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Division of Lands and Minerals
Bureau of Land Management
Utah State Office
PO Box 45155
324 South State Street
Salt Lake City, UT 84145
HAND DELIVERED

Re: PROTEST OF OIL AND GAS LEASE SALE – UTAH, November 21, 2006
PARCELS UT-003A to UT-003G & UT-004, Box Elder County.

Pursuant to 43 C.F.R. §§ 4.450-2 and 3120.1-3, Friends of Great Salt Lake (“FRIENDS”) hereby protests the Bureau of Land Management (“BLM”) proposal to lease parcels UT-003A to UT-003G and UT-004 for oil and gas development.

I. FRIENDS

FRIENDS has, as its mission, to preserve and protect the Great Salt Lake ecosystem and to increase public awareness and appreciation of the lake through education, research, and advocacy. The organization has long been involved in the protection and restoration of Great Salt Lake and its ecosystems, advocating for ways in which the public may enjoy these resources by fishing, birdwatching, boating, photographing, hiking and studying these natural areas. On behalf of its members, FRIENDS frequently participates in state and federal agency processes related to the management of the lake. FRIENDS considers this participation to be critical to its mission and to be valuable as a means to influencing the administration of the lake and to protecting and preserving the lake ecosystem and opportunities for recreation that depend on the health of that ecosystem.

FRIENDS has staff and members who regularly use and enjoy and will continue to use and enjoy the lake and the area around it for bird-watching, boating, photographing, hiking and studying natural areas. Indeed, these members use and will use in the future the areas proposed to be leased for energy development. FRIENDS, its staff and its members are harmed and will be harmed should BLM offer for lease the Box Elder County parcels for energy development. FRIENDS will be harmed because BLM failed to consider adequately the environmental impacts of the proposal and because development

of the proposed leases will significantly impair their use and enjoyment of the lake by harming wildlife, wildlife habitat, scenic beauty, recreation and water quality and their ability to enjoy and participate in recreational activities associated with these values.

II. Basis of Protest and Relief Requested

BLM's decision to sell the parcels at issue in this protest violates the National Environmental Policy Act, 42 U.S.C. §§ 4321 et seq. ("NEPA") and the National Historic Preservation Act, 16 U.S.C. §§ 470 et seq. ("NHPA"), and the regulations and policies that implement these laws. As a result, FRIENDS requests that BLM withdraw these lease parcels from sale until the agency has fully complied with NEPA and the NHPA.

NEPA requires that the BLM prepare a pre-leasing NEPA document that fully considers and analyzes the environmental impacts of a proposed action **before** the agency engages in an irretrievable commitment of resources such as the sale of non-no surface occupancy oil and gas leases. Importantly, BLM's pre-leasing analysis must be contained in its already-completed NEPA analyses because a Documentation of NEPA Adequacy and Land Use Plan Conformance ("DNA") is not itself a document that may be tiered to NEPA documents, but rather is used to determine the sufficiency of previously issued NEPA documents.

A. NEPA

NEPA also requires federal agencies to take a hard look at new information or circumstances concerning the environmental effects of a federal action even after an environmental assessment ("EA") or an environmental impact statement ("EIS") has been prepared, and to supplement the existing environmental analyses if the new circumstances raise significant new information relevant to environmental concerns. As explained below, BLM has failed to consider adequately the impacts of the proposed action and failed to take a hard look at new information and new circumstances that have come to light since BLM finalized the relevant NEPA documents.

Here, BLM's NEPA analysis is insufficient in that it fails to consider adequately the impact of potential oil and gas development on the ecosystem of Great Salt Lake. Importantly, the Utah Division of Fire, Forestry and State Lands ("Division"), the state agency charged with managing Great Salt Lake, released its Great Salt Lake Comprehensive Management Plan and Decision Document ("CMP") on March 1, 2000. That document underscored the fragile nature of the North Arm of Great Salt Lake, the many threats to this ecosystem and the need for more analysis before those threats are understood. Because the relevant parcels are adjacent to Great Salt Lake, the Division's analysis of this issue is important new information highlighting the environmental issues relevant to BLM's NEPA compliance.

For example, because of geological hazards posed by faults under Great Salt Lake, the Division states in the CMP that it will require a site-specific analysis of potential hazards and consultation with the Utah Geological Survey regarding the

adequacy of any proposed mitigation. CMP at 18. In response to concerns that it “downplayed” the “importance of western and northern lake and shoreline habitats to wildlife resources,” the Division also states that, not only that this habitat is “important,” and that the Division’s “intent is to protect wildlife and habitats wherever they occur,” but also that habitat and wildlife that does occur on the west and north end of the lake “is important and will receive due consideration.” CMP at 73. Indeed, the Division acknowledges that “[m]ore research and monitoring . . . will be needed in the future to understand and properly manage and conserve the lake.” CMP at 75.

The CMP also specifies that new information must be incorporated into planning efforts at the site-specific level in order to guide management in a way that adequately protects public trust resources. For example, the Division notes that in order to “protect the viewshed or the visual aesthetics of” Great Salt Lake it must develop a visual resource management plan. CMP at 23. The Division also notes that the “highest priority for accomplishing the goals and objectives of the” CMP and the “most critical information for lake managers at this time” is the need to collect data on the “volumes and concentrations of waterborne nutrients and heavy metals entering” Great Salt Lake. CMP at 40; see also CMP at 18 (“DNR believes that a greater effort is needed to understand the wildlife functions within the ecosystem and manage to protect the existing values, mitigate the losses when practicable, and extend greater protection than has occurred historically”).

The CMP also identifies, but does not analyze, potential serious adverse impacts that could result from development of parcels in or adjacent to the bed of Great Salt Lake based on currently imposed stipulations. For example, in the CMP, the Division notes that there are extremely “sensitive ecological interests” in the North Arm that are currently “buffered by the reduced access.” CMP at 20. The islands there provide “critical habitat and nesting grounds for American white pelicans and other shorebirds.” Id. However, “even minimal human presence has [been] shown to disrupt” the birds using the North Arm “to the point that they move off the island to less productive habitat.” Id.

Significant new information regarding Great Salt Lake and its public trust resources has come to light. For example, federal scientists have discovered alarmingly high levels of methylmercury in the water of Great Salt Lake. These levels represent the highest levels of this toxin ever discovered by the USGS. Toxic levels of mercury have also been found in Great Salt Lake eared grebes, shovelers and goldeneyes, so much so that people were warned against consuming these latter two species. In addition, possible selenium contamination in the lake has prompted state and federal agencies, along with the public, to begin the extensive process of determining a lake-specific numeric water quality standard for this pollutant. At the same time, another USGS study has shown high levels of contaminants in the bed of the lake. These discoveries sound an alarm about water quality, indicating that the system is already overloaded. Oil and gas development, particularly the construction and use of roads, could seriously exacerbate this problem in that these toxic pollutants remain in lake sediments. Areas such as those offered for lease have been under water and are subject to future inundation.

Moreover, David A. Dinter, Associate Professor of the Department of Geology and Geophysics at the University of Utah has written to the Division to explain that the area of the North Arm of Great Salt Lake lies the epicenter of the largest instrumentally recorded earthquake in Utah history, the Hansel Valley Magnitude 6.5 event of 1934. At the same time, close by is an even more dangerous fault – the Great Salt Lake fault – that runs submerged immediately west of Promontory Peninsula and generates earthquakes up to at least Magnitude 7.0. Because the shaking and tsunami that would accompany any rupture of these faults is capable of causing catastrophic failure of even earthquake-strengthened structures, Professor Dinter warns of serious damage to both on-shore and off-shore facilities and serious consequences to life, property and the environment. Any leasing decisions should be delayed until BLM considers that the area of the leases is prone to large earthquakes and seriously considers the potential effects of such earthquakes.

In addition, there has been no analysis of the impact of development on the eared grebe and other birds that depend upon the North Arm during periods of flood, estimated by the Division to be approximately 10% of the time. This is particularly warranted given the proximity of the leased parcels to Gunnison Island, a critical habitat for bird life in the North Arm. In high precipitation years, as fresh water decreases salinity in the north and south arms, brine shrimp production in the North Arm will outstrip that in the South Arm, and birds such as the eared grebe, Wilson's phalaropes and red-necked phalaropes will necessarily rely on the ecosystem of the North Arm. By the same token, oil, gas and development, once initiated, can be in place for several decades. Within that time frame, the causeway could be breached or actions taken to better circulate the lake's waters. Again, the North Arm could become even more important to birds such as the eared grebe.

Finally, there has been no analysis of the cumulative impact of oil, gas and hydrocarbon development, together with other increasing pressures on public trust resources. For example, as indicated above, there are several new analyses that demonstrate that the lake is plagued with serious water quality issues, exacerbated by the ever increasing demand for the fresh water that replenishes the lake every year. Factors such as increased storm water run off, increased recreation, and increased near-lake development all also have cumulative adverse impact on public trust resources.

B. NHPA

BLM's decision to sell and issue leases for the 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. Specifically, BLM's reliance on a "one well" determination to determine that the lease sale will have "No Adverse Effect" is arbitrary and capricious. The agency's approach violates the site-specific identification requirements of NHPA. Moreover, to find that development will not affect properties where placement of that one well is theoretically possible is not the same as saying that it will have no adverse effect.

The one well policy also does not account for road building and the particularly vulnerable nature of the soils of the area.

Also inadequate is the analysis of potential impacts to the Golden Spike National Historic Site. At least two of the parcels, UT-003G and UT-004, include portions of the Central Pacific Rail Road Grade associated with the history preserved by that national park unit. Opening this area with roads could adversely impact present and future historical and scenic conservation efforts of the National Park Service and other agencies. Moreover, BLM has done no analysis as to how its non-site specific “one well” policy can coexist with efforts to protect scenic qualities of this and other areas. In other words, without truly site-specific analysis, there is no way to tell if the theoretically possible single well will be in a location that is in keeping with best management practices or necessary efforts to protect soils or scenic values. By the same token, in this area, which is characterized by deep mud, there is no indication whether this one well is even plausible from the stand point of technical feasibility.¹

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. 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). 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 to “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”). BLM’s DNA process does not comply with this mandate.

The DNA process also violates 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.”² 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. Allowing

¹ Previously SHPO has qualified its concurrence of BLM’s “one well” assertion by stating that SHPO lacks expertise in engineering and other technical considerations regarding well placement and was relying on BLM’s assertions to presume that “single well placement and access is theoretically possible anywhere within the parcels.” *See, e.g.,* Letter from Matthew Seddon, Deputy SHPO to Timothy Faircloth, Vernal BLM (March 31, 2006), at 1-2. At the same time, BLM’s assertion that one well can be placed somewhere on every single lease parcel at issue in this protest is unfounded. *See* 36 C.F.R. § 800.5(a)(1) (describing direct and indirect adverse effects, including “changes of the character of the property’s use or of physical features within the property’s setting that contribute to its historic significance.”). This is particularly true here where scenic issues are of primary concern.

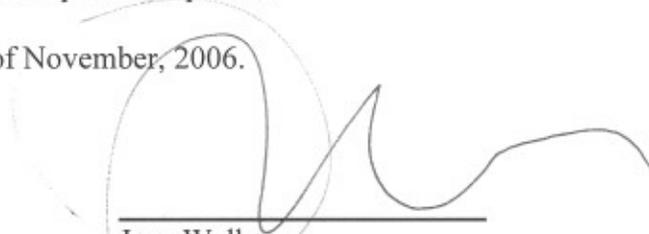
² Because the National Programmatic Agreement – which the Utah Protocol agreement is tiered from – was signed in 1997, well before the current NHPA regulations were put in place, it is questionable whether either document remains valid. This further reinforces the need for BLM to fully comply with the NHPA’s Section 106 process.

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 equivalent to encouraging participation in an open NHPA process.

III. Relief

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

Respectfully submitted the 6th day of November, 2006.



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