in points in the Utility Project study area.

COMMENT(S)

RESPONSE(S)

17

Tom Elder (cont.)

17b

area, and is the start of a 35-mile wild canyon river trip. The canyon downstream has been the focus of BLM wilderness controversies, and is currently managed as 'containing wilderness characteristics'. That area is close to the proposed project, and certainly the put-in should be referenced in your project document.

Place Stamp Here

BLM Vernal Field Office  
Attn: Stephanie Howard  
170 South 500 East  
Vernal, Utah 84078

COMMENT(S)		RESPONSE(S)
17	Tom Elder (cont.)	
17c	Map provided at Vernal Open House	17c Recreation text revised to include Cowboy Canyon put-in point and included canoeing as a recreation use.

# COMMENT(S)

# RESPONSE(S)

18

Virginia Exton

From: [kbuckner@blm.gov](mailto:kbuckner@blm.gov) on behalf of [Vernal Comments, BLM UT](#)  
To: [Dana Holmes](#)  
Subject: Comments on BLM's DEIS on EAO plans for a utility corridor for oil shale development  
Date: Thursday, May 12, 2016 9:41:19 AM

----- Forwarded message -----

From: **Virginia Exton** <[vinie.exton@usu.edu](mailto:vinie.exton@usu.edu)>  
Date: Thu, May 5, 2016 at 12:31 PM  
Subject: Comments on BLM's DEIS on EAO plans for a utility corridor for oil shale development  
To: "[UT\\_Vernal\\_Comments@blm.gov](mailto:UT_Vernal_Comments@blm.gov)" <[UT\\_Vernal\\_Comments@blm.gov](mailto:UT_Vernal_Comments@blm.gov)>

Thank you for allowing online comments. I am a Vernal resident but I was not able to attend any of the open houses. However, I have read and continue to follow news reports and comments on the DEIS for Enefit's planed oil shale development.

I am concerned about several issues which I feel neither the BLM nor Enefit has addressed:

1. Most importantly, the DEIS fails to consider **recreational uses of the area other than ATV use**. In fact, the White River is a beautiful and relatively pristine resource which includes both commercial and private recreational users (the Bonanza White River access is within the project area) and those users are boaters as well as hikers. In addition, the DEIS includes no recognition of the project's effect on adjacent areas such as the proposed Wilderness and/or Conservation Areas, which includes significant geological formations and historical sites.

2. The DEIS fails to consider **negative impacts to the area** such as a potential oil spill (an especially egregious effect of simple carelessness or seismic activity in this heavily fracked and drilled area) nor does it address the **financial responsibility** for such a scenario.

3. Finally, the DEIS makes no mention of **visual & sound intrusions**. This includes the mitigation of construction and powerline lights (yes, the Department of the Interior is serious about maintaining the sanctity of dark skies in & around national parks and national monuments, and so am I) and sound mitigation of pump stations as well as pipeline and transmission line maintenance.

I appreciate the opportunity to voice my opinion which at this time is **not** in favor of the proposed project.

Virginia Exton

179 S. 100 E.

Vernal, UT 84078

18a

Text has been added to Sections 3.2.16 and 4.2.16 to address dispersed recreation activities other than all-terrain vehicle use.

No wilderness areas exist in or near the Project area. A wilderness characteristics inventory was completed in January 2016 for some lands along the White River on the west side of State Route 45. Wilderness characteristics were found on some of those lands, and a portion of those lands do overlap with the Utility Project study area. However, no impacts on wilderness characteristics will occur because the Enefit rights-of-way are all located approximately 0.4 mile away from those areas, and are on the opposite side (east side) of State Route 45. No disturbance will occur within those areas under either alternative considered in the EIS.

The Bonanza launch area is located on the west side of State Route 45 on the opposite side of the road and 0.4 mile downstream of the proposed river crossing. The effects from construction activities and increased traffic to launch access have been added to the EIS.

No conservation areas are located in or near the Utility Project area other than those addressed in the EIS.

18b

The spill prevention measures for the Utility Project are described in Section 2.2.3.1 of the EIS. Due to the various habitat types in the Project area, potential adverse impacts from leaks are discussed in Sections 4.2.5.1.1.1 and 4.2.10.1.1. Soil impacts are discussed through Sections 4.2.3.1.1.1, 4.2.5.1, and 4.2.5.1.1.2

Pipelines would be designed to minimize the potential for leaks, spills, and potential spills during construction and operation of the Utility Project. Flow meters on either end of the pipelines and at each end of the White River crossing will be used to control and monitor pipelines. Degradation of surface water due to sedimentation and turbidity from construction activities and vehicle use during operations is not anticipated. Additionally, the use of site-appropriate best management practices and mitigation would minimize impacts. Therefore, the analysis of spilled natural gas or product in the aquatic environment is only assessed qualitatively in this EIS.

The Applicant will be responsible for maintenance of their utilities to prevent spills and proper reporting and cleanup if a spill were to occur. Reclamation bonding will also be required in accordance with the BLM realty program processes.

18c

No power line lights are proposed as part of the Utility Project. The closest national monument (Dinosaur) is 19.5 miles from the northern end of the Project area. The closest national park (Arches) is 76 miles South of the Utility Project. Given the distance and topography, light impacts are not anticipated to occur.

Pump stations are only for water collection. They are on private land, so they are outside of the BLM's jurisdiction. Pipeline and transmission noise is limited to working hours and working vehicles.

## COMMENT(S)

## RESPONSE(S)

19

Aaron Fumarola

**From:** Admin, BLM SPAM  
**To:** [BLM\\_UT\\_Vernal\\_Comments@blm.gov](mailto:BLM_UT_Vernal_Comments@blm.gov)  
**Subject:** Fwd: [BLM Objectionable Words] Comments on Enefit project  
**Date:** Thursday, June 02, 2016 8:10:04 AM

This email was blocked by the spam filter for objectionable words/attachment violation and after review is being released. Please do not reply back to this email as it will go to the Spam box.

IT Security  
 Continuous Monitoring  
 BLM, IRM, IT Security Division (WO-840)

----- Forwarded message -----

**From:** Aaron Fumarola <[aaron.fumarola@gmail.com](mailto:aaron.fumarola@gmail.com)>  
**Date:** Wed, Jun 1, 2016 at 7:01 PM  
**Subject:** [BLM Objectionable Words] Comments on Enefit project  
**To:** [BLM\\_UT\\_Vernal\\_Comments@blm.gov](mailto:BLM_UT_Vernal_Comments@blm.gov)

Dear Stephanie Howard,

I am writing to oppose the Bureau of Land Management's Proposed Action in the Draft Environmental Impact Statement (EIS) for the Enefit American Oil Utility Corridor Project. Granting the rights-of-way applications to Enefit would enable development of the South Project, the first commercial-level oil shale operation in the U.S. The federal government should not be in the business of enabling new, dangerous fossil fuel development on private or public lands.

The Draft EIS failed to analyze the significant climate and environmental impacts of the South Project. Processing the kerogen contained in oil shale into usable crude oil is a highly energy-intensive, destructive and wasteful process. The rock is first mined like coal, crushed, and heated to at least 700 degrees Fahrenheit to boil the kerogen into an extractable fuel. Producing this type of energy would require digging some of the world's largest and deepest open pit mines and operating multiple new power plants, also powered by fossil fuels, that would produce millions of tons of greenhouse gas emissions and other pollutants. Oil shale production also places incredible strain on the Colorado River Basin, which is already facing a water crisis and decreases in volume by as much as 27 percent. Four barrels of water are needed to produce one barrel of oil. Predictions are that full-scale production of oil shale at the South Project would consume and contaminate about 200 million gallons of water per day.

New oil shale development makes no sense in a carbon-constrained world. The latest climate science indicates that more public fossil fuels have already been leased than can be burned to stay below catastrophic levels of global warming. Any new fossil fuel development, therefore, should be precluded in order to mitigate the severe consequences to people and the planet of climate disruption. The South Project would cover approximately 13,441 acres of oil shale containing approximately 1.2 billion barrels of oil. At full production, the South Project is expected to produce 50,000 barrels of oil per day for up to 30 years, which could release half a billion tons of carbon emissions. Rather than increase dependence on dirty fossil fuels that will only harm people and destroy our planet, we should accelerate a just transition to a clean energy economy before it's too late.

19a

19a

The South Project is outside the jurisdiction of the BLM and will proceed to full buildout regardless of the BLM decision to be made for the Utility Project. To address confusion expressed by the public during the Draft EIS comment period, those South Project impacts that may accumulate with the impacts of the Utility Project Proposed Action have been moved to the cumulative impact analysis in the Final EIS. Information on its contribution to the cumulative effects of the Utility Project has been included to the extent known. The plant and mine plan are not yet fully engineered or submitted to regulatory agencies so the best available data was used as a proxy.

Environmental analysis of the South Project would be considered by the appropriate permitting agencies during final design and siting. The potential need for additional power generation and utilization of water resources in the region is identified as an unquantifiable cumulative effect. As part of the PSD permitting for the South Project, the generation of GHGs must be quantified, and best available control options must be considered. This includes permitting under the CAA and CWA through local permitting agencies and the EPA.



**COMMENT(S)**

**RESPONSE(S)**

**19**

**Aaron Fumarola (cont.)**

To combat climate change, we can't permit dirty, unconventional fuels to gain a foothold in the U.S., or lock in that dirty fuel for decades. The claim that federal denial of the rights-of-way would not prevent development of the South Project is disingenuous. The Proposed Action amounts to a subsidy from the federal government to Enefit for oil shale development. Why spend millions of dollars to produce a new fossil fuel using vast amounts of existing fossil fuels to exacerbate climate disruption and environmental degradation? The only answer can be corporate profits. The public interest in a safe climate future can only be met by keeping fossil fuels in the ground.

The Bureau of Land Management should protect the public interest and future generations and deny Enefit's rights-of-way applications.

PLEASE DON'T [REDACTED] THIS UP.

Sincerely,

Aaron Fumarola

13077

COMMENT(S)

RESPONSE(S)

110

Dan Gibbs

From: [kbuckner@blm.gov](mailto:kbuckner@blm.gov) on behalf of [Vernal Comments, BLM UT](#)  
To: [Dana Holmes](#)  
Subject: Fwd: Enefit Draft EIS  
Date: Thursday, May 12, 2016 9:38:45 AM

----- Forwarded message -----

From: <[pgibbs@centurytel.net](mailto:pgibbs@centurytel.net)>  
Date: Wed, May 11, 2016 at 10:15 PM  
Subject: Enefit Draft EIS  
To: [blm\\_ut\\_vernal\\_comments@blm.gov](mailto:blm_ut_vernal_comments@blm.gov)

To: BLM

Please accept my comments on the **Enefit American Oil Utility Corridor EIS**.

I am an electrician by vocation. I have worked in the oil, gas, coal, and oil shale industries. I spent about 13 years helping Shell Oil Company in the development of the oil shale industry here in Colorado. Sadly, Shell was regulated out of the oil shale business in Colorado and the United States. This resulted in my personal loss of employment with Shell. Shell Oil continues to work on oil shale development in the Middle Eastern country of Jordan. This suggests they still believe in the great potential of this resource. May I state from personal experience that Shell Oil was extremely careful and consensuses as pertaining to everything associated with the environment.

I know that this EIS is specific to utility corridors. We have many pipelines and power transmission lines crossing our public lands in the region. These corridors seem to heal quickly, with low impact. I have spent most of my life in this area, and am familiar with the general area of the Enefit project. I see no reason to oppose these corridors. If these corridors are not approved, Enefit would have little choice but to truck fuel, water, and produced oil. The utility corridors are far superior to having heavy truck traffic. Trucking would undoubtedly endanger both humans and wildlife, burns more fuel, and thus creating more emissions. Likewise, building a generation facility at the Enefit project site would appear to be counterproductive from any standpoint, in as much as DG&T's generators are only a few mile away.

Some oppose any present or future use of fossil fuels. However, fossil fuels are essential to our everyday way of life. I believe, if the lights were to go out and people were left afoot, many of the opposite opinion would reconsider their views. Please consider this: those who own a cell phone or mountain bike should understand that the materials that went into making these items came from mines and oil wells. I could just as easily use the example of a wind generator or solar panels. Certainly we have a stewardship to care for the Earth. I love nature and its beauties as much as anyone. I personally believe in conservation and responsible operating practices, as opposed to the radical approaches of some popular

110a

Comment noted.

**COMMENT(S)**

**RESPONSE(S)**

110	Dan Gibbs (cont.)
	<p>thinking.</p> <p>I strongly believe in the need for the United States to be energy independent. Unrest in the world and especially the Middle East increasingly threatens our peace, prosperity, and even our very freedoms. Oil shale production can be a giant step in accomplishing that objective. As a resident of Rangely, Colorado, I live right in the middle of the world's richest known deposits of oil shale. Enefit's plan to produce 50,000 barrels per day is a huge endeavor. And yet, this production is small compared to the potential resources surrounding us. Oil shale development has tremendous potential for our communities, the region, and the nation. I believe the oil shale industry can, and should, be a part of making America prosperous and energy independent. I believe this can be done in environmentally responsible ways. Enefit is the only company, to date, to truly be successful in the oil shale industry. They have many decades of high level production and experience in Estonia. I welcome Enefit to our area.</p> <p>I10b [ I would encourage Federal, Colorado State, Rio Blanco County, Rangely, and Enefit officials to support and develop better access from Rangely to the Enefit project site: specifically by improving the Dragon Trail Road leaving Rangely toward the south and into Utah. This would do much to encourage Enefit employees to live and work in the Rangely community.</p> <p>Thank you for considering my comments.</p> <p>Dan Gibbs</p> <hr/> <p>This email has been scanned by the Symantec Email Security.cloud service. For more information please visit <a href="http://www.symanteccloud.com">http://www.symanteccloud.com</a></p>

I10b [ Comment noted. This comment is outside the scope of this EIS.

## COMMENT(S)

## RESPONSE(S)

111

Ariel y Heron

Page 1 of 1

## Draft Environmental Impact Statement

## Submission Successful

Your Submission ID is: EnefitCommentPeriodApril2016-1-36861

## Names &amp; Addresses

Mr. Ariel y Heron  
 2891 w International Airport road  
 Anchorage, Alaska 99502, United States  
 Email Address: a.heron.6@gmail.com  
 Day Phone: 1  
 Evening Phone:  
 Fax Number:  
 Other Phone:  
 Agency: Public Web Page

## Comments

Comment 1  
 ID:

"This oil shale project would be another significant source of pollution in an area that just can't take any more," said Dr. Brian Moench with Utah Physicians for a Healthy Environment. "During the drilling boom of 2013 the air pollution in the Uinta Basin was literally off the charts, as much as would be expected from 100 million cars, eight times more cars than in all of Los Angeles. It would be unconscionable to allow anything that would make that even worse."

Comment: These resource extraction projects provide a brief windfall for a select few and long-term hazards and expenses for taxpayers. We are facing unprecedented climate change. Temperatures and sea levels are rising faster than scientific models predict. There is no way business as usual can proceed with any assurance of desired or even manageable outcomes. The many carbon sinks provided by our natural environment are pretty much maxed out.

Given the current fossil fuel glut, the viability of sustainable alternative energies, oil shale development is flat out immoral.

## Submission Classification

Response Type: Front Office Submission Form  
 Delivery Type: Front Office Submission Form  
 Receipt Date: 04/10/2016  
 Status: ACTIVE

## Agreements

No - Withhold personally identifying information from future publications on this project?

Yes - Please include me on the mailing list for this project?

## Original Submission Files

111a

Monitored ozone values are disclosed in the EIS (Table 3-6). The EIS also discloses that based on current publicly available monitoring data (Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2013. EPA Document EPA-R-15-04) the Uinta Basin is trending toward marginal to moderate for ozone nonattainment determination. Section 3.2.2.6 and Table 3-6 provide a summary of the daily values, which cannot be compared directly to the 75 parts per million value for the NAAQS. The highest single 8-hour average reported was 0.142, which is about twice the NAAQS value, although a single reading does not constitute a violation of the NAAQS. The Extreme Ozone National Ambient Air Quality criteria, which applies to Los Angeles, is a design value (multiple year average of highest readings) at or above 0.175 parts per million, which is 23 percent higher than the peak concentration observed in 2013. The Utility Project would contribute ozone precursors volatile organic compounds and nitrogen oxide as described in Tables 4-3 and 4-4. These emissions will be short term (during construction) and transitory (wherever the work is currently occurring). The comment is concerned with the South Project, which is a reasonably foreseeable non-federal action with impacts that may accumulate with the Utility Project Proposed Action. The BLM has no jurisdiction over the South Project. The Applicant has reiterated that the South Project will proceed regardless of the BLM's decision on the Utility Project. The accumulation of impacts is disclosed to the extent they are known in Section 4.3.3.2.

## COMMENT(S)

## RESPONSE(S)

I12

Jake Hodie

**From:** [kbuckner@blm.gov](mailto:kbuckner@blm.gov) on behalf of Vernal Comments, BLM UT  
**To:** [Dana Holmes](#)  
**Subject:** Fwd: NO New Oil and Gas Leasing!!!  
**Date:** Tuesday, June 14, 2016 9:34:00 AM

----- Forwarded message -----

From: **JAKE HODIE** <[action@wildearthguardians.org](mailto:action@wildearthguardians.org)>  
 Date: Mon, Jun 13, 2016 at 6:50 AM  
 Subject: NO New Oil and Gas Leasing!!!  
 To: Vernal Utah Field Office <[blm\\_ut\\_vernal\\_comments@blm.gov](mailto:blm_ut_vernal_comments@blm.gov)>

Jun 13, 2016

Vernal Utah Field Office  
 UT

Dear Field Office,

I am writing in regards to the Bureau of Land Management's plans to auction off more than 50,000 acres of public lands for fracking at oil and gas lease sales in Colorado, Montana, and Utah this October and November.

So much of our wilderness has already been ruined by mining, drilling, development, and man.

Enough is enough!

The wilderness is supposed to be a place of peace and quiet for us, and the wildlife which live in it!

The animals are running out of places to live and be safe. Our wildlife are under threat from so many angles. They desperately need to be protected, mainly from humans.

Life is hard enough for people, let alone the animals.

Can't we please offer them some much needed help?!

PLEASE save the wilderness for all future generations before it is permanently ruined. Some damage cannot be undone!

Global warming is real. And so we must do something NOW to help protect the Earth.

We must be proactive as too much time has already passed and the threat is growing by the day.

The animal kingdom is already suffering and what hurts them will also hurt us. The animal kingdom is a fragile thing, and we cannot and must not let global warming do any more damage to them.

Our air is already suffering.

The environment is already suffering.

The waters are already suffering.

Haven't we suffered enough?!

I12a

Comment noted. No wilderness areas exist in or near the Project area. A wilderness characteristics inventory was completed in January 2016 for some lands along the White River on the west side of State Route 45. Wilderness characteristics were found on some of those lands, and a portion of those lands do overlap with the Utility Project study area. However, no impacts on wilderness characteristics will occur because the Enefit rights-of-way are all located approximately 0.4 mile away from those areas and are on the opposite side (east side) of State Route 45. No disturbance will occur within those areas under either alternative analyzed in the EIS.

Text has been added to Chapter 3 to include description of the White River Wilderness Area.

**COMMENT(S)**

**RESPONSE(S)**

112	Jake Hodie (cont.)
	<p>It's time to keep our fossil fuels in the ground. To this end, I'm calling on you to reject leasing any more oil and gas throughout the U.S. and to abandon your upcoming plans to lease in Colorado, Montana, and Utah.</p> <p>To date, the Obama Administration has yet to come clean with the American public on the climate change impacts of public lands oil and gas leasing program. Given the accelerating heat waves, droughts, superstorms, and sea rise from fossil fuel burning, this omission shows a shameful disregard for our nation and our future.</p> <p>This and all further public lands oil and gas lease sales must be suspended until estimated climate pollution and impacts from such sales are clearly revealed to the public. An honest accounting of the social cost of carbon pollution must be included in that study.</p> <p>The Administration is already moving on a similar path to reform the way our publicly owned coal is managed in the U.S. There is simply no excuse for not doing the same for the federal public lands oil and gas program.</p> <p>Please do not make us wait any longer before taking such critical action.</p> <p>Sincerely,</p> <p>JAKE HODIE 145 Starwood Aspen, CO 81611 <a href="mailto:skicopmtn@aol.com">skicopmtn@aol.com</a></p> <hr/> <p>This email has been scanned by the Symantec Email Security.cloud service. For more information please visit <a href="http://www.symanteccloud.com">http://www.symanteccloud.com</a></p>

COMMENT(S)

RESPONSE(S)

113

Herm Hoops

From: [kbuckner@blm.gov](mailto:kbuckner@blm.gov) on behalf of [Vernal Comments, BLM UT](#)  
To: [Dana Holmes](#)  
Subject: Enefit Transmission & Pipeline Corridor Comments  
Date: Thursday, May 12, 2016 9:41:46 AM

----- Forwarded message -----  
From: **Herm Hoops** <[hoops@ubtanet.com](mailto:hoops@ubtanet.com)>  
Date: Thu, May 5, 2016 at 11:51 AM  
Subject: Enefit Transmission & Pipeline Corridor Comments  
To: [UT\\_Vernal\\_Comments@blm.gov](mailto:UT_Vernal_Comments@blm.gov)

I am submitting the following comments on the Bureau of Land Management's draft environmental impact statement for utility rights of way serving Enefit American Oil's mine that would extract and process kerogen-bearing rock (oil shale) in the Uinta Basin in Utah. The Draft indicates the uses for the utility corridor include water and natural gas supply lines, 138-kilovolt electricity lines, road improvements, and an oil product pipeline to the private land on which the processing would occur.

- My first comment is a general one related to a seemingly conflict between the BLM's purpose stated in the Draft which recognizes the need to improve domestic energy production, develop renewable energy resources, and enhance the infrastructure for collection and distribution of energy resources across the nation. To this end, the BLM is charged with analyzing applications for utility and transportation systems on federal land it administers. It appears that comment is in direct opposition to the stated BLM Mission: **"It is the mission of the Bureau of Land Management to sustain the health, diversity, and productivity of the public lands for the use and enjoyment of present and future generations."** Sustaining the "health and diversity" of public lands will be hugely impacted from the Enefit project and the corridor access that BLM is proposing. The Draft indicates the air pollution and other resources would have less pollution if the project is completed. This is typical linear, governmental "in-the-box" thinking that fails to consider the larger picture. While the Enefit "project" is on private land, it makes the BLM proposed action complicit

113a

113a

The BLM is charged by FLPMA and implementing regulations to consider and respond to right-of-way applications.

I13	COMMENT(S)	RESPONSE(S)
	<p><b>Herm Hoops (cont.)</b></p> <p>in the degradation of air quality and other environmental degradations of the Uintah Basin by the “project.” Once the pipelines and transmission lines are in place there is an enhanced perpetual reason to continue a project that will reduce our quality of life. If the pipelines and transmission lines are not built it will be Enefit’s responsibility to control, manage and meet pollution regulations. <b>Thus that issue (1.5.3) IS WITHIN SCOPE of the Draft and it is not properly addressed.</b></p> <p>I13b [ - THE WHITE RIVER &amp; WILDERNESS: The consideration of the “project’s” impact on private and commercial recreational use of the White River is completely overlooked by the Draft. The Draft also fails to consider a wide variety of impacts on proposed Wilderness, the potential of National Conservation Area status, significant geological formations, and historical sites. The Draft includes NO economic recognition related to the project’s effects on the adjacent White River or proposed Wilderness.</p> <p>I13c [ - HAZARDS: The Draft provides no information or solutions to pipelines or hazardous materials accidents or spills. It does not identify who will bear the financial responsibility of those type of accidents, or the effects of those accidents on outdoor recreation. We have learned that environmental hazardous spills have a national effect upon visitation to regional sites, and thus the Draft should consider the impact on tourism and the economic impacts to places like Dinosaur National Monument, Flaming Gorge and other regional destinations. With the potential for pipeline breaks the Draft fails to consider the effects of seismic activity on the proposed pipelines and or transmission lines, especially given the proximity of the corridor to the Mesaverde Group, that would transmit such seismic activity.</p> <p>I13d [</p> <p>I13e [</p> <p>I13f [ - VISUAL RESOURCES: The Draft fails to completely mitigate the effects of visual intrusions during construction. It completely overlooks two significant project effects: dark night skies and sound intrusion by construction and the completed project. The Draft is also extremely flawed because it does not include a discussion of dark night skies and the buffering of ambient lights from construction or the project. The Secretary of Interior has made it clear that maintaining those characteristics of dark night skies is a priority of the Department of Interior - yet there is no discussion of this in the Draft. In addition the</p> <p>I13g [</p> <p>I13h [</p>	<p>I13b [ Compliance with laws and permitting requirements for the South Project is the Applicant’s responsibility. BLM has no jurisdiction over the South Project, and thus it is out of the scope of the BLM decision to be made. However, the BLM is required to disclose and consider cumulative impacts as directed by NEPA and its implementing regulations. In this case, the South Project does have impacts that will accumulate with the Utility Project Proposed Action alternative. Those impacts have been disclosed to the extent they are known. When they are not known, the procedures in 40 CFR 1502.22 were followed. Please note that the South Project cannot be prevented by BLM decision making.</p> <p>I13c [ Text has been added to Sections 3.2.16 and 4.2.16 to address dispersed recreation activities on the White River within the study area. The Bonanza launch area is located on the west side of State Route 45 on the opposite side of the road and 0.4 mile downstream of the proposed river crossing. The effects from construction activities and increased traffic to launch access have been added to the EIS.</p> <p>I13d [ There are no proposed wilderness or National Conservation Areas present in the study area. Geological and historical resources were addressed in the EIS in Sections 4.3.2 and 4.3.4.</p> <p>I13e [ Recreation adjacent to the White River and in any areas proposed for wilderness are unmanaged (dispersed recreation); an economic analysis of these activities is not feasible.</p> <p>I13f [ Additional text has been added to qualitatively state “any reduction in recreational activity that is not simply displaced could potentially result in a decrease in either market or non-market economic and social benefits for the Project area”.</p> <p>I13g [ The short-term effects on visual resources during construction are unavoidable due to the ground-disturbing activities associated with building the Project. As outlined in Table 4-1, a series of ACEPMs (design features) and BLM mitigation measures are proposed to reduce these effects to the extent practicable.</p> <p>I13h [ No change to document. Construction of the Utility Project would occur during daylight hours. Enefit has clarified that there will not be permanent nighttime lighting on any of the Utility Project components. The utility tie-in locations (of which only the product pipeline and shorter transmission line/switchyard are located on BLM land) may have limited lighting installed and available in the event emergency nighttime maintenance is necessary, but this lighting would not be on regularly. The pipelines, transmission lines, and appurtenant structures would not have any lighting. Impacts on dark night skies from the Utility Project are therefore considered to be minimal. It is believed that this concern is mostly with the South Project. Mitigation of lighting on the South Project is outside of the BLM’s jurisdiction and outside of the scope of this EIS.</p>



**COMMENT(S)**

**RESPONSE(S)**

**I13**

**Herm Hoops (cont.)**

I13h  
I13i  
I13j  
Draft fails to describe and provide for sound mitigation of pump stations, pipeline and transmission line maintenance. There is no mention of power line intrusion or mitigation in the EA. The proposed power line is a visual intrusion that should be mitigated by locating it underground. At a minimum any above ground power line should have raptor protections, but the EA does not address that concern.

I13k  
- PROJECT FAILURE: Given the historic failure of projects, especially unproven ones in regards to oil shale and tar sands, the Draft fails to require a bond for pipeline or transmission line removal and land reclamation should Enefit fail economically. The Draft states: "The Applicant is still in the planning and preliminary engineering design process for the South Project mining and mineral processing." How can the BLM NOT require a bond with such an admittedly unproven process?

I may have additional comments.

Herman Hoops

P.O. Box 163

Jensen, UT 84035

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For more information please visit <http://www.symanteccloud.com>

I13h

There is potential for long term auditory intrusions resulting from sounds associated with equipment such as the water supply booster pump station. Short-term auditory intrusions could occur during construction of the Project. Construction sounds, earth moving, and movement of large equipment can result in significant auditory. However, these intrusions may be of a temporary nature (short-term impacts) they are still disclosed as a part of the potential impacts resulting from the Project.

I13i

BLM's analysis of visual impacts from the project were disclosed in Section 4.2.13. An overhead powerline as described in the Proposed Action is in compliance with BLM VRM objectives and the Vernal Field Office RMP. Buried powerlines typically have additional cable and equipment requirements including nighttime lighting of some of those facilities, continuous trenching and concrete vault construction requirements (as opposed to regular tower placement on small cement pads), a shorter life expectancy (40 years instead of 80 years), and increased difficulty and time to isolate and repair issues or otherwise maintain the line. In addition, underground line length may be limited. An overhead line with its lower amount of surface disturbance would be easier to reclaim in this project area, where reclamation is already difficult.

See [https://www.xcelenergy.com/staticfiles/xcel/Corporate/Corporate%20PDFs/OverheadVsUnderground\\_FactSheet.pdf](https://www.xcelenergy.com/staticfiles/xcel/Corporate/Corporate%20PDFs/OverheadVsUnderground_FactSheet.pdf).

I13j

Raptor perch deterrents would be installed as per the MLEA Avian Protection Plan. This was addressed in Table 4-1, Wildlife Mitigation Measure 2.

I13k

Bonding would be addressed in the right-of-way grant permit and stipulations for construction, if an action alternative is selected by the BLM.

COMMENT(S)

RESPONSE(S)

114

Beth Jones

**From:** [kbudkner@blm.gov](mailto:kbudkner@blm.gov) on behalf of [Vernal Comments, BLM UT](#)  
**To:** [Dana Holmes](#)  
**Subject:** Fwd: My comments on the Enefit project  
**Date:** Monday, June 20, 2016 2:44:04 PM

Unique Comment

----- Forwarded message -----

**From:** Beth Jones, expat in Austria <[bj1@direkt.at](mailto:bj1@direkt.at)>  
**Date:** Wed, Jun 8, 2016 at 1:26 PM  
**Subject:** My comments on the Enefit project  
**To:** [BLM\\_UT\\_Vernal\\_Comments@blm.gov](mailto:BLM_UT_Vernal_Comments@blm.gov)

Dear Stephanie Howard,

I am writing in vigorous opposition to the Bureau of Land Management's Proposed Action in the Draft Environmental Impact Statement (EIS) for the Enefit American Oil Utility Corridor Project. Granting the rights-of-way applications to Enefit would enable the dangerous development of the South Project, the first commercial-level oil shale operation in the U.S.

In the era of global warming, the federal government should not be in the business of enabling new, dangerous fossil fuel development on private or public lands.

As you well know -- or should -- the Draft EIS failed to analyze the significant climate and environmental impacts of the South Project. Processing the kerogen contained in oil shale into usable crude oil is a highly energy-intensive, destructive and wasteful process. The rock is first mined like coal, crushed, and heated to at least 700 degrees Fahrenheit to boil the kerogen into an extractable fuel.

We would be idiots to embrace this type of energy.

It would require digging some of the world's largest and deepest open pit mines and operating multiple new power plants, also powered by fossil fuels, that would produce millions of tons of greenhouse gas emissions and other pollutants. Oil shale production also places incredible strain on the Colorado River Basin, which is already facing a water crisis and decreases in volume by as much as 27 percent. Four barrels of water are needed to produce one barrel of oil. Predictions are that full-scale production of oil shale at the South Project would consume and contaminate about 200 million gallons of water per day.

New oil shale development makes absolutely no sense in a carbon-constrained world. The latest climate science indicates that more public fossil fuels have already been leased than can be burned to stay below catastrophic levels of global warming.

Any and all new fossil fuel development, therefore, should be precluded in order to mitigate the severe consequences to people and the planet of climate disruption.

As you know, the South Project would cover approximately 13,441 acres of oil shale containing approximately 1.2 billion barrels of oil. At full production, the South Project is expected to produce 50,000 barrels of oil per day for up to 30 years, which could release half a

114a

Environmental analysis of the South Project would be considered by the appropriate permitting agencies during final design and siting. The potential need for additional South Project power generation and utilization of water resources in the region is identified as a reasonably foreseeable non-federal cumulative action. To the degree that the effects are known and accumulate with the effects of the Utility Project, they are disclosed in the EIS. Any accumulating effects that are not known were dealt with as prescribed by 40 CFR 1502.22. As part of the PSD permitting for the South Project, the generation of greenhouse gases must be quantified, and best available control options must be considered. This includes permitting under the Clean Air Act and Clean Water Act through local permitting agencies and the Environmental Protection Agency. In addition, Table 1-2 of this EIS identifies the laws, regulations and policies applicable to this project. The South Project permitting is all outside the jurisdiction of the BLM and outside of the scope of this EIS.

The South Project is outside of the jurisdiction of the BLM and will proceed to full buildout regardless of the BLM decision to be made for the Utility Project. To address confusion expressed by the public during the Draft EIS comment period, those South Project impacts that may accumulate with the impacts of the Utility Project Proposed Action have been moved to the cumulative impact analysis in the Final EIS. Information on its contribution to the cumulative effects of the Utility Project has been included to the extent known. The plant and mine plan are not yet fully engineered or submitted to regulatory agencies so the best available data was used as a proxy.

**COMMENT(S)**

**RESPONSE(S)**

114	Beth Jones (cont.)
	<p>billion tons of carbon emissions.</p> <p>IDIOCY. Instead of blindly increasing our dangerous dependence on dirty fossil fuels that will only harm people and destroy our planet, we should accelerate a just transition to a clean energy economy before it's too late.</p> <p>To combat climate change, we cannot permit dirty, unconventional fuels to gain a foothold in the U.S., or lock in that dirty fuel for decades. The claim that federal denial of the rights-of-way would not prevent development of the South Project is disingenuous. The Proposed Action amounts to a subsidy from the federal government to Enefit for oil shale development. Why spend millions of dollars to produce a new fossil fuel using vast amounts of existing fossil fuels to exacerbate climate disruption and environmental degradation? The only answer can be corporate profits. The public interest in a safe climate future can only be met by keeping fossil fuels in the ground.</p> <p>The Bureau of Land Management should protect the public interest and future generations and deny Enefit's rights-of-way applications.</p> <p>Sincerely,</p> <p>Beth Jones, expat in Austria</p> <p>52310</p> <hr/> <p>This email has been scanned by the Symantec Email Security.cloud service. For more information please visit <a href="http://www.symanteccloud.com">http://www.symanteccloud.com</a></p> <hr/>

COMMENT(S)

RESPONSE(S)

I15	Amy Kopishke
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From: [kbuckner@blm.gov](mailto:kbuckner@blm.gov) on behalf of [Vernal Comments, RLM UT](#)  
To: [Dana Holmes](#)  
Subject: Enefit EIS right of way  
Date: Wednesday, June 15, 2016 7:15:38 AM

----- Forwarded message -----  
From: Amy Kopischke <[amy.kopischke@gmail.com](mailto:amy.kopischke@gmail.com)>  
Date: Tue, Jun 14, 2016 at 3:20 PM  
Subject: Enefit EIS right of way  
To: [UT\\_Vernal\\_Comments@blm.gov](mailto:UT_Vernal_Comments@blm.gov)

I would like to see the Enefit EIS right of way project denied.

This area of Utah/Colorado/Wyoming already has seen great depreciation of air quality due to increased mining. I realize this is only the right of way for their infrastructure, but we are scalping our beautiful landscape for them to be able to mine for 30 years - a resource that is dirty to use and dirty to get. I hope to see more alternative fuel options before the 30 years is up, making our sacrificed right of ways obsolete.

Thank you,

--

~ Amy Kopischke  
970-389-3900  
[amy.kopischke@gmail.com](mailto:amy.kopischke@gmail.com)

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For more information please visit <http://www.symanteccloud.com>

I15a

I15a

Comment noted.

## COMMENT(S)

## RESPONSE(S)

116

Christopher Lish

**From:** [kbuckner@blm.gov](mailto:kbuckner@blm.gov) on behalf of [Vernal Comments, BLM UT](#)  
**To:** [Dana Holmes](#)  
**Subject:** Fwd: Please reject drilling for shale oil in Utah -- DOI-BLM-UT-G010-2014-0007-EIS (Enefit American Oil Utility Corridor Project EIS)  
**Date:** Tuesday, June 14, 2016 1:47:09 PM

----- Forwarded message -----

**From:** Chris Lish <[lishchris@yahoo.com](mailto:lishchris@yahoo.com)>  
**Date:** Tue, Jun 14, 2016 at 10:56 AM  
**Subject:** Please reject drilling for shale oil in Utah -- DOI-BLM-UT-G010-2014-0007-EIS (Enefit American Oil Utility Corridor Project EIS)  
**To:** "[UT\\_Vernal\\_Comments@blm.gov](mailto:UT_Vernal_Comments@blm.gov)" <[UT\\_Vernal\\_Comments@blm.gov](mailto:UT_Vernal_Comments@blm.gov)>

Tuesday, June 14, 2016

Bureau of Land Management  
 170 South 500 East  
 Vernal, Utah 84078

Subject: Please reject drilling for shale oil in Utah -- DOI-BLM-UT-G010-2014-0007-EIS (Enefit American Oil Utility Corridor Project EIS)

Dear Field Office Manager Ester McCollough,

I am writing to oppose the Bureau of Land Management's Proposed Action in the Draft Environmental Impact Statement (EIS) for the Enefit American Oil Utility Corridor Project. Granting the rights-of-way applications to Enefit would enable development of the South Project, the first commercial-level oil shale operation in the U.S. The federal government should not be in the business of enabling new, dangerous fossil fuel development on private or public lands. I urge the Bureau of Land Management (BLM) to reject the proposed rights-of-way for Enefit's massive and dirty oil shale strip mining and refining project because the project is bad for the climate, bad for water, bad for air quality, and not in the public interest.

*"Our duty to the whole, including to the unborn generations, bids us to restrain an unprincipled present-day minority from wasting the heritage of these unborn generations. The movement for the conservation of wildlife and the larger movement for the conservation of all our natural resources are essentially democratic in spirit, purpose and method."*  
 -- Theodore Roosevelt

The Draft EIS failed to analyze the significant climate and environmental impacts of the South Project. Processing the kerogen contained in oil shale into usable crude oil is a highly energy-intensive, destructive, and wasteful process. The rock is first mined like coal, crushed, and heated to at least 700 degrees Fahrenheit to boil the kerogen into an extractable fuel. Producing this type of energy would require digging some of the world's largest and deepest open pit mines and operating multiple new power

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Environmental analysis of the South Project would be considered by the appropriate permitting agencies during final design and siting. The potential need for additional South Project power generation and utilization of water resources in the region is identified as a reasonably foreseeable non-federal cumulative action. To the degree that the effects are known and accumulate with the effects of the Utility Project, they are disclosed in the EIS. Any accumulating effects that are not known were dealt with as prescribed by 40 CFR 1502.22. As part of the PSD permitting for the South Project the generation of greenhouse gases must be quantified, and best available control options must be considered. This includes permitting under the Clean Air Act and Clean Water Act through local permitting agencies and the Environmental Protection Agency. In addition, Table 1-2 of this EIS identifies the laws, regulations and policies applicable to this project. South Project permitting is all outside the jurisdiction of the BLM and outside of the scope of this EIS.

The South Project is outside of the jurisdiction of the BLM and will proceed to full buildout regardless of the BLM decision to be made for the Utility Project. To address confusion expressed by the public during the Draft EIS comment period, those South Project impacts that may accumulate with the impacts of the Utility Project Proposed Action have been moved to the cumulative impact analysis in the Final EIS. Information on its contribution to the cumulative effects of the Utility Project has been included to the extent known. The plant and mine plan are not yet fully engineered or submitted to regulatory agencies so the best available data was used as a proxy.

116a

COMMENT(S)

RESPONSE(S)

116

Christopher Lish (cont.)

116a

plants, also powered by fossil fuels that would produce millions of tons of greenhouse gas emissions and other pollutants.

*"Then I say the Earth belongs to each generation during its course, fully and in its own right, no generation can contract debts greater than may be paid during the course of its own existence."*  
-- Thomas Jefferson

In addition to fouling the air in an area already suffering from some of the worst winter smog in the country, mining oil shale will also drain water from rivers in the arid West. Oil shale production would place incredible strain on the Colorado River Basin, which is already facing a water crisis and decreases in volume by as much as 27 percent. Four barrels of water are needed to produce one barrel of oil. Predictions are that full-scale production of oil shale at the South Project would consume and contaminate about 200 million gallons of water per day.

*"Our government is like a rich and foolish spendthrift who has inherited a magnificent estate in perfect order, and then has left his fields and meadows, forests and parks to be sold and plundered and wasted."*  
-- John Muir

New oil shale development makes no sense in a carbon-constrained world. The latest climate science indicates that more public fossil fuels have already been leased than can be burned to stay below catastrophic levels of global warming. Any new fossil fuel development, therefore, should be precluded in order to mitigate the severe consequences to people and the planet of climate disruption. The South Project would cover approximately 13,441 acres of oil shale containing approximately 1.2 billion barrels of oil. At full production, the South Project is expected to produce 50,000 barrels of oil per day for up to 30 years, which could release half a billion tons of carbon emissions. Rather than increase dependence on dirty fossil fuels that will only harm people and destroy our planet, we should accelerate a just transition to a clean energy economy before it is too late.

*"As we peer into society's future, we—you and I, and our government—must avoid the impulse to live only for today, plundering for our own ease and convenience the precious resources of tomorrow. We cannot mortgage the material assets of our grandchildren without risking the loss also of their political and spiritual heritage. We want democracy to survive for all generations to come, not to become the insolvent phantom of tomorrow."*  
-- Dwight D. Eisenhower

Our country needs to move from reliance on dirty fossil fuels to using cleaner forms of energy. Enefit's proposal would take us in the opposite direction, paving the way for production of up to a billion barrels of oil baked from rock using a process that emits about 40% more greenhouse gases than conventional oil. To combat climate change, we can't permit dirty, unconventional fuels to gain a foothold in the U.S., or lock in that dirty fuel for decades. To protect our children from the worst impacts of climate change, oil shale needs to stay in the ground.

COMMENT(S)

RESPONSE(S)

116

Christopher Lish (cont.)

*"It is our task in our time and in our generation, to hand down undiminished to those who come after us, as was handed down to us by those who went before, the natural wealth and beauty which is ours."*

-- John F. Kennedy

The claim that federal denial of the rights-of-way would not prevent development of the South Project is disingenuous. The Proposed Action amounts to a subsidy from the federal government to Enefit for oil shale development. The subsidy provided to Enefit via easier access to water and electricity will encourage oil shale production in an area where it would likely not occur without the BLM handout.

*"Every man who appreciates the majesty and beauty of the wilderness and of wild life, should strike hands with the farsighted men who wish to preserve our material resources, in the effort to keep our forests and our game beasts, game-birds, and game-fish—indeed, all the living creatures of prairie and woodland and seashore—from wanton destruction. Above all, we should realize that the effort toward this end is essentially a democratic movement."*

-- Theodore Roosevelt

Why spend millions of dollars to produce a new fossil fuel using vast amounts of existing fossil fuels to exacerbate climate disruption and environmental degradation? The only answer can be corporate profits. The public interest in a safe climate future can only be met by keeping fossil fuels in the ground.

*"Do not suffer your good nature, when application is made, to say 'Yes' when you should say 'No'. Remember, it is a public not a private cause that is to be injured or benefited by your choice."*

-- George Washington

The Bureau of Land Management should protect the public interest and future generations and deny Enefit's rights-of-way applications.

*"A thing is right when it tends to preserve the integrity, stability, and beauty of the biotic community. It is wrong when it tends otherwise."*

-- Aldo Leopold

Thank you for your consideration of my comments. Please do NOT add my name to your mailing list. I will learn about future developments on this issue from other sources.

Sincerely,  
Christopher Lish  
San Rafael, CA

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COMMENT(S)

RESPONSE(S)

117	Josie Lopez
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From: [kbuckner@blm.gov](mailto:kbuckner@blm.gov) on behalf of [Vernal Comments, BLM UT](#)  
 To: [Dana Holmes](#)  
 Subject: Fwd: Comments on Enefit project  
 Date: Monday, June 20, 2016 3:01:24 PM

Unique Comment  
 ----- Forwarded message -----  
 From: **Josie Lopez** <[jalop48@msn.com](mailto:jalop48@msn.com)>  
 Date: Thu, Jun 9, 2016 at 8:44 AM  
 Subject: Comments on Enefit project  
 To: [BLM\\_UT\\_Vernal\\_Comments@blm.gov](mailto:BLM_UT_Vernal_Comments@blm.gov)

Dear Stephanie Howard, Dear Stephanie Howard,

The future of the scenic Green River watershed in Utah is in the hands of President Obama.

Enefit, an Estonian oil company, wants to build a huge oil shale development. It would cover about 13,441 acres of this beautiful area.

I am asking the Obama administration to say NO to destroying the Green River watershed!

Oil shale development combines some of the worst aspects of coal and oil projects.

It's an energy-intensive, destructive and wasteful process. Shale rock is first mined like coal. Then it's crushed and heated to at least 700 degrees Fahrenheit.

This project would mean digging some of the world's largest and deepest open pit mines. And to head the shale we'd have to open new power plants, also powered by fossil fuels, that would produce millions of tons of carbon emissions and other pollutants.

Oil shale production would put severe water strain on a region already in a water crisis. Four barrels of water are needed to produce one barrel of shale oil. Enefit's project would consume and contaminate about 200 million gallons of water per day.

The evidence is clear -- Enefit's project is all risk and no reward for the American people. But in order to go forward, Enefit needs approval from the Obama administration to construct roads, pipelines, and a power line across public lands. The Obama administration's draft decision gave Enefit the green light, but it's not final yet. You still have a chance to stop it!

Please choose to keep oil in the ground in Utah!

Why would the Obama administration spend millions of dollars to produce a new fossil fuel that would actually make us burn more fossil fuels to produce? The only answer can be to profit Fossil Fuel Empires like Enefit.

We need to stop digging up fossil fuels, not opening up our beautiful Western landscapes to dirty, unconventional fuels like shale oil. Instead, we need to speed up the just transition to a clean energy economy. To protect people and our planet, the only option is to keep fossil fuels



COMMENT(S)

RESPONSE(S)

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Josie Lopez (cont.)

in the ground.

Please stop this dirty project and keep fossil fuels in the ground!

I am writing to oppose the Bureau of Land Management's Proposed Action in the Draft Environmental Impact Statement (EIS) for the Enefit American Oil Utility Corridor Project. Granting the rights-of-way applications to Enefit would enable development of the South Project, the first commercial-level oil shale operation in the U.S. The federal government should not be in the business of enabling new, dangerous fossil fuel development on private or public lands.

The Draft EIS failed to analyze the significant climate and environmental impacts of the South Project. Processing the kerogen contained in oil shale into usable crude oil is a highly energy-intensive, destructive and wasteful process. The rock is first mined like coal, crushed, and heated to at least 700 degrees Fahrenheit to boil the kerogen into an extractable fuel. Producing this type of energy would require digging some of the world's largest and deepest open pit mines and operating multiple new power plants, also powered by fossil fuels, that would produce millions of tons of greenhouse gas emissions and other pollutants. Oil shale production also places incredible strain on the Colorado River Basin, which is already facing a water crisis and decreases in volume by as much as 27 percent. Four barrels of water are needed to produce one barrel of oil. Predictions are that full-scale production of oil shale at the South Project would consume and contaminate about 200 million gallons of water per day.

New oil shale development makes no sense in a carbon-constrained world. The latest climate science indicates that more public fossil fuels have already been leased than can be burned to stay below catastrophic levels of global warming. Any new fossil fuel development, therefore, should be precluded in order to mitigate the severe consequences to people and the planet of climate disruption. The South Project would cover approximately 13,441 acres of oil shale containing approximately 1.2 billion barrels of oil. At full production, the South Project is expected to produce 50,000 barrels of oil per day for up to 30 years, which could release half a billion tons of carbon emissions. Rather than increase dependence on dirty fossil fuels that will only harm people and destroy our planet, we should accelerate a just transition to a clean energy economy before it's too late.

To combat climate change, we can't permit dirty, unconventional fuels to gain a foothold in the U.S., or lock in that dirty fuel for decades. The claim that federal denial of the rights-of-way would not prevent development of the South Project is disingenuous. The Proposed Action amounts to a subsidy from the federal government to Enefit for oil shale development. Why spend millions of dollars to produce a new fossil fuel using vast amounts of existing fossil fuels to exacerbate climate disruption and environmental degradation? The only answer can be corporate profits. The public interest in a safe climate future can only be met by keeping fossil fuels in the ground.

The Bureau of Land Management should protect the public interest and future generations and deny Enefit's rights-of-way applications.

Sincerely,

josie lopez



117a

Environmental analysis of the South Project would be considered by the appropriate permitting agencies during final design and siting. The potential need for additional South Project power generation and utilization of water resources in the region is identified as a reasonably foreseeable non-federal cumulative action. To the degree that the effects are known and accumulate with the effects of the Utility Project, they are disclosed in the EIS. Any accumulating effects that are not known were dealt with as prescribed by 40 CFR 1502.22. As part of the PSD permitting for the South Project the generation of greenhouse gases must be quantified, and best available control options must be considered. This includes permitting under the Clean Air Act and Clean Water Act through local permitting agencies and the Environmental Protection Agency. In addition, Table 1-2 of this EIS identifies the laws, regulations and policies applicable to this project. South Project permitting is all outside the jurisdiction of the BLM and outside of the scope of this EIS.

The South Project is outside of the jurisdiction of the BLM and will proceed to full buildout regardless of the BLM decision to be made for the Utility Project. To address confusion expressed by the public during the Draft EIS comment period, those South Project impacts that may accumulate with the impacts of the Utility Project Proposed Action have been moved to the cumulative impact analysis in the Final EIS. Information on its contribution to the cumulative effects of the Utility Project has been included to the extent known. The plant and mine plan are not yet fully engineered or submitted to regulatory agencies so the best available data was used as a proxy.

COMMENT(S)

RESPONSE(S)

I18	<div>Greg Madsen</div> <div><p><b>From:</b> <a href="mailto:kbuckner@blm.gov">kbuckner@blm.gov</a> on behalf of <a href="#">Vernal Comments, BLM UT</a> <b>To:</b> <a href="#">Dana Holmes</a> <b>Subject:</b> Fwd: Comments: Enefit American Oil Utility Corridor <b>Date:</b> Thursday, May 12, 2016 9:40:53 AM <b>Attachments:</b> <a href="#">image001.png</a></p><hr/><p>----- Forwarded message ----- From: <b>Greg Madsen</b> &lt;<a href="mailto:gmdsen@wheelercat.com">gmdsen@wheelercat.com</a>&gt; Date: Fri, May 6, 2016 at 8:02 AM Subject: Comments: Enefit American Oil Utility Corridor To: "<a href="mailto:blm_ut_vernal_comments@blm.gov">blm_ut_vernal_comments@blm.gov</a>" &lt;<a href="mailto:blm_ut_vernal_comments@blm.gov">blm_ut_vernal_comments@blm.gov</a>&gt; Cc: Bryan Larsen &lt;<a href="mailto:bkarlarsen@wheelercat.com">bkarlarsen@wheelercat.com</a>&gt;, Ben Romney &lt;<a href="mailto:bromney@wheelercat.com">bromney@wheelercat.com</a>&gt;</p><p>To Whom It May Concern:</p><p>I wish to voice my support in reference to granting the proposed utility corridor to Enefit American Oil. The reasons I support this action is, quite simply, that the utility corridor would create the least disruption in terms of traffic, dust creation, energy waste, wildlife impact, and overall negative impact relative to the Enefit project. Therefore, proceeding with the corridor is the responsible course of action when compared with the no-action alternative.</p><p>Respectfully submitted,</p><p>Greg Madsen</p><p>Greg Madsen   WMS Product Manager   Wheeler Machinery Co. 4901 West 2100 South, Salt Lake City, UT 84120 Office: 801.978.1338 <a href="mailto:gmdsen@wheelercat.com">gmdsen@wheelercat.com</a>   <a href="http://www.wheelercat.com">www.wheelercat.com</a></p><div></div><p><i>Built to Listen. Built to Deliver.</i> How can we better serve you? Please share your <a href="#">feedback</a>.</p><hr/><p>This email has been scanned by the Symantec Email Security.cloud service. For more information please visit <a href="http://www.symanteccloud.com">http://www.symanteccloud.com</a></p></div>
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I18a	<div>Comment noted.</div>
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COMMENT(S)

RESPONSE(S)

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Mary Poulson

Page 1 of 1

Draft Environmental Impact Statement

Submission Successful  
Your Submission ID is: EnefitCommentPeriodApril2016-1-38981

Names & Addresses

Marv Poulson  
3631 Carolyn  
Salt Lake City, Utah 84106, United States  
Email Address: imagedancer@hotmail.com  
Day Phone: 1801-558-0875  
Evening Phone: 801-558-0875  
Fax Number:  
Other Phone:  
Agency: Public Web Page  
Marv Poulson  
3631 Carolyn  
Salt Lake City, Alabama 84106, United States  
Email Address: imagedancer@hotmail.com  
Day Phone: 1801-558-0875  
Evening Phone: 801-558-0875  
Fax Number:  
Other Phone:  
Agency: Public Web Page

Comments

Comment ID: 1  
Comment  
Title: Marv Poulson  
Your settings on this page prevent efficient data entry with cut-past functionality, seeming contrived to limit public input.  
Comment: Therefore, I have attached my statement and trust you actually recieve it.  
You seem to have engineered this WEB based system to favor buisness interests over The Public Interest.  
Attachment: [The Enefit EIS analysis Enefit EIS Letter.pdf](#)

Submission Classification

Response Type: Front Office Submission Form  
Delivery Type: Front Office Submission Form  
Receipt Date: 06/14/2016  
Status: ACTIVE

Agreements

Yes - Withhold personally identifying information from future publications on this project?  
Yes - Please include me on the mailing list for this project?

Original Submission Files

# COMMENT(S)

# RESPONSE(S)

119

Mary Poulson (cont.)

119a

The Enefit EIS analysis takes a solitary impact approach that ignores the cumulative impacts of previous BLM and State project approvals. Only considering the Enefit proposal in isolation from prior Agency Decisions fundamentally misses the cumulative impacts of prior approvals impacts.

More properly, the Enefit proposal must be considered in its additive impacts which will increase the effects of existing impacts in an amplifying effect. Failing to consider the additive impacts will constitute Agency malfeasance.

119b

Expanding the existing road corridor with widening directly threatens adjacent populations of vulnerable species that have been withdrawn from Endangered Species Act consideration under agreement with The State of Utah. Disturbance of habitat and populations of *Penstemon grahamii*, *Penstemon scariosus* var. *albifluvis*, *Aquilegia barnebyi* brings that BLM, USFWS, and State of Utah into question as to fundamental validity.

Similarly, adding pipeline corridor and power line corridor represent additive impacts far beyond this single proposal. The same species impact considerations must be included for full analysis of impacts. Disturbance of habitat and population of *Penstemon grahamii*, *Penstemon scariosus* var. *albifluvis*, *Aquilegia barnebyi* brings that BLM, USFWS, and State of Utah into question as to fundamental validity.

119c

The cumulative impacts on air, land, water, habitat, and rare, threatened and endangered species require more comprehensive analysis than is currently included in the Enefit EIS. I am particularly concerned with impacts on native biota, including *Penstemon grahamii*, *Penstemon scariosus* var. *albifluvis*, *Aquilegia barnebyi*, etc. Each of these species is under increasing threat because of each project proposal ignoring the cumulative impacts on land and habitat destruction. Continued failure to protect these vulnerable species will require up-listing each of them to fully listed status under the Endangered Species Act.

119d

A cumulative impact analysis will more properly and completely address the full spectrum of issues. I trust that The Agency will take a more comprehensive cumulative analysis for the Enefit Project. The commercial viability of Oil Shale, Oil Sands, Shale Oil development is increasingly questionable, especially when irreversible impacts are thoroughly taken into account when ultimate abandonment of the proposed infrastructure installations are included in the analysis.

Marv Poulson  
3631 Carolyn  
Salt Lake City, UT 84106  
801-558-0875  
imagedancer@hotmail.com

119a

Cumulative impacts, as defined by CEQ (40 CFR 1508.7) are presented in Section 4.3 of this EIS.

119b

Effects of widening Dragon Road to special status plants were included in the analysis of impacts in the EIS. Refer to Section 4.2.7.

119c

Cumulative impacts, as defined by CEQ (40 CFR 1508.7) are presented in Section 4.3 of this EIS using the best available information.

The cumulative impacts for special status plant species has been revised to examine potential incremental cumulative effects, as well as determine the extent of pre-existing development, across the range of the species.

119d

The economic impact of the Utility Project Proposed Action and no action alternatives are disclosed in Section 4.2.17. The cumulative economic impacts are disclosed in Section 4.3.3.17. However, this comment is regarding the South Project, which is a reasonably foreseeable non-federal action that is included in the cumulative effects of the Utility Project to the degree that those effects accumulate with the effects of the Proposed Action. Economics of the South Project have been estimated to the degree that they may accumulate with the impacts of the Utility Project Proposed Action, and to the degree that they are known. However, the EIS for the utility corridors is not required to include an economic feasibility study for the South Project because it is out of the scope of the decision to be made. Enefit has reiterated that the South Project will move forward regardless of BLM's ultimate decision on the rights-of-way, so a South Project economic feasibility analysis is a business function conducted by Enefit American Oil independent of this EIS effort.

COMMENT(S)

RESPONSE(S)

I20

Elizabeth Reed

**From:** [kbuckner@blm.gov](mailto:kbuckner@blm.gov) on behalf of [Vernal Comments, BLM UT](#)  
**To:** [Dana Holmes](#)  
**Subject:** Fwd: Reject Enefit's Oil Shale Right of Way  
**Date:** Friday, June 17, 2016 2:42:54 PM

----- Forwarded message -----

**From:** Elizabeth Reed <[samantha249@comcast.net](mailto:samantha249@comcast.net)>  
**Date:** Mon, Jun 13, 2016 at 5:58 PM  
**Subject:** Reject Enefit's Oil Shale Right of Way  
**To:** [BLM\\_UT\\_Vernal\\_Comments@blm.gov](mailto:BLM_UT_Vernal_Comments@blm.gov)

Dear Ms. McCullough,

I am writing to urge you to reject Enefit's proposed right-of-way plan, which would enable a massive oil shale strip mine in the heart of eastern Utah's desert. This project is not in the public interest -- it would be bad for our climate, bad for our water, and bad for air quality.

Our country needs to move away from reliance on dirty fossil fuels to clean, renewable forms of energy. Enefit's proposal would take us in the opposite direction, paving the way for production of half a billion barrels of oil baked from rock using a process that produces about 40 percent more greenhouse gases than conventional oil. To protect our children from the worst impacts of climate change, oil shale needs to stay in the ground.

Mining oil shale would also irresponsibly drain water from rivers in the arid West and foul the air in an area already suffering from winter smog.

The BLM shouldn't write a blank check to Enefit. The subsidy -- in the form of the right of way -- would provide the company easier access to water, pipelines and electricity. And it would encourage oil shale production in an area where it would likely never occur without the taxpayer handout.

Mining high-carbon fossil fuels in the face of a worsening climate crisis is disastrous public policy. That's why I urge you and the BLM to reject Enefit's plan immediately.

Sincerely,

Elizabeth Reed  
 1 cliffmont st apt 403  
 Roslindale, MA 02131  
 US

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 For more information please visit <http://www.symanteccloud.com>

I20a

This EIS is being prepared under NEPA to help the BLM make a decision based on an understanding of the environmental consequences, and to take action that protect, restore, and enhance the environment (40 CFR 1500.1(c)). There are no public interest requirements in either the NEPA itself or in CEQ's implementing regulations. Therefore, this NEPA analysis may inform the BLM's final right-of-way public interest determination, but it will not make that determination.

This comment refers to the BLM's public interest determination, which is a right-of-way processing step that allow the BLM to deny a right-of-way. See 43 CFR 2804.26 and 43 CFR 2884.23. The BLM manuals define public interest in two ways. Manual 2803.10A2 (Qualifications for Holding FLPMA Grants) and Manual 2883.10A3 state: "It is not in the public interest to process a ROW application when the Applicant is an existing holder and is not in compliance with the existing grant terms and conditions, including nonpayment of rent and cost recovery. The existence of willful trespasses on public lands should also be considered." Manual 2800 (Rights of Way) states: "public interest or benefit: factors that serve to promote the good of the public in general rather than the exclusive benefit of the applicant." Since the public interest determination is a right-of-way regulation concept, the BLM's public interest determination for the Utility Project will be made in the final approval or disapproval of the Applicant's SF299s.

This EIS is being prepared under NEPA to help the BLM make a decision based on an understanding of the environmental consequences and take actions that protect, restore, and enhance the environment (40 CFR 1500.1(c)). There are no public interest requirements in either the Act itself or CEQ's implementing regulations. Therefore, this NEPA analysis may inform the BLM's final right-of-way public interest determination, but it will not make that determination.

COMMENT(S)

RESPONSE(S)

I21

Earlene Rex

**From:** [kbuckner@blm.gov](mailto:kbuckner@blm.gov) on behalf of [Vernal Comments, BLM UT](#)  
**To:** [Dana Holmes](#)  
**Subject:** Fwd: No blank checks for the oil shale industry  
**Date:** Friday, June 17, 2016 12:17:26 PM

----- Forwarded message -----

**From:** Earlene Rex <[info@actionnetwork.org](mailto:info@actionnetwork.org)>  
**Date:** Tue, Jun 14, 2016 at 9:29 PM  
**Subject:** Re: No blank checks for the oil shale industry  
**To:** [BLM\\_UT\\_Vernal\\_Comments@blm.gov](mailto:BLM_UT_Vernal_Comments@blm.gov)

Ester McCullough,

I urge the Bureau of Land Management to reject Enefit's proposed rights-of- way plan for the company's massive and dirty oil shale strip mining and refining project because it is bad for the climate, bad for water, bad for air quality, and not in the public interest.

Our country needs to move from reliance on dirty fossil fuels to cleaner forms of energy. Enefit's proposal would take us in the opposite direction, paving the way for production of half a billion barrels of oil baked from rock using a process that pollutes about 40% more greenhouse gases than conventional oil. To protect our children from the worst impacts of climate change, oil shale needs to stay in the ground.

Mining oil shale would also drain water from rivers in the arid West and foul the air in an area already suffering from some of the worst winter smog in the country.

The BLM should not write a blank check to Enefit. The subsidy – in the form of the right-of- way -provided to Enefit would provide easier access to water, pipelines, and electricity. This would encourage oil shale production in an area where it would likely never occur without the BLM handout.

The BLM absolutely should not make a decision about the right-of- way until it has analyzed Enefit's plan. Granting Enefit's right-of- way before evaluating the plan is allowing Enefit to game the system.

To protect the public interest and future generations, the BLM should reject Enefit's oil shale proposal.

Earlene Rex  
[earlenerx@aol.com](mailto:earlenerx@aol.com)  
5640 oakdale  
Slc, Utah 84121

I21a

The BLM has no jurisdiction over the South Project. In addition, the South Project analysis is not necessary for a reasoned choice between alternatives in this EIS for the purposes of NEPA because the South Project will continue to full buildout regardless of the BLM Decision on the Utility Project. However, South Project effects have been included in the cumulative effects of the Utility Project EIS to the degree that those effects accumulate with the effects of the Proposed Action.

COMMENT(S)

RESPONSE(S)

I22

Galen Schuck

**From:** [kbuckner@blm.gov](mailto:kbuckner@blm.gov) on behalf of [Vernal Comments, BLM UT](#)  
**To:** [Dana Holmes](#)  
**Subject:** Fwd: Enefit American Oil utility project Impact  
**Date:** Thursday, May 12, 2016 9:43:24 AM

----- Forwarded message -----

**From:** **GALEN** <[galenstarr@comcast.net](mailto:galenstarr@comcast.net)>  
**Date:** Wed, May 4, 2016 at 12:37 PM  
**Subject:** Enefit American Oil utility project Impact  
**To:** [blm\\_ut\\_vernal\\_comments@blm.gov](mailto:blm_ut_vernal_comments@blm.gov)

I am against the proposed action to upgrade roads,build power and pipelines in the Dragon Road area. I have been to this area and it is a place of beautiful scenery with lots of wildlife. Please consider no action on this proposal.  
Thank you  
Galen Schuck  
Sandy,UT

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For more information please visit <http://www.symanteccloud.com>

I22a

I22a

Comment noted.

## COMMENT(S)

## RESPONSE(S)

123

Jim Steitz

Jim Steitz  
849 Glades Road #1203  
Gatlinburg, TN 37738

**RE: Enefit Oil Shale Project**

June 13, 2016

Stepanie Howard, Vernal Field Office  
Bureau of Land Management  
170 South 500 East  
Vernal, Utah 84078

Dear Ms. Howard

As a former Utahn who still holds great affection and value for our landscape, I urge you to **reject the requested rights of way for the company 'Enefit' to strip-mine 9,000 acres of land for oil shale.** This project would inflict severe damage on the Uinta Basin, and help to catalyze an incipient industry whose future business plans are irreconcilable with the national interest and with an atmosphere that can support human life.

This mine would **provide a springboard into the most ecologically destructive form of liquid fossil fuel extraction and use ever developed** by humankind. At a time when human survival depends upon dramatically decreasing our emissions of carbon dioxide, the Estonia-based "Enefit" wants to sink a large capital investment into a new stream of ultra-high-carbon fuel that is unlikely to be staunched once the infrastructure is established. While an Enefit spokesperson told the Deseret News that "The BLM's involvement in preparing an Environmental Impact Statement does not imply any kind of government endorsement either," this assertion is absolutely contrary to policy framework established by NEPA. **To approve the rights of way across BLM land is tantamount to BLM approving the 9,000 acre strip mine itself.** Moreover, because the Enefit project is envisioned by the industry as a stepstone toward larger oil shale projects across the region, the BLM's analysis must assess the cumulative impacts of normalizing such an ultra-high-carbon variant of the oil industry for decades to come. Simple chemistry and arithmetic will show this impact may be an existential one for human civilization.

There exists no possible cost-benefit analysis by which the BLM may justify its right-of-way assistance to extract a fuel that will dramatically increase our carbon emissions. **Tar sands extraction requires an amount of energy equal to a substantial fraction of the oil** being recovered. Therefore, the burning of tar sands represents a backwards regression toward even greater emissions per unit energy produced, exactly the opposite of the fuel source changes America must make. **Tar sands are a tremendous step backward to dirtier, higher-carbon energy that will accelerate global warming, a horrific legacy for Utah to leave our descendants.**

At the current 'social cost of carbon' employed by the EPA for cost-benefit analysis, the liabilities of the carbon dioxide from oil shale grossly exceed the market value of the oil, and the disparity only widens as our understanding of climate change expands and the price of oil remains depressed the humanity attempts to evade those impacts. Moreover, these oil shales starkly breach the mathematical limits on carbon dioxide implicated in the Paris climate accords, to which the US is a party, and to which the BLM is therefore obligated. **For BLM to comply with the Paris Accord, its policy must be compatible with keeping 80% of known remaining fossil fuels safely underground and unburned. This remaining carbon budget includes no space for Utah's tar sands.**



COMMENT(S)

RESPONSE(S)

123

Jim Steitz (cont.)

Moreover, this project would render a broad swath of land a lifeless moonscape, in close proximity to the Green and White Rivers, while drawing colossal quantities of water from the already over-allocated upper Colorado Basin. I am deeply saddened that a government official would to invite a company to tear a tremendous gash in the Uinta Basin, and create an ecologically shattered industrial zone, less like Utah and more like other places people visit Utah to escape.

As a Utahn in heart as well as diploma, I am embarrassed that our primary legacy may be to accelerate, hasten, and further entrench the global crisis of our atmosphere's deterioration. Utah may forever be remembered as a place where our final chance to mitigate global warming was cast aside, in favor of a final, mad rush to extract the last, dirtiest, most viscous, most water-intensive, most mineral-locked reserves of oil. Our society, at this late date, can yet consciously and intelligently choose a stable climate that our descendants can survive. The proposed Enfit tar sands mine would help forceclose on that chance, and would be remembered in antipathy and sorry by our descendants if allowed.

If this mine were to be economically "successful," it would only inspire more corporate visions of oil shale, and more corporate pressure on Utah to open more of its landscape to bulldozing, stripping, and mining. In Canada, tar-sands mining is already widespread and causing ecological devastation. Tar-sands companies are already stripping Canada's precious forests into a vast, black, churned, hellish wasteland. I shudder to consider the similar fate of the Uinta Basin, if the hydrocarbon companies develop a similar taste for this most vile of fossil fuels in my home state. We must immediately close the door to this fundamentally inappropriate resource, and prevent its peddlers from getting a foot in the door of Utah.

Again, please reject the proposed Enfit oil shale mine, and prevent oil-shale mining from establishing itself in the Uinta Basin, with devastating consequences for Utah and all of humankind.

Sincerely,

  
Jim Steitz

123a

123a

Comment noted.

COMMENT(S)

RESPONSE(S)

I24	<p><b>Matt Thomas</b></p> <p><b>From:</b> <a href="mailto:kbuckner@blm.gov">kbuckner@blm.gov</a> on behalf of <a href="#">Vernal Comments, BLM UT</a> <b>To:</b> <a href="#">Dana Holmes</a>; <a href="#">Michael Doyle</a> <b>Subject:</b> Fwd: Enefit Corridor <b>Date:</b> Monday, May 16, 2016 10:48:55 AM</p> <hr/> <p>----- Forwarded message ----- <b>From:</b> <b>Thomas, Matthew</b> &lt;<a href="mailto:Matthew.Thomas@anadarko.com">Matthew.Thomas@anadarko.com</a>&gt; <b>Date:</b> Thu, May 12, 2016 at 10:53 AM <b>Subject:</b> Enefit Corridor <b>To:</b> "<a href="mailto:UT_Vernal_Comments@blm.gov">UT_Vernal_Comments@blm.gov</a>" &lt;<a href="mailto:UT_Vernal_Comments@blm.gov">UT_Vernal_Comments@blm.gov</a>&gt;</p> <p>I am writing in support of the Enefit Utility Corridor. I have had the opportunity to work for several world class companies in the oil, gas and mining industries. These companies have been diligent stewards of environmental and public responsibility. After attending the open house in Vernal and doing my own research into Enefits proposal and into the company itself. I believe that they have put together a viable plan to go forward.</p> <p>Enefit has a proven record in the mining and processing of shale. Their benefit to the community would be immense. They have also taken the time to develop plans that will help to minimize or even negate any negative effects on the local area. These include but are not limited to traffic impact on roadways, vehicle emissions, water usage, wild and plant life.</p> <p>I look forward to seeing this company move forward in the Uintah Basin and to the great asset they can be to the local area.</p> <p>Matt Thomas E&amp;I Tech GNB Anadarko 435-828-1008</p> <p><a href="#">Click here for Anadarko's Electronic Mail Disclaimer</a></p> <hr/> <p>This email has been scanned by the Symantec Email Security.cloud service.</p>
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I24a	<p>Comment noted.</p>
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COMMENT(S)

RESPONSE(S)

I25

John Vaillant

**From:** [kbuckner@blm.gov](mailto:kbuckner@blm.gov) on behalf of [Vernal Comments, BLM UT](#)  
**To:** [Dana Holmes](#)  
**Subject:** Fwd: Rights of Way for Enefit Project  
**Date:** Wednesday, June 15, 2016 7:17:44 AM

----- Forwarded message -----

From: **John Vaillant** <[jvaillant@telus.net](mailto:jvaillant@telus.net)>  
Date: Tue, Jun 14, 2016 at 4:10 PM  
Subject: RE: Rights of Way for Enefit Project  
To: [UT\\_Vernal\\_Comments@blm.gov](mailto:UT_Vernal_Comments@blm.gov)

Greetings;

I am a U.S. citizen, parent and journalist based in Vancouver, BC.

I am opposed to this project because, after studying the relationship between fossil fuels, alternative energy and climate over the past decade, I have come to understand that the age of energy transition is upon us.  
It's no longer something that will happen "in the future." It is happening now, and rapidly.

Given that this project will further deface the landscape and contribute to an increase in GHG emissions - onsite and downstream, and given the data now available to us regarding the well-documented negative impacts of these projects on water, soil, air and human health, responsible governments and energy companies should be pursuing renewable energy projects.

This is where the future is leading us, and American companies have an opportunity to set an example.

Please see this recent article from Bloomberg (one among many):

<http://www.bloomberg.com/news/articles/2016-06-13/we-ve-almost-reached-peak-fossil-fuels-for-electricity>

Sincerely,

John Vaillant

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I25a

I25a

Comment is out of scope of this EIS as defined by the purpose and need statement.

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## **Appendix I9**

### **Form Letters**

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**COMMENT(S)**

FL1

## Action Network

**From:** [kbuckner@blm.gov](mailto:kbuckner@blm.gov) on behalf of [Vernal Comments, BLM UT](#)  
**To:** [Dana Holmes](#)  
**Subject:** Fwd: Please reject Enfit oil shale proposal  
**Date:** Monday, June 20, 2016 11:20:29 AM

### Unique comment

----- Forwarded message -----  
From: **Dan Melton** <[info@actionnetwork.org](mailto:info@actionnetwork.org)>  
Date: Sat, Jun 11, 2016 at 4:18 PM  
Subject: Please reject Enefit oil shale proposal  
To: [BLM\\_UT\\_Vernal\\_Comments@blm.gov](mailto:BLM_UT_Vernal_Comments@blm.gov)

Ester McCullough,

Please reject the Enfit plan for an oil shale strip mining and refining complex; it would be bad for the climate, bad for water quality, and bad for air quality.

We need to move from reliance on dirty fossil fuels to cleaner forms of energy. The Enfit proposal would take us in exactly the opposite direction. Oil shale needs to stay in the ground.

To protect the public interest and future generations, the BLM should reject the Enfit oil shale proposal.

Dan Melton  
[oakville000@yahoo.com](mailto:oakville000@yahoo.com)  
2138 LaFollette Avenue  
Madison, Wisconsin 53704

No response needed.

COMMENT(S)

RESPONSE(S)

FL2

EarthJustice

**From:** [kbuckner@blm.gov](mailto:kbuckner@blm.gov) on behalf of [Vernal Comments, BLM UT](#)  
**To:** [Dana Holmes](#)  
**Subject:** Fwd: Public comment on Enefit EIS  
**Date:** Friday, June 17, 2016 2:37:40 PM

----- Forwarded message -----

From: **KnowWho Services** <[noreply@knowwho.services](mailto:noreply@knowwho.services)>  
 Date: Sun, Jun 12, 2016 at 6:23 PM  
 Subject: Public comment on Enefit EIS  
 To: [blm\\_ut\\_vernal\\_comments@blm.gov](mailto:blm_ut_vernal_comments@blm.gov)

Dear BLM Enefit Comments,

I'm writing to urge the Bureau of Land Management to reject Enefit's request to use public lands for rights of way to its dirty oil shale mining project.

If allowed to move forward, this foreign company would strip mine, crush, and cook massive quantities of oil shale in order to extract a low-value oil substitute called kerogen on a patchwork of Utah's public and private lands.

Oil shale development emits far more greenhouse gases than other fossil fuels. It also pollutes the air we breathe, creates mining waste that threatens water quality, scars the land and hurts wildlife habitat. A government study also found that large-scale development of oil shale in Utah could require almost as much water annually as Denver, Salt Lake City, and Albuquerque use each year.

The BLM has been hampered in writing a sufficient or informative EIS by Enefit's failure to disclose crucial information about the volume, scope, and timing of its proposed mine. Furthermore, Enefit has provided no evidence to back up its claim that its proprietary methods allow it to outperform the current state of the art in lifecycle greenhouse gas emissions for oil shale production. As a result the current DEIS is unacceptable.

Instead of allowing fossil fuel companies to dig up our land and pollute our water, air, and climate, we should be investing in clean, renewable energy that will help create sustainable jobs in Utah. Given the threats we face from climate disruption, and the volatility and bleak future of the oil market, approving this plan would be shortsighted and counter-productive.

For these reasons, I urge BLM to reject the right-of way as not in the public interest and to prevent Enefit from using our public lands to support this dirty project.

Thank you for your consideration.

Sincerely,

Frank B. Anderson  
 515 N Meyler St  
 San Pedro, CA 90731-  
[fbmjct@aol.com](mailto:fbmjct@aol.com)

No response needed.



COMMENT(S)

RESPONSE(S)

FL3	Grand Canyon Trust
<p>From: <a href="mailto:kbuckner@blm.gov">kbuckner@blm.gov</a> on behalf of <a href="#">Vernal Comments, BLM UT</a>  To: <a href="#">Dana Holmes</a>; <a href="#">Michael Doyle</a>  Subject: Fwd: Enefit Rights-of-Way Not in the Public Interest  Date: Tuesday, May 31, 2016 7:53:40 AM</p> <hr/> <p>----- Forwarded message -----  From: <b>Grand Canyon Trust</b> &lt;<a href="mailto:info@grandcanyontrust.org">info@grandcanyontrust.org</a>&gt;  Date: Sun, May 29, 2016 at 2:50 PM  Subject: Enefit Rights-of-Way Not in the Public Interest  To: Ester McCollough &lt;<a href="mailto:UT_Vernal_Comments@blm.gov">UT_Vernal_Comments@blm.gov</a>&gt;</p> <p>Dear Field Office Manager McCollough:</p> <p>I urge the Bureau of Land Management to reject Enefit's proposed rights-of-way plan for the company's massive and dirty oil shale strip mining and refining project because it is bad for the climate, bad for water, bad for air quality, and not in the public interest.</p> <p>Our country needs to move from reliance on dirty fossil fuels to cleaner forms of energy. Enefit's proposal would take us in the opposite direction, paving the way for production of half a billion barrels of oil baked from rock using a process that pollutes about 40% more greenhouse gases than conventional oil. To protect our children from the worst impacts of climate change, oil shale needs to stay in the ground.</p> <p>Mining oil shale would also drain water from rivers in the arid West and foul the air in an area already suffering from some of the worst winter smog in the country.</p> <p>The BLM should not write a blank check to Enefit. The subsidy – in the form of the right-of-way – provided to Enefit would provide easier access to water, pipelines, and electricity. This would encourage oil shale production in an area where it would likely never occur without the BLM handout.</p> <p>The BLM absolutely should not make a decision about the right-of-way until it has analyzed Enefit's plan. Granting Enefit's right-of-way before evaluating the plan is allowing Enefit to game the system.</p> <p>To protect the public interest and future generations, the BLM should reject Enefit's oil shale proposal.</p> <p>Sincerely,  Connor Record  <a href="mailto:crecord20@gmail.com">crecord20@gmail.com</a></p> <hr/> <p>This email has been scanned by the Symantec Email Security.cloud service.  For more information please visit <a href="http://www.symanteccloud.com">http://www.symanteccloud.com</a></p>	

No response needed.

COMMENT(S)

RESPONSE(S)

FL4

KnowWho Services

**From:** [kbuckner@blm.gov](mailto:kbuckner@blm.gov) on behalf of [Vernal Comments, BLM UT](#)  
**To:** [Dana Holmes](#)  
**Subject:** Fwd: Public comment on Enefit EIS  
**Date:** Monday, June 20, 2016 9:40:23 AM

----- Forwarded message -----

From: **KnowWho Services** <[noreply@knowwho.services](mailto:noreply@knowwho.services)>  
Date: Fri, Jun 10, 2016 at 3:23 PM  
Subject: Public comment on Enefit EIS  
To: [blm\\_ut\\_vernal\\_comments@blm.gov](mailto:blm_ut_vernal_comments@blm.gov)

Dear BLM Enefit Comments,

I'm writing to urge the Bureau of Land Management to reject Enefit's request to use public lands for rights of way to its dirty oil shale mining project.

If allowed to move forward, this foreign company would strip mine, crush, and cook massive quantities of oil shale in order to extract a low-value oil substitute called kerogen on a patchwork of Utah's public and private lands.

Oil shale development emits far more greenhouse gases than other fossil fuels. It also pollutes the air we breathe, creates mining waste that threatens water quality, scars the land and hurts wildlife habitat. A government study also found that large-scale development of oil shale in Utah could require almost as much water annually as Denver, Salt Lake City, and Albuquerque use each year.

The BLM has been hampered in writing a sufficient or informative EIS by Enefit's failure to disclose crucial information about the volume, scope, and timing of its proposed mine. Furthermore, Enefit has provided no evidence to back up its claim that its proprietary methods allow it to outperform the current state of the art in lifecycle greenhouse gas emissions for oil shale production. As a result the current DEIS is unacceptable.

Instead of allowing fossil fuel companies to dig up our land and pollute our water, air, and climate, we should be investing in clean, renewable energy that will help create sustainable jobs in Utah. Given the threats we face from climate disruption, and the volatility and bleak future of the oil market, approving this plan would be shortsighted and counter-productive.

For these reasons, I urge BLM to reject the right-of way as not in the public interest and to prevent Enefit from using our public lands to support this dirty project.

Thank you for your consideration.

Sincerely,

Sadie Bailey  
2225 Alabama St Apt 4  
Huntington Beach, CA 92648-  
[stalsky04@gmail.com](mailto:stalsky04@gmail.com)

No response needed.

## COMMENT(S)

## RESPONSE(S)

FL5

## Multiple Individuals – Group 1

**From:** [kbuckner@blm.gov](mailto:kbuckner@blm.gov) on behalf of [Vernal Comments, BLM UT](#)  
**To:** [Dana Holmes](#)  
**Subject:** Fwd: Comments on Enefit project  
**Date:** Monday, June 20, 2016 2:29:42 PM

----- Forwarded message -----

From: **Douglas K Miller, MD** <[dokmille@gmail.com](mailto:dokmille@gmail.com)>  
 Date: Fri, Jun 10, 2016 at 9:54 AM  
 Subject: Comments on Enefit project  
 To: [BLM\\_UT\\_Vernal\\_Comments@blm.gov](mailto:BLM_UT_Vernal_Comments@blm.gov)

Dear Stephanie Howard,

I am writing to oppose the Bureau of Land Management's Proposed Action in the Draft Environmental Impact Statement (EIS) for the Enefit American Oil Utility Corridor Project. Granting the rights-of-way applications to Enefit would enable development of the South Project, the first commercial-level oil shale operation in the U.S. The federal government should not be in the business of enabling new, dangerous fossil fuel development on private or public lands.

The Draft EIS failed to analyze the significant climate and environmental impacts of the South Project. Processing the kerogen contained in oil shale into usable crude oil is a highly energy-intensive, destructive and wasteful process. The rock is first mined like coal, crushed, and heated to at least 700 degrees Fahrenheit to boil the kerogen into an extractable fuel. Producing this type of energy would require digging some of the world's largest and deepest open pit mines and operating multiple new power plants, also powered by fossil fuels, that would produce millions of tons of greenhouse gas emissions and other pollutants. Oil shale production also places incredible strain on the Colorado River Basin, which is already facing a water crisis and decreases in volume by as much as 27 percent. Four barrels of water are needed to produce one barrel of oil. Predictions are that full-scale production of oil shale at the South Project would consume and contaminate about 200 million gallons of water per day.

New oil shale development makes no sense in a carbon-constrained world. The latest climate science indicates that more public fossil fuels have already been leased than can be burned to stay below catastrophic levels of global warming. Any new fossil fuel development, therefore, should be precluded in order to mitigate the severe consequences to people and the planet of climate disruption. The South Project would cover approximately 13,441 acres of oil shale containing approximately 1.2 billion barrels of oil. At full production, the South Project is expected to produce 50,000 barrels of oil per day for up to 30 years, which could release half a billion tons of carbon emissions. Rather than increase dependence on dirty fossil fuels that will only harm people and destroy our planet, we should accelerate a just transition to a clean energy economy before it's too late.

To combat climate change, we can't permit dirty, unconventional fuels to gain a foothold in the U.S., or lock in that dirty fuel for decades. The claim that federal denial of the rights-of-way would not prevent development of the South Project is disingenuous. The Proposed Action amounts to a subsidy from the federal government to Enefit for oil shale development.

FL5a

The South Project is outside of the jurisdiction of the BLM and will proceed to full buildout regardless of the BLM decision to be made for the Utility Project. To address confusion expressed by the public during the Draft EIS comment period, those South Project impacts that may accumulate with the impacts of the Utility Project Proposed Action have been moved to the cumulative impact analysis in the Final EIS. Information on its contribution to the cumulative effects of the Utility Project has been included to the extent known. The plant and mine plan are not yet fully engineered or submitted to regulatory agencies so the best available data was used as a proxy.

Environmental analysis of the South Project would be considered by the appropriate permitting agencies during final design and siting. The potential need for additional power generation and utilization of water resources in the region is identified as an unquantifiable cumulative effect. As part of the PSD permitting for the South Project the generation of GHGs must be quantified, and best available control options must be considered. This includes permitting under the CAA and CWA through local permitting agencies and the EPA.

**COMMENT(S)**

**RESPONSE(S)**

FL5	Multiple Individuals – Group 1 (cont.)
	<p>Why spend millions of dollars to produce a new fossil fuel using vast amounts of existing fossil fuels to exacerbate climate disruption and environmental degradation? The only answer can be corporate profits. The public interest in a safe climate future can only be met by keeping fossil fuels in the ground.</p> <p>The Bureau of Land Management should protect the public interest and future generations and deny Enefit's rights-of-way applications.</p> <p>Sincerely,</p> <p>Douglas K Miller, MD</p> <p>63122</p> <hr/> <p>This email has been scanned by the Symantec Email Security.cloud service. For more information please visit <a href="http://www.symanteccloud.com">http://www.symanteccloud.com</a></p> <hr/>

COMMENT(S)

RESPONSE(S)

FL6

Multiple Individuals – Group 2

**From:** [kbuckner@blm.gov](mailto:kbuckner@blm.gov) on behalf of [Vernal Comments, BLM UT](#)  
**To:** [Dana Holmes](#)  
**Subject:** Fwd: Reject Enefit's Oil Shale Right of Way  
**Date:** Friday, June 17, 2016 1:35:53 PM

----- Forwarded message -----

From: **Elisabeth Bechmann** <[elisabeth.bechmann@kstp.at](mailto:elisabeth.bechmann@kstp.at)>  
 Date: Tue, Jun 14, 2016 at 1:12 PM  
 Subject: Reject Enefit's Oil Shale Right of Way  
 To: [BLM\\_UT\\_Vernal\\_Comments@blm.gov](mailto:BLM_UT_Vernal_Comments@blm.gov)

Dear Ms. McCullough,

I am writing to urge you to reject Enefit's proposed right-of-way plan, which would enable a massive oil shale strip mine in the heart of eastern Utah's desert. This project is not in the public interest -- it would be bad for our climate, bad for our water, and bad for air quality.

Our country needs to move away from reliance on dirty fossil fuels to clean, renewable forms of energy. Enefit's proposal would take us in the opposite direction, paving the way for production of half a billion barrels of oil baked from rock using a process that produces about 40 percent more greenhouse gases than conventional oil. To protect our children from the worst impacts of climate change, oil shale needs to stay in the ground.

Mining oil shale would also irresponsibly drain water from rivers in the arid West and foul the air in an area already suffering from winter smog.

The BLM shouldn't write a blank check to Enefit. The subsidy -- in the form of the right of way -- would provide the company easier access to water, pipelines and electricity. And it would encourage oil shale production in an area where it would likely never occur without the taxpayer handout.

Mining high-carbon fossil fuels in the face of a worsening climate crisis is disastrous public policy. That's why I urge you and the BLM to reject Enefit's plan immediately.

Sincerely,

Elisabeth Bechmann  
 Neugebäudeplatz  
 St. Poelten, 03100  
 AT

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No response needed.

COMMENT(S)

RESPONSE(S)

FL7

WildEarth Guardians

**From:** [kbuckner@blm.gov](mailto:kbuckner@blm.gov) on behalf of [Vernal Comments, BLM UT](#)  
**To:** [Dana Holmes](#)  
**Subject:** Fwd: Protect Our Climate, No Oil Shale  
**Date:** Friday, June 17, 2016 3:09:32 PM

----- Forwarded message -----

**From:** **Emily Armstrong** <[action@wildearthguardians.org](mailto:action@wildearthguardians.org)>  
**Date:** Sun, Jun 12, 2016 at 7:28 AM  
**Subject:** Protect Our Climate, No Oil Shale  
**To:** BLM Utah Vernal Comments <[BLM\\_UT\\_Vernal\\_Comments@blm.gov](mailto:BLM_UT_Vernal_Comments@blm.gov)>

Jun 12, 2016

BLM Utah Vernal Comments  
170 South 500 East  
Vernal, UT 84078

Dear Vernal Comments,

I urge the Bureau of Land Management to reject Enefit's proposed right-of-way plan for the company's massive and dirty oil shale strip mining and refining project. This oil shale proposal is bad for the climate, bad for water, bad for air quality, and not in the public interest.

Our country needs to move away from fossil fuels to cleaner forms of energy. Enefit's proposal would take us in the opposite direction, paving the way for production of half a billion barrels of oil baked from rock using a process that pollutes about 40% more greenhouse gases than conventional oil. To protect our children from the worst impacts of climate change, oil shale needs to stay in the ground.

Mining oil shale would also drain water from rivers in the arid West and foul the air in an area already suffering from some of the worst winter smog in the country.

To protect the public interest and future generations, please reject Enefit's oil shale proposal.

Sincerely,

Emily Armstrong  
324 E Pine Knoll Dr  
Flagstaff, AZ 86011-7028  
[jellyjamjam@gmail.com](mailto:jellyjamjam@gmail.com)

No response needed.