

**United States Department of the Interior
Bureau of Land Management**

Record of Decision

February 2015

**Record of Decision and Final Environmental Impact Statement
Lands Administered by the Fishlake National Forest
Oil and Gas Leasing**

Location: Fishlake National Forest
Teasdale Ranger District, Dixie National Forest
Beaver, Garfield, Iron, Juab, Millard, Piute, Sanpete, Sevier, and
Wayne Counties, Utah

Utah State Office
440 West 200 South, Suite 500
Salt Lake City, Utah 84101
(801) 539-4001



Table of Contents

1.0 INTRODUCTION.....	2
1.1 Summary.....	2
1.2 Background.....	2
1.3 Purpose of and Need for Action.....	5
2.0 DECISION.....	6
3.0 OVERVIEW OF THE ALTERNATIVES.....	8
3.1 Alternative A (No Action).....	9
3.2 Alternative B.....	9
3.3 Alternative C (Preferred/Selected Alternative).....	10
3.4 Alternative D.....	11
3.5 Alternatives Considered But Eliminated From Detailed Analysis.....	11
4.0 MANAGEMENT CONSIDERATIONS AND RATIONALE FOR DECISION.....	12
5.0 CONSULTATION AND CONSISTENCY REVIEW.....	12
5.1 Coordination and Consultation.....	12
5.1.1 Endangered Species Act Section 7 Consultation.....	13
5.1.2 National Historic Preservation Act and Tribal Consultation.....	14
5.2 Consistency with State and Local Plans.....	15
6.0 PUBLIC INVOLVEMENT.....	15
7.0 APPEALS.....	17
8.0 APPROVAL.....	18

Bureau of Land Management - Utah
Record of Decision
Record of Decision and Final Environmental Impact Statement
Lands Administered by the Fishlake National Forest
Oil and Gas Leasing

1.0 Introduction

1.1 Summary

With this Record of Decision (“ROD”), the Bureau of Land Management (“BLM”) formally adopts the ROD and Final Environmental Impact Statement (“FEIS”) for Lands Administered by the Fishlake National Forest - Oil and Gas Leasing. The BLM concurs with the selection of Alternative C from that FEIS, as documented and modified by the ROD issued by the United States Forest Service (“USFS”) on August 20, 2013, and the attached USFS letter (“January 24 USFS Appeal Resolution Letter”) (Attachment 1), dated January 24, 2014, which recorded the terms of the agreement under which an appeal filed by WildEarth Guardians, Grand Canyon Trust and Western Resource Advocates on the aforementioned USFS-issued ROD and FEIS was resolved.¹

The BLM, which served as a cooperating agency in the preparation of the aforementioned FEIS, has determined, following an independent review, that the suggestions and comments it provided during the preparation of the FEIS have been satisfied and that the FEIS was prepared in manner that complies with all requirements imposed by the National Environmental Policy Act (“NEPA”), 42 United States Code (“USC”) §§ 4321 *et seq.*, the Council on Environmental Quality (“CEQ”) regulations that implement the NEPA, 40 Code of Federal Regulations (“CFR”) §§ 1500 – 1508, and all policies of the Department of the Interior (“DOI”) and the BLM for the preparation of NEPA documents. In light of these determinations, the BLM has elected to adopt the USFS-issued ROD and FEIS without recirculation, as is provided for by 40 CFR §1506.3(c).

This BLM ROD, if accompanied in the future by a leasing consent and appropriate surface use restrictions from the USFS, will allow the BLM to offer for oil and gas lease the federal minerals underlying certain lands under the administration of the Fishlake National Forest (“NF”).

1.2 Background

With respect to the issuance and administration of oil and gas leases on National Forest System (“NFS”) lands, the BLM and the USFS have shared responsibilities. These shared responsibilities derive from the Federal Onshore Oil and Gas Leasing Reform Act of 1987

¹ The ROD and FEIS for Lands Administered by the Fishlake National Forest – Oil and Gas Leasing is available at the Fishlake National Forest Supervisor’s Office at 115 East 900 North, Richfield, UT 84701 or by request to the BLM Utah State Office at 440 West 200 South, Suite 500, Salt Lake City, UT 84101 or 801-539-4067. The documents may also be accessed online at: <http://www.fs.usda.gov/projects/fishlake/landmanagement/projects>.

(“FOOGLRA”), Pub. L. No. 100-203, which amended the Mineral Leasing Act of 1920 (“MLA”), 30 USC §§ 181 *et seq.*.

To implement the FOOGLRA, regulations were promulgated by the BLM in 1988 (e.g. 43 CFR § 3101.7) and the USFS in 1990 (36 CFR § 228 Subpart E) (collectively “implementing regulations”). These implementing regulations describe the procedures by which each agency shall carry out its statutory responsibilities for oil and gas leasing of NFS lands. Moreover, in 2006, the BLM and the USFS entered in to a memorandum of understanding (“MOU”), *Concerning Oil and Gas Leasing and Operations*, FS Agreement No. 06-SU-11132428-052 (2006), which further defined the responsibilities of each agency with respect to oil and gas leasing on NFS lands.

Under the MLA, as amended by the FOOGLRA, the implementing regulations, and the MOU, the BLM is solely responsible for the offering for sale and issuance of oil and gas leases on NFS lands, but it may only exercise this authority with the consent of, and subject to any surface protections required by, the USFS. *E.g.*, 30 USC § 226(a), (g)-(h); 43 CFR § 3101.7; MOU at 2, 8-10. Furthermore, before the USFS can provide BLM with its consent to lease specific NFS lands, it must first undertake in a “leasing analysis” whereby it identifies which NFS lands are administratively available for oil and gas leasing and, for those lands identified as available for leasing, any restrictions on lease operations, such as lease stipulations, that are necessary to protect surface resources or other uses for the subject NFS lands. 36 CFR § 228.102(a)-(d).

The USFS-issued FEIS and ROD addressed by this BLM ROD were prepared in order to accomplish the aforementioned leasing analysis and availability identification pursuant to 36 CFR § 228.102(a)-(d) for the NFS lands under the administration of the Fishlake NF, an area consisting of approximately 1,707,810 acres of land.² As such, on August 20, 2013, based upon the analysis in the FEIS, the USFS issued the aforementioned ROD (“USFS ROD”) in order to document its decision to select Alternative C from the FEIS and in doing so it identified which lands administered by the Fishlake NF would be administratively available for oil and gas leasing, and under what surface use conditions, as is required by 36 CFR § 228.102(a)-(d).

The USFS ROD also documents the decision of the USFS to amend the applicable land and resource management plans (“LRMPs”) for the analysis area of the FEIS. More specifically, the USFS ROD amends the Fishlake NF LRMP (1986) (“Fishlake LRMP”) by designating approximately 1,454,511 acres of land as administratively available for oil and gas leasing subject to specific resource protecting conditions (lease terms, stipulations and lease notices). The USFS ROD also amends the Dixie NF LRMP (1986) (“Dixie LRMP”) by designating approximately 253,299 acres of land, which the Fremont River Ranger District of the Fishlake NF currently administers, as administratively available for oil and gas leasing subject to specific resource protecting conditions (lease terms, stipulations and lease notices). These amendments to the Fishlake and Dixie LRMPs were necessary because those LRMPs, both of which were issued

² The 1,707,810 acres of NFS lands under the administration of the Fishlake NF, which constituted the analysis area for the FEIS, is comprised of the approximately 1,454,511 acres of land that was previously addressed by the land and resource management plan issued for the Fishlake NF in 1986 and approximately 253, 299 acres of land that was previously addressed by the land and resource management plan issued for the Dixie NF in 1986, which the Fremont River Ranger District of the Fishlake NF currently administers.

prior to the enactment of the FOGLRA, did not include the leasing analysis and oil and gas leasing administrative availability determination, as required by 36 CFR § 228.102, prior to being amended by the USFS ROD.

Once the USFS has completed a leasing analysis and identified which NFS lands are administratively available for leasing pursuant to 36 CFR § 228.102(c)-(d), upon receiving a notification from the BLM regarding specific NFS lands that have been proposed for leasing, the USFS may provide the BLM with consent to lease the specific NFS lands in accordance with 36 CFR § 228.102(e). More specifically, 36 CFR § 228.102(e) provides that the USFS shall consent to a BLM request to offer specific NFS lands for lease, if it has determined that: 1) oil and gas leasing of the specific NFS lands has been adequately addressed in a NEPA document, and is consistent with the applicable LRMP; 2) the conditions for surface occupancy, as identified through 36 CFR § 228.102(c)(1), have been included as a stipulation(s) on the proposed lease(s); and 3) oil and gas operations could be permitted somewhere on each proposed lease, except where lease stipulations prohibit all surface occupancy.

After the USFS provides its consent to lease specific NFS lands, the BLM is responsible for offering any such NFS lands at a competitive oil and gas lease sale auction, which includes the posting of a public notice for the lease sale where NFS lands will be offered for lease and, with assistance from the USFS, resolving any public protests received for proposed lease sale parcels on NFS lands. If the BLM and the USFS determine that a protest, or protests, received on a proposed lease parcel cannot be resolved prior to the lease sale, the parcel may be withheld from offering at the sale, but the existence of an unresolved protest does not mandate that the parcel be withheld from offering at a lease sale. However, if a parcel with an unresolved protest(s) is offered and sold at a lease sale, a lease will not be issued for that parcel until all protests of the parcel have been resolved. *See* 30 USC § 226(a), (f), (h); 43 CFR Part 3100; MOU at 9-10.

After an oil and gas lease is issued on NFS lands, an oil and gas lessee/operator may propose specific oil and gas development operations on the lease by submitting an Application for Permit to Drill (“APD”), which will include a proposed Surface Use Plan of Operations (“SUPO”). The USFS has the full responsibility and authority for approving and regulating surface-disturbing activities associated with oil and gas exploration and development on NFS lands. These responsibilities include the approval of the SUPO component of APDs. The BLM has the authority and responsibility to regulate subsurface operations, and directly related surface activities and uses, for oil and gas leases issued on NFS lands. These responsibilities of the BLM include reviewing and approving the Drilling Plan (“DP”) component of APDs and final approval authority for APDs. A lessee/operator may not conduct surface-disturbing activities on a lease without an approved APD and SUPO. 30 USC § 226(g); 43 CFR §§ 3101.1, 3162.3; 36 CFR §§ 228.106-108; MOU at 12-14.

If lands are leased and a lessee/operator applies for an APD, only then would the USFS and the BLM consider the approval of specific ground-disturbing operations. Moreover, approval of such ground-disturbing activities would require and will be based upon a site-specific analysis in accordance with the NEPA and other federal laws intended to protect the environment and other non-mineral resources and uses on the land. If the site-specific analysis at the APD stage identifies potential environmental impacts or resource conflicts that warrant specific protections,

the USFS and the BLM can take full advantage of the provisions included in the standard lease terms (“SLT”), which are described in BLM Form 3100-11³ and at 43 CFR § 3101.1, and any stipulations and lease notices attached to the lease to work with the lessee/operator in order to protect potentially impacted resources. 30 USC § 226(g); 43 CFR §§ 3101.1, 3162.3; 36 CFR §§ 228.106-108; MOU at 12-14.

1.3 Purpose of and Need for Action

The purpose of and need for this action is to allow the BLM and the USFS to be responsive to oil and gas leasing proposals submitted for lands under the administration of the Fishlake NF in manner that complies with the requirements imposed by the MLA, the FOOGLRA and its implementing regulations, the NEPA, and other federal laws and regulations applicable to oil and gas leasing and development on NFS lands.

Pursuant to the MLA, as amended by the FOOGLRA, BLM Utah must hold competitive oil and gas lease sales on “at least [a] quarterly” basis, when eligible federal lands, which may include NFS lands, are available. *See* 30 USC § 226(b)(1)(A). As previously discussed, the BLM is responsible for the offering for sale and the issuance of oil and gas leases on NFS lands, but it may only exercise this authority with the consent of, and subject to surface protections required by, the USFS. 30 USC § 226(a), (g)-(h); 43 CFR § 3101.7. Moreover, before the USFS can provide BLM with a consent to lease, it must first undertake in a “leasing analysis” pursuant to 36 CFR § 228.102(c) whereby it identifies which NFS lands are administratively available for oil and gas leasing and, for those lands identified as available for leasing, any restrictions, such as lease stipulations, that are necessary to protect surface resources. 36 CFR § 228.102(a)-(e). The FEIS and USFS ROD have been prepared in order to accomplish the aforementioned leasing analysis and availability identification, as required by 36 CFR § 228.102, for the NFS lands administered by the Fishlake NF.

The existing LRMPs for the analysis area of the FEIS were issued prior to the enactment/promulgation of the FOOGLRA and its implementing regulations. As a result, those LRMPs lacked the leasing analysis and leasing availability identification that 36 CFR § 228.102(a)-(e) requires before an oil and gas lease may be issued on NFS lands. Thus, the FEIS and USFS ROD also serve to amend the applicable LRMPs so as to incorporate in to those LRMPs the leasing analysis and administrative availability determinations, as well as the required surface use restrictions, that were identified through the FEIS and USFS ROD and which are require in order for new oil and gas leases to be issued on the NFS lands under the administration of the Fishlake NF.

Pursuant to the NEPA, the responsible federal agencies are required to identify and assess the potential environment impacts that may result from the oil and gas leasing and development actions that may occur as a result of the decisions made with the USFS ROD. *See* 42 USC § 4332(2)(C). Accordingly, the FEIS and USFS ROD were prepared in order to document the processes and methodology utilized for the subject leasing analysis and identify and assess the reasonably foreseeable environmental impacts that might occur as a result of future oil and gas

³ 43 CFR § 3101.1-1 requires the use of BLM Form 3100-11 for oil and gas leases issued pursuant to 43 CFR Part 3100, including those issued on NFS lands.

leasing on the NFS lands under the administration of the Fishlake NF. The USFS, as the surface managing agency for the analysis area, served as the lead agency, as described by 40 CFR § 1501.5 and § 1508.16, in the preparation of the FEIS and USFS ROD. The BLM, as the agency that would be responsible for the issuance and administration of oil and gas leases issued on the subject NFS lands, participated as a cooperating agency, as described by 40 CFR § 1501.6 and § 1508.5, in the preparation of the FEIS.

In order for the BLM to carry out its responsibilities with respect to the oil and gas leasing of specific NFS lands where the USFS has provided its consent to lease based upon a leasing analysis completed pursuant to 36 CFR § 228.102 and the NEPA, the BLM must independently review the NEPA document(s) that provide the basis for the USFS leasing consent decision and then make an independent decision on lease issuance. *E.g.*, *Center for Native Ecosystems*, 182 IBLA 37, 49 (2012) (*citing* 40 CFR § 1506.3 and MOU at 5-6). Moreover, in order for the BLM to rely upon a NEPA document(s) in making an independent leasing decision, it must formally adopt the subject NEPA document(s) and, in doing so, it must certify that the adopted NEPA document(s) was prepared in compliance with the NEPA, the CEQ regulations implementing the NEPA, and the BLM's own procedures and requirements for the preparation of NEPA documents. 40 CFR § 1506.3; BLM NEPA Handbook, H-1790-1 § 5.4; MOU at 5-6 and 8-10; *See also*, *Center for Native Ecosystems*, 182 IBLA 37, 49 (2012) (*citing* 40 CFR § 1506.3 and MOU at 5-6). The CEQ regulations and the BLM's own NEPA policies further mandate that the BLM formally adopt NEPA documents that were prepared with another agency serving as the lead agency by way of a separately-issued BLM decision document. *E.g.*, BLM NEPA Handbook, H-1790-1 § 5.4.1 (*citing Forty Most Asked Questions Concerning CEQ's NEPA Regulations* (1981)). As such, the purpose of this ROD ("BLM ROD") is to document the BLM's formal adoption of the FEIS and USFS ROD, which includes the BLM's independent determination that the FEIS was prepared in manner that complies with all requirements imposed by the NEPA, the CEQ regulations, and all applicable BLM requirements and procedures.

As previously noted, pursuant to the MLA, as amended, the BLM Utah must hold competitive oil and gas lease sales, at least quarterly, when eligible federal lands, which may include NFS lands, are available. *See* 30 USC § 226(b)(1)(A). Thus, for the reasons discussed above, the formal adoption action provided for by this ROD will assist the BLM Utah in carrying out its oil and gas leasing responsibilities under the MLA with respect to the NFS lands under the administration of the Fishlake NF.

2.0 Decision

With this ROD, the BLM Utah formally adopts the USFS ROD and FEIS for Lands Administered by the Fishlake NF - Oil and Gas Leasing and concurs with the selection of Alternative C from that FEIS, as documented and modified in the ROD issued by the USFS on August 20, 2013, and the January 24 USFS Appeal Resolution Letter. Under this decision, approximately 1,707,810 acres of NFS land under the administration of the Fishlake NF would be administratively available for oil and gas leasing and subject to the operational restrictions (lease notices and stipulations) identified in the FEIS at Appendix A, and as modified by the January 24 USFS Appeal Resolution Letter.

This ROD also serves to formally document the conclusions by the BLM that the comments and suggestions it provided while serving as a cooperating agency in the preparation of the FEIS have been satisfied and that the FEIS was prepared in manner that complies with all requirements imposed by the NEPA, the CEQ regulations implementing the NEPA, and all applicable requirements and policies of the BLM and the DOI. This ROD also documents the BLM's concurrence with the determination by the USFS at pages 19-21 of the USFS ROD regarding the consistency of the USFS ROD and FEIS with other applicable laws, regulations and policies. As a result of these determinations, the BLM has elected to adopt the FEIS and USFS ROD without recirculation, as is provided for by 40 CFR § 1506.3(c).

This ROD does not, by itself, authorize the issuance of any oil and gas leases. However, if in the future the USFS provides the BLM with its consent, as well as the surface use restrictions required, to lease specific NFS lands under the administration of the Fishlake NF, the decisions and determinations made with this ROD may be relied upon to support future decisions by the BLM to issue oil and gas leases for certain NFS lands. The BLM cannot offer lands within the Fishlake NF for oil and gas leasing without the USFS first providing its consent to lease in accordance with the procedures and requirements described in 36 CFR § 228.102(e), 30 USC § 226 (h); 43 CFR § 3101.7; 36 CFR § 228.102(a)-(e). Pursuant to 36 CFR § 228.102(e), if and when the BLM provides the USFS with a proposal to offer specific NFS lands for oil and gas lease, the USFS will review any such proposal within the context of the decisions and analysis contained within the USFS ROD and the FEIS and provide its consent to the subject leasing proposal only if it determines that: 1) the subject oil and gas leasing proposal has been adequately addressed in an existing NEPA document, and is consistent with the applicable LRMP; 2) the necessary restrictions on surface occupancy, as identified through 36 CFR § 228.102(c)(1), would be imposed as a stipulation(s) on the proposed lease(s); and 3) oil and gas operations could be permitted somewhere on each proposed lease, except where lease stipulations prohibit all surface occupancy.

This ROD also does not authorize any ground-disturbing operations on NFS lands. Specific surface-disturbing activities to develop oil and/or gas from NFS lands under the administration of the Fishlake NF would be considered for approval only after the lands have been leased and additional site-specific environmental analysis has occurred pursuant to an APD. 30 USC § 226(g); 43 CFR §§ 3101.1, 3162.3; 36 CFR § 228.106-108; MOU at 12-14.

The CEQ regulations at 40 CFR § 1505.2(c) require that decision documents, such as this ROD, state whether all practicable means to avoid or minimize environmental harms that may result from the selected alternative have been adopted, and if not, why they were not. Mitigation for resource impacts that may result from oil and gas development operations on Fishlake NF administered lands would occur through the application of the SLT and the stipulations and lease notices identified in Appendix A of the FEIS and the January 24 USFS Appeal Resolution Letter. If the additional site-specific environmental analysis that would occur at the APD stage identifies potential environmental impacts or resource conflicts that require specific protections, the BLM and the USFS may take full advantage of the protections available pursuant to the USFS ROD, as modified by the January 24 USFS Appeal Resolution Letter, which includes the applicable stipulations and lease notices, as identified in Appendix A of the FEIS and the January 24 USFS Appeal Resolution Letter, and the SLT identified in BLM Form 3100-11 and at 43 CFR §

3101.1, and the approval of an APD may be conditioned upon compliance with certain conditions of approval (“COAs”), which the USFS and the BLM may develop and require compliance with so long as such COAs are consistent with the restrictions imposed by the SLT or any stipulations attached to a lease at the time of issuance. *E.g.*, 30 USC § 226(g); 43 CFR §§ 3101.1, 3162.3; 36 CFR § 228.106-108; MOU at 12-14.

For the reason discussed above and in the USFS ROD and FEIS, the BLM concurs with the determination by the USFS that the selection of Alternative C from the FEIS, with the modifications referenced above, includes all of the practicable mitigation and other protective measures needed to avoid or minimize environmental harms that may result from the decisions made with this ROD and the USFS ROD. The BLM has also determined that, of the alternatives considered in detail, Alternative C from the FEIS, with modifications as previously noted, best met the purpose and need for action discussed in section 1.3 of this ROD. These determinations were based upon, among other things, considerations of the statutorily imposed mineral leasing responsibilities of the BLM and the USFS, the identification and analysis of non-mineral and mineral resources within the FEIS and USFS ROD and the specific location and level of restrictions that would be imposed upon any oil and gas operations pursuant to the selected alternative and the modifications of that alternative as previously described.

3.0 Overview of the Alternatives

Alternatives were developed through public scoping, internal discussions, considerations and analysis by resource specialists for the USFS and coordination with cooperating agencies and interested parties during the preparation of the FEIS. Ultimately, the FEIS considered four alternatives (Alternatives A - D) in detail. These alternatives are described in Chapter of 2 the FEIS and in the USFS ROD at page 17. This ROD incorporates by reference the detailed descriptions of those alternatives, as stated in the USFS ROD and the FEIS. Brief descriptions of the four alternatives that the FEIS considered in detail have been provided below.

The CEQ regulations implementing the NEPA require that environmental impact statements (“EISs”) include a “no action” alternative. 40 CFR § 1502.14(d). Alternative A, under which no new oil and gas leases would be issued for lands administered by the Fishlake NF, constituted the no action (and no lease) alternative for the subject Fishlake NF oil and gas leasing FEIS.

The Alternatives B, C, and D considered by the FEIS all would allow for some level of new oil and gas leasing to occur on the lands under the administration of the Fishlake NF. Furthermore, all three alternatives would make approximately 1,707,810 acres of land administratively available for oil and gas leasing. Nonetheless, Alternatives B, C, and D were all unique on account of differences in the protective measures, such as the lease stipulations, that would be applied and the presence, or not, of “no lease” areas in those alternatives.

In general, Alternative B constituted the alternative that would be the least restrictive to future oil and gas leasing and development operations and Alternative D represented the most restrictive leasing option (aside from Alternative A, the no lease alternative). Alternative C (the preferred and selected alternative) falls in between Alternatives B and D with respect to the general level

of restrictions that are imposed upon oil and gas lease operations. Implementation of Alternatives B, C, and D all would require amendments to the Fishlake and Dixie LRMPs.

3.1 Alternative A (No Action/No Lease)

Under Alternative A (FEIS section 2.2.1), no new oil and gas leases would be issued for the NFS lands administered by the Fishlake NF. The analysis for this alternative included two possible management actions, no action and a no lease action.

Under the no action alternative, management designations and activities pertaining to oil and gas leasing would continue unchanged pursuant to the existing LRMPs. Under the no lease action alternative, the Fishlake NF and the Dixie NF Forest Supervisors would issue decisions that formally render the analysis area for the FEIS unavailable for future oil and gas leasing. While the no action and the no lease action alternatives would involve procedural differences (i.e. the former would require decisions formally closing the analysis area to future leasing), the substantive leasing impacts would be the same under both action options. As such, the no action and the no lease action alternatives were combined in to Alternative A for the purposes of analysis.

Under the no action alternative, no new oil and gas leases would be issued within the analysis area for the FEIS because the applicable LRMPs, the Dixie LRMP and the Fishlake LRMP, were issued prior to the passage of the FOOGLRA and, as a result, these LRMPs lack the leasing analysis and leasing availability identification that FOOGLRA, and its implementing regulations at 36 CFR § 228.102(a)-(e), installed as mandatory prerequisites to the issuance of oil and gas leases on NFS lands. Likewise, under the no lease action alternative, decisions from the Forest Supervisors would prohibit future leasing within the analysis area for the FEIS. Thus, under both the no action and no lease action alternatives, the result would be that no new oil and gas leases would be issued for the NFS lands administered by the Fishlake NF.

3.2 Alternative B

Under Alternative B (FEIS section 2.2.2), the total land administratively available for oil and gas leasing is approximately 1,707,810 acres.

Of those lands identified as administratively for lease, approximately 878,369 acres (51% of the available lands) would be subject to the restrictions imposed by the SLT only, approximately 827,775 acres (49% of the available lands) would subject to the restrictions imposed by controlled surface use stipulations (“CSU”), and approximately 1,665 acres (less than 1% of the available lands) would subject to the restriction of no surface occupancy (“NSO”).

Under this alternative, all lands administered by the Fishlake NF would be administratively available for leasing subject to the SLT only, with the exception of Mexican Spotted Owl (“MSO”) Protected Activity Centers (“PACs”) and Class I Airshed Areas, which would be subject to NSO and CSU restrictions, respectively, in addition to the SLT.

3.3 Alternative C (Preferred / Selected Alternative)

Alternative C (FEIS section 2.2.3) was the preferred alternative and the alternative selected by the USFS ROD, with the modifications previously discussed.

Under Alternative C, the total land administratively available for oil and gas leasing is approximately 1,707,810 acres.

Of those lands identified as administratively for lease, approximately 62,468 acres (4% of the available lands) would be subject to the restrictions imposed by the SLT only, approximately 82,359 acres (5% of the available lands) would subject to the restrictions imposed by timing limitation stipulations (“TL”), approximately 209,120 acres (12% of the available lands) would subject to the restrictions imposed by CSU, and approximately 1,353,863 acres (79% of the available lands) would subject to the restriction of NSO.

Under this alternative, all lands managed by the Fishlake NF would be administratively available for lease subject to the SLT and, where appropriate, additional constraints are imposed with lease stipulations, as identified in Appendix A of the FEIS, and as modified by the January 24 USFS Appeal Resolution Letter. Under Alternative C, a NSO stipulation would be applied in the following areas:

- All Research Natural Areas;
- Inventoried Roadless Areas;
- Quitchupah Canyon Cultural Area;
- Paradise Valley Cultural Resource Site;
- Old Spanish Trail Corridor;
- Areas with Steep Slopes (greater than 35% or North Horn sediment areas with slopes greater than 25%);
- Areas of Geologic Hazards or Unstable Soils;
- Areas within 1 Mile of Known Federal Threatened or Endangered Plant Locations;
- Areas within 1 Mile of Sensitive Plant Locations Covered by a Conservation Agreement;
- Areas within 300 Feet of Riparian Areas, Wetlands, Lakes, Reservoirs, Perennial Streams and Springs;
- Drinking Water Source Protection Zones – Zones 1 – 3, and T2 and T4;
- MSO PACs;
- Bald Eagle Winter Concentration Areas;
- Goshawk Core Nesting Areas;
- Within 4 Miles of Sage-grouse Leks;
- Known Colonies of Pygmy Rabbits;
- Key Habitat for Boreal Toad;
- Within ¼ Mile of Developed Recreation Sites and National Recreation Trails;
- Within ¼ Mile of Forest Service Administrative Sites and Facilities; and
- Frequently Viewed Areas of High Scenic Integrity.

Alternative C imposes a TL restriction in the following areas: Sage-grouse Brood Rearing Areas and Wintering Habitat; Crucial Elk and Mule Deer Winter Range, Calving and Fawning Areas;

and Bighorn Sheep Lambing and Winter Range. Lastly, under this alternative a CSU restriction would be applied in the following areas: Goshawk Post-fledging Areas; Active Raptor Nest Areas; and Class I Airshed Areas.

3.4 Alternative D

Alternative D (FEIS section 2.2.4) was developed in response to comment letters received from the Utah Environmental Congress (“UEC”), as well as other organization that partnered with the UEC during public scoping for the FEIS. This alternative was developed to include elements and components associated with those referenced in the comment letters from the UEC and its partner organizations. More specifically, this alternative emphasized the protection of non-mineral resources and uses over oil and gas exploration and development activities and the associated economic benefits. Comments submitted by environmental organizations other than UEC, sportsmen, and other groups and individuals that expressed an interest in emphasizing natural resource protection over oil and gas development were also addressed by this alternative.

Under Alternative D, the total land administratively available for oil and gas leasing is approximately 1,707,810 acres. However, under Alternative D, the USFS ROD and FEIS could not be used to authorize future oil and gas leasing on approximately 1,239,352 acres (73% of the available lands) of the land designated as administratively available for leasing. The aforementioned 1,239, 352 acres of land, which the USFS ROD and FEIS refer to as “no lease” areas, includes the following areas: Municipal Watersheds; Campground Water Systems; Threatened, Endangered, or Candidate Species Habitat; Key Habitat for the Boreal Toad; Research Natural Areas; Inventoried Roadless Areas; Suitable Wild and Scenic River Corridors; National Recreation Trails; and the Quitchipah Canyon Cultural Area.

Of the lands identified as administratively available for leasing that are outside of the “no lease” areas, approximately 32,002 acres (2% of the available lands) would be subject to the restrictions imposed by the SLT only, approximately 27,714 acres (1% of the available lands) would subject to the restrictions imposed by CSU, and approximately 408,740 acres (24% of the available lands) would subject to the restriction of NSO.

Alternative D also represented the environmentally preferred alternative. Under this alternative, there would be no new oil and gas leasing on approximately 1,239,352 acres of land within the analysis area for the FEIS.

3.5 Alternatives Considered But Eliminated From Detailed Analysis

As a result of comments made during the public scoping period for the FEIS project, the following alternative was considered and then dismissed from detailed analysis for the following reasons:

An alternative that would make all lands that are legally available for leasing administratively available to lease subject to a NSO restriction was considered, but then dismissed from detailed analysis. Alternatives B, C, and D all apply NSO restrictions to portions of the analysis area for the FEIS, but none of the three alternatives applied the NSO restriction across the entire analysis

area. In the case of Alternatives B, C, and D, the application of a NSO restriction was based upon specific resource protection needs and/or objectives. An alternative that indiscriminately applies a NSO restriction to all of the lands administered by the Fishlake NF would be neither reasonable nor justified and such an alternative would also not be consistent with BLM and USFS policies for mineral exploration and development.

4.0 Management Considerations and Rationale for the Decision

The BLM concurs with the rationale presented in the USFS ROD at pages 8-16 regarding the selection of Alternative C from the FEIS. As such, with this ROD, the BLM adopts the aforementioned USFS rationale as its own rationale.

The alternatives analyzed by the FEIS adequately addressed the wide range of resource values under the administration of the Fishlake NF, as well as the subsurface resources which the BLM is responsible for managing, and the selection of Alternative C, based upon the analysis in the FEIS, provided a management decision that was responsive to all substantive resource issues identified both internally and through public and interagency participation for the project.

The BLM also concurs with the determination by the USFS that, of the alternatives considered in the FEIS, Alternative C best met the purpose and need for action, as described in the USFS ROD, the FEIS and in this ROD at section 1.3. The BLM further concurs with the USFS determination that Alternative C represents the best balance between the need to protect natural resources and the need for the BLM and the USFS to meet their responsibilities with respect to oil and gas leasing for the NFS lands administered by the Fishlake NF. For example, in accordance with 36 CFR § 228.102, Alternative C makes a significant amount of land, approximately 1,707,801 acres, administratively available for oil and gas leasing, but, in doing so, it also imposes operational restrictions, such as the lease notices and stipulations identified in Appendix A of the FEIS and the January 24 USFS Appeal Resolution Letter, that will adequately protect other resource values for the subject NFS lands.

Upon a review of the USFS ROD, FEIS, and associated documents, the BLM concurs with the determination by the USFS at page 21 of the USFS ROD, which provides that the selected alternative (Alternative C) includes the appropriate mitigation and other protective measures needed to avoid or minimize environmental harms that may result from the implementation of the selected alternative. This determination was based upon, among other things, considerations of the known resources within the analysis area for the FEIS, the proportion and location of NSO restrictions applied within the analysis area, as well as the other protections that will be provided by way of the SLT, and TL and CSU restrictions imposed pursuant to the selected alternative.

5.0 Consultation and Consistency Review

5.1 Coordination and Consultation

The USFS consulted with several state and federal agencies in preparing the USFS ROD and FEIS. As previously noted, the BLM served as a cooperating agency in the preparation of the

NEPA documents for the project. In addition to the BLM (jurisdictional), the State of Utah (jurisdictional and special expertise) also participated as a cooperating agency, as described by 40 CFR § 1501.6 and § 1508.5, in the preparation of the NEPA documents for this project. More specifically, the State of Utah participated in the development of the project through its Department of Parks and Recreation, Division of Wildlife Resources, Division of Water Quality, Division of Oil, Gas and Mining, Division of Air Quality, and Division of Environmental Quality.

The Department of the Interior's United States Fish and Wildlife Service ("USFWS") and National Park Service were consulted and participated in the development of the alternatives addressed in the FEIS. Consultation with the USFWS for the project, as required by the Endangered Species Act ("ESA"), 16 USC §§ 1531 *et seq.*, has been completed and a Biological Opinion, dated January 19, 2012, was issued to the USFS for the project.

The United States Environmental Protection Agency ("EPA") also participated heavily in the development of the subject oil and gas leasing project by analyzing potential air quality issues and in reviewing the project's NEPA documents in accordance with requirements under the CEQ regulations. Any future oil and gas development activities within the analysis area for the FEIS would have to comply with the Clean Air Act, applicable air quality rules and regulations of the State of Utah, as well as any other applicable regulations of the EPA.

If appropriate and/or necessary, additional coordination and/or consultation (formal or informal) will occur in the future if and when the BLM submits a proposal to offer specific NFS lands for lease and/or if lands are leased and specific surface-disturbing operations are proposed through the APD process. All subsequent coordination and consultation will be conducted in accordance with the applicable laws, regulations and procedures of the interested parties.

5.1.1 Endangered Species Act Section 7 Consultation

Pursuant to the ESA, federal agencies are prohibited from authorizing, funding, or carrying out any action that is likely to "jeopardize" the continued existence of any endangered or threatened species or result in the "destruction or adverse modification" of critical habitat, as designated by the USFWS, for any species that has been "listed" as threatened or endangered pursuant to the ESA. 16 USC § 1536. Moreover, if a federal action is likely to adversely affect a species that has been listed pursuant to the ESA, or the critical habitat of any such species, the responsible federal agency must enter into formal consultation with the USFWS. *Id.* Species that are proposed or candidates for listing as threatened or endangered under the ESA and BLM-designated "sensitive" species are managed to prevent the future listing of such species as threatened or endangered under the ESA.

A Biological Assessment ("BA") was completed in connection with the subject Fishlake NF oil and gas leasing project in order to identify and evaluate the potential impacts to plant and animal species that could result from the implementation of alternatives considered in the FEIS. The findings of these evaluations have been summarized in Chapter 3 of the FEIS and in the BA prepared for the project.

As previously stated, consultation with the USFWS for the FEIS project, as required by the ESA, has been completed and a Biological Opinion, dated January 19, 2012, was issued to the USFS. In that Biological Opinion, the USFWS concurred with the findings of the above-referenced BA by stating that the subject leasing decisions for lands administered by the Fishlake NF were not likely to jeopardize the continued existence of the threatened and endangered species identified as present or potentially present within the analysis area for the FEIS. Based upon the findings in the BA, the Biological Opinion dated January 19, 2012, and the analysis in the FEIS, the USFS and the BLM (as documented with this ROD) have concluded that the decisions made by the USFS ROD and this ROD are in compliance with the ESA.

5.1.2 National Historic Preservation Act and Consultation with Tribes

Section 106 of the National Historic Preservation Act (“NHPA”), 16 USC § 470f, requires federal agencies to identify and consider the potential effects that federally funded or authorized “undertakings” may have on “historic properties” that are listed, or eligible for listing, on the National Register of Historic Places (“National Register”). In general, the “section 106 process” includes the following steps: (1) an identification of historic properties potentially impacted by a federal undertaking; (2) an assessment of the potential impacts to historic properties; and, (3) if adverse impacts to historic properties are anticipated, the development of a plan for avoiding or mitigating adverse impacts to historic properties. Federal agencies are also required to make a good faith effort to consult with Native American Tribes that attach religious or cultural significance to artifacts and/or areas that may be affected by a federal undertaking. 36 CFR §§ 800.2(c)(2)(ii) and 800.4(a)(1)(iii).

A phased approach to NHPA compliance, as provided for by 36 CFR § 800.4(b)(2) and § 800.5(a)(3), has been endorsed in situations where no-surface disturbing activity is to occur until the section 106 process is complete and, due to the programmatic nature of the subject undertaking, specific impacts are difficult to completely ascertain prior to the approval or proposal of a specific ground-disturbing action. *E.g., Southern Utah Wilderness Alliance*, 177 IBLA 89, 98 (2009) (citing *The Madan, Hidatas, and Arikara Nation*, 164 IBLA 343, 354-355 (2005)).

The leasing analysis associated with the FEIS and USFS ROD was programmatic in nature and, as such, it evaluated and addressed the reasonably foreseeable impacts to cultural resources in manner that was consistent with the objectives of that leasing analysis, which included making informed determinations as to which NFS lands should be made administratively available for oil and gas leasing and which NFS lands possess known cultural resource characteristics that should be protected by specific lease stipulations, if and when any of those lands are considered for specific oil and gas exploration and development operations.

The FEIS has identified and addressed the reasonably foreseeable impacts that future oil and gas leasing could have on known cultural resources within the analysis area for the FEIS. Areas that were known to contain culturally important resources, where the protections afforded by a lease stipulation would be appropriate, were identified in the FEIS and appropriate protections were identified and applied to those areas. Such areas included the Old Spanish Trail Corridor, the Paradise Valley Cultural Resource Site, and the Quitcupah Canyon Cultural Area. These areas

have all been placed under a NSO stipulation pursuant to the selected alternative (Alternative C), with modifications as identified in the January 24 USFS Appeal Resolution Letter.

For all lands that have been identified as administratively available for oil and gas leasing under the selected alternative, before any ground-disturbing activities associated with oil and gas development may occur, the USFS will identify and evaluate, for the specific lease areas where ground-disturbances are proposed, any cultural resources that will need specific avoidance or mitigation measures. Any potential site-specific impacts to cultural resources, which includes historic properties that are eligible for protection under the NHPA, will be analyzed and addressed in the site-specific NEPA analysis that would be required if and when the details of a specific oil and gas exploration and development project is proposed through the APD process. Furthermore, any oil and gas leases that are issued in the future in accordance with the decisions and analysis of the USFS ROD and FEIS will be issued with a standard lease notice, which the USFS has developed for the protection of cultural resources, attached. That lease notice requires that cultural resource surveys be completed and appropriate mitigation developed in order to protect any historic properties that are discovered during the site-specific surveys. In addition, under the SLT, the USFS and/or the BLM may require that proposed oil and gas facilities or operations be moved by up to 200 meters (656 feet) in order to avoid impacts to cultural resources.

In addition, the Fishlake NF and the Utah State Historic Preservation Office (“SHPO”) have executed a programmatic agreement that will be implemented to further ensure that any future oil and gas leasing and development actions within the analysis area for the FEIS are conducted in accordance with the NHPA.

Consultation with the appropriate Native American Tribes occurred throughout and in conjunction with the NEPA process for this project. A list of the Tribes consulted for the project has been documented in the FEIS at section 4.0.

The USFS ROD and FEIS indicate that the reasonably foreseeable impacts to cultural resources that could result from oil and gas actions authorized pursuant to the selected alternative would be avoided or adequately mitigated at or prior to the commencement of any surface-disturbing operations through the application of the protective measures that are available pursuant to the selective alternative. Based upon an independent review of the analysis within the FEIS and USFS ROD, BLM concurs with the aforementioned determination by the USFS.

5.2 Consistency with State and Local Plans

Inconsistencies with state, county, or local plans were not identified.

6.0 Public Involvement

On July 7, 2006, an initial public scoping period for the oil and gas leasing project that is the subject of this ROD was commenced with the publication in the Federal Register of a Notice of Intent (“NOI”) for the Fishlake NF Oil and Gas Leasing Analysis EIS project. The publication of this NOI initiated a formal 45-day public scoping period for the project.

In addition to the NOI, the USFS utilized several other methods and channels to notify the public about opportunities to become involved with and provide comments during public scoping for the Fishlake NF Oil and Gas Leasing Analysis EIS project. Information about the project has been listed in the Schedule of Proposed Actions (“SOPA”), which the USFS publishes on a quarterly basis in order to provide the public with information about proposed, soon-to-begin, and in-progress environmental analysis projects and documents, since April 1, 2006. In June 2006, public scoping information for the project was published in several newspapers that serve the general geographic area for the project, which included the *Garfield County Insider*, the *Millard County Chronicle Progress*, the *Wayne County Insider*, and the *Richfield Reaper*. A public breakout session regarding the project was conducted during the Dixie and Fishlake Forest Plan Forum held on June 28, 2006. On July 5, 2006, a legal notice informing the public of scoping for the project was again published in the *Richfield Reaper*, a weekly newspaper serving the project area and the designated newspaper of record for the project. Letters were sent to 250 individuals and organizations, and six public meetings were conducted in Beaver, Fillmore, Junction, Loa, Richfield, and Salina, Utah, regarding the project. Finally, due to the duration of time between the initial public scoping for the project and the release of the Draft Environmental Impact Statement (“DEIS”) for the project, a supplemental NOI was published in the Federal Register on January 18, 2011.

On October 21, 2011, a Notice of Availability (“NOA”) for the DEIS was published in the Federal Register, which commenced a formal 45-day public comment period for that document. Eight comment letters were received during the DEIS comment period. All of the comments were reviewed and considered by the USFS interdisciplinary team assembled for the project. Additionally, all of the comments have been recorded and responded to in detail in Appendix G of the FEIS. On account of comments about the air quality monitoring report that was referenced in the DEIS not being accessible, the USFS made that report available and published another NOA in the Federal Register on February 17, 2012, which extended the formal comment period for the DEIS for an additional 45-days.

The Forest Supervisors for the Fishlake and Dixie NFs signed the USFS ROD, which selected Alternative C from the FEIS, on August 20, 2013. On September 4, 2013, a legal notice for the USFS ROD and FEIS was published in the newspaper of record for the project. A NOA for the USFS ROD and FEIS was published in the Federal Register on September 13, 2013. On account of certain factors associated with the partial shutdown of the United States Government in October of 2013, an additional legal notice for the USFS ROD and FEIS was published in the newspaper of record on October 30, 2013.

In accordance with 36 CFR § 219.17(b)(3), an appeal, dated December 16, 2013, of the USFS ROD and FEIS was filed by WildEarth Guardians, Grand Canyon Trust and Western Resource Advocates. The aforementioned appeal filed by WildEarth Guardians, Grand Canyon Trust and Western Resource Advocates represented the only appeal of the USFS ROD and FEIS received by the USFS during the appeal period for those documents. As documented in a January 24, 2014, USFS letter (i.e. the “January 24 USFS Appeal Resolution Letter”), the appellants and the USFS ultimately reached an agreement whereby the aforementioned appeal would be resolved and withdrawn. In general, the agreement that resolved that appeal of the USFS ROD and FEIS

included the USFS providing clarifications as to the nature of the decision being made by the USFS ROD, as well as clarifications and modifications to the language for certain lease stipulations identified in the FEIS.⁴ In a letter dated January 27, 2014, the appellants formally withdrew their appeal of the USFS ROD and FEIS, in its entirety, pursuant to the agreement described in the January 24 USFS Appeal Resolution Letter. In a letter dated January 30, 2014, the USFS formally accepted the letter from WildEarth Guardians, Grand Canyon Trust and Western Resource Advocates whereby the appellants formally withdrew the appeal of the USFS FEIS and ROD. This January 30, 2014, letter constituted the final administrative determination by the USFS for the appeal of the USFS ROD and FEIS. *See* 36 CFR § 215.18(c).

7.0 Appeals

This BLM ROD may be appealed to the Interior Board of Land Appeals (“IBLA”) in accordance with the regulations contained in 43 CFR Part 4 and as described on the attached BLM Form 1842-1 (Attachment 2). In order for an appeal of this decision to be considered, a written notice of appeal must be filed with this office at Bureau of Land Management, Utah State Office, 440 West 200 South, Suite 500, Salt Lake City, Utah 84101, with a copy to the Office of the Regional Solicitor, Intermountain Region, U.S. Department of the Interior at Federal Building Room 6201, 125 South State Street, Salt Lake City, Utah 84138, within 30-days from the date that this decision is signed by the Authorized Officer.

If you wish to file a petition for a stay pursuant to 43 CFR § 4.21 as to the effectiveness of this decision during the time that your appeal is being reviewed by the IBLA, a petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification in accordance with the standards listed in 43 CFR § 4.21(b), which include:

- (1) The relative harm to the parties if the stay is granted or denied;
- (2) The likelihood of the appellant’s success on the merits;
- (3) The likelihood of irreparable harm if the stay is not granted; and
- (4) Whether the public interest favors granting the stay.

If a petition for a stay is submitted with the notice of appeal, a copy of the notice of appeal and the petition for a stay must be served on each party named in the decision from which the appeal is taken, and with the IBLA at the same time that those documents are filed with the office of the Authorized Officer.

A copy of the notice of appeal, and a statement of reasons, as well as all other pertinent documents must be served on each adverse party named in the decision from which the appeal is taken and on the Office of the Regional Solicitor (at the address previously described), no later than 15-days after the filing of the document with the Authorized Officer and/or the IBLA.

Please direct any questions regarding this decision to Justin Abernathy, BLM Utah Fluid Minerals Leasing Coordinator, at 801-539-4067.

⁴ The January 24 USFS Appeal Resolution Letter identifies the specific modifications/clarifications that were made to stipulations as well as other aspects of the USFS ROD and FEIS in order to resolve the appeal of those documents.

8.0 Approval

In consideration of foregoing, I approve this BLM ROD with which the BLM formally adopts the USFS ROD and FEIS for Lands Administered by the Fishlake NF - Oil and Gas Leasing and concurs with the selection of Alternative C from the FEIS, as documented and modified by the USFS ROD and the January 24 USFS Appeal Resolution Letter.

/s/ Kent Hoffman

February 10, 2015

Authorized Officer

Date

For Juan Palma
State Director
Bureau of Land Management - Utah
U.S. Department of the Interior

Attachments

1. January 24 USFS Appeal Resolution Letter
2. BLM Form 1842-1