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OIL AND GAS LEASE SALE PROTEST
 (Filed Pursuant to 43 C.F.R. §§ 4.450-2 and 3120.1-3)

August 19, 2008 Lease Sale State of Utah

The Theodore Roosevelt Conservation Partnership ("TRCP") hereby protests the inclusion of certain parcels in the above referenced lease sale as advertised by the Bureau of Land Management ("BLM") on April 2, 2008. TRCP requests the following parcels be withdrawn from sale because they: 1) Contain designated elk and mule deer crucial winter range, fawning habitat, and migration routes, or 2) contain designated crucial pronghorn habitat.

UTU86450; UTU86451; UTU86452; UTU86453; UTU86454; UTU86455; UTU86456;
UTU86457; UTU86458; UTU86459; UTU86460; UTU86461; UTU86462; UTU86463;
UTU86464; UTU86465; UTU86466; UTU86467; UTU86468; UTU86469; UTU86470;
UTU86471; UTU86472; UTU86473; UTU86474; UTU86475; UTU86476; UTU86477;
UTU86478; UTU86479; UTU86480; UTU86481; UTU86482; UTU86483; UTU86484;
UTU86485; UTU86486; UTU86487; UTU86488; UTU86489; UTU86490; UTU86491;
UTU86492; UTU86493; UTU86494 ; UTU86495; UTU86496; UTU86497; UTU86498;
UTU86499; UTU86500; UTU86501; UTU86502; UTU86503; UTU86504; UTU86505;
UTU86506; UTU86507; UTU86508; UTU86509; UTU86510; UTU86511

BACKGROUND ON TRCP'S INTEREST

TRCP is a national non-profit (26 U.S.C. § 501(c)(3)) conservation organization dedicated to guaranteeing every American a place to hunt and fish, particularly on public lands. TRCP accomplishes its goal three ways: 1) Ensuring access to public lands, 2) ensuring adequate funding for natural resource agencies, and 3) helping to conserve fish and wildlife habitats. TRCP has formed, with various partners, a Fish, Wildlife, and Energy Working Group, comprised of some of the country's oldest and most respected hunting, fishing, and conservation organizations. With over 113,000 individual partners in the U.S. and over 1000 individual partners in Utah, TRCP is working hard to ensure that the development of oil and gas resources on public lands in the West is balanced with the needs of fish and wildlife resources, but is concerned that the rapid pace of development is precluding BLM from managing these resources as required by the Federal Land Policy and Management Act ("FLPMA"), 43 U.S.C. § 1701 *et seq.*

TRCP is especially concerned with the fate of elk, pronghorn, and mule deer and the recreational opportunities they provide tens of thousands of sportsmen each fall in Utah. Without comprehensive habitat management planning, closely coordinated with the Utah Division of Wildlife Resources ("UTDWR"), leasing and development of energy resources within crucial big game winter range, fawning habitat, and migration routes can have a devastating impact on those wildlife resources and the hunting opportunities they afford.

THE IMPORTANCE OF KEY HABITATS

UTDWR has stated in its *Statewide Management Plan for Mule Deer*: "Mule deer are the most important game animal in Utah" and that the state has received a consistently high demand for annual mule deer harvest tags. UTDWR has also stated in its *Statewide Management Plan for Elk*: "Maintaining a diverse and high quality elk hunting program is important to Utah sportsmen. Hunter demand for opportunity to hunt mature bulls is high and increasing." Unfortunately, mule deer harvest numbers have plummeted over the past few decades (e.g., from 101,761 in 1970 to just 34,720 in 2000). See State of Utah Mule Deer Status Report (<http://www.muledeernet.org/utahstatus.htm>). And the UTDWR *Statewide Management Plan for Elk* states that "Crucial elk habitat is continuously being lost in many parts of Utah and severely fragmented in others due to human expansion and development. Urbanization, road construction, OHV use, and energy development have all impacted elk habitat." Energy development is associated with increased fragmentation, human expansion and development, road construction, increased OHV use through new roads, and the actual energy development footprint itself.

Crucial habitats and features are essential to mule deer, elk, and pronghorn survival. See, e.g., *White et al., Effect of Density Reduction on Overwinter Survival of Free-ranging Mule Deer Fawns, Journal of Wildlife Management* 62:214-225 (1997); and *Sweeney, et al., Snow Depths Influencing Winter Movements of Elk, Journal of Mammalogy*, Vol. 65, No. 3 (Aug. 1984), pp. 524-526. The quantity and quality of mule deer and elk habitat is identified by UTDWR as the primary determiner of the health and size of mule deer and elk herds. UTDWR also identifies energy development as a main source of "loss or degradation of mule deer habitat," meaning these habitats should retain their qualities in order to sustain populations over time *Utah Division of Wildlife Resources Statewide Management Plan for Mule Deer* (Nov. 13, 2003).

BLM generally has identified big game as an important resource in its Resource Management Plans ("RMP"), recognized the sensitive nature of winter ranges and migration routes, and subsequently has applied lease stipulations and activity restrictions to prevent loss of these areas for these purposes.

LEGAL REQUIREMENTS

I. THE NATIONAL ENVIRONMENTAL POLICY ACT.

The National Environmental Policy Act ("NEPA"), 42 U.S.C. §4321 *et seq.*, was enacted in recognition of "the profound impact of man's activity on the interrelations of all components of the natural environment, [and] ... the critical importance of restoring and maintaining environmental quality to the overall welfare ... of man" 42 U.S.C. § 4331. NEPA

“prescribes the necessary process by which federal agencies must take a ‘hard look’ at the environmental consequences of [their] proposed courses of action.” *Pennaco Energy, Inc. v. U.S. Dept. of Interior*, 377 F.3d 1147, 1150 (10th Cir. 2004) (internal quotations omitted); see also *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989). NEPA is intended to focus the attention of the government and the public on the likely environmental consequences of a proposed agency action. *Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 371 (1989).

TRCP understands the proposed sale of 56 parcels within the Cedar City Field Office is based on *Final Cedar Beaver Garfield Antimony RMP* (1984), the *Record of Decision on the Final Cedar Beaver Garfield Antimony RMP/FEIS* (1986) and, principally, Environmental Assessment, UT-040-08-036, *Oil and Gas Leasing in the Eastern Portion of the Cedar City Field Office* (May 2008) (the “EA”). In summary, the EA: 1) Fails to analyze new information concerning the impact of oil and gas development on mule deer, elk, and pronghorn; 2) relies on an arbitrary “reasonable foreseeable development” or “RFD” scenario; 3) and contains no analysis of the impact of proposed leasing on hunting in the affected area.

A. An Environmental Impact Statement is Warranted for Cedar City FO Leasing.

As a preliminary matter, TRCP submits the EA represents a wholly inadequate level of analysis for leasing over 80,000 acres of minerals. The impacts of the proposed sale are likely to be “significant” for NEPA purposes, and thus an environmental impact statement (“EIS”) is warranted.

Significance is evaluated in terms of both context and intensity. 40 C.F.R. § 1508.27. “Intensity” should be judged, among other ways, by considering: “(3) Unique characteristics of the geographic area such as proximity to ... ecologically critical areas; (4) The degree to which the effects on the quality of the human environment are likely to be highly controversial; (5) The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks ... [and] (7) Whether the action is related to other actions with individually insignificant but cumulatively significant impacts.”

The proposed lease parcels will be within and in close proximity to crucial winter range, fawning areas and migration routes. The impact of eventual development on those areas is “highly controversial” in that there appears to be significant disagreement between BLM and the scientific community concerning the impact of oil and gas development on crucial winter range and what is required to protect big game from those impacts. BLM’s EA concedes that it is difficult to tell what the overall impact of leasing will be on these resources. Finally, there is little question that the cumulative impact of oil and gas leasing presents a serious threat to big game viability. All these factors militate in favor of a finding of significance, and, therefore, the production of an EIS.

B. Existing Analyses in Vernal, Richfield, and Price Are Not Sufficient in Light of Significant New Information Concerning the Needs of Big Game.

TRCP understands the resource management plans (“RMP”) on which BLM relies to

support the proposed leasing action on parcels UTU86511; UTU86510; UTU86509; UTU86508; UTU86507; UTU86450 in the Vernal, Richfield, and Price management areas are the *Price River MFP*, 1983; *Price River MFP Supplement*, 1984; *Range Valley HMP*, 1991; *Mountain Valley MFP*, 1982; *Vernal EA Record Oil and Gas Leasing Program*, 1975; *Diamond Mountain RMP* 1994; *Book Cliffs RMP*, 1985.

As a preliminary matter, TRCP notes that these planning documents are between one and 3 decades old, clearly triggering the need for heightened scrutiny under CEQ guidance and BLM's earlier IM Nos. 2000-034 and 2001-062. Additionally, given that the Vernal, Richfield, and Price RMPs are currently under revision, the BLM has admitted that the land use plans used to evaluate the nominated lease parcels for the Aug. 19, 2008 lease sale are based on information in need of revision. However, as evident in the Documentations of NEPA Adequacy, BLM has determined that these RMPs and the NEPA analyses conducted to support their adoption decades ago have been deemed adequate for purposes of supporting the proposed lease sale.

BLM should not proceed with the lease sale pending final revision of the RMPs. NEPA regulations provide: "(a) Until an agency issues a record of decision ..., no action concerning the proposal shall be taken which would: (1) Have an adverse environmental impact; or (2) Limit the choice of reasonable alternatives. 40 CFR 1506.1. By issuing leases in the affected area, BLM will be committing the leased lands to oil and gas development before it has finalized the RODs on its RMP amendments. BLM will, in other words, be limiting the choice of reasonable alternatives available in the RMP revision process. TRCP recognizes the rule cited above allows actions such as the lease sale to proceed if they already are covered by a valid plan and underlying NEPA analysis, but that exception does not apply in this case. For the reasons discussed herein, existing program documents are insufficient to support the proposed lease sale. Indeed, BLM's EA recognizes as much. Therefore, BLM must finalize its RMP amendments prior to committing the resources in the project area to oil and gas development.

Any DNA prepared for these leases is arbitrary, capricious, contrary to law, and an abuse of discretion for the same reasons as the EA as discussed below.

C. BLM Must Recognize the Latest Information on Mule Deer.

Agencies must supplement existing environmental analyses if new circumstances "raise[] significant new information relevant to environmental concerns[.]" *Portland Audubon Soc'y v. Babbitt*, 998 F.2d 705, 708-709 (9th Cir. 2000). Moreover, an "agency must be alert to new information that may alter the results of its original environmental analysis, and continue to take a 'hard look at the environmental effects of [its] planned action, even after a proposal has received initial approval.'" *Friends of the Clearwater v. Dombek*, 222 F.3d 552, 557 (9th Cir. 2000) quoting *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 374 (1989).

NEPA's implementing regulations further underscore this obligation. An agency "shall prepare supplements to either draft or final environmental impact statements if ... there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts." 40 C.F.R. §1502.9(c)(1)(ii). Even where an EIS has been previously prepared, "[i]f there remains 'major Federal actio[n]' to occur, and if the new information is sufficient to show that the remaining action will 'affect[t] the quality of the human

environment' in a significant manner or to a significant extent not already considered, a supplemental EIS must be prepared." *Marsh v. Oregon Natural Resources Council*, 109 S.Ct. 1851, 1859 (1989).

The Council on Environmental Quality's ("CEQ") NEPA guidance states that "if the proposal has not yet been implemented, EISs that are more than 5 years old should be carefully reexamined to determine if [new circumstances or information] compel preparation of an EIS supplement." See 46 Fed. Reg. 18026 (1981) (Question 32). This caution was reiterated by earlier BLM Instruction Memoranda ("IM") Nos. 2000-034 (expired September 30, 2001) and 2001-062 (expired September 30, 2002).

Since the RMP was originally developed, BLM has acquired much new information about oil and gas development, and important wildlife habitats like crucial winter range, fawning areas, and migration routes. But, BLM's EA does not utilize this information in developing alternatives for the proposed lease sale. The most recent findings, including published literature, report significant impacts to mule deer use of winter range, with 27% being attributed to energy development. Sawyer, H. et al., 2006 ANNUAL REPORT. SUBLETTE MULE DEER STUDY (PHASE II): LONG-TERM MONITORING PLAN TO ASSESS POTENTIAL IMPACTS OF ENERGY DEVELOPMENT ON MULE DEER IN THE PINEDALE ANTICLINE PROJECT, Cheyenne, Wyoming, USA (2006) and Sawyer, H. et al., 2006. WINTER HABITAT SELECTION OF MULE DEER BEFORE AND DURING DEVELOPMENT OF A NATURAL GAS FIELD, *Journal of Wildlife Management* 70:396-403 (2006). This is despite BLM's use of lease stipulations like those to be utilized under the proposed action described in the EA. The mule deer research from Sublette County, Wyoming paints a "seriously different picture of the likely environmental consequences of the proposed action" that has never been discussed in an environmental assessment or impact statement. *State of Wisconsin v. Weinberger*, 745 F.2d 412 (7th Cir. 1984); accord, *Essex County Preservation Ass'n v. Campbell*, 536 F.2d 956 (1st Cir. 1976). Yet, the EA does not even reference these studies in the literature cited.

In addition, recent studies have concluded that protection of migration corridors is critical to sustaining migratory mule deer populations in key areas. See generally *Western Ecosystems Technology*, Final Report for the Atlantic Rim Mule Deer Study (April 2007). "Prior to 2000 [when nearly all the RMPs at issue here were adopted], conserving migration routes had not been a top management concern for agencies" in areas where development was relatively minor. Hall Sawyer and Matthew Kauffman, *Identifying Mule Deer Migration Routes in the Atlantic Rim Project Area* (April 1, 2008) at 1. Again, there is no mention of this research in the EA.

Finally, through the use of radio and satellite telemetry, scientists from UTDWR and other big game researchers have been able to identify migration routes used by big game in their seasonal movements. These materials constitute inventories and evaluations of the areas using vastly improved techniques and methods - including compilation of comprehensive on-the-ground data, photographs, mapping, and extensive documentation of land conditions and values collected during extended visits, and research conducted subsequent to the BLM's RMP development. This information was not available at the time the relevant RMPs were developed, was not incorporated into the EA, and cannot be said to have been considered for NEPA purposes.

In other cases, BLM Utah has recognized the importance of this information. For example, Utah BLM decided to pull 42 parcels in the August 2007, lease sale, cancel the entire November 2007 lease sale and then defer 5 parcels in the February, 2008 lease sale. Catlin, T., *Federal Oil and Gas Sale Scheduled for August 21*, Utah BLM Newsroom (15 August 2007); Catlin, T., *November Competitive Oil and Gas Lease Sale Cancelled*, Utah BLM Newsroom (28 September 2007); Catlin, T., *Federal Oil and Gas Sale Scheduled for February 19*, Utah BLM Newsroom (15 February 2008). The proposed lease parcels should not be leased until BLM has evaluated the best available information on mule deer.

D. The RFD Scenario in the EA is Unreasonable.

One of the major shortcomings of the EA is its unrealistic RFD scenario based on past development trends in this area. New technologies for developing natural gas resources have greatly expanded Industry's ability to extract gas that was previously unavailable or economically infeasible. In any RFD scenario, this increased efficiency should be considered, along with the rising cost of natural gas that is spurring increased development interest in areas where it was previously unseen.

Without the slightest acknowledgement of these factors, BLM employs the same fundamental RFD scenario it has relied on for years. As a result, BLM's EA assumes that only 30 wells will be drilled in the action area over the next 10 years. In light of improving technologies and economic pressures making otherwise marginal oil and gas production more cost-effective, it is totally unreasonable to assume that, once leased, production would be limited to just 30 wells in 10 years.

According to a recent NY Times article, "The wellhead price of natural gas is about five times higher than it was in the 1990s" and "The Bush administration, in its effort to expand energy production, has issued more than three times the number of well-drilling permits on Western lands as in the Clinton administration's last six years," (Barringer, Falicity. *A Push to Wrest More Oil From Land, but Most New Wells Are for Natural Gas*. New York Times. August 3, 2008.). With new market situations causing increasing prices and political interests pushing for increased natural gas production, it is unreasonable to expect that future natural gas development levels will mirror those of the past when the situation is clearly different.

By relying on an illegitimate RFD scenario, BLM has artificially downplayed the likely environmental impacts of development in the leased area. Such impacts can be seen in places such as the Powder River Basin and Pinedale Anticline, where new technologies have made previously unavailable gas sources accessible and highly marketable. The environmental degradation associated with those developments has been profound, yet BLM's EA appears to dismiss these potential impacts altogether.

E. The EA Does Not Analyze the Impact of the Proposed Lease Sale on Hunting.

NEPA "places upon an agency the obligation to consider every significant aspect of the environmental impact of the proposed action" and "ensures that the agency will inform the public that it has indeed considered environmental concerns in its decision making process." *Baltimore Gas & Electric Co. v. Natural Resources Defense Council, Inc.*, 462 U.S. 87, 97

(1983) (citations omitted). In this case, BLM has not evaluated adequately the impact of proposed leasing on hunting in the affected area. Although the EA recognizes that big game may be negatively affected, BLM makes no attempt to articulate what that might mean in the way of reduced hunting opportunities for TRCP's members.

Moreover, in evaluating the cumulative impact of the proposed lease sale, BLM states that its "Cumulative Impact Analysis Area" is limited to the action area. However, big game do not respect BLM's administrative boundaries. A proper cumulative impact analysis must account for the overall impact of the proposed lease sale on the herd units to which animals in the action area belong. BLM has not even attempted such analysis. As a result, the American sportsmen has no idea how BLM's proposal will affect him.

F. BLM Must Conduct the Required NEPA Analysis Before Leasing or Impose "No-Surface Occupancy" Stipulations.

CEQ regulations make clear that the discussion of alternatives is "the heart" of the NEPA process. 40 C.F.R. §1502.14. NEPA analyses must "[r]igorously explore and objectively evaluate all reasonable alternatives." 40 C.F.R. §1502.14(a). Objective evaluation is no longer possible after BLM has bound itself to a particular outcome (such as surface occupation within sensitive areas) by failing to conduct adequate analysis before foreclosing alternatives that would protect the environment (i.e., no leasing or No Surface Occupancy (NSO) stipulations).

An oil and gas lease conveys "the right to use so much of the leased lands as is necessary to explore for, drill for, mine, extract, remove and dispose of all the leased resource in a leasehold." 43 C.F.R. §3101.1-2. This right is qualified only by "[s]tipulations attached to the lease; restrictions deriving from specific, nondiscretionary statutes; and such reasonable measures as may be required by the authorized officer to minimize adverse impacts to other resource values, land uses or users not addressed in the lease stipulations at the time operations are proposed." 43 C.F.R. § 3101.1-2. Unless drilling would violate an existing lease stipulation or a specific nondiscretionary legal requirement, BLM argues lease development must be permitted subject only to limited discretionary measures imposed by the surface-managing agency.¹

¹ That said, BLM has broad discretion in leasing federal lands in the first instance. The Mineral Leasing Act ("MLA") "left the Secretary discretion to refuse to issue any lease at all on a given tract." *Udall v. Tallman*, 85 S.Ct. 792, 795 (1965) *reh. den.* 85 S.Ct. 1325. "The filing of an application which has been accepted does not give any right to lease, or generate a legal interest which reduces or restricts the discretion vested in the Secretary whether or not to issue leases for the lands involved." *Duesting v. Udall*, 350 F.2d 748, 750-51 (D.C. Cir. 1965), *cert. den.* 383 U.S. 912 (1966). See also *Bob Marshall Alliance v. Hodel*, 852 F.2d 1223, 1230 (9th Cir. 1988) ("[R]efusing to issue [certain petroleum] leases ... would constitute a legitimate exercise of the discretion granted to the Secretary of the Interior"); *McDonald v. Clark*, 771 F.2d 460, 463 (10th Cir. 1985) ("While the [MLA] gives the Secretary the authority to lease government lands under oil and gas leases, this power is discretionary rather than mandatory").

Accordingly, the appropriate time to evaluate the impact of leasing on crucial winter range, fawning habitat, is *before* an oil and gas lease is granted. *Sierra Club v. Peterson*, 717 F.2d 1409, 1414-1415 (D.C. Cir. 1983) *quoting* *Mobil Oil Corp. v. F.T.C.*, 562 F.2d 170, 173 (2nd Cir. 1977)). Unless BLM is prepared to withdraw the protested parcels or incorporate NSO stipulations into leases on the protested parcels, BLM must analyze the impacts of subsequent development prior to leasing. BLM cannot defer all site-specific analysis to later stages such as submission of Applications for Permit to Drill ("APDs") or proposals for full-field development.

In an effort to prevent further loss of crucial big game habitats and migration corridors, the Western Governor's Association in 2007 issued a resolution calling for better identification and cooperation to protect these important habitats for the future. *See* Resolution 07-01, *Protecting Wildlife Migration Corridors and Crucial Wildlife Habitat in the West*. In the associated follow-up report from the Oil and Gas Working Group (December 2007), problems with the current leasing process and recommendations for better management and coordination were made. Recommendation #1-D states: "Western Governors should request the Secretaries of the Interior and Agriculture to assess, and implement where appropriate, a policy of site-specific NEPA analysis before offering new federal lease parcels in the areas that the states deem to be wildlife corridors and crucial habitats." (Emphasis supplied).

II. FEDERAL LANDS POLICY AND MANAGEMENT ACT ("FLPMA")

FLPMA requires BLM to prepare and maintain a current inventory of all public lands and their resources. 43 U.S.C. § 1711(a). This systematic inventory forms the basis of the land use planning process. 43 U.S.C. § 1701(a)(2). "Th[e] inventory shall be kept current so as to reflect changes in conditions and to identify new and emerging resource and other values." 43 U.S.C. § 1711(a). The RMP is over 20 years old, and the EA does not indicate what mapping BLM relied on to identify crucial big game habitats. The attached information, however, shows there are a number of significant habitats within the project area. Without more information, it appears to TRCP that BLM is relying on outdated inventories for this lease sale. A decision by BLM to hold the lease sale as scheduled without taking into account the most up-to-date mapping information would be arbitrary and capricious. *Compare* *Center for Biological Diversity v. Bureau of Land Management*, 422 F. Supp. 2d 1115, 1167-68 (N.D. Cal. 2006) ("The Court concludes it was arbitrary and capricious to approve the RAMP with such obviously outdated and inadequate inventories.").

"In managing the public lands the [Secretary of Interior] shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands." 43 U.S.C. §1732(b). In the context of FLPMA, by using the imperative language "shall", "Congress [leaves] the Secretary no discretion" in how to administer the Act. *NRDC v. Jamison*, 815 F. Supp. 454, 468 (D.D.C. 1992). BLM's duty to prevent unnecessary or undue degradation ("UUD") under FLPMA is mandatory, and BLM must, at a minimum, demonstrate compliance with the UUD standard. *Sierra Club v. Hodel*, 848 F.2d 1068 (10th Cir. 1988) (the UUD standard provides the "law to apply" and "imposes a definite standard on the BLM.").

In this case, BLM is required to demonstrate compliance with the UUD standard by showing that future impacts from development will be mitigated and thus avoid undue or unnecessary degradation of big game crucial winter ranges, fawning areas, and migration routes.

See e.g., *Kendall's Concerned Area Residents*, 129 IBLA 130, 138 ("If unnecessary or undue degradation cannot be prevented by mitigation measures, BLM is required to deny approval of the plan."). See also *Mineral Policy Center v. Norton*, 292 F. Supp. 2d 30, 40 (D.D.C. 2003) ("FLPMA, by its plain terms, vests the Secretary of the Interior with the authority—and indeed the obligation—to disapprove of an otherwise permissible ... operation because the operation though necessary ... would unduly harm or degrade the public land.")²

In this instance, BLM has a statutory obligation to demonstrate that leasing in or adjacent to crucial big game winter ranges, fawning areas, and migration routes will not result in UUD. However, BLM's proposed action would rely on timing stipulations already shown to be ineffective in maintaining mule deer populations. Specifically, BLM must demonstrate that leasing will not lead to future development that causes UUD by irreparably damaging the habitat function of crucial big game winter ranges and migration routes and fawning areas that could lead to population decline. Existing analysis has not satisfied BLM's obligation to comply with the UUD standard and prevent permanent impairment of the function of crucial winter ranges, fawning areas, and migration routes of these public lands. Proceeding with leasing would be arbitrary, capricious, and an abuse of discretion.

III. EXECUTIVE ORDER 13443: FACILITATION OF HUNTING HERITAGE AND WILDLIFE CONSERVATION

On August 16, 2007, President Bush signed Executive Order ("EO") 13443, the purpose of which is "to direct Federal agencies that have programs and activities that have a measurable effect on public land management, outdoor recreation, and wildlife management, including the Department of the Interior ..., to facilitate the expansion and enhancement of hunting opportunities and the management of game species and their habitat." See EO 13443 reprinted at 72 Fed. Reg. 46,537 (Aug. 20, 2007). Among other things, EO 13443 requires BLM to:

- Evaluate the effect of agency actions on trends in hunting participation and, where appropriate to address declining trends, implement actions that expand and enhance hunting opportunities for the public;
- Manage wildlife and wildlife habitats on public lands in a manner that expands and enhances hunting opportunities, including through the use of hunting in wildlife management planning; and
- Establish short and long term goals, in cooperation with State and tribal governments, and consistent with agency missions, to foster healthy and productive populations of game species and appropriate opportunities for the public to hunt those species.

The RMP, on which the proposed leasing action is based, does not account for the duties imposed on BLM by virtue of EO 13443. The EA does not even acknowledge EO 13443. Leasing of the protested parcels will directly adversely impact the very resources and recreational and hunting interests EO 13443 is intended to protect. Yet, BLM has provided no

² Further, the agency is required to manage the public's resources "without permanent impairment of the productivity of the land and the quality of the environment..." 43 U.S.C. §1702(c); *Mineral Policy Center v. Norton*, 292 F. Supp. 2d at 49.

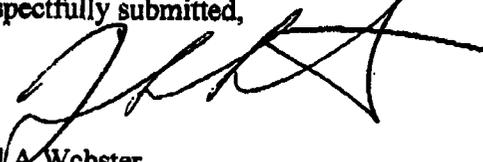
explanation of whether or how the proposed lease sale will comply with EO 13443. While TRCP understands EO 13443 purports not to create an independent right of judicial review, proceeding to lease the protested parcels without consideration of the goals and objectives of EO 13443 would be arbitrary and capricious and without observance of procedures required by EO 13443. See 5 U.S.C. § 706(2)(a) and (d).

CONCLUSION

For the reasons stated above, parcels containing disputed big game crucial winter range, fawning areas, and migration routes are inappropriate for mineral leasing and development at this time. Existing pre-leasing analysis does not comply with NEPA, FLPMA or other applicable law. Utah citizens have raised substantial concerns about impacts to big game resources and the need for additional actions to protect these resources.

TRCP respectfully requests that the Utah State Director withdraw these disputed parcels from the August 19, 2008 competitive lease sale. In the event BLM proceeds to offer these parcels, all prospective bidders should be informed of the pending protest.

Respectfully submitted,


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8-4-08

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To: Selma Sierra - UT BLM State Director	From: Joel Webster - TRCP
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Phone:	Date: July 4, 2008
Re:	cc:

Please see the attached Aug. 19, 2008 Utah BLM lease sale protest. Direct all correspondence to:

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