



southern
utah
wilderness
alliance

VIA FAX: 801.539.4237

December 17, 2012

Juan Palma
Utah State Director
Bureau of Land Management
440 West 200 South, 5th 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 to Be Held on February 19, 2013*

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 February 19, 2013, offering in Salt Lake City, Utah of the following thirteen parcels:

UT0213-199, UT0213-201, UT0213-240, UT0213-246, UT0213-247, UT0213-248, UT0213-249, UT0213-250, UT0213-251, UT0213-252, UT0213-253, UT0213-254, and UT0213-255.

As explained below, the Bureau of Land Management's (BLM's) decision to sell the thirteen 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 thirteen lease parcels from sale until the agency has fully complied with all the federal laws, regulations, and executive orders

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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 Has Not Properly Evaluated Impacts to Lands with Wilderness Characteristics

The BLM failed to properly evaluate impacts to lands with wilderness characteristics because it did not consider an alternative that would have eliminated any lease parcels that overlapped with lands with wilderness characteristics and it did not follow its guidance on this matter.

The BLM has not evaluated the wilderness characteristics of the Coyote Wash proposed wilderness. *See* Rocky Mountain Wild, Map - February 2013 Utah Lease Sale – Lease Parcel Group 3 (attached as Ex. 1) (identifying boundaries of proposed Coyote Wash wilderness and conflicts with proposed leases); *see also* Coyote Wash proposed wilderness, BLM Wilderness Characteristics Review, Moab RMP Background Documents (Dec. 2006-Feb. 2007) (attached as Ex. 2 and available online at: http://www.blm.gov/pgdata/etc/medialib/blm/ut/moab_fm/rmp/background_documents/wilderness_characteristics.Par.0491.File.dat/CoyoteWash.pdf). Lease parcels UT0213-199, UT0213-201, UT0213-240, UT0213-246, UT0213-247, UT0213-248, UT0213-249, UT0213-250, UT0213-251, UT0213-252, UT0213-253, UT0213-254, and UT0213-255 overlap with or fall inside of the wilderness characteristics area of Coyote Wash.

The BLM has recently issued a new wilderness character inventory manual (Manual 6310) which contains new guidance not considered by the Moab Field Office for the Coyote Wash proposed wilderness. *See* BLM Manual 6310 – Conducting Wilderness Characteristics Inventory on BLM Lands (Mar. 15, 2012), *available at* http://www.blm.gov/pgdata/etc/medialib/blm/wo/Information_Resources_Management/p

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olicy/blm_manual.Par.38337.File.dat/6310.pdf. The last time the Moab Field Office conducted a wilderness character inventory of this area was in preparation for the Moab Resource Management Plan, which was released in 2008.

BLM's new manual states that "[r]egardless of past inventory, the BLM must maintain and update as necessary, its inventory of wilderness resources on public lands." BLM Manual 6310.06.A. The public identification of wilderness characteristics during a NEPA process, new information from the public regarding wilderness character, or a proposed project such as an oil and gas lease sale are all reasons for the BLM to consider updating its wilderness character inventory. *Id.* All of those factors are implicated here; the BLM must perform a wilderness character inventory of the Coyote Wash proposed wilderness before issuing leases which could ultimately compromise that area. Furthermore, BLM's manual provides new guidance—not previously available to either the Moab or Monticello field offices—regarding the method and manner of conducting a wilderness character review.

The Moab Field Office's February 2013 Oil and Gas Lease Sale, Environmental Analysis DOI-BLM-UT-Y010-2012-0190-EA (November 2012) (Lease Sale EA) contains no indication that the Moab Field Office considered the wilderness characteristics of the Coyote Wash area. However, the Lease Sale EA did defer two parcels that overlapped with the Big Triangle proposed wilderness—a separate area of wilderness characteristics that the BLM had not reevaluated under its new guidance—in order to comply with Manual 6310. *See* Lease Sale EA at 12, 84-85, 97-98. The BLM should have done the same for the Coyote Wash proposed wilderness area.

Since the issuance of the Moab RMP; there have been significant changed

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circumstances that warrant the need to revisit those decisions concerning wilderness characteristics. Secretarial Order 3310 constitutes a clear change of direction and policy and is the sort of circumstance to warrant a revisiting of those decisions.

Secretarial Order 3310 indicates that it is the policy of the Department of the Interior to avoid impairment of lands inventoried to have wilderness characteristics. *See* Secretarial Order 3310 (Dec. 22, 2010), *available at* <http://www.doi.gov/news/pressreleases/loader.cfm?csModule=security/getfile&PageID=115974>. Although Congress has indicated that funds are not available for implementing this order, the Order has not been revoked and the Interior Department’s policy remains unchanged. *See* Department of Defense and Full-Year Continuing Appropriations Act, 2011, Pub. L. No. 112-010, § 1769 (stating that “For the fiscal year ending September 30, 2011, none of the funds made available by this division or any other Act may be used to implement, administer, or enforce Secretarial Order No. 3310 issued by the Secretary of the Interior on December 22, 2010.”). On June 1, 2011; the Secretary of the Interior responded to this legislation stating that “the BLM will not designate any lands as ‘Wild Lands.’” Memo. from Ken Salazar, Sec’y of the Interior, to Bob Abbey, BLM (June 1, 2011), *available at* <http://www.doi.gov/news/pressreleases/upload/Salazar-Wilderness-Memo-Final.pdf>. Thus, the Secretary did not end Department’s policy to avoid impairment of wilderness character lands.

The BLM should not offer leases UT0213-199, UT0213-201, UT0213-240, UT0213-246, UT0213-247, UT0213-248, UT0213-249, UT0213-250, UT0213-251, UT0213-252, UT0213-253, UT0213-254, or UT0213-255 because it would be contrary to the policy of Secretarial Order 3310. Following this policy would require no

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expenditure of money here and it would not entail the designation of Wild Lands, therefore it does not run afoul of the spending limitations or the Secretary's June 1 memo. This is entirely consistent with BLM's authority to manage and protect wilderness characteristics under Federal Land Policy and Management Act and BLM's Land Use Planning Handbook. *See* 43 U.S.C. § 1702(c); H-1601-1, App. C at 12-13.

Furthermore, the Secretary of the Interior's June 1, 2011, memorandum affirms BLM's obligation to inventory and "consider" wilderness characteristics "when making project-level decisions." Salazar Memo. at 1; *see also Ore. Natural Desert Ass'n v. BLM*, 531 F.3d 1114, 1119 (9th Cir. 2008) (recognizing BLM's duty to maintain and use current inventory of lands with wilderness characteristics when making management decisions).

In order to fully "consider" wilderness characteristics in the context of this lease sale, the Secretary's Memorandum requires the BLM to develop and evaluate a leasing alternative that fully protects lands with wilderness characteristics, either through parcel deferrals or NSO stipulations. Such an alternative would comply with a key provision of IM 2010-117, which requires BLM to evaluate lease sale alternatives that "address unresolved resource conflicts." In response to this requirement of the IM, BLM has consistently included alternatives in lease sale EAs that protect wilderness characteristics, even in lease sale EAs that post-date the congressional funding limitation on implementing the Wild Lands Policy. For example, in Colorado the proposed action for the White River Field Office's August 2011 Oil and Gas Lease Sale EA, BLM deferred five parcels in order to update its wilderness inventory and protect "primitive recreation opportunities." BLM should follow suit for the February lease sale and evaluate an

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alternative that protects the wilderness characteristics of the preliminary sale parcels.

The BLM has misinterpreted the significance of the White River Field Office's actions and neglected this duty by not preparing an alternative eliminating leasing, or imposing NSO provisions, in lands with wilderness characteristics.

REQUEST FOR RELIEF

SUWA respectfully requests the following appropriate relief: (1) the withdrawal of the thirteen protested parcels from the February 19, 2013, 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 thirteen 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 and Grand Canyon Trust. Members and staff of SUWA 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. SUWA submitted comments on Lease Sale EA analyzing this proposed lease sale. *See generally* Letter from David Garbett, SUWA, to Moab Field Office, BLM (Oct. 19, 2012) (attached as Ex. 3).¹

December 17, 2012

David Garbett
Stephen Bloch
Southern Utah Wilderness Alliance
425 East 100 South
Salt Lake City, Utah 84111

¹ SUWA reincorporates and adopts these comments in its protest.

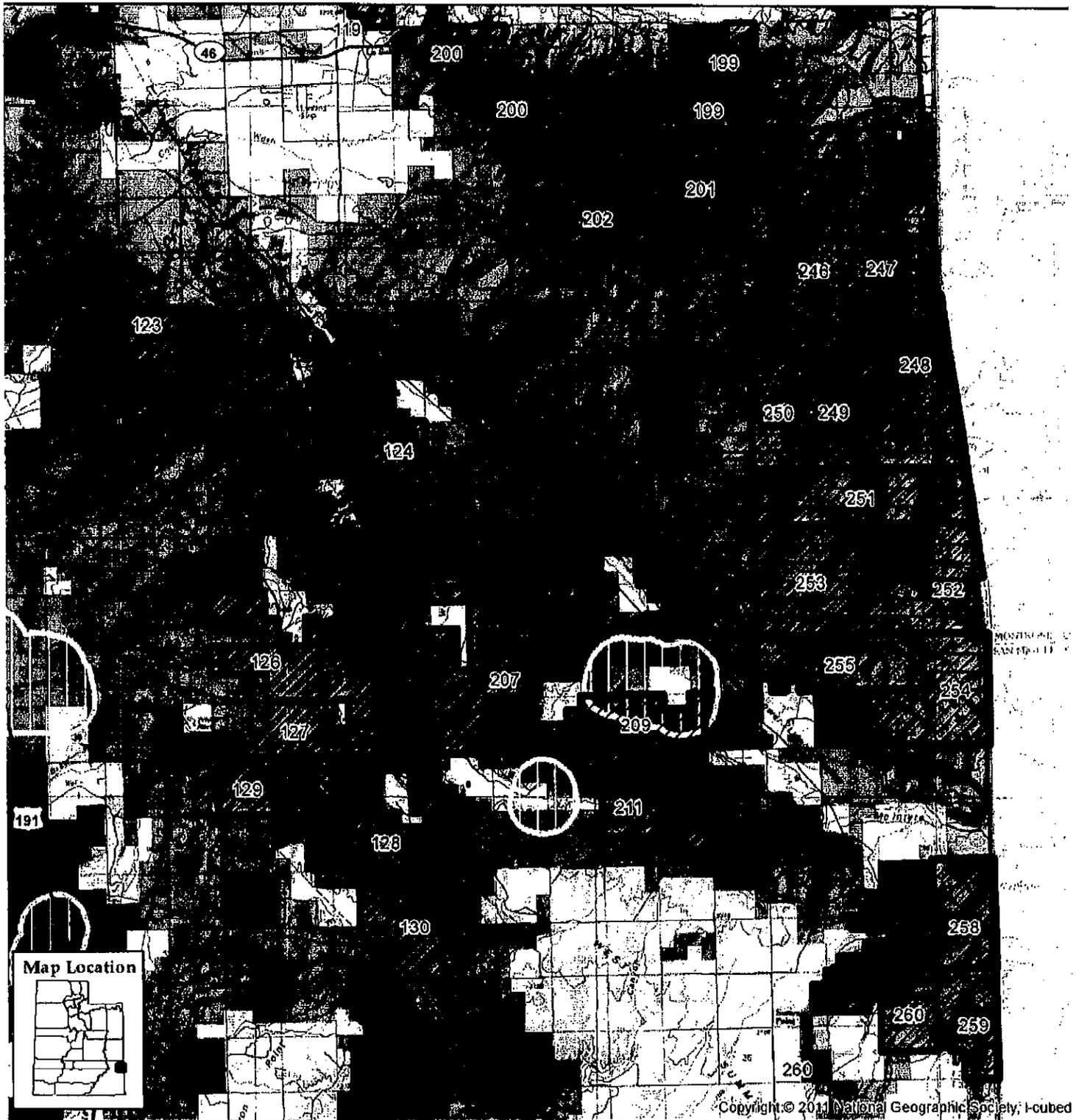
SUWA Protest
Feb. 2013 lease sale

Exhibit 1

FROM SUWA 801-486-4233

(MON) DEC 17 2012 16:30/ST. 16:26/No. 7503091342 P 9

FEBRUARY 2013 UTAH LEASE SALE - LEASE PARCEL GROUP 3



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Legend

- Gunnison or White-Tailed Prairie Dog Active Colony with Half Mile Buffer UTDWR 2002
- Utah Wilderness Inventory BLM 1999, Revised 2007
- Legislative Wilderness Proposition HR 1500 UT UTSGID 1991
- Legislative Wilderness Proposition HR 1745 UT UTSGID 1995
- Citizens' Proposed Wilderness Areas Grand Canyon Trust 2011
- Citizen Proposed Wilderness Red Rock UT UTSGID 2009
- Citizen Proposed Wilderness Utah Wilderness Coalition UTSGID 1995
- Citizen Proposal Wilderness at the Edge Utah Wilderness Coalition UTSGID 1989

- City
- Interstate
- US Highway
- State Highway
- Feb 19 2013 EA Lease Parcels
- County

- BLM
- NPS
- USFS
- Other Federal
- State
- Tribal
- Private



Data Sources: BLM, ESRI, UTSGID
 Other data sources listed in the legend
 Map by: Rocky Mountain Wild 9/2012



FROM SUWA 801-486-4233

(MON) DEC 17 2012 18:31/ST. 18:28/No. 7503091342 P 10

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Exhibit 2

WILDERNESS CHARACTERISTICS REVIEW

Date of Submission: *December 30, 2003*

Date(s) of Field Office Review: *December, 2006- February, 2007*

Submitter: *SUWA*

Name of Area to be Reviewed: *Coyote Wash*

BLM Field Office(s) Affected: *Moab*

EVALUATION

1.) Was new information submitted by a member of the public for this area?

YES ____ NO X

2.) If new information was submitted, describe the submission. For example, did the submission include a map that identifies the specific boundaries of the area(s) in question; a narrative that describes the wilderness characteristics of the area and documents how that information differs from the information gathered and reviewed in prior BLM inventories; photographic documentation; etc?

The area reviewed was derived from a GIS Data Layer provided by the proponent. New information such as maps, photographs, or narratives were not included.

3. As a result of interdisciplinary review of relevant information (which may include aerial photographs, state and county road information, road maintenance agreements, documentation from prior BLM inventories, field observations, maps, master title plats, evidence presented as new information by a proponent, etc.), do you conclude:

X a) the decision reached in previous BLM inventories that the area lacks wilderness characteristics is still valid.

(or)

____ b) some or all of the area has wilderness characteristics as shown on the attached map.

4. Describe your findings regarding specific wilderness characteristics and provide detailed rationale.

See attached narrative

5. Document all information considered during the interdisciplinary team review (e.g. aerial photographs, state and county road information, road maintenance agreements, documentation from prior BLM inventories, field observations, maps, master title plats, evidence presented as new information by a proponent, etc.)

During the course of the interdisciplinary team review, Moab BLM undertook the following steps:

In late 2006 and early 2007, BLM used GIS information to identify potential impacts on naturalness including county road data (previously verified as part of travel plan formulation), and local BLM GIS data on range improvements, oil and gas wells, vegetative manipulations (especially chainings), and community pits. Master Title Plat data available from the State Office GIS was examined for rights-of-way.

BLM Moab next undertook a detailed review of high resolution aerial photos from 2006 to both verify information from the GIS review, as well as to look for additional impacts not incorporated in GIS. These impacts could include such things as seismic exploration lines not included in the county road inventory and other disturbances from past minerals activities.

The above steps enabled Moab BLM to prepare a map showing what remaining areas were likely to possess naturalness. As described in the attached narrative, most of this unit acreage is marked by a large number of roads and other impacts, mostly from past uranium mining activities. The only lands in the unit appearing generally natural are located in the center of the unit, but are of insufficient size to possess wilderness characteristics.

Moab BLM convened an interdisciplinary review team meeting on January 11, 2007, to review the findings from the above steps. Team members were asked to provide information which either supported or refuted these findings, based on both specialized resource expertise and field experience. Based on input from this review, Moab BLM incorporated any necessary changes into its analysis.

The following specific documents and files were utilized:

1. San Juan County road inventory
2. Lisbon range allotment file
3. NAIP 2006 aerial photos (GIS)
4. Vegetative treatments (local GIS)
5. Range improvements (local GIS)
6. UWC Proposed Wilderness GIS Data Layer (2005)

6. List the members of the interdisciplinary team and resource specialties represented.

Name	Resource(s) Represented
------	-------------------------

<i>Name</i>	<i>Resource(s) Represented</i>
<i>Bill Stevens</i>	<i>Wilderness, GIS, Recreation</i>
<i>Ann Marie Aubry</i>	<i>Hydrology, Soils</i>
<i>Brent Northrup</i>	<i>Minerals, RMP Team Lead</i>
<i>Chad Niehaus</i>	<i>Recreation</i>
<i>Daryl Trotter</i>	<i>Botany, NEPA coordinator</i>
<i>Donna Turnipseed</i>	<i>Cultural, Paleontology</i>
<i>Katie Stevens</i>	<i>Recreation, Planning</i>
<i>Lynn Jackson</i>	<i>Geology, Minerals, Associate FO Manager</i>
<i>Pam Riddle</i>	<i>Wildlife</i>
<i>David Williams</i>	<i>Range</i>
<i>Maggie Wyatt</i>	<i>Field Office Manager</i>

Field Office Manager /s/ Maggie WyattDate 3/9/07

This determination is part of an interim step in BLM's internal decision-making process and does not constitute a decision that can be appealed.

Analysis of Citizens' Proposals for Wilderness Characteristics

Coyote Wash

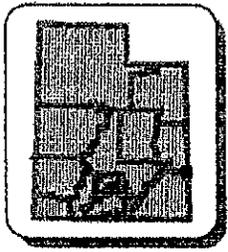
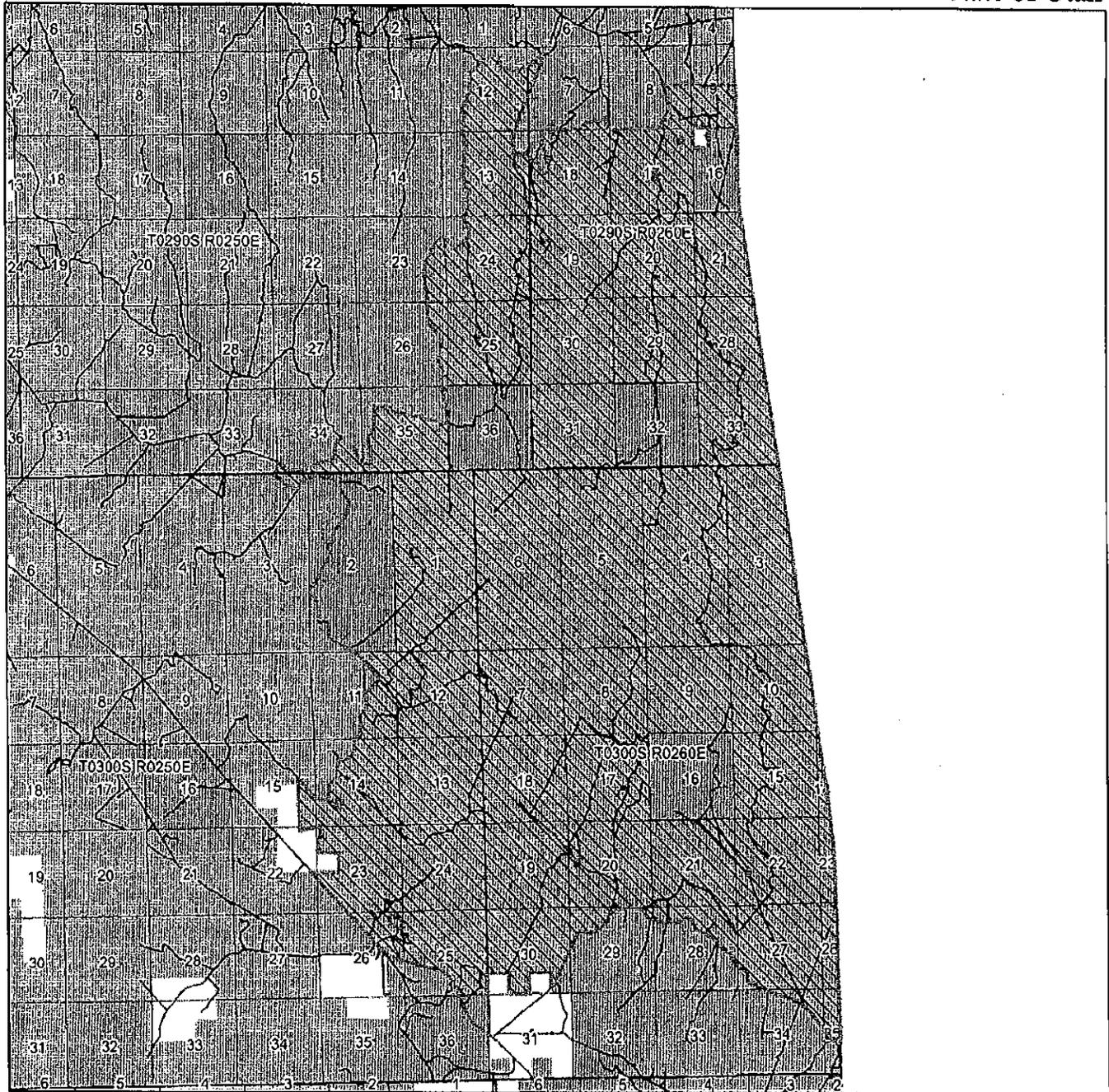
The Citizens' Proposal is a stand-alone unit along the Colorado state line; it is in the southeast corner of the Moab Field Office.

To possess wilderness characteristics, lands must possess naturalness and outstanding opportunities for solitude or primitive and unconfined recreation. According to the 1964 Wilderness Act, these outstanding opportunities generally require a land mass of 5000 acres or more. An exception to this are those lands which adjoin other lands already judged to possess wilderness characteristics, as the opportunities need be present *somewhere* in the larger unit. In the case of Coyote Wash, the proposed area does not adjoin any other area evaluated as possessing wilderness characteristics. As such, it must possess such characteristics on its own.

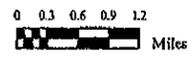
Coyote Wash does not have wilderness characteristics. Coyote Wash includes lands that have been heavily impacted by past mining activities, especially during the uranium boom of the past century. The area is riddled with substantially noticeable mining routes, mining-associated disturbances, and seismic exploration lines. The San Juan County road inventory, verified by BLM, indicates approximately 76 miles of interior routes on public lands within the proposal area. Aerial photographs from 2006 indicate many more miles of constructed routes above and beyond the County inventory. The only portion of the area not completely bisected by substantially noticeable routes lies in the approximate center of the unit. As shown in the attached aerial photos, the areas encompassed by photos 1 and 2 show numerous impacts. Only a portion of the area encompassed in photo 3 appears natural, but this area is of insufficient size to manage as a stand-alone unit.

Coyote Wash WCR Findings

State of Utah



1:103,452



Legend

— San Juan Co Identified Routes

Wilderness Characteristics Review

- NWC
- WC

Land Status

- Bureau of Land Management
- BLM Wilderness Area
- National Forest
- National Park Service
- Indian Lands
- Military Reservations
- State Lands
- Private Lands
- Water



United States Department of the Interior
 Bureau of Land Management
 Moab Field Office
 Map created on Feb 22, 2007

CAUTION:
 Land ownership data is derived from less accurate data than the 1:24000 scale base map. Therefore, land ownership may not be shown for parcels smaller than 40 acres, and land ownership lines may have plotting errors due to source data.
 No warranty is made by the Bureau of Land Management for the use of the data for purposes not intended by the BLM.

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Feb. 2013 lease sale

Exhibit 3



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BY ELECTRONIC MAIL

(BLM UT MB Comments@blm.gov, BLM UT MT O&G Leasing Comments@blm.gov, and mdhunter@blm.gov)

October 19, 2012

Bureau of Land Management
Moab Field Office
82 East Dogwood
Moab, UT 84532

Re: February 2013 Oil and Gas Lease Sale

Greetings:

The Southern Utah Wilderness Alliance and the Grand Canyon Trust (collectively "SUWA") appreciate the opportunity to submit scoping comments on the Bureau of Land Management's proposed February 2013 oil and gas lease sale and the Moab Field Office, February 2013 Oil and Gas Lease Sale, Environmental Assessment DOI-BLM-UT-Y010-2012-0190-EA (Sept. 2012) (Moab EA), and the Monticello Field Office, February 2013 Oil and Gas Lease Sale, Environmental Assessment DOI-BLM-UT-Y020-2012-0038-EA (Sept. 2012) (Monticello EA).

SUWA finds the possible leasing of the following seventeen parcels particularly troubling: 42, 169, 170, 199, 201, 206, 240, 246, 247, 248, 249, 250, 251, 252, 253, 254, and 255. These parcels should all be withdrawn from the proposed February lease sale for the reasons discussed below.

BLM Must Conduct Environmental Analysis at the Leasing Stage

It is important to note that the BLM must conduct environmental analysis at the leasing stage while it still retains full discretion regarding its management decisions. In the case of air quality impacts and impacts to other resources, the BLM has consistently pushed that analysis off to some other day. This is prohibited by the National Environmental Policy Act (NEPA).

"BLM regulations, the courts and [Interior Board of Land Appeals] precedent proceed under the notion that the issuance of a lease without [a no surface occupancy (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); see also

Pennaco Energy, Inc., 377 F.3d at 1159-61; *Union Oil Co.*, 102 IBLA 187, 189 (1988); *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 [environmental impact statement (EIS)], but that an EIS was required before the selling of leases without “no surface occupancy” stipulations); *Sierra Club v. Peterson*, 717 F.2d 1409, 1414 (D.C. Cir. 1983) (same for the D.C. Circuit). An oil and gas lease that does not prohibit all surface use constitutes an “irreversible and irretrievable commitment of resources.” *Peterson*, 717 F.2d at 1414 (quoting *Mobil Oil Corp. v. F.T.C.*, 562 F.2d 170, 173 (2d Cir. 1977)).

At the leasing stage, BLM makes an “irrevocable commitment” to allow construction of roads, well pads, and pipelines. *Peterson*, 717 F.2d at 1414-15. BLM regulations provide that unless otherwise stipulated in the lease, “[a] lessee shall have the right to use so much of the leased lands as is necessary to explore for, drill for, mine, extract, remove and dispose of all the leased resource in a leasehold.” 43 C.F.R. § 3101.1-2. Accordingly, once the lease is issued, BLM no longer has the authority to prevent some level of development. *Peterson*, 717 F.2d at 1415; see also *Connor v. Burford*, 848 F.2d 1441, 1451 (9th Cir. 1988) (“In sum, the sale of a[n] oil and gas lease [that does not prohibit surface use] constitutes the ‘point of commitment,’ after the lease is sold the government no longer has the ability to prohibit potentially significant inroads on the environment.”). Because the issuance of the proposed February 2013 leases is the point of commitment, BLM must fully consider the environmental impacts of the leases—including air pollution—before issuing them.

BLM has failed to do so, for resources such as air quality, in lease sales in the Moab and Monticello field offices previously. The BLM must analyze potential impacts before offering any of these parcels for lease. The BLM must undertake its environmental analysis before issuing a lease because certain impacts—the promised development—may flow from that transaction and the BLM must consider those impacts while it still retains full discretion regarding whether or not to permit development and how that development should take place. See *Pennaco Energy, Inc.*, 377 F.3d at 1159.

Wilderness Character Inventory

The BLM has not evaluated the wilderness characteristics of the Big Triangle and Coyote Wash proposed wilderness. See *Rocky Mountain Wild*, February 2013 Utah Lease Sale – Lease Parcel Group 3 (attached) (identifying boundaries of proposed Coyote Wash wilderness and conflicts with proposed leases).

SUWA provided the BLM with a new wilderness character submission for the Big Triangle area; an area that the BLM has not considered for its wilderness character in light of new guidance. See Letter from Neal Clark, SUWA, to Jeffrey Smith, BLM (Oct. 17, 2012) (including Exhibits A and B) (Big Triangle WC Submission) (attached). The BLM must consider this information before issuing leases 169 or 170.

The BLM has recently issued a new wilderness character inventory manual (Manual 6310) which contains new guidance not considered by the Moab Field Office for either the Big Triangle or Coyote Wash proposed wilderness. See BLM Manual 6310 – Conducting

Wilderness Characteristics Inventory on BLM Lands (Mar. 15, 2012), available at http://www.blm.gov/pgdata/etc/medialib/blm/wo/Information_Resources_Management/policy/blm_manual.Par.38337.File.dat/6310.pdf.

BLM's new manual states that "[r]egardless of past inventory, the BLM must maintain and update as necessary, its inventory of wilderness resources on public lands." BLM Manual 6310.06.A. The public identification of wilderness characteristics during a NEPA process, new information from the public regarding wilderness character, or a proposed project are all reasons for the BLM to consider updating its wilderness character inventory. *Id.* All of those factors are implicated here; the BLM must perform a wilderness character inventory of the Big Triangle and Coyote Wash areas before issuing leases which could ultimately compromise that wilderness character. Furthermore, BLM's manual provides new guidance—not previously available to either the Moab or Monticello field offices—regarding the method and manner of conducting a wilderness character review.

The BLM must defer parcels 169, 170, 199, 201, 246, 247, 248, 249, 250, 251, 252, 253, 254, and 255 until such time it is able to perform a wilderness character inventory for these areas.

Watershed Concerns

The BLM should remove parcel 42 because of its proximity with the Moab watershed. Because drilling could compromise water quality in this area, the BLM should remove this parcel from its proposed lease sale while it still retains full authority to do so.

BLM Must Take a Hard Look at the Impacts of Leasing on Air Quality

The BLM has not considered the effects of a decision to issue these seventeen leases on air quality or how air quality in the region is being impacted by ongoing, planned, and reasonably foreseeable development in the district.

In particular, the BLM must consider the cumulative impacts from the potential development of these lease parcels combined with vehicle travel on designated routes in the Moab and Monticello field offices. The BLM has never fully considered the impacts to air quality from the designation of travel plans in the Moab and Monticello field offices, nor the pollution that will be generated by authorized vehicle travel on those routes.

1. Air Quality Modeling and Off-Road Vehicle Routes

To accurately and fully understand the impact of off-road vehicle (ORV) travel on public lands the BLM must model the fugitive dust and tailpipe emissions produced by ORVs traveling on designated routes, and traveling in authorized cross country areas, as well as modeling fugitive dust and emission levels in closed areas for comparison. BLM must estimate the background levels, and must analyze the aggregate air quality impacts from increased ORV use on the thousands of miles of ORV routes in the various alternative scenarios in the RMP and Travel Plan in addition to the current level and likely increasing motor vehicle use (non-ORV use) on

roads and routes in the field office area. The BLM has never undertaken such analysis in either the Moab or Monticello field office.

Attached to these comments are excerpts from a recent draft environmental impact statement prepared by BLM's Price Field Office which demonstrates the type of analysis that the Moab and Monticello field offices must conduct. See Buys & Associates, Inc., *Near-Field Air Quality Technical Support Document for the West Tavaputs Plateau Oil and Gas Producing Region Environmental Impact Statement* in Appendix J – Air Quality Technical Support Document of the BLM, West Tavaputs Plateau Natural Gas Full Field Development Plan, Draft Environmental Impact Statement, UT-070-05-055 (Feb. 2008) (West Tavaputs Plateau or WTP DEIS) (excerpts attached).

The Federal Land Policy and Management Act (FLPMA) and its implementing regulations require the BLM to ensure that its designation of areas and routes as open to vehicular – particularly ORV – travel, complies with all applicable air quality standards; this requirement also applies now to leasing decisions since the cumulative impacts of oil and gas development in these areas combined with vehicle travel on designated routes and all other ongoing, planned, and reasonably foreseeable activity in the area could lead to violations of applicable air quality standards. See 43 C.F.R. § 2920.7(b)(3) (requiring that BLM “land use authorizations shall contain terms and conditions which shall ... [r]equire compliance with air ... quality standards established pursuant to applicable Federal or State law”) (emphasis added); see also 43 U.S.C. § 1712(c)(8) (requiring BLM in land use plans – which would therefore require implementation in daily management – to “provide for compliance with applicable pollution control laws, including State and Federal air ... pollution standards or implementation plans”). The Moab RMP also contains an affirmative commitment that all BLM and BLM-authorized activities will maintain air quality in the planning area within the air quality thresholds established by the State of Utah, specifically the Utah Ambient Air Quality Standards and the prevention of significant deterioration (PSD) limits. Moab RMP Record of Decision 52 (2008), available at http://www.blm.gov/pgdata/etc/medialib/blm/ut/moab/fo/rmp/rod_approved_rmp.Par.24543.File.dat/Moab%20Final%20Plan.pdf. These State of Utah air quality standards, both the ambient air quality standards and PSD limits, are the exact same standards as the corresponding national standards (the National Ambient Air Quality Standards (NAAQS) and national PSD limits).

NAAQS set allowable ambient maximums for various pollutants in order to protect human health and other secondary values. See 42 U.S.C. § 7409(b). Both PM_{2.5} and PM₁₀ – referring to particulate matter 2.5 and 10 microns in diameter or smaller, respectively – are pollutants subject to NAAQS. See 40 C.F.R. § 50.7 (establishing NAAQS for PM_{2.5}); 40 C.F.R. § 50.6 (establishing NAAQS for PM₁₀). Both short-term and long-term exposure to fine particles can lead to increased premature mortality, increased hospital admissions and emergency room visits, and the development of chronic respiratory disease. See National Ambient Air Quality Standards for Particulate Matter, 71 Fed. Reg. 2620, 2627-28 (Jan. 17, 2006).

In the WTP DEIS the BLM calculated the likely air quality impacts that would result from the travel of pickup trucks on unpaved roads and from the emissions of the truck engines. See WTP DEIS at App. J. Truck travel on unpaved roads creates significant amounts of fugitive dust, which results in high levels of both PM_{2.5} and PM₁₀. See *id.* at 3 of 12 and 12 of 12. In the WTP

DEIS modeling, fugitive dust from truck traffic on unpaved roads was projected to be the major pollutant during oil and gas development activities. *See id.* at 3 of 12. In an oil and gas project recently approved by the Vernal Field Office of the BLM, levels of PM_{2.5} – principally from fugitive dust emissions from truck traffic – were projected to be high enough to exceed NAAQS. *See Buys & Associates, Inc., Rock House Emissions Inventory for Enduring Resources' Saddletree Draw Leasing and Rock House Development Proposal, Final Environmental Assessment UT-080-07-671 (Dec. 2007) (excerpts attached).*¹

The excerpts from the air quality modeling performed for the WTP DEIS demonstrate that fugitive dust generation can be modeled as well as emissions for ORVs. The BLM must conduct similar modeling for ORV use on unpaved routes that is authorized by its travel plan as well as ORV cross country use and predictable unauthorized use. As with the WTP DEIS modeling, the BLM can calculate average distances driven; the formula for fugitive dust emissions, but without assuming any type of dust mitigation; the average emissions of a typical ORV; and the various other facets of a proper quantitative air quality model. Without performing such a quantitative analysis the BLM cannot know the full and accurate cumulative impacts of the potential oil and gas development on these proposed leases combined with its authorizations regarding ORV travel in the planning area and all other pollution generating activity in the region.

2. *The Moab and Monticello Field Offices Have Not Fully Analyzed Travel Plan-Related Pollution*

Among other things, the BLM has never inventoried the particulate matter pollution, differentiated for particulate matter 2.5 microns in diameter or smaller (PM_{2.5}) and for particulate matter ten microns in diameter or smaller (PM₁₀), which will be generated by fugitive dust from vehicles for anything but oil and gas development. An inventory of these pollutants is the necessary first step in evaluating how much pollution is being generated by vehicle travel on designated routes and in open areas in the Moab and Monticello field offices and then modeling to determine how that pollution is concentrating in the atmosphere. The existence of designated routes and travel of automobiles and ORVs on designated routes generates significant amounts of fugitive dust that negatively affects air quality in the region and will continue to do so into the foreseeable future. The BLM acknowledges that ORVs are significant contributors of fugitive dust. *See, e.g., Monticello Proposed RMP/Final Environmental Impact Statement 4-17; 3-13 (2008) (Monticello RMP) ("Most recreational visitors engage in motorized activities that are emission sources in addition to highway vehicles used for transportation.")*, available at http://www.blm.gov/pgdata/etc/medialib/blm/ut/monticello_fo/planning/rmp/frmp0.Par.35820.File.dat/RMP.pdf. Furthermore, as explained above, the BLM itself routinely attempts to estimate fugitive dust emissions from the passage of vehicles on unpaved roads in the context of oil and gas development. It then models these emissions to arrive at predicted ambient

¹ According to the emissions inventory accompanying the Rock House EA, the project operations will result in a 24-hour maximum average concentration contribution of 14.3 µg/m³. *See Rock House Emissions Inventory at 4 of 4.* Adding the maximum project impact of 14.3 µg/m³ to the estimated background level of 25 µg/m³ produces a concentration of 39.3 µg/m³ – a number well above the NAAQS limit of 35 µg/m³. *Id.*

concentrations of various pollutants. However, neither the Moab nor Monticello field offices have ever applied such analysis to motor vehicle travel connected to the BLM's authorization of its travel plans in the respective field offices. Without such analysis the BLM cannot know if its issuance of these seventeen leases, with their accompanying potential for oil and gas development, combined with other pollution generating activities in the region will comply with federal and state air quality standards so that it can know what impact they may have on human health, wildlife, vegetation, water bodies, and the climate.

The models for these other projects demonstrate that fugitive dust from vehicular travel on unpaved roads can create significant levels of ambient pollution. The levels of $PM_{2.5}$ predicted in the Rock House EA discussed above were so high that they exceeded NAAQS. It is likely that most of the predicted $PM_{2.5}$ was the result of fugitive dust generated by vehicular traffic. Furthermore, dirt roads and ORV routes may generate fugitive dust even when not being traveled by vehicles (e.g., by wind blown dust). Thus, it is vital that the BLM quantify all of the routes that it has designated, estimate the rate at which they will generate fugitive dust when not being traveled by vehicles, estimate the number of vehicles that will use each route, and the likely fugitive dust generation rate, and then model those figures to understand the true impacts of fugitive dust emissions to understand cumulative impacts in this matter.

To demonstrate the potential particulate matter pollution that could result from the travel of vehicles on unpaved roads, SUWA submits an emissions inventory prepared by Megan Williams – an air quality expert – which examines likely emissions from three routes in the Monticello planning area. See Megan Williams, Fugitive Dust Inventory – ORV Travel on Unpaved Routes (Oct. 3, 2008) (attached). This emissions inventory was developed using the EPA's guidance on estimating fugitive dust emissions from vehicle travel on unpaved roads and follows the instructions and recommendations that SUWA has set forth here. See *id.* These estimates indicate how BLM must inventory fugitive dust from those routes that it has designated in the Moab and Monticello field offices as available for vehicle travel. This inventory also demonstrates how severely inadequate BLM's current understanding of these pollutants is because of its failure to ever inventory fugitive dust from vehicle travel on designated routes and from the mere existence of routes, which are then susceptible to wind erosion.

The inventory prepared by Ms. Williams shows that estimated vehicle travel on one route in the Monticello Field Office, the Valley of the Gods scenic byway – some sixteen miles of unpaved road – could result in up to 5.6 tons per year of $PM_{2.5}$ and 55.8 tons per year for PM_{10} . Williams, Fugitive Dust Inventory. This single route alone surpasses the Monticello RMP's projected yearly emissions for PM_{10} (thirty-one tons per year) under the Monticello RMP. Monticello RMP at 4-29. It alone nearly matches the RMP's projections for $PM_{2.5}$ (seven tons per year) from all activities approved by RMP. *Id.* Ms. Williams projected emissions for two other routes. See Williams, Fugitive Dust Inventory. These two routes, combined, consist of thirty-eight miles of unpaved surface; they could contribute up to 51.2 tons per year of PM_{10} and 5.1 tons per year of $PM_{2.5}$. *Id.* In all, vehicle travel on the three routes analyzed by Ms. Williams could result in up to 107.0 tons per year of PM_{10} and 10.7 tons per year of $PM_{2.5}$ from fifty-four miles of unpaved routes. *Id.* These estimates are three times the projected PM_{10} emissions and nearly one and one-half the projected $PM_{2.5}$ emissions in the entire Monticello RMP. Compare *id.*, with

Monticello RMP at 4-29. Considering that the Monticello RMP designates 2,800 miles of unpaved routes in the planning area, it is certain that BLM emissions inventory substantially understates the true impacts from the travel plan-related activities permitted in this region. If one were to extrapolate these estimates to the full 2,800 miles of unpaved routes identified in the Monticello RMP then PM_{10} emissions would be approximately 5,548 tons per year and $PM_{2.5}$ emissions would be approximately 555 tons per year.

The Moab Field Office has designated 4,006 miles of dirt routes in its travel plan. It has never considered the fugitive dust emissions generated by vehicle travel on routes it has designated, as well as the fugitive dust generated by the existence of those routes. The Moab RMP estimates potential yearly emissions for $PM_{2.5}$ and PM_{10} from oil and gas activity, but not from travel plan-related activity. See, e.g., Moab Proposed RMP/Final Environmental Impact Statement 4-29 to -33 (2008) (Moab RMP), available at http://www.blm.gov/pgdata/etc/medialib/blm/ut/moab_fo/rmp/finaeis.Par.16274.File.dat/CompleteDocumentText.pdf. The Moab RMP then predicts that oil and gas activity in the field office will contribute 45 tons per year of $PM_{2.5}$ and 236 tons per year of PM_{10} . Extrapolating from Ms. Williams's results, the Moab Field Office could be experiencing up to tons per year 794 tons per year of $PM_{2.5}$ and 7,938 tons per year of PM_{10} from travel on designated routes. These figures dwarf the emission estimates performed by the BLM for oil and gas.

Since the BLM has never fully considered these pollutants, the BLM must now inventory likely fugitive dust emissions from the use of designated travel routes in the Moab and Monticello field offices, differentiated for PM_{10} and $PM_{2.5}$, in order to understand the true impacts combined with potential oil and gas development. In addition, BLM must then perform dispersion modeling to know how individuals, plants, and wildlife will be affected by these activities. Such analysis must take place now in order to ensure that BLM's authorizations will satisfy national and state air quality standards.

3. *The Uinta Basin Air Quality Study Does Not Constitute Adequate Cumulative Analysis*

The BLM may not rely on the Uinta Basin Air Quality Study (UBAQS) for cumulative impacts analysis. This study, which only modeled to up to year 2012, is deeply flawed, not a public document, and actually predicts ozone exceedances. Furthermore, it contains no analysis of vehicle travel on designated routes in the Moab Field Office. It was prepared by the oil and gas industry trade group formerly known as the Independent Petroleum Association of Mountain States, as opposed to the BLM. First, UBAQS only analyzed potential pollution total through 2012. It will provide absolutely no predictive value for the BLM by the time these leases are actually issued in 2013. Furthermore, UBAQS predicts that oil and gas development portions of the study area will actually lead to ozone exceedances (outside of the wintertime exceedances, which it ignored). See, e.g., Letter from David Garbett, SUWA, to Mike Stiewig, BLM (July 6, 2010) (containing excerpts from Environ, Uinta Basin Air Quality Study (UBAQS) TS-10, TS-28, TS-29 (June 30, 2009) (showing exceedances in the Vernal Field Office area based on 2006 meteorological data)) (attached).² Second, UBAQS does not include new monitored data from

² SUWA incorporates the comments of that letter here.

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 Ex. 2 of Letter from Garbett to Stiewig).³ Fourth, the Uinta Basin has also experienced several exceedances of NAAQS for fine particulates 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. UBAQS does not evaluate how development in these areas will relate to the proposed revisions to the ozone NAAQS likely to be released by the EPA. UBAQS is completely inadequate in terms of providing cumulative impacts analysis for the Moab Field Office for oil and gas impacts alone, setting aside impacts from vehicles using designated routes, something it completely ignores.

A federal court has already indicated that the Moab RMP lacks sufficient air quality analysis to support an oil and gas lease sale. See *Southern Utah Wilderness Alliance v. Allred*, 2009 WL 765882, 1:08cv2187 RMU (Jan. 17, 2009) (granting a temporary restraining order preventing the issuance of oil and gas leases from the Moab Field Office, among other places, because it was likely that the Moab RMP did not adequately consider impacts to this resource in the Moab RMP). These impacts must be analyzed before the BLM considers issuing any of these seventeen leases.

Stiles Report

Following Secretary Salazar's February 2009 withdrawal of a number of oil and gas lease parcels offered in the Moab Field Office in the December 2008 oil and gas lease sale, the Department of the Interior issued guidance related to oil and gas leasing. This withdrawal produced an initial report prepared by Deputy Secretary Hayes on the propriety of the December 2008 lease sale. Then the Interior Department released a more detailed report prepared by a team of BLM and Park Service staff regarding the December 2008 lease sale. The so-called "Stiles Report," named for the team leader Mark Stiles, contains a detailed discussion of the parcels that were withdrawn from the offer to lease from the December 2008 lease sale. Many of these parcels were located in the Moab Field Office. Although many of the concerns detailed in the Stiles Report are site specific, the procedural concerns provide guidance for the Moab Field Office now. The BLM has not followed all of the recommendations of the Stiles Report, it should defer these seventeen parcels until it fully complies with the recommendations of that report.

BLM Must Take a Hard Look at the Impacts of Leasing on Climate

The BLM has not considered the effects of a decision to issue these seventeen leases on climate change or how climate change will impact the resources related to the development of these leases in the Moab RMP. The Moab EA completely ignores this issue.

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

³ SUWA incorporates the criticisms of the EPA regarding that analysis here.

when undertaking long-range planning exercises” and also made clear that the requirements in Secretarial Order No. 3226 remain in effect. Order 3226, issued by then-Interior Secretary Bruce Babbitt, 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. The potential issuance of these seventeen leases and the potential oil and gas development that would ensue constitute the sort of activity on public lands where BLM must consider climate change. Whether this analysis should have taken place at the resource planning stage or the lease issuance stage, must undertake this analysis now. Until that analysis has been undertaken the BLM should not issue any of these seventeen leases.

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 did not adequately conduct any analysis of the effects of climate change in the Moab RMP nor did the agency consider the greenhouse gas contributions of reasonably foreseeable oil and gas development originating in these seventeen lease parcels in the Moab EA.

This climate change analysis must take place at the point of irreversible and irretrievable commitment. *See supra* (citing *Southern Utah Wilderness Alliance*, 159 IBLA at 240-43; *Friends of the Southeast’s Future*, 153 F.3d at 1063; *Pennaco Energy, Inc.*, 377 F.3d at 1159-61; *Union Oil Co.*, 102 IBLA at 189; *Conner*, 848 F.2d at 1448-51; *Peterson*, 717 F.2d at 1414). These seventeen oil and gas leases do not prohibit all surface use and therefore constitute an “irreversible and irretrievable commitment of resources.” *See supra*; *Peterson*, 717 F.2d at 1414.

The BLM has never considered 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), available at http://www.colorado.edu/admin/announcement_files/1649-uploaded/announcement-1649-4670.pdf; 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), available at http://esp.cr.usgs.gov/people/reynolds_pdfs/Neff_et_al_dust_deposition_Nature_Geosci_2008.pdf; SUWA, *Dust from BLM Lands in Utah Melting Snow in Colorado*, http://action.suwa.org/site/DocServer/DustonSnow_FactSheet.pdf?docID=9421. The BLM should analyze the potential impacts of all the surface disturbing activities that would be permitted in the leasing of the parcels offered in the February 2013 lease sale along with the potential impacts of ongoing and reasonably-foreseeable activities in the Moab and Monticello planning areas on the phenomenon 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. The methodology for inventorying dust generation described above could be applied to any activity that will cause fugitive dust (e.g.

mining, oil and gas development, grazing) in order to estimate total dust emissions. This information can be applied to this analysis as well.

BLM Has Not Complied with the Requirements of IM 2010-117

In addition to directing BLM to fully analyze an alternative that would protect wilderness characteristics, *see supra*, IM 2010-117 directs BLM to "take into account" several "other considerations" during its evaluation of lease sale parcels, including (1) whether non-mineral resource values outweigh mineral development values in "undeveloped areas." Because several of the sale parcels are located in "undeveloped areas" BLM must evaluate this consideration in the Moab EA. It has not done that here. The BLM knows how to perform such analysis and did in the Wyoming's High Desert District Office, which recently included a separate discussion for the IM's "other considerations" in a lease sale EA.

When evaluating lease parcels, BLM should determine whether "non-mineral resource values are greater than potential mineral development values" in "undeveloped areas." The parcels at issue here, are located in undeveloped areas.

Because these areas also have considerable "non-mineral resource values," such as inventoried wilderness characteristics, watershed, important recreation and scenic values, and cultural resource values, the BLM must evaluate and determine whether they are outweighed by potential mineral development values. The BLM has not performed this weighing. This determination "is a policy decision that is not dependent upon the economic values that may be assigned to competing resources." IM 2010-117, n.ix; *see also* 43 U.S.C. § 1702(c) (requiring BLM to give "consideration . . . to the relative values of the resources [of the public lands] and not necessarily to the combination of uses that will give the greatest economic return").

Visual Resource Inventory

The Moab Field Office did not update its visual resource inventory as part of the 2008 Moab RMP process. The BLM has been updating visual resource inventories for the field offices across the state, including the lands covered by these parcels. This updated information should have been included in determining whether existing visual resource management classes are correct and oil and gas leasing stipulations are adequate to protect visual resources. In the face of this new information, BLM should defer leasing on these seventeen parcels until it prepares a land use plan amendment to consider significant new information changing VRM categories. *See* 43 C.F.R. § 1610.5-5; *see also* BLM Handbook H1601-1 at 45 (Section VII.A) ("Plan amendments are most often prompted by the need to . . . consider significant new information from resource assessments, monitoring, or scientific studies that change land use plan decisions.").

Sincerely,

/s/ David Garbett

FROM SUWA 801-486-4233

(MON) DEC 17 2012 16:42/ST. 16:26/No. 7503091342 P 27

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FAX COVER SHEET

TO: Juan Palma, State Director, Bureau of Land Management, Utah State Office

FROM: Stephen Bloch

DATE: December 17, 2012

TOTAL PAGES (including cover page): 27

COMMENTS:

SUWA and Grand Canyon Trust protest re: the sale of 13 specified parcels at the BLM February 2013 oil and gas lease sale

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