



southern
utah
wilderness
alliance

HAND DELIVERED

August 2, 2010

Juan Palma
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Bureau of Land Management
440 West 200 South, 5th Floor
P.O. Box 45155
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Re: Protest of Bureau of Land Management's Notice of Competitive Oil and Gas Lease Sale to Be Held on August 17, 2010

Greetings,

In accordance with 43 C.F.R. §§ 4.450-2 and 3120.1-3, the Southern Utah Wilderness Alliance (SUWA) hereby timely protests the August 17, 2010, offering, in Salt Lake City, Utah, of the following ten parcels in the Vernal Field Office:

UTU88046 (UT0810-052); UTU88047 (UT0810-034); UTU88050 (UT0810-035); UTU88051 (UT0810-055); UTU88052 (UT0810-056); UTU88053 (UT0810-057); UTU88054 (UT0810-036); UTU88055 (UT0810-058); UTU88056 (UT0810-059); UT88057 (UT0810-060) (10 parcels)

As explained below, the Bureau of Land Management's (BLM's) decision to sell these ten parcels at issue in this protest violates, among other federal laws and regulations, the National Environmental Policy Act, 42 U.S.C. §§ 4321 *et seq.* (NEPA); the Federal Land Policy and Management Act, 43 U.S.C. §§ 1701 *et seq.* (FLPMA); and the regulations and policies that implement these laws.

SUWA requests that BLM withdraw these ten lease parcels from sale until the agency has fully complied with all the federal laws, regulations, and executive orders

discussed herein. Alternatively, the agency could attach unconditional no surface occupancy (NSO) stipulations to each parcel and proceed with the sale of these parcels.

BLM Must Conduct Air Quality Modeling Before Selling These Leases

The Vernal Field Office's Resource Management Plan and its accompanying environmental impact statement (collectively the "Vernal RMP") did not conduct the sort of quantitative air quality modeling of all criteria pollutants that is required by FLPMA and NEPA prior to selling the following ten parcels: UTU88046 (UT0810-052); UTU88047 (UT0810-034); UTU88050 (UT0810-035); UTU88051 (UT0810-055); UTU88052 (UT0810-056); UTU88053 (UT0810-057); UTU88054 (UT0810-036); UTU88055 (UT0810-058); UTU88056 (UT0810-059); and UT88057 (UT0810-060).

FLPMA requires BLM to ensure that its approval of oil and gas development comply with all applicable air quality standards. 43 U.S.C. § 1712(c)(8); 43 C.F.R. § 2920.7(b)(3). These air quality standards include both the national ambient air quality standards (NAAQS) and the prevention of significant deterioration (PSD) increment limits created by the Clean Air Act. These standards are based on ambient concentrations of various air pollutants. BLM is obligated under the Clean Air Act to ensure that any activity it approves will not violate air quality standards such as NAAQS and PSD. Only through quantitative dispersion modeling can the BLM understand if the ambient concentrations of pollutants likely to result from these leases will remain within the bounds of federal air quality standards.

NEPA requires that BLM model the impacts from the various activities—and fully inventory the pollutants generated by these activities—permitted by the Vernal RMP. "NEPA 'prescribes the necessary process' by which federal agencies must 'take a

“hard look” at the environmental consequences’ of the proposed courses of action.”

Pennaco Energy, Inc. v. U.S. Dept. of the Interior, 377 F.3d 1147, 1150 (10th Cir. 2004).

To comply with NEPA’s “hard look” requirement, BLM must explain how its actions will or will not comply with environmental laws and policies. 40 C.F.R. § 1502.2(d); 40 C.F.R. § 1508.27(b). The fundamental objective of NEPA is to ensure that an “agency will not act on incomplete information only to regret its decision after it is too late to correct.” *Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 371 (1990).

To comply with NEPA, prior to selling oil and gas leases BLM must thoroughly analyze whether air pollution from the oil and gas development authorized will exceed relevant air quality standards or have adverse impacts on public health or national parks and must support its conclusions with relevant evidence. BLM has not done so.

With regard to these ten parcels the Vernal Field Office’s August 2010 Competitive Oil and Gas Lease Sale Determination of NEPA Adequacy, DOI-BLM-UT-G010-2010-0284-DNA (July 2010) (Vernal DNA), asserts that there will be no impacts from leasing and that if development were proposed then standards stipulations would be implemented. Vernal DNA at 18 (Interdisciplinary Team Checklist). This does not comply with BLM’s NEPA and FLPMA obligations to analyze impacts and observe federal air quality standards. While courts have confirmed that BLM can utilize determinations of NEPA adequacy (DNAs) to indicate if existing NEPA is “adequate,” they have equally made clear that a DNA is not a NEPA document and as such cannot provide additional analysis or data. *Pennaco Energy, Inc.*, 377 F.3d at 1151, 1162.

“BLM regulations, the courts and [Interior Board of Land Appeals (IBLA)] precedent proceed under the notion that the issuance of a lease without an NSO

stipulation conveys to the lessee an interest and a right so secure that full NEPA review must be conducted prior to the decision to lease.” *Southern Utah Wilderness Alliance*, 159 IBLA 220, 240-43 (2003) (citing *Friends of the Southeast’s Future v. Morrison*, 153 F.3d 1059, 1063 (9th Cir. 1998) (additional citations omitted). See *Pennaco Energy, Inc.*, 377 F.3d at 1159-61; *Union Oil Co.*, 102 IBLA 187, 189 (1988) (citing *Sierra Club v. Peterson*, 717 F.2d 1409, 1412 (D.C. Cir. 1983)); *Conner v. Burford*, 848 F.2d 1441, 1448-51 (9th Cir. 1988) (holding that the selling of leases containing “no surface occupancy” stipulations did not require preparation of an EIS, but that an EIS was required before the selling of leases without “no surface occupancy” stipulations); *Peterson*, 717 F.2d at 1414 (same). BLM must conduct full analysis of air quality impacts before offering or issuing these ten leases.

The Vernal Field Office has not fully considered the impacts of oil and gas development that could result from these leases on air quality. The Vernal RMP did not conduct quantitative air quality dispersion modeling for ozone, a criteria pollutant under the Clean Air Act. Letter from Larry Svoboda, Environmental Protection Agency (EPA), to Selma Sierra, BLM (Sept. 23, 2008) (attached as Exhibit A).

The Vernal Field Office has not considered new levels of wintertime ozone that were recently observed in the Uinta Basin (where wintertime monitoring had previously been unavailable). See Letter from David Garbett, SUWA, to Mike Stiewig, BLM (July 6, 2010) (attached as Exhibit B).¹ In the winter of 2010 alone, beginning January 1, two new monitors in the Uinta Basin recorded sixty-eight exceedances of the ozone NAAQS. See *id.* It is likely that the Uinta Basin has the worst wintertime ozone in the nation and,

¹ SUWA hereby incorporates this July 6, 2010, letter to Mike Stiewig and raises all the issues discussed therein.

if these results are repeated in the coming years, some of the worst concentrations of ozone during the course of a year of any location in the nation.²

The Uinta Basin Air Quality Study (UBAQS), prepared by the oil and gas industry trade group Independent Petroleum Association of Mountain States (IPAMS), does not provide adequate analysis either. First, importantly, UBAQS modeled exceedances of ozone in the Uinta Basin. *See* Environ, Uinta Basin Air Quality Study

² For comparison, Pinedale, Wyoming—often cited as the location of some of the worst wintertime ozone in the United States—averaged ozone concentrations of 75 parts per billion (ppb) from 2008 through 2010. EPA, AirExplorer, Query Concentrations, http://www.epa.gov/cgi-bin/htmsSQL/mxplorer/query_daily.hsql?poll=42101&msaorcountyName=1&msaorcountyValue=1 (last visited July 21, 2010) (attached as Exhibit C). The Uinta Basin’s average for 2010—if no higher values are recorded—will be 117 ppb (based on the NAAQS-created measurement of the fourth highest value). *See* Letter from Garbett to Stiewig at 2. According to the American Lung Association, the three most polluted counties for ozone in the United States are San Bernardino, Riverside, and Kern, all in California; the most polluted city is Los Angeles. American Lung Association, State of the Air 2010 (attached as Exhibit D). Los Angeles County, from 2007 to 2009, has averaged an ozone concentration of 108 ppb (and only 59 ppb for wintertime ozone, limiting results to January 1 through March 22). EPA, AirExplorer, Query Concentrations, http://www.epa.gov/cgi-bin/htmsSQL/mxplorer/query_daily.hsql?poll=42101&msaorcountyName=1&msaorcountyValue=1 (last visited July 21, 2010) (attached as Exhibit E). San Bernardino County, from 2007 to 2009, has averaged an ozone concentration of 118 ppb (and only 67 ppb for wintertime ozone, limiting results to January 1 through March 22). EPA, AirExplorer, Query Concentrations, http://www.epa.gov/cgi-bin/htmsSQL/mxplorer/query_daily.hsql?poll=42101&msaorcountyName=1&msaorcountyValue=1 (last visited July 21, 2010) (attached as Exhibit D). Riverside County, from 2007 to 2009, has averaged an ozone concentration of 106 ppb (and only 68 ppb for wintertime ozone, limiting results to January 1 through March 22). EPA, AirExplorer, Query Concentrations, http://www.epa.gov/cgi-bin/htmsSQL/mxplorer/query_daily.hsql?poll=42101&msaorcountyName=1&msaorcountyValue=1 (last visited July 21, 2010) (attached as Exhibit F). Kern County, from 2007 to 2009, has averaged an ozone concentration of 105 ppb (and only 66 ppb for wintertime ozone, limiting results to January 1 through March 22). EPA, AirExplorer, Query Concentrations, http://www.epa.gov/cgi-bin/htmsSQL/mxplorer/query_daily.hsql?poll=42101&msaorcountyName=1&msaorcountyValue=1 (last visited July 21, 2010) (attached as Exhibit G). These wintertime ozone levels in Uinta Basin suggest that the area may have some of the worst ozone levels of any location in the country.

(UBAQS) TS-10, TS-28, TS-29 (June 30, 2009) (excerpts attached as Exhibit 3 of Letter from Garbett to Stiewig) (showing exceedances in the Vernal Field Office area based on 2006 meteorological data). Second, UBAQS does not include new monitored data from the winter 2010 ozone monitors in the Uinta Basin. Third, the EPA has raised significant issues with UBAQS, demonstrating that it is not adequate analysis. *See* Letter from Larry Svoboda, EPA, to Bill Stringer, BLM (Oct. 16, 2009) (attached as Exhibit 2 of Letter from Garbett to Stiewig). Fourth, the Uinta Basin has also experienced several exceedances of NAAQS for fine particulates (PM_{2.5}) recorded during the winters of 2007 through 2009; UBAQS did not make use of this monitored data. *See* Letter from Garbett to Stiewig at 3-4, Exs. 4-5.

Finally, two separate federal courts have called into question BLM's ozone analysis in the Vernal Field Office. In *Southern Utah Wilderness Alliance v. Kempthorne*, Case 1:08-cv-00411-LFO (D.D.C. Dec. 1, 2008), a federal court ordered the Vernal Field Office to explain why it had not conducted ozone modeling for cumulative impacts for an environmental assessment considering an oil and gas development. *See* Order (attached as Exhibit H). Less than two months later, a federal district court issued a temporary restraining order against the issuance of certain oil and gas leases because, in part, the court found it likely that the Vernal RMP was flawed because it lacked ozone dispersion modeling. *See* Memo. Order, *S. Utah Wilderness Alliance v. Allred*, 1:08-cv-02187-RMU, at 3 (D.D.C. Jan. 17, 2009) (attached as Exhibit I). The latter case is directly on all fours with the present matter. There, as here, BLM attempted to offer oil and gas leases in the Vernal Field Office while relying on the Vernal RMP. The federal district court indicated that this action was likely a violation of BLM's obligations. *See*

Memo. Order, *S. Utah Wilderness Alliance* at 3. These two decisions reiterate that the Vernal RMP has no sufficient ozone analysis upon which it can rely for leasing.

Furthermore, BLM has never accounted for significant fine particulate pollution in the Uinta Basin. Sporadic monitoring during the winters of 2007 through 2009 has recorded values of PM_{2.5} well in excess of the 24-hour average maximum NAAQS. *See* Letter from Garbett to Stiewig at 3-4. Oil and gas development contributes to fine particulate pollution. *See generally* Vernal RMP § 4.2. Because air quality in the Uinta Basin is already at levels in excess of federal air quality standards it is vital that BLM model pollution concentrations from the development likely to result from these leases to show whether or not any activity may take place here without further exacerbating these problems.

Because BLM has ignored ozone and fine particulate pollution and did not conduct the required quantitative analysis in violation of FLPMA and NEPA it may not offer these ten parcels for sale at the August 2010 oil and gas lease sale.

BLM Has Failed to Adequately Consider Climate Change

The Vernal RMP did not give sufficient consideration to the serious issue of climate change required by NEPA prior to selling the ten parcels at issue in this protest.

The best scientific evidence available shows that climate change is a real and compelling threat to public lands. *Massachusetts v. EPA*, 127 S. Ct. 1438, 1455 (2007). In Secretarial Order 3289, Secretary Salazar stated that BLM “must consider and analyze potential climate change impacts when undertaking long-range planning exercises” and also made clear that the requirements in Secretarial Order No. 3226 remain in effect. Order 3226 requires BLM to “consider and analyze potential climate change impacts”

when undertaking long-range planning exercises, including specifically “management plans and activities developed for public lands.” These Orders are enforceable and demand BLM’s compliance.

Under NEPA, BLM must adequately and accurately describe the environment that will be affected by the proposed action—the “affected environment.” 40 C.F.R. § 1502.15. This includes the affected environment as modified by climate change. BLM must also consider a “no action” alternative, which describes the environmental baseline, and compare all alternatives to this baseline. 40 C.F.R. § 1502.14(d). Climate change is both part of the baseline as well as a reasonably foreseeable impact under each alternative analyzed in the RMPs.

BLM did not conduct any analysis of the effects of climate change on the lands managed under the Vernal RMP or incorporate such analysis into the consideration of management alternatives. Nor did the agency consider the greenhouse gas contributions of reasonably foreseeable oil and gas development within the planning areas. Instead, BLM claimed that it could not analyze the impacts of climate change due to lack of tools for quantification, including a lack of guidance from EPA. *See, e.g.* Vernal RMP at 4-8; Director’s Protest Resolution Report for Vernal RMP at 49-50 (Oct. 29, 2008). However, EPA rejected that precise argument in its comments on the Vernal RMP, stating that “NEPA requires federal agencies to take a hard look at potential environmental impacts associated with their proposed actions” and the “[l]ack of regulatory protocol or emission standards for greenhouse gases does not preclude BLM from fulfilling this responsibility.” Letter from Svoboda to Sierra at 4-5.

The Vernal RMP also refused to consider the pressing issue of disturbed desert dust being deposited on nearby mountain snowpack, in turn leading to early snowmelt and increased regional temperatures, which is directly related to the larger phenomenon of climate change. *See, e.g.,* Thomas H. Painter *et al.*, *Impact of Disturbed Desert Soils on Duration of Mountain Snow Cover*, *Geophysical Research Letters*, Vol. 24, L12502 (June 23, 2007) (attached as Exhibit J); J.C. Neff *et al.*, *Increasing Eolian Dust Deposition in the Western United States Linked to Human Activity*, *Nature Geoscience* (Advanced Online Publication – February 24, 2008) (attached as Exhibit K); SUWA, *Dust from BLM Lands in Utah Melting Snow in Colorado* (attached as Exhibit L). The BLM should analyze the impacts of all the surface disturbing activities it has permitted in the Vernal RMP along with the potential impacts of the issuance of these ten leases on the issue of dust melting snow. In addition to qualitative analysis, the BLM can at least quantify total suspended particulates that are likely to be generated by wind erosion on the disturbed surfaces described above; this is something BLM already knows how to do and has employed in some projects. *See* West Tavaputs Plateau Natural Gas Full Field Development Plan, Draft Environmental Impact Statement UT-070-05-055, at App. J, Figure 4 (Feb. 2008) (excerpt attached as Exhibit M).

The Vernal DNA briefly waives away these issues in its Interdisciplinary Team Checklist where it discusses “greenhouse gas emissions” (presumably as a substitute for the larger issue of climate change) and asserts that leasing and development of these tracts will not contribute meaningful amounts of greenhouse gas emissions and that in any event it is too soon to address issue of climate change. Vernal DNA at 19.

BLM violated NEPA by failing to take a hard look at the issue of climate change and not analyzing either (a) the impacts that oil and gas leasing and development authorized in the Vernal RMP will have on climate change (including dust on snow) or (b) the negative impacts that climate change will have on the land use allocation decisions made in the Vernal RMP. BLM also violated NEPA by not accurately describing baseline conditions and thus not accurately analyzing the no-action alternative.

REQUEST FOR RELIEF

SUWA respectfully requests the following appropriate relief: (1) the withdrawal of the ten protested parcels from the August 17, 2010, Competitive Oil and Gas Lease Sale until such time as the agency has complied with NEPA and FLPMA or, in the alternative, (2) withdrawal of the ten 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 on behalf of the Southern Utah Wilderness Alliance. Members and staff of SUWA 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.

August 2, 2010

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