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**HAND DELIVERED**

November 6, 2006

Henri Bisson – Acting State Director  
Utah State Director, Bureau of Land Management  
440 West 200 South, 5<sup>th</sup> Floor  
P.O. Box 45155  
Salt Lake City, Utah 84145-0155

*Re: Protest of Bureau of Land Management's Notice of Competitive Oil and Gas  
Lease Sale Concerning 39 Parcels*

Greetings,

In accordance with 43 C.F.R. §§ 4.450-2 and 3120.1-3, the Southern Utah Wilderness Alliance, Natural Resources Defense Council, The Wilderness Society, and the Grand Canyon Trust<sup>1</sup> (collectively referred to as "SUWA") hereby timely protest the November 21, 2006 offering, in Salt Lake City, Utah, of the following 39 parcels in the Vernal, Monticello, Moab, Richfield, Salt Lake, and Price field offices:

**Monticello field office:**

**UT 1106-264, UT 1106-336, UT 1106-338, UT 1106-339, UT 1106-341, UT 1106-343, UT 1106-345, UT 1106-346, UT 1106-348 (9 parcels)**

**Salt Lake field office: UT 1106-003A, UT 1106-003B, UT 1106-003G (3 parcels)**

**Richfield field office: UT 1106-182 (1 parcel)**

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<sup>1</sup> The Grand Canyon Trust joins this protest only as to the following 11 parcels: UT 1106-264, UT 1106-276, UT 1106-298, UT 1106-336, UT 1106-338, UT 1106-339, UT 1106-341, UT 1106-343, UT 1106-345, UT 1106-346, UT 1106-348.

**Price field office: UT 1106-157, UT 1106-158, UT 1106-159, UT 1106-160, UT 1106-161, UT 1106-163, UT 1106-183, UT 1106-184, UT 1106-190, UT 1106-191, UT 1106-194, UT 1106-203, UT 1106-206, UT 1106-207, UT 1106-208, UT 1106-209, UT 1106-210, UT 1106-211, UT 110-239 (19 parcels)**

**Moab field office: UT 1106-276, UT 1106-298 (2 parcels)**

**Vernal field office: UT 1106-002, UT 1106-003, UT 1106-274, UT 1106-275, UT 1106-290 (5 parcels)**

As explained below, the Bureau of Land Management's (BLM's) decision to sell the 39 parcels at issue in this protest violates the National Environmental Policy Act, 42 U.S.C. §§ 4321 et seq. (NEPA), the National Historic Preservation Act, 16 U.S.C. §§ 470 et seq. (NHPA), and the regulations and policies that implement these laws.

SUWA requests that BLM withdraw these 39 lease parcels from sale until the agency has fully complied with NEPA and the NHPA.

The grounds of this Protest are as follows:

**A. Leasing the Contested Parcels Violates NEPA**

**1. Inadequate Pre-Leasing NEPA Analysis**

NEPA requires that the BLM prepare a pre-leasing NEPA document that fully considers and analyzes the no-leasing alternative before the agency engages in an irretrievable commitment of resources, i.e., the sale of non-no surface occupancy oil and gas leases. See Southern Utah Wilderness Alliance v. Norton, 2:04cv574 (DAK) (D. Utah), Slip, Op. at 18-21; Bob Marshall Alliance v. Hodel, 852 F.2d 1223, 1228-30 (9<sup>th</sup> Cir. 1988) (requiring full analysis of no-leasing alternative even if EIS not required); Montana Wilderness Assoc. v. Fry, 310 F. Supp. 2d 1127, 1145-46 (D. Mont. 2004); Southern Utah Wilderness Alliance, 164 IBLA 118, 124 (2004) (quoting Pennaco Energy, Inc. v. U.S. Dep't of the Interior, 377 F.3d 1147, 1162 (10<sup>th</sup> Cir. 2004))

(reversing and remanding Utah BLM decision to lease seven parcels in Kanab field office because of inadequate pre-leasing NEPA analysis). Importantly, BLM's pre-leasing analysis must be contained in its already completed NEPA analyses because, as the IBLA recognized in Southern Utah Wilderness Alliance, "DNAs are not themselves documents that may be tiered to NEPA documents, but are used to determine the sufficiency of previously issued NEPA documents." 164 IBLA at 123 (citing Pennaco, 377 F.3d at 1162).

a. Richfield Field Office – Parcel UT 1106-182

The Richfield DNA states that the 1975 Richfield Oil and Gas Environmental Analysis Record (Richfield EAR) and 1975 Fillmore Oil and Gas Environmental Analysis Record (Fillmore EAR) adequately considered the "no-leasing alternative." Richfield DNA at 4 (citing Richfield EAR at 26; Fillmore EAR at 11). See Richfield EAR at 128-29 (discussion of "do not allow leasing" alternative"). A review of the EARs, however, reveals that the "no-lease" alternative was summarily dismissed and was not, in fact, analyzed, considered, and evaluated. See Southern Utah Wilderness Alliance v. Norton, Slip Op. at 20-21 (BLM failed to prepare adequate pre-leasing NEPA analysis to support decision to sell leases in Richfield field office – Henry Mountains field station). Moreover, when BLM prepared the 1982 Mountain Valley MFP and 1982 Parker Mountain MFP, also cited in the Richfield DNA, it was not accompanied by a separate environmental impact statement or other similar NEPA analysis and thus the current leasing categories and alternatives were not considered in the land use planning context. Southern Utah Wilderness Alliance, 164 IBLA at 123-24 (noting that BLM did not consider MFPs "major federal actions" and thus agency did not prepare EIS to

accompany MFP). The subsequent oil and gas NEPA analyses cited to in the Richfield DNA – the Utah Combined Hydrocarbon Leasing Regional EIS (1984) and the Oil and Gas Leasing Implementation EA for Henry Mountain and Sevier River Resources Areas (1988) – did not analyze the no-leasing alternative, but simply carried forward the decisions made in the EARs that lands were available for leasing. BLM should thus defer leasing parcel UT 1106-182 until the agency prepares an adequate pre-leasing NEPA analysis.

- b. *Price Field Office – UT 1106-183, UT 1106-184, UT 1106-190, UT 1106-191, UT 1106-194, UT 1106-203, UT 1106-206, UT 1106-207, UT 1106-208, UT 1106-209, UT 1106-210, UT 1106-211, UT 1106-239*

The Price DNA states that the 1975 Price EAR, the 1982 Price River Management Framework Plan, and the 1988 EA Supplement on Cumulative Impacts of Oil and Gas Leasing Categories considered the “no-leasing alternative.” Price DNA at 4. To the contrary, none of these documents contain the required NEPA no-leasing alternative analysis. See Southern Utah Wilderness Alliance v. Norton, Slip Op. at 18-21 (holding that Price EAR did not adequately consider the no-leasing alternative). As described above, the Price EAR did not adequately analyze the no-leasing alternative. The Price River MFP was not accompanied by a NEPA analysis and thus cannot be relied upon for an analysis of the no-lease alternative. In addition, the Price River MFP Supplement did not analyze the no-leasing alternative for lands managed by the Price River MFP, but simply carried forward the decisions made in the Price EAR and Price River MFP that lands were available for leasing. BLM should thus defer leasing parcels UT 1106-183, UT 1106-184, UT 1106-190, UT 1106-191, UT 1106-194, UT 1106-203, UT 1106-206,

UT 1106-207, UT 1106-208, UT 1106-209, UT 1106-210, UT 1106-211, and UT 1106-239 until the agency prepares an adequate pre-leasing NEPA analysis.

**2. BLM Failed to Take the Required “Hard Look” at Whether Its Existing Analyses Are Valid in Light of New Information or Circumstances.**

NEPA requires federal agencies to take a hard look at new information or circumstances concerning the environmental effects of a federal action even after an EA or an EIS has been prepared, and to supplement the existing environmental analyses if the new circumstances “raise[] significant new information relevant to environmental concerns.” Portland Audubon Soc’y v. Babbitt, 998 F.2d 705, 708-09 (9<sup>th</sup> Cir. 1993). Specifically, 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 actions.” Friends of the Clearwater v. Dombeck, 222 F.3d 552, 557 (9<sup>th</sup> Cir. 2000). NEPA’s implementing regulations further underscore an agency’s duty to be alert to, and to fully analyze, potentially significant new information. The regulations declare that 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) (emphasis added).

As explained below, the Price, Richfield, Salt Lake, and Moab field offices failed to take a hard look at new information and new circumstances that have come to light since BLM finalized the 1975 Price EAR, San Rafael EIS/RMP, Box Elder EIS/RMP, Grand EIS/RMP as well as subsequent oil and gas EAs. See also Pennaco Energy, 377 F.3d at 1162 (explaining that DNAs determine whether “previously issued NEPA

documents were sufficient to satisfy the ‘hard look’ standard,” and are not independent NEPA analyses). In addition, to the extent that the Price field office took the required hard look, its conclusion that it need not prepare a supplemental NEPA analysis was arbitrary and capricious.

a. *Parcel UT 1106-276 – Former Spruce Canyon Wilderness Inventory Area (WIA)*

BLM has arbitrarily determined that the sale of lease parcel UT 1106-276 – formerly located in the **Spruce Canyon WIA** is appropriate – despite acknowledging that there is “significant new information” about the area’s wilderness characteristics that is not considered in current NEPA analyses.<sup>2</sup> The Spruce Canyon WIA was inventoried between 1996-99 by the BLM as part of the agency’s larger Utah wilderness inventory and determined to contain the necessary wilderness characteristics as defined in the Wilderness Act, 16 U.S.C. §§ 1131 et seq., for potential entry into the National Wilderness Preservation System. See Utah Wilderness Inventory, at vii-ix (1999) (excerpts attached as Exhibit 2). As the BLM’s wilderness inventory documentation explained:

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<sup>2</sup> In 2003, the Moab field office revised BLM’s 1999 Utah Wilderness Inventory and determined that approximately 1,100 acres in Unit 4 should be removed from the Spruce Canyon WIA, citing to the location of state lands. See Moab Field Office, Revisions to the 1999 Utah Wilderness Inventory (BLM 2003) (attached hereto as Exhibit 1). That BLM determined these 1,100 acres should no longer be part of the Spruce Canyon WIA does not mean that these lands no longer contain wilderness characteristics. See Utah Wilderness Inventory, 132 (1999) (excerpts attached as Exhibit 2) (“All four of the Spruce Canyon inventory units retain their natural character. No roads, vehicle ways, or other unnatural features were identified within inventory Units 1, 3, or 4.”). Indeed, there is nothing in the record to demonstrate that these 1100 acres lack wilderness character (only that they are now no longer considered part of the Spruce Canyon WIA) and conversely there is nothing in the BLM’s 1985 Grand RMP/EIS that analyzes the impacts of oil and gas leasing and development to wilderness characteristics BLM itself determined to exist in Unit 4 Spruce Canyon WIA. BLM should thus defer leasing parcel UT 1106-274 until the agency completes its revision of the Moab RMP/EIS.

The Secretary's instructions to the BLM were to "focus on the conditions on the disputed ground today, and to obtain the most professional, objective, and accurate report possible so we can put the inventory questions to rest and move on." [The Secretary] asked the BLM to assemble a team of experienced, career professionals and directed them to apply the same legal criteria used in the earlier inventory and the same definition of wilderness contained in the 1964 Wilderness Act.

Utah Wilderness Inventory, vii (emphasis added). As the result of this review, the BLM determined that its earlier wilderness inventories had failed to recognize 2.6 million acres of lands that met the applicable criteria in its prior reviews, including the Labyrinth Canyon, Desolation Canyon, and Beaver Creek WIAs. See State of Utah v. Babbitt, 137 F.3d 1193, 1198-99 (10<sup>th</sup> Cir. 1998) (discussing history of BLM's Utah wilderness inventories). Importantly, the Grand EIS/RMP – prepared after the 1978-80 wilderness inventory – did not reanalyze the wilderness characteristics of lands that were passed over for wilderness study area status. Rather, that plan and its accompanying NEPA analysis merely adopted the conclusion that lands not identified as WSAs did not contain wilderness characteristics.

As part of its 1996-99 wilderness inventory, BLM compiled comprehensive case files to support its findings that these two WIAs have wilderness characteristics, including numerous aerial and on-the-ground photographs, as well as a detailed narrative with accompanying source materials and SUWA incorporates these documents, located in the Utah State office, by reference to this protest. See also Utah Wilderness Inventory, 132 (Spruce Canyon WIA) (attached as Exhibit 2). Based on the candid statements in these wilderness files that BLM's own Wilderness Inventory provided significant new information that has not been analyzed in existing NEPA documentation, it is clear that this parcel must be removed from the November 2006 sale list. BLM's failure to do so is

a clear violation of NEPA because: (a) the 1996-99 wilderness inventory is undeniably new information, as BLM itself admits; (b) this wilderness inventory meets the textbook definition of what constitutes "significant" information; and (c) the sale of non-NSO leases constitutes an irreversible and irretrievable commitment of resources and thus requires a pre-leasing EIS.

Moreover, BLM cannot credibly claim that it has ever taken a hard look at the impact that oil and gas development would have on the wilderness characteristics of the WIAs because the wilderness case files post-date all the NEPA analyses and accompanying land use plans relied upon by BLM here. At the time that those documents were prepared, the BLM did not know that these areas contained wilderness quality lands. Hence, the Grand RMP/EIS does not contain the type of site specific information about the wilderness characteristics of the Spruce Canyon and WIAs that was provided in the BLM's own (and subsequent) wilderness inventory evaluation, nor could it analyze the impacts of energy development on those characteristics. That BLM's Grand RMP/EIS may have discussed in general terms the values of this area, is no substitute for the required hard look at the impacts of oil and gas development on wilderness characteristics. See Pennaco Energy, 377 F.3d at 1162 (explaining that DNAs determine whether "previously issued NEPA documents were sufficient to satisfy the 'hard look' standard," and are not independent NEPA analyses). In sum, BLM's own wilderness inventory evaluations and comprehensive case files constitute precisely the type of significant new information that requires additional environmental analysis before BLM approves the irreversible commitment of resources – the November 2006 lease sale.

b. Areas that May Have Wilderness Characteristics<sup>3</sup>

As part of its comments on the draft Price resource management plan, SUWA provided BLM with new and significant information to the BLM regarding the wilderness characteristics of the Price River and Desolation Canyon proposed wilderness units. See Comments submitted by Southern Utah Wilderness Alliance *et al.* for the Price draft resource management plan (Nov. 29, 2001) (excerpts attached hereto as Exhibit 4); Map – Price Area Lease Parcels (attached as Exhibit 5); Map – Green River Area Lease Parcels (attached as Exhibit 6). Specifically, SUWA provided new information regarding the following 9 proposed lease parcels:

Price River proposed wilderness unit: UT 1106-190, UT 1106-191, UT 1106-194, UT 1106-209, UT 1106-210, UT 1106-211

Desolation Canyon proposed wilderness unit: UT 1106-206, UT 1106-207, UT 1106-208

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<sup>3</sup> BLM is currently proposing to sell lease parcel UT 1106-003 – located in the Goslin Mountain proposed wilderness unit. On December 15, 2001 SUWA provided BLM (Vernal field office) with significant new information about the Goslin Mountain proposed wilderness unit. See Evaluation of New Information Suggesting that an Area of Public Land Has Wilderness Characteristics, Utah Wilderness Coalition's Goslin Mountain Proposed Wilderness Unit (Nov. 26, 2002) (attached hereto as Exhibit 3). BLM reviewed SUWA's information and determined that "the information is significantly different from the information in prior inventories conducted by BLM regarding the wilderness values of the area or a portion of the area." *Id.* at 1. Though BLM ultimately concluded that the area did not have a reasonable probability of wilderness character, it did so on the erroneous ground that because adjacent inventoried Forest Service roadless lands were not at that point being considered for wilderness designation, the proposed Goslin Mountain – alone – was smaller than the 5,000 acre minimum for wilderness designation. See id. at 2-3. This conclusion did not refute BLM's initial finding that SUWA had provided new significant information about the on-the-ground wilderness characteristics in the Goslin Mountain proposed wilderness unit. BLM should thus defer leasing parcel UT 1106-003 until the agency prepares a supplemental NEPA analysis to consider the impacts of leasing and development to wilderness characteristics or until the agency completes the Vernal land use planning process.

BLM has never reviewed, analyzed (in a supplemental NEPA analysis), or field checked this significant new information – but must do so before it offers these nine lease parcels.

As part of its comments on the draft Vernal resource management plan, SUWA provided BLM with new and significant information to the BLM regarding the wilderness characteristics of the Home Mountain proposed wilderness unit. See Exhibit 7 (excerpts). See Map – Vernal Area Lease Parcels (attached as Exhibit 8).

SUWA has also provided new information regarding lease parcel UT 1106-003; BLM has never reviewed, analyzed (in a supplemental NEPA analysis), or field checked this significant new information – but must do so before it offers this parcel.

c. White Tailed Prairie Dog Potential ACEC

As part of its resource management plan revision planning process the Price field office has identified the potential White Tailed Prairie Dog ACEC (9,204 acres). See Supplemental Information and Analysis to the Price Field Office Draft Resource Management Plan/Environmental Impact Statement for Areas of Critical Environmental Concern (available on-line at <http://www.blm.gov/rmp/ut/price/documents/PriceACECSupplementalV2.pdf>). The Price field office DNA “ACEC Write-up from November 2006 DNA – Rational for Offering Parcels for Lease” describes the White Tailed Prairie Dog potential ACEC as being “more than locally significant:”

The Castle Valley complex is large, over 5,000 acres. The other prairie dog towns and complexes in the Price Field Office (PFO) are smaller. . . . Based on the most recent inventories of white-tailed prairie dog colonies, there are 10 relatively large white-tailed prairie dog complexes remaining in North America (each occupying more than 5,000 acres).

(Attached hereto as Exhibit 9) (emphasis added). This is new, significant information about a BLM sensitive species – information that is not documented in existing NEPA analyses or land use plans. The following 6 proposed lease parcels are located within this potential ACEC: UT 1106-157, UT 1106-158, UT 1106-159, UT 1106-160, UT 1106-161, and UT 1106-163.

BLM's own "ACEC Write-up" for this lease sale noted that parcels UT 1106-157 and UT 1106-163 should be deferred from the November 2006 lease sale because management of this proposed ACEC would require stricter stipulations than what are currently provided for in the existing San Rafael RMP/EIS. See ACEC Write-up at unpaginated 1. Nevertheless, the Price field office DNA proposes to sell these two lease parcels. BLM must defer leasing UT 1106-157 and UT 1106-163 until this internal discrepancy can be resolved.

SUWA further contends that BLM's rationale for sanctioning the sale of the remaining 4 parcels (UT 1106-158, UT 1106-159, UT 1106-160, UT 1106-161) is erroneous. Specifically, the Price field office DNA relies on lease notices and other provisions of the standard lease form (the 60 day/200 meter rule) to argue that the special values in the proposed White-tailed prairie dog ACEC can be protected. See Price DNA at 8. To the contrary, and as BLM is well aware, lease notices are entirely unenforceable and nothing more than a restatement of standard lease stipulations. See 43 C.F.R. § 3101.1-3 (Stipulations and Information Notices: "An information notice [i.e., lease notice] has no legal consequences, except to give notice of existing requirements, and may be attached to a lease by the authorized officer at the time of lease issuance to convey certain operational, procedural, or administrative requirements relative to lease

management within the terms and conditions of the standard lease form. Informational notices shall not be a basis for denial of lease operations.") (emphasis added). To rely essentially on a lessees' good-will to abide by these notices – and the ability to move surface disturbance a mere 200 meters (again a standard lease provision) – when the BLM's own Supplemental Information and Analysis (ACEC) notes that future leasing would be subject to "major constraints" or closed to leasing altogether, is arbitrary and capricious. In short, BLM must defer leasing UT 1106-158, UT 1106-159, UT 1106-160, UT 1106-161 until completion of the Price RMP/EIS.

**3. BLM Should Defer 9 Parcels in the Price and Vernal Field Offices Pursuant to Instruction Memorandum No. 2004-110 (Change 1) and 40 C.F.R. § 1506.1**

BLM Instruction Memorandum (IM) No. 2004-100 (Change 1) "re-emphasizes the importance of considering temporary deferral of oil, gas, and geothermal leasing in those areas with active land use planning activities" such as the Monticello, Richfield, and Moab field offices. This IM further directs BLM "to consider temporarily deferring oil, gas, and geothermal leasing on federal lands with land use plans that are currently being revised." The IM provides non-exclusive examples of when deferral may be appropriate – including instances where the preferred alternative would designate lands in leasing categories 2-4. The IM does not, however, in any way restrict BLM from deferring oil and gas leasing decisions to those examples. NEPA implementing regulation 40 C.F.R. § 1506.1 is consistent with this interpretation as it provides that while BLM is in the midst of an environmental analysis, such as the Monticello, Richfield, and Moab land use planning/NEPA process, the agency must not take any action "which would . . . [l]imit the choice of reasonable alternatives." See also 40

C.F.R. § 1502.2(f) (while preparing environmental impact statements, federal “[a]gencies shall not commit resources prejudicing selection of alternatives before making a final decision (§ 1506.1).”)<sup>4</sup> Another section of that same regulation directs that while BLM is preparing a required EIS “and the [proposed] action is not covered by an existing program statement,” that BLM must not take actions that may “prejudice the ultimate decision on the program.” 40 C.F.R. § 1506.1(c). The regulation further states that “[i]nterim action prejudices the ultimate decision on the program when it tends to determine subsequent development or limit alternatives.” *Id.* (emphasis added). While BLM has a land use plan and NEPA analysis in place for the lands at issue in the Vernal field office (Book Cliffs and Diamond Mountain RMPs/EISs) and Price field office (San Rafael RMP/EIS and Price River MFP/Price EAR), the agency’s own February 2000 Report to Congress – Land Use Planning for Sustainable Resource Decisions made clear that existing land use plans such as the Diamond Mountain/Book Cliffs RMPs/EISs do not accurately reflect current, unanticipated levels of interest and attention in oil and gas development. See BLM Report to Congress – Land Use Planning for Sustainable Development, at 4, 7 (Feb. 2000) (attached hereto as Exhibit 10).

A decision by BLM to restrict the application of IM 2004-100 (Change 1) and 40 C.F.R. § 1506.1 to instances where there is a potential conflict with only the preferred alternative would indicate that BLM had prejudged the outcome of the land use planning and NEPA process, in violation of NEPA. In other words, when BLM is in the midst of a land use planning process and considering alternate land uses and protections for certain

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<sup>4</sup> BLM’s historic interpretation of this regulation – found most recently in Section VII.E of the agency’s land use planning handbook – confirmed this interpretation of 40 C.F.R. § 1506.1.

tracts recently nominated for oil and gas leasing, it is entirely appropriate – and indeed mandated by NEPA – for BLM to defer leasing those lands pending completion of the land use plan. This is particularly true here, where oil and gas leasing under the San Juan RMP/EIS, Grand RMP/EIS, and Richfield/Fillmore EARS and Mountain Valley MFP would limit or eliminate from consideration alternatives in the Monticello, Moab, and Richfield DRMPs/DEISs.<sup>5</sup>

The numbered points below identify instances where BLM should defer leasing until the Price and Vernal DRMPs/DEISs is finalized, in accordance with IM 2004-110 (Change 1) and 40 C.F.R § 1506.1:

1. Desolation Canyon ACEC – UT 1106-239: The Price field office’s “Supplemental Information and Analysis to the Price Field Office Draft Resource Management Plan/Environmental Impact Statement for Areas of Critical Environmental Concern” identifies that the Desolation Canyon proposed ACEC (Alternative C) would be open to leasing subject to “major constraints” (i.e., no surface occupancy). The Price River MFP/Price EAR does not provide for NSO stipulations throughout this entire parcel and thus deferral is appropriate.
2. White-tailed prairie dog ACEC – UT 1106-157, UT 1106-158, UT 1106-159, UT 1106-160, UT 1106-161, and UT 1106-163: The Price field office’s “Supplemental Information and Analysis to the Price Field Office Draft Resource Management Plan/Environmental Impact Statement for Areas of Critical Environmental Concern” identifies that the White-tailed prairie dog proposed ACEC would be open to leasing subject to “minor constraints” (i.e., category 2 special stipulations). BLM is proposing to sell these 7 parcels with unenforceable lease notices – essentially standard lease stipulations – which will not protect the resources identified in this proposed ACEC and thus deferral is appropriate. See 43 C.F.R. § 3101.1-3 (Stipulations and Information Notices: “An information notice [i.e., lease notice] has no legal consequences, except to give notice of existing requirements, and may be attached to a lease by the authorized officer at the time of lease issuance to convey certain operational, procedural, or administrative requirements relative to lease management within the terms and conditions of the standard lease form. Informational notices shall not be a basis for denial of lease operations.”) (emphasis added).

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<sup>5</sup> As IM 2004-110 (Change 1) makes clear, “[t]his policy [of deferral] may delay, but will not, in and of itself, reduce the production of energy.”

3. Main Canyon ACEC - UT 1106-274 and UT 1106-275: The Vernal field office draft resource management plan identifies a proposed Main Canyon ACEC, citing to the following “relevant values:” “the existence of important cultural and historic resources, and natural systems.” Vernal DRMP/DEIS, at G-6 (emphasis added). The Vernal DRMP/DEIS continues that “[t]he relevant values described above have substantial significance due to qualities that make them fragile, sensitive, rare, irreplaceable, exemplary, and unique. . . . This area has been the focus of several past proposals to manage it in a way that would accentuate its exemplary natural systems.” *Id.* (emphasis added). Alternative C in the Vernal DRMP/DEIS would protect the proposed Main Canyon ACEC’s “exemplary natural systems” with category 2 special lease stipulations. *Id.* at Figures 13 (Oil and Gas Leases – Alternative C) and Figure 24 (Special Designations). The existing land use plan only provides for standard stipulations and BLM is proposing to sell these leases with a handful of unenforceable lease notices. *See id.* at Figure 14 (current management – Oil and Gas Leases). *See also* 43 C.F.R. § 3101.1-3 (Stipulations and Information Notices). BLM should thus defer leasing parcels UT 1106-274 and UT 1106-275 until the Vernal field office finalizes the Vernal RMP/EIS.
4. **Failure to Analyze Impacts of Oil and Gas Leasing and Development to Golden Spike National Historic Site, Arches National Park, and Hovenweep National Monument.**

As noted above, BLM “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 actions.” Friends of the Clearwater v. Dombeck, 222 F.3d 552, 557 (9<sup>th</sup> Cir. 2000). In addition, to ensure that the effects of separate activities do not escape consideration, NEPA requires BLM to consider direct and indirect effects, as well as cumulative environmental impacts, in its environmental analyses. *See Davis v. Mineta*, 302 F.3d 1104, 1125 (10<sup>th</sup> Cir. 2002); *see also Grand Canyon Trust v. Federal Aviation Admin.*, 290 F.3d 339, 345-47 (D.C. Cir. 2002). NEPA’s regulations provide that “effects” includes ecological, aesthetic, and historic impacts, “whether direct, indirect, or cumulative.” 40 C.F.R. § 1508.8. “Cumulative impact,” in turn, 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.

Id. § 1508.7.

Based on these regulations, NEPA documents must provide useful analysis of past, present, and future actions. City of Carmel-By-The-Sea v. U.S. Dept. of Transp., 123 F.3d 1142, 1160 (9<sup>th</sup> Cir. 1997); Muckleshoot Indian Tribe v. U.S. Forest Serv., 177 F.3d 800, 809-810 (9<sup>th</sup> Cir. 1999). As the D.C. Circuit has held, the fact that a project may result in even a small incremental increase in the overall impacts to a resource is meaningless if “there is no way to determine . . . whether [this small increase] in addition to the other [impacts], will ‘significantly affect’ the quality of the human environment.” Grand Canyon Trust, 290 F.3d at 346.

Here, the Salt Lake, Moab, and Monticello field offices failed to analyze the potentially significant direct and indirect effects and cumulative impacts of the development of the following 6 parcels to Golden Spike National Historic Site, Arches National Park, and Hovenweep National Monument: UT 1106-003G (Golden Spike); UT 1106-298. (Arches), UT 1106-341 (Hovenweep), UT 1106-343 (Hovenweep), UT 1106-345 (Hovenweep), and, UT 1106-346 (Hovenweep).

*a. Golden Spike National Historic Site (parcel UT 1106-003G)*

In a letter dated May 30, 2006, the Superintendent for Golden Spike National Historic Site wrote to the BLM’s Salt Lake field office expressing concerns about the potential significant impacts oil and gas development – authorized by the sale of parcel UT 0806-009 (now being offered as UT 1106-003G) – would have to the “scenic,

recreational, and cultural resources associated with the Transcontinental Railroad.” See Letter from Margaret A. Johnson, Superintendent Golden Spike National Historic Site to Salt Lake Field Office Manager (May 30, 2006) (attached hereto as Exhibit 11).

Specifically, Superintendent Johnson stated that oil and gas leasing and development would negatively impact this important National Register site:

Leasing and developing oil and gas resources in this open county would negatively affect the scenic cultural landscape and historic features associated with the National Register site. Resource specialists in the National Park Service describe this section of transcontinental railroad as looking much as it would have in 1869 when it was constructed.

Id. In response to these serious concerns, the associate Salt Lake field office manager wrote to the Park Service and indicated: (1) that lands within the viewshed of the Transcontinental Railroad Grade were designated as Class IV VRM – the lowest and least protective designation – which allows for major modification of the landscape, (2) that lands located on the Grade were designated as Class III VRM, which allows for moderate change to the landscape, and (3) that “BLM will employ oil and gas best management practices to reduce the visual impact of all oil and gas facilities.” Letter from David H. Murphy, Associate Field Manager, Salt Lake Field Office to Superintendent Margaret Johnson, Golden Spike National Historic Site (June 26, 2006) (attached hereto as Exhibit 12). Though the Salt Lake field office recently prepared a specific plan amendment for the Railroad Grade in 1998, that planning effort did not anticipate and therefore did not evaluate the current level of interest for oil and gas leasing and development in these remote portions of the field office. The plan amendment thus did not analyze whether additional protective stipulations were necessary to protect the integrity of this National Historic site. Deferral of this parcel is

entirely appropriate until such time that the Salt Lake office updates its NEPA analyses and reassesses what additional stipulations are necessary to protect this cultural landscape and associated historic features.

Finally, parcel UT 1106-003G – though included in BLM’s final sale list, is not mentioned anywhere in the Salt Lake field office DNA supporting the sale of leases at the November 2006 lease sale and thus sale of this parcel should be deferred.

b. *Arches National Park (parcel UT 1106-298)*

In a letter dated August 28, 2006, the Superintendent of the Arches National Park wrote to the Moab field office manager with serious concerns about the potential impacts of 2 oil and gas leases proposed for sale on lands close to Arches National Park to park resources and values. See Letter from Superintendent, Arches National Park to Moab Field Manager, BLM (August 28, 2006) (attached hereto as Exhibit 13). In this letter, the Park Service highlighted its concerns that oil and gas leasing and development on parcels UT 1106-298 and UT 1106-317 would negatively impact park resources, including: water quality, air quality, and natural quiet. See id. (“Standard stipulations in place that protect water quality and the distance drilling is allowed from the river might not be sufficient in this instance to prevent unacceptable impacts. On these same parcels [including UT 1106-298], we are also concerned about noise and visual intrusion on the high quality river recreation experience currently provided in the area.” The Park Superintendent specifically requested that BLM defer leasing UT 1106-298 so that additional “mitigation measures can be formulated to accommodate the oil and gas leasing program in a manner that is considerate of coexisting area values;” these mitigation measures would be prepared as part of the Moab field office’s ongoing land use planning revision process.

In a letter back to Park Service, BLM stated that it would be deferring UT 1106-317 for unrelated resource issues, but that the agency intends to offer parcel UT 1106-298. See Letter from BLM, Deputy State Director, Land and Minerals to Superintendent, National Park Service, Southeast Utah Group (Oct. 10, 2006).(attached hereto as Exhibit 14). The Deputy State Director specifically alleged in his letter that “[b]eing set back and above the river would sufficiently mitigate potential visual, noise, and river recreation experience intact[.]. These potential impacts would be considered when site-specific analysis can be undertaken at the time development is proposed, and appropriate mitigation and approval conditions would be determined at that time, as addressed above . . .” Id. To the contrary, there are no special stipulations attached to lease parcel UT 1106-298 (i.e., category 2 or 3 stipulations) and thus BLM is limited to the standard stipulations that the agency often finds inadequate to protect sensitive landscapes. In the preliminary alternatives analysis for the revised Moab resource management plan, BLM proposes to impose either no-surface occupancy or special stipulations to the lands covering parcel UT 1106-298. See Moab Resource Management Plan, Preliminary Alternatives, Map 2-5B to Map 2-5D (available on-line at <http://www.blm.gov/rmp/ut/moab/documents.htm>) (attached hereto as Exhibit xx).

c. *Hovenweep National Monument (parcels UT 1106-341, UT 1106-343, UT 1106-345, UT 1106-346)*

In a letter dated August 29, 2006, the Superintendent of Hovenweep and Natural Bridges National Monument wrote to the Monticello field office manager with serious concerns about the potential impacts of 4 oil and gas leases proposed for sale on lands close to Hovenweep National Monument to park resources and values. See Letter from Superintendent, Hovenweep and Natural Bridges National Monument to Monticello field

manager, BLM (August 29, 2006) (attached hereto as Exhibit 15). The Superintendent specifically requested that BLM defer leasing UT 1106-346, stating that the Park Service is “concerned that if this parcel is leased, the quality [of] the park visitor experience would be lessened by drilling rigs, new roads and other development on the vistas surrounding Hovenweep National Monument.” *Id.* (also arguing that oil and gas development would detract from the quiet and solitude that many visitors find important to their experience at Hovenweep, as well as the dark night skies). BLM responded by noting that there is some level of existing oil and gas development near Hovenweep (though not specifying if this development occurred after BLM finalized the San Juan RMP/EIS) and reminding the Park Service that similar concerns were raised by the Service in the last 1980’s. *See* Letter from BLM, Deputy State Director, Land and Minerals to Superintendent, National Park Service, Southeast Utah Group (Oct. 10, 2006) (attached hereto as Exhibit 14). BLM’s response misses the central point of the Park Service’s letter; that the Park Service has new and significant information about the increased value of the Monument’s quiet and solitude. The Monument superintendent specifically stated that “recent public surveys of the visitors to Hovenweep show that the quiet and solitude of the area is a very important element in the quality of their experience,” and thus regardless if this issue was raised at some point in the past, BLM must defer leasing now because this significant new information has not been adequately addressed in the existing NEPA analyses. *See* Letter from Superintendent, Hovenweep and Natural Bridges National Monument to Monticello field manager, BLM (emphasis added). SUWA further disagrees with BLM’s assertion that the subject 4 parcels are “almost surrounded by oil and gas fields” and will be supplementing this protest with a

separate exhibit depicting the location of these parcels vis-à-vis existing oil and gas development and topographic relief.

**B. Leasing the Contested Parcels Violates the NHPA**<sup>6</sup>

As described below, BLM's decision to sell and issue leases the 39 parcels at issue in this protest violates § 106 of the NHPA, 16 U.S.C. § 470(f) and its implementing regulations, 36 C.F.R. §§ 800 et seq.

As Utah BLM has recognized for some time, the sale of an oil and gas lease is the point of "irreversible and irretrievable" commitment and is therefore an "undertaking" under the NHPA. See BLM Manual H-1624-1, Planning for Fluid Mineral Resources, Chapter I(B)(2); see also 36 C.F.R. § 800.16(y); Montana Wilderness Assoc. v. Fry, 310 F. Supp. 2d 1127, 1152-53 (D. Mont. 2004); Southern Utah Wilderness Alliance, 164 IBLA at 21-28. The NHPA's implementing regulations further confirm that the "[t]ransfer, lease, or sale of property out of federal ownership and control without adequate and legally enforceable restrictions or conditions to ensure long-term preservation of the property's historic significance" constitutes an "adverse effect" on historic properties. Id. § 800.5(a)(2)(vii) (emphasis added). See 65 Fed. Reg. 77689, 77720 (Dec. 12, 2000) (Protection of Historic Properties – Final Rule; Revision of Current Regulations) (discussing intent of § 800.5(a)(2)(iii)).

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<sup>6</sup> To the extent that BLM's issued Instruction Memorandum 2005-003 Cultural Resources and Tribal Consultation for Fluid Mineral Leasing, Oct. 5, 2004, is inconsistent with the Interior Board of Land Appeals' decision in Southern Utah Wilderness Alliance, 164 IBLA 1 (2004), the BLM must comply with the IBLA's interpretation of the agency's duties under the NHPA. See 43 C.F.R. § 4.1(b)(3).

1. *Monticello Field Office*

The Monticello field office DNA and the office's cultural resources report both assert a "no historic properties affected" determination for the sale of parcels UT 1106-264, UT 1106-341, UT 1106-343, UT 1106-345, UT 1106-346, UT 1106-336, UT 1106-338, UT 1106-339, UT 1106-341, UT 1106-343, UT 1106-348. This assertion is undercut by the field office archaeologists own statement – for each of these parcels – that "it has been determined that reasonable development could occur without impacts to eligible cultural properties." November 2006 Oil and Gas Lease Parcels Cultural Resources Class 1 Inventory, Specialist Report, Nancy Shearin (Aug. 24, 2006) (attached to Monticello field office November 2006 lease sale DNA) (emphasis added). See Oxford American Desk Dictionary, at 82 (1998) ("Can:" [1] be able to, know how to [2] be potentially capable of"). Ms. Shearin's candid, qualified statement that oil and gas development on these 11 parcels could occur undercuts her later assertion that the sale of these parcel will not affect historic properties. Compare 36 C.F.R. § 800.4(d)(1) with id. § 800.4(d)(2) (noting distinction between "no effect" and "may effect"). Indeed, because Ms. Shearin cannot rule out that adverse effects from leasing and subsequent development are possible, there is no support for her and the Monticello field office's "no historic properties affected" determination and a decision to proceed with the sale of this parcel would be arbitrary and capricious.

2. *Failure to Involve the Public – All Field Offices/All Parcels*

BLM is further violating the NHPA by failing to adequately consult with members of the interested public regarding the effects of leasing all the protested parcels. Such consultation must take place before the BLM makes an irreversible and irretrievable

commitment of resources – in other words before the November 2006 lease sale. See Southern Utah Wilderness Alliance, 164 IBLA 1 (2004). The NHPA requires BLM to “determine and document the area of potential effects, as defined in [36 C.F.R.] § 800.16(d),” identify historic properties, and to affirmatively seek out information from the SHPO, Native American tribes, consulting parties, and other individuals and organizations likely to have information or concerns about the undertaking’s potential effects on historic properties. 36 C.F.R. § 800.4(a). See Southern Utah Wilderness Alliance, 164 IBLA at 23-24 (quoting Montana Wilderness Assoc., 310 F. Supp. 2d at 1152-53). The NHPA further states that BLM shall utilize the information gathered from the source listed above and in consultation with at a minimum the SHPO, Native American tribes, and consulting parties “identify historic properties within the area of potential affect.” Id. § 800.4(b). See id. § 800.04(b)(1) (discussing the “level of effort” required in the identification process as a “reasonable and good faith effort to carry out appropriate identification efforts”).

The DNA process also violates the NHPA and Protocol § IV.C., which states that “BLM will seek and consider the views of the public when carrying out the actions under terms of this Protocol.”<sup>7</sup> As BLM’s DNA forms plainly state, the DNA process is an “internal decision process” and thus there is no opportunity for the public to participate in the identification of known eligible or potentially eligible historic properties. Permitting public participation only at the “protest stage,” or arguing that the time period for seeking public input ended when BLM completed its dated resource management plans, is not

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<sup>7</sup> Because the National Programmatic Agreement – which the Protocol is tiered from – was signed in 1997, well before the current NHPA regulations were put in place, it is questionable whether either document remains valid. This further reinforces the need for BLM to fully comply with the NHPA’s Section 106 process.

equivalent to encouraging participation in an open NEPA process, and BLM should withdraw the 39 parcels in the Price, Monticello, Vernal, Salt Lake, Moab and Richfield field offices that are the subject of this protest.

### **REQUEST FOR RELIEF**

SUWA requests the following appropriate relief: (1) the withdrawal of the 39 protested parcels from the November 21, 2006 Competitive Oil and Gas Lease Sale until such time as the agency has complied with NEPA and the NHPA or, in the alternative (2) withdrawal of the 39 protested parcels until such time as the BLM attaches unconditional no-surface occupancy stipulations to all protested parcels.

This protest is brought by and through the undersigned legal counsel on behalf of the Southern Utah Wilderness Alliance, the Natural Resources Defense Council, The Wilderness Society, and the Grand Canyon Trust. Members and staff of these organizations reside, work, recreate, or regularly visit the areas to be impacted by the proposed lease sale and therefore have an interest in, and will be affected and impacted by, the proposed action.



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Attorney for Southern Utah Wilderness Alliance et al.

**Exhibit List**  
**Southern Utah Wilderness Alliance *et al.* Protest of**  
**Utah BLM November 2006 Oil and Gas Lease Sale**

- Exhibit 1:** Moab Field Office, Revisions to the *1999 Utah Wilderness Inventory* (BLM 2003)
- Exhibit 2:** Utah Wilderness Inventory (1999) (excerpts)
- Exhibit 3:** Evaluation of New Information Suggesting that an Area of Public Land Has Wilderness Characteristics, Utah Wilderness Coalition's Goslin Mountain Proposed Wilderness Unit (Nov. 26, 2002)
- Exhibit 4:** Comments Submitted by Southern Utah Wilderness Alliance *et. al.*, Price Draft Resource Management Plan (Nov. 29, 2001) (excerpts)
- Exhibit 5:** Map – Price Area Lease Parcels
- Exhibit 6:** Map – Green River Area Lease Parcels
- Exhibit 7:** Comments Submitted by Southern Utah Wilderness Alliance *et. al.*, Vernal Draft Resource Management Plan (Nov. 29, 2001) (excerpts)
- Exhibit 8:** Map – Vernal Area Lease Parcels
- Exhibit 9:** Price Field Office, DNA, ACEC Write-up from November 2006 DNA – Rationale for Offering Parcels for Lease
- Exhibit 10:** BLM Report to Congress – Land Use Planning for Sustainable Development (Feb. 2000)
- Exhibit 11:** Letter from Margaret A. Johnson, Superintendent, Golden Spike National Historic Site to Salt Lake Field Office Manager (May 30, 2006)
- Exhibit 12:** Letter from David H. Murphy, Associate Field Manager, Salt Lake Field Office to superintendent Margaret Johnson, Golden Spike National Historic Site (June 26, 2006)
- Exhibit 13:** Letter from Superintendent, Arches National Park to Moab Field Manager (Aug. 28, 2006)
- Exhibit 14:** Letter from BLM, Deputy State Director, Land Minerals to Superintendent, National Park Service, Southeast Utah Group (Oct. 10, 2006)
- Exhibit 15:** Letter from Superintendent, Hovenweep and Natural Bridges National Monument to Monticello Field Manager (Aug. 29, 2006)