



southern  
utah  
wilderness  
alliance

HAND DELIVERED

May 7, 2007

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

*Re: Protest of Bureau of Land Management's Notice of Competitive Oil and Gas Lease Sale Concerning 16 Parcels*

Greetings,

In accordance with 43 C.F.R. §§ 4.450-2 and 3120.1-3, the Southern Utah Wilderness Alliance, Red Rock Forests, and the Center for Water Advocacy (referred to collectively as "SUWA") hereby timely protest the May 22, 2007 offering, in Salt Lake City, Utah, of the following 16 parcels in the Cedar City, Salt Lake, Moab, Vernal, and Price field offices:

**Salt Lake field office: UT 0507-004, UT 0507-005, UT 0507-006**

**Cedar City field office: UT 0507-31, UT 0507-41, UT 0507-42, UT 0507-43, UT 0508-44 (5 parcels)**

**Price field office: UT 0507-067, UT 0507-068, UT 0507-74, UT 0507-75, UT 0507-76 (5 parcels)**

**Moab field office: UT 0507-76, UT 0507-77 (2 parcels)**

**Vernal field office: UT 0507-100 (1 parcel)**

As explained below, the Bureau of Land Management's (BLM's) decision to sell the 16 parcels at issue in this protest violates the National Environmental Policy Act, 42 U.S.C.

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§§ 4321 et seq. (NEPA), the National Historic Preservation Act, 16 U.S.C. §§ 470 et seq. (NHPA), and the regulations and policies that implement these laws.

SUWA requests that BLM withdraw these 16 lease parcels from sale until the agency has fully complied with NEPA and the NHPA. Alternatively, the agency could attach unconditional no-surface occupancy stipulations to each parcel and proceed with the sale of these parcels.

The grounds of this Protest are as follows:

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

**1. Inadequate Pre-Leasing NEPA Analysis: Failure to Adequately Consider the No-Leasing Alternative**

NEPA requires that the BLM prepare a pre-leasing NEPA document that fully considers and analyzes the no-leasing alternative before the agency engages in an irretrievable commitment of resources, i.e., the sale of non-no surface occupancy oil and gas leases. See Southern Utah Wilderness Alliance v. Norton, 457 F. Supp. 2d 1253, 1262-1264 (D. Utah 2006); Bob Marshall Alliance v. Hodel, 852 F.2d 1223, 1228-30 (9<sup>th</sup> Cir. 1988) (requiring full analysis of no-leasing alternative even if EIS not required); Montana Wilderness Ass'n. v. Fry, 310 F. Supp. 2d 1127, 1145-46 (D. Mont. 2004); Southern Utah Wilderness Alliance, 164 IBLA 118, 124 (2004) (quoting Pennaco Energy, Inc. v. U.S. Dep't of the Interior, 377 F.3d 1147, 1162 (10<sup>th</sup> Cir. 2004)). Importantly, BLM's pre-leasing analysis must be contained in its already completed NEPA analyses because, as the Interior Board of Land Appeals recognized in Southern Utah Wilderness Alliance, "DNAs are not themselves documents that may be tiered to NEPA documents, but are used to determine the sufficiency of previously issued NEPA documents." 164 IBLA at 123 (citing Pennaco, 377 F.3d at 1162).

The Cedar City DNA states that the 1976 Cedar City Oil and Gas Environmental Analysis Record (Cedar City EAR) “evaluated leasing and one alternative, to not allow leasing. . . . In 1986, the Record of Decision (ROD) for the CBGA RMP/EIS amended the [leasing] categories and lease stipulations established through the 1976 EAR.” Cedar City DNA at unpaginated 2. In short, the Cedar City field office is relying entirely on the Cedar City EAR for its alternative analysis and consideration of the no-leasing alternative. A review of the EAR, however, reveals that the “no-lease” alternative was summarily dismissed and was not, in fact, analyzed, considered, and evaluated. See Southern Utah Wilderness Alliance, 457 F. Supp. 2d at 1262-1264. The CBGA RMP/EIS contains no similar discussion or analysis of the no-leasing alternative. Rather, that document considered the “no-action” alternative which was a continuation of the leasing categories established in the Cedar City EAR. See CBGA PRMP/FEIS at 3-1 to 3-2 (discussion of no-action alternative: “The No Action alternative presents a continuation of present levels or systems of resource use and management. . . . Minerals: Existing oil and gas leasing categories would be retained.”). Similarly, the subsequent oil and gas NEPA analysis cited to in the Cedar City DNA – the Supplemental EA for Oil and Gas Leasing (1988) – did not analyze the no-leasing alternative, but simply carried forward the decisions made in the EAR that lands were available for leasing. Thus, BLM must defer leasing parcels UT 0507-31, UT 0507-41, UT 0507-42, UT 0507-43, UT 0508-44 until the agency prepares an adequate pre-leasing NEPA analysis.

Similarly, the Moab DNA cites to the Moab District 1976 EAR which allegedly “analyzed one alternative to not allow leasing.” See Moab DNA at 2-3. A review of that EAR, however, reveals that the “no-lease” alternative was summarily dismissed and was

not, in fact, analyzed, considered, and evaluated. See Southern Utah Wilderness Alliance, 457 F. Supp. 2d at 1262-1264. It is also clear from a review of the Grand RMP/EIS that BLM did not consider the no-leasing alternative during the RMP process, but rather only analyzed a range of alternatives from full production to no-action – the no-action alternative being continuation of the leasing categories established in the earlier EAR. See Grand DRMP/DEIS at 2-13 (“Continue present management for oil and gas under the category system described in Appendix R”).<sup>1</sup> In addition, the 1988 RMP Oil & Gas Supplemental environmental assessment – also cited in the Moab DNA – did not consider the no-leasing alternative. Thus, BLM must defer leasing parcels UT 0507-76, UT 0507-77 until the agency prepares an adequate pre-leasing NEPA analysis.

Likewise, the Salt Lake EAR, Price EAR, and Vernal EAR – relied upon by the Salt Lake, Price and Vernal field offices respectively for analysis of the no-leasing alternative, each failed to analyze, consider, and evaluate this alternative as required by NEPA. See Salt Lake DNA at 4 (citing Salt Lake District Oil & Gas EAR); Price DNA at 3 (citing Price District Oil & Gas EAR); Vernal DNA at 3 (citing Vernal EAR). Southern Utah Wilderness Alliance, 457 F. Supp. 2d at 1262-1264. Thus, BLM must defer leasing the following parcels until the agency prepares an adequate pre-leasing NEPA analysis: 0507-004, UT 0507-005, UT 0507-006, UT 0507-067, UT 0507-068, UT 0507-74, UT 0507-75, UT 0507-76, and UT 0507-100.

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<sup>1</sup> Appendix R to the Grand DEIS/DRMP merely lists the “Oil and Gas Category Stipulations.”

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

NEPA requires federal agencies to take a hard look at new information or circumstances concerning the environmental effects of a federal action even after an EA or an EIS has been prepared, and to supplement the existing environmental analyses if the new circumstances “raise[] significant new information relevant to environmental concerns.” Portland Audubon Soc’y v. Babbitt, 998 F.2d 705, 708-09 (9<sup>th</sup> Cir. 1993). Specifically, an “agency must be alert to new information that may alter the results of its original environmental analysis, and continue to take a ‘hard look’ at the environmental effects of [its] planned actions.” Friends of the Clearwater v. Dombeck, 222 F.3d 552, 557 (9<sup>th</sup> Cir. 2000). See Southern Utah Wilderness Alliance v. Norton, 457 F. Supp. 2d at 1264-69 (discussing supplemental NEPA requirement in the context of oil and gas leasing and concluding that BLM acted arbitrarily by proceeding with oil and gas lease sale without first preparing supplemental NEPA analyses). NEPA’s implementing regulations underscore an agency’s duty to be alert to, and to fully analyze, potentially significant new information. The regulations declare that an agency “shall prepare supplements to either draft or final environmental impact statements if . . . there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.” 40 C.F.R. § 1502.9(c)(1)(ii) (emphasis added).

As explained below, the Salt Lake and Cedar City field offices failed to take a hard look at new information and new circumstances that have come to light since BLM finalized the Box Elder EIS/RMP, the CBGA EIS/RMP, and subsequent oil and gas EAs.

See also Pennaco Energy, 377 F.3d at 1162 (explaining that DNAs determine whether “previously issued NEPA documents were sufficient to satisfy the ‘hard look’ standard,” and are not independent NEPA analyses); Southern Utah Wilderness Alliance, 457 F. Supp. 2d at 1255-56 (discussing DNAs). In addition, to the extent that the Salt Lake and Cedar City field offices took the required hard look, their conclusions that they need not prepare supplemental NEPA analyses was arbitrary and capricious.

a. *Sun Tunnels*

Lease parcel UT 0507-005 is located less than ¼ of a mile from the so-called “sun tunnels” in western Box Elder County. See Salt Lake DNA, Cultural Resources Report at unpaginated 2 (discussion of Box Elder County Group). In his report, Salt Lake field office archaeologist Laird Naylor acknowledges that the Sun Tunnels “may qualify as a Traditional Cultural Property [TCP]” and “[i]f so, it is possible that a well anywhere in the two adjacent tracks may cause an adverse effect.” Id. The Sun Tunnels are not mentioned in the Box Elder RMP/EIS and according to Mr. Naylor, to the extent that the Sun Tunnels may be considered a TCP and significant, that significance has attached in the intervening years since the RMP/EIS was completed. (Personal communication). In sum, this significant new information about the Sun Tunnels is not considered, analyzed, or even mentioned in the Box Elder RMP/EIS and thus BLM must defer leasing UT 0507-005 until the agency prepares a supplemental NEPA analysis.

b. *Parowan Gap Area*

The cultural resources report prepared by the Cedar City field office archaeologist for the February 2007 lease sale conclusively demonstrates that significant, new information about the importance of the Parowan Gap region (including surrounding

cairns) has only come to light in recent years, well after BLM finalized the CBGA EIS/RMP in 1984. See Cultural Resources Report for February, 2007 oil and gas lease sale (attached in Appendix D to Cedar City DNA) (attached hereto as Exhibit 1). The Cedar City field office archaeologist's Cultural Resources Report for the May 2007 sale is consistent with the February report, though the May report describes parcel UT 0507-031 in Little Salt Lake while acknowledging that this parcel is "set squarely in the east mouth of the [Parowan] gap, connecting Parowan and Cedar Valleys." See Cultural Resources Report for May 2007 oil and gas lease sale (attached to Cedar City DNA) at unpaginated 5. Keeping firmly in mind that lease sale DNAs are not new NEPA documents and that they are intended only to document that previously prepared NEPA analyses sufficiently analyzed, considered and evaluated the impacts of oil and gas leasing and development to a host of natural and cultural resources, a review of the Cedar City archaeologist's reports for the February and May 2007 sales makes clear that BLM must defer leasing parcel UT 0507-031.

For example, much of the Cedar City archaeologist's February 2007 report discusses the findings from a 1997 report – prepared 15 years after the CBGA EIS/RMP – and the previously undocumented importance of the Gap as an astronomical observatory. See February 2007 Cultural Resources Report at unpaginated 7-8 ("To return to the [1997] ACRON work, and as alluded to above, the most remarkable thing to come out of the effort was the concept of the Gap as an astronomical observatory. . . . Given that these agricultural people were using the Gap as a solar/lunar observatory, a whole 'Pandora's Box' of implications arise therefrom."). See also id. (describing increase in traffic related to the "pig farms" west of Minersville and the impacts that

traffic is having to the Gap and its resources). Perhaps most damning is the candid statement by the Cedar City archaeologist that “the National Register Property and the NSO area are tiny little things, and beyond question not large enough to address anyone’s concerns about the Gap.” *Id.* at 8 (emphasis added). Exacerbating the problem is that the CBGA EIS/RMP contains virtually no information about the Gap and its importance and only designates 17 acres as open for leasing but with no-surface occupancy stipulations. See *id.* at 6.

In short, the new and significant information contained in BLM’s own cultural resources report establishes that BLM must not offer parcel UT 0507-031, but rather must defer leasing until the agency prepares a supplemental NEPA analysis.

**B. Leasing the Contested Parcels Violates the NHPA<sup>2</sup>**

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

As Utah BLM has recognized for some time, the sale of an oil and gas lease is the point of “irreversible and irretrievable” commitment and is therefore an “undertaking” under the NHPA. See BLM Manual H-1624-1, Planning for Fluid Mineral Resources, Chapter I(B)(2); see also 36 C.F.R. § 800.16(y); Montana Wilderness Ass’n v. Fry, 310 F. Supp. 2d 1127, 1152-53 (D. Mont. 2004); Southern Utah Wilderness Alliance, 164 IBLA at 21-28. The NHPA’s implementing regulations further confirm that the

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<sup>2</sup> To the extent that BLM’s issued Instruction Memorandum 2005-003 Cultural Resources and Tribal Consultation for Fluid Mineral Leasing, Oct. 5, 2004, is inconsistent with the Interior Board of Land Appeals’ decision in Southern Utah Wilderness Alliance, 164 IBLA 1 (2004) and the recently issued decision in Southern Utah Wilderness Alliance, IBLA 2004-124 (2007), BLM must comply with the IBLA’s interpretation of the agency’s duties under the NHPA. See 43 C.F.R. § 4.1(b)(3).

“[t]ransfer, lease, or sale of property out of federal ownership and control without adequate and legally enforceable restrictions or conditions to ensure long-term preservation of the property’s historic significance” constitutes an “adverse effect” on historic properties. *Id.* § 800.5(a)(2)(vii) (emphasis added). See 65 Fed. Reg. 77689, 77720 (Dec. 12, 2000) (Protection of Historic Properties – Final Rule; Revision of Current Regulations) (discussing intent of § 800.5(a)(2)(iii)).

1. *Cedar City Field Office – Parowan Gap*

The Cedar City field office DNA and the office’s cultural resources report both assert a “no historic properties affected” determination for the sale of parcel UT 0507-031. This assertion is undercut by the field office archaeologist’s discussion in his February 2007 Report of the perceived necessary accommodation between oil and gas development and cultural resources protection that drove his analysis and review:

When the Gap vis-à-vis leasing became an obvious, surprisingly widely expressed concern the recent spate of oil and gas work, some 10,636 acres, in six big lease parcels were deferred. This may or may have been enough area to address all concerns, but it was obviously way too much to suit industry, particularly following the investment in the large seismic program focused squarely on the area. Thus, all of the parcels showed up again on the Feb. 06 [sic] maps.

Since the initial deferrals [in 2005], BLM has been working with the Native Americans – as well as industry – in an attempt to find a position acceptable to all.

Cedar City DNA, Appendix D, Cultural Resources Report for February, 2007 oil and gas lease sale at unpaginated 8 (emphasis added). Indeed, the archaeologist’s discussion about the potential effects from leasing is fundamentally incorrect because he attempts to bifurcate leasing from later development, though leasing without adequate consideration of indirect effects – and thus inadequate stipulations – opens the door for unanalyzed adverse effects.

Though the field office archaeologist has indicated that he believes leasing parcel UT 0507-031 would not directly impact historic properties, neither the DNA nor the archaeologist's February 2007 and May 2007 reports contains any discussion or explanation about the potentially significant indirect effects of oil and gas extraction and development to the Gap. See 36 C.F.R. § 800.5(a)(1) (defining adverse effect to include direct and indirect effects); id. § 800.5(a)(2)(v) (examples of adverse effects: "Introduction of visual, atmospheric, or audible elements that diminish the integrity of the property's significant historic features.").

2. *Vernal field office – Parcel UT 0507-100*

The Vernal field office archaeologist prepared a report analyzing the potential effects of leasing the parcels proposed to be offered for sale at the May 2007 lease sale and recommended an "adverse effect" finding for the sale of parcel UT 0507-100. See Vernal DNA, A Cultural Resource Evaluation & Comments Concerning the May, 2007 Oil & Gas Lease Sale in Duchesne & Uintah Counties, Utah, at 6. The field office archaeologist stated that a "no adverse effect" determination "may be achieved through a Class III inventory prior to leasing and/or issuance of a drilling permit . . ." Id. It is clear that the resources on this parcel (identified as having a "high site density") are unusually significant and deferral of parcel UT 0507-100 is thus appropriate.

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

BLM has further violated the NHPA by failing to adequately consult with members of the interested public such as SUWA regarding the effects of leasing all the protested parcels. Such consultation must take place before the BLM makes an irreversible and irretrievable commitment of resources – in other words before the May

2007 lease sale. See Southern Utah Wilderness Alliance, 164 IBLA 1 (2004). The NHPA requires BLM to “determine and document the area of potential effects, as defined in [36 C.F.R.] § 800.16(d),” identify historic properties, and to affirmatively seek out information from the SHPO, Native American tribes, consulting parties, and other individuals and organizations likely to have information or concerns about the undertaking’s potential effects on historic properties. 36 C.F.R. § 800.4(a). See Southern Utah Wilderness Alliance, 164 IBLA at 23-24 (quoting Montana Wilderness Ass’n, 310 F. Supp. 2d at 1152-53). The NHPA further states that BLM shall utilize the information gathered from the source listed above and in consultation with at a minimum the SHPO, Native American tribes, and consulting parties “identify historic properties within the area of potential affect.” Id. § 800.4(b). See id. § 800.04(b)(1) (discussing the “level of effort” required in the identification process as a “reasonable and good faith effort to carry out appropriate identification efforts”).

In particular, where SUWA was closely involved in BLM’s decisions in May 2005 and February 2007 to defer to leasing parcels near the Parowan Gap and recently requested consulting party status from BLM’s Cedar City office for the Parowan 2-D seismic project, it is simply inexplicable why BLM did not contact SUWA to discuss the instant leasing proposal.<sup>3</sup> Indeed, it is clear that BLM staff worked for some time with industry and Native American tribes to arrive at this “middle ground” proposal – and yet kept SUWA at arm’s length. This decision in no way meets the NHPA’s command – repeated in the Protocol – that the BLM “seek information” from organizations like

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<sup>3</sup> Moreover, it was SUWA who suggested that the field office archaeologist contact the Hopi Tribe regarding oil and gas leasing and development activities near the Parowan Gap – further evidence that BLM should have, but did not, consult with SUWA regarding this leasing proposal.

SUWA “likely to have knowledge of, or concerns with, historic properties in the area.” 36 C.F.R. § 800.4(a)(3) (emphasis added). See Protocol § IV.C (“BLM will seek and consider the views of the public when carrying out the actions under terms of this Protocol.”).<sup>4</sup>

As BLM’s DNA forms plainly state, the DNA process is an “internal decision process” and thus there is no opportunity for the public to participate in the identification of known eligible or potentially eligible historic properties. Permitting public participation only at the “protest stage,” or arguing that the time period for seeking public input ended when BLM completed its dated resource management plans, is not equivalent to encouraging participation in an open NEPA process, and BLM should withdraw the 16 parcels that are the subject of this protest.

3. *Failure to Adequately Consult with Native American Tribes – Salt Lake, Price, Moab and Vernal field offices*

As in the recent decision from the IBLA - Southern Utah Wilderness Alliance, IBLA 2004-124, the record here does not demonstrate that the Price, Moab, Salt Lake, or Vernal field offices adequately consulted with the Native American tribes. See Southern Utah Wilderness Alliance, IBLA 2004-124 at 12 (holding that BLM failed to meaningfully consult with Native American tribes). In short, the form letters that these offices sent to various tribes suffers from the same flaw that the IBLA recently held to be fatal to BLM’s consultation efforts. Thus, BLM must defer leasing the 16 parcels at issue here until the agency fully and adequately consult with Native American tribes.

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<sup>4</sup> Because the National Programmatic Agreement – which the Protocol is tiered from – was signed in 1997, well before the current NHPA regulations were put in place, it is questionable whether either document remains valid. This further reinforces the need for BLM to fully comply with the NHPA’s Section 106 process.

### **REQUEST FOR RELIEF**

SUWA requests the following appropriate relief: (1) the withdrawal of the 16 protested parcels from the May 22, 2007 Competitive Oil and Gas Lease Sale until such time as the agency has complied with NEPA and the NHPA or, in the alternative (2) withdrawal of the 16 protested parcels until such time as the BLM attaches unconditional no-surface occupancy stipulations to all protested parcels.

This protest is brought by and through the undersigned legal counsel on behalf of the Southern Utah Wilderness Alliance, Red Rock Forests, and the Center for Water Advocacy. Members and staff of these organizations reside, work, recreate, or regularly visit the areas to be impacted by the proposed lease sale and therefore have an interest in, and will be affected and impacted by, the proposed action.



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Attorney for Southern Utah Wilderness Alliance et al.

# **EXHIBIT 1**



## United States Department of the Interior

### BUREAU OF LAND MANAGEMENT

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In Reply Refer To:  
UT-042  
3100

#### Memorandum

To: Randy Trujillo, Associate FO Manager  
From: Gardiner Dalley, Archeologist  
Subject: Cultural Resources Report for February, 2007 oil and gas lease sale

#### Introduction

The basic purpose of this report is to surface, analyses, and deal with, in one way or another, the known and projected cultural resources over a large number of parcels, mainly in Iron County, as depicted on the project map entitled "February 2007 Oil and Gas Sale, CCFO Parcels - Draft Map." The map, based on files sent from Fluid Minerals, Utah State Office, shows parcels clustered in the hills of north-central Iron County, a long and narrow cluster in the Escalante Desert, a few parcels around Minersville in south-central Beaver Country, a few parcels in and near the northern end of the Parowan Valley, a set on the Three Peaks area northwest of Cedar City, and, very pertinent and central to this document, parcels on and around the Parowan Gap area.

The map, however, does not accurately depict the job at hand, and has, in my opinion, unnecessarily complicated - or at least muddled - the issue. Many of the parcels, in whole or in part, have come up before and are part of previous analyses. This is particularly true of the block in north-central Iron County, as well as a few in Parowan Valley and those around Minersville. In the main, these parcels were analyzed as parts of big offerings in August 2005 and August 2006. A parcel-by-parcel accounting was intended to be part of this report, but the parcels have been reconfigured and renumbered. I pretty much lost interest when I discovered that. Thus, anyone interested beyond the statement of previous analysis may consult our documents for the referenced sales.

Deferred in previous sales, the Three Peaks Parcels (64, 65, 66) are to be deferred again. Also, there is a tract in Buckskin Valley that has already been leased and will thus not be pursued. Interestingly, there is a little block of parcels at the extreme northeast end of the Parowan Valley that was not included in previous offerings. That will, of course, be dealt with here. Previously analyzed and/or deferred are various parcels containing and surrounding the petroglyphs of the Parowan Gap National

Register Property. Central to this particular document, the "Gap" will be accorded considerable attention in sections to follow.

With all of the "noise" off the table, then, what it comes down to is that this document will cover: (1) A mosaic of parcels in the Escalante Valley, all contained within a rectangular area 18 miles long by 7 miles wide; (2) Parcels 19,20,21,22 that occupy the northeast end of the Parowan Valley, and also run a couple of mile east into the foothills; (3) Relevant, freshly "un-deferred" parcels in the vicinity of Parowan Gap, including some proposed tailoring and new deferral requests. Yet again, this is a very important part of this analysis.

The documentation to follow, besides being done in view of numerous regulations and instructions, is firmly anchored in two complementary and converging sources of information. First, it represents a rather careful review of the Cedar City Field Office cultural resource files. These are extensive, current, contain both in-house and consultant work, and actually form the basis for the pertinent set of records in the office of the Utah SHPO. Secondly, the writer draws on over 30 years of experience working, as the Cedar District/Field Office Archeologist, with the local resources. Much of what is in the field office files is the direct result of his field work and analyses. Also, of course, it is done in view of the comments received from the Paiute Indian Tribe of Utah pursuant to an MOU with that particular entity. And, for this particular undertaking, input has been elicited from the Hopi, especially relevant to the Parowan Gap issues.

#### Units of Analysis, the "APE," and some General Considerations.

While it will be necessary to use a closer focus with some of our parcels in this undertaking, the "doing" of several of these lease sale documents has produced a very effective way of treating with the data that are surfaced in the records review. In the main, even though some are quite large, dealing with individual parcels has not proven to be either necessary or productive. What has worked very well has been to develop "clusters" or "blocks" of essentially contiguous parcels as our units of analysis. That way, it is possible to work with areas of similar topographic and environmental factors, and, to some extent, with similar results from previous work as per site densities, site types, cultural affiliations, etc.

In essence, the way the parcels come to us rather naturally leads to the block/cluster approach. That is exactly how the parcels lay, and the blocks generally occupy more or less coherent pieces of real estate, at the very least topographically. This worked extremely well for the large August 2005 offerings, particularly so as the four units we defined to work with fit nicely with some of our larger projects. It was also a life-saver for the very large (300,000 acre) August 2006 analysis, where we were able to compress 121 parcels into six very workable units that, while not showing quite the data base of the 05 units, lay in a nice complementary manner with the earlier undertaking. While the current effort is not nearly as large as the August 05 or 06 work, the Escalante Valley parcels - while a little spread out - work nicely as a unit for analysis; in fact, this is quite an excellent fit topographically. However, as noted above, the Parowan Gap area requires separate and problem-specific analysis, and the little cluster in northern Parowan Valley does not occupy enough area to be suitable for much generalization. One block is still a block, however, and will be effective for the Escalante Valley. And we will retain the concept for future sales, should they continue to be large.

Before addressing what we think we know about the resources of the units chosen for analysis, based on what we do actually know about projects, results, and various concerns, there are some factors and considerations - and caveats and parameters - more or less common to all that may effectively here be considered:

A. The APE. Simply put, the APE for this analysis coincides exactly with boundaries of the lease offerings, however they may be configured. In no instance have we seen the need to extend the blanket of the APE to include surrounding areas of known or inferred dense or highly sensitive or exceptional resource. For this particular job, it has been necessary to be more than a little "iffy" about the boundaries of Parowan Gap, but that is another matter. Extremely pertinent to the analysis, and as well noted here as anywhere (and it will be again) is that while it makes more work of the literature review, the size of the lease offerings, particularly in view of the nature of our local resource, greatly lessens the chances of resource defeating drilling on any one parcel. The great majority are in the range of 2000 acres, more than large enough to buffer most exceptional properties, or even our usually rather limited in extent, high-density areas.

B. Our data for the lease clusters and parcels are almost wholly derivative from project work over the past 30 years. On the one hand, this could be seen as providing somewhat random information; on the other, our projects are often in what might be seen in modeling as high probability (for the presence of prehistoric sites). So our data, very often, are weighted to the latter possibility - mainly pretty strongly, it is believed. That did not happen this time; quite the opposite, in fact, was true of the Escalante Valley parcels. Also, and of quite recent vintage, there is a fairly large corpus of information relevant to the astronomical implications of Parowan Gap, that, while ultimately derivative from project work, goes far beyond what is usual for such undertakings.

C. Other than Parowan Gap, treated with herein, and a few other localities, we do not control very many "sexy" sites in the field office area. Our Great Basin foragers provided a whole lot of "scatters" of various sorts, mainly reflecting transient hunting and gathering activities, and including not very inspiring flake and tool (sometimes) scatters - fairly often with ground stone, occasionally with features such as hearths, and sometimes - in the later periods - with ceramics. Such Fremont village sites as exist are almost exclusively on private land along the Parowan Front, and there are none of the big, based-on-stone structural sites that mark the Anasazi areas to the south and southeast. Rock art is certainly not uncommon, but major concentrations, such as the Gap, are. Sheltered sites (caves, rock overhangs) are not common at all, nor are major, long-term camps and the like. There are two big obsidian source areas to deal with. Located in the Mineral Mountains and in the vicinity of Modena, these have led to strong concentrations of sites reflecting the technology involved in tool stone procurement and the technology of stone tool production. While of considerable interest, our historic sites are quite limited in number, and most are located on patented land. The Escalante parcels could hold homesteads from the early portions of the 1900's - most of which were abandoned during the Depression.

This is not to infer, of course, that there is not a large and important archeological resource over the field office area. There most certainly is, although it may be more loved by archeologists and point hunters than by others. There are large numbers of sites, many of which can be tied to Archaic, Fremont, and Paiute occupations. There is

even a little material from the earlier, big-game hunting periods (Clovis, Folsom, etc.). Such sites as we have can often be tremendously data-rich, often more-so in the aggregate than individually, since many represent short-term, transient occupations. For the same reasons, they can also be extremely sensitive to even what might seem to be minor disturbances. A small Paiute station, perhaps even with the remains of a temporary shelter, can be lost in a heartbeat to any sort of machinery, and many - even very large - surficial scatters can lose much of their information potential to surface collecting of sensitive artifacts. Further, a great many of our ubiquitous scatters prove to be much more difficult to tease meaningful data from than is the case with substantial sites with stratification and well-defined features.

D. With the post-lease tools and options available for use in resource protection, it is the view taken here that it would take an awfully serious and very obvious conflict situation, involving extremely sensitive/dense/valuable resource, to suggest going to an "Adverse Effect" or even a "No Adverse Effect" determination at this juncture. There is the site-specific "clearance" opportunity at the APD stage, the Native Americans also get another cut at that level, there are standard stipulations in a drilling permit, and the following is to be included in each lease granted ) per WO IM 2005-003):

"This lease may be found to contain historic properties and/or resources protected under the National Historic Preservation Act (NHPA), American Indian Religious Freedom Act, American Indian Graves and Protection Act, E.O. 13007, or other statutes and executive orders. The BLM will not approve any ground-disturbing activities that may affect such properties or resources until it completes its obligation under applicable requirements of the NHPA and other authorities. The BLM may require modification to exploration or development proposals to protect properties, or disapprove any activity that is likely to result in adverse effects that cannot be successfully avoided, minimized, or mitigated.

E. In view of, and in conjunction with, the factors noted in D, above, it should be explicitly noted that our analyses here are based on the potential effects of siting one drill hole per lease parcel. To quantify, this is viewed to include, per our NOI standards, no more than 5 acres of disturbance for a single drill pad and necessary access. While we would at least raise the issue of further development potential in very sensitive/dense/highly valuable areas (Parowan Gap for instance - see following) - and perhaps recommend deferral - the basis of the effect determinations presented herein is the one-hole footprint (albeit that print to be from a foot that is "in-the-door"). Again, of course, the size of the lease offering is very much central here (see "A," above).

F. In view of the implications for associations with a Parowan Gap astronomical observatory, the Cedar City Field Office will insure that any and all consultants working in the vicinity of Parowan Gap, involved with energy-driven projects or not, are particularly sensitive to rock cairns, to the point that these features should be recorded as individual sites. This procedure was actually begun with the work in advance of the recent Parowan 2-D seismic program.

With the foregoing in view, then, here are considerations relevant to the areas requiring resource identification and analysis, as well as determinations of potential effects from oil and gas leasing.

1. The Escalante Valley Cluster. This unit includes 16 numbered parcels, including a few that are in 2 or 3 non-contiguous pieces. Because of ownership patterns, the parcels are somewhat scattered, but are contained in a big rectangular area about 7 by 18 miles in size. Most of the parcels are fairly large, generally well over a section, although a few are in the 80-acre range. As noted previously, parcel size is quite relevant, as at this juncture, BLM is only obligated to provide for one 5-acre drill site. With a generally not very dense resource over much of the field office area, this is one of the better tools available for resource protection, while at the same time providing for making as many parcels as possible available for leasing.

The parcels here are butted up against the east side of the Escalante Valley, at least over the northern 2/3 of the north-south run of the big tract, and extend to the west less than halfway across the big valley. On the south, the parcels extend from one side to the other of a little lobe of the valley, separated from the main structure by the north tongue of the Antelope Range. The western tier of parcels on the south area get into the foothills a little, while the bulk of the tract, particularly to the north, is on the valley floor. Had we seen a substantial difference in resource, we might have made the southern portion a separate tract, but there seemed no compelling reason to do so.

The review of the records for the area surfaced only a few projects of any substance, and almost no sites. Notable is that there are no big block inventory areas that did so well in providing substantial data for previous lease sale reportings. The only blocked-up areas, in fact, are a few 80 or so acre units used as samples to predict resource conflicts along some alternate IPP routes.

The major project for the area is the Kern River Pipeline(s) that runs northeast to southwest across the northern area. This is a good swath for a sample of the area, and it has worked well for us in that regard in other areas. Actually, it worked well here, too, as virtually no resource was surfaced. Several short seismic lines and a couple of road upgrades were likewise nonproductive of sites. We believe these projects are, in fact, quite nicely reflective of what is available as archeological resource in the bulk of the valley. We learned this lesson early-on, and have seen it proven time and again: there is very little prehistoric archeology on the valley floor - save where there is active sand, then it can be rather dense. Also it can be rather old. Early points and sites are reported from the dune areas in the valley, and some excavation was done in conjunction with the building of the IPP lines. The only other resource consistently seen by projects over some areas of the valley is the occasional homestead.

In short, then, there is very little concern over resource conflict on the parcels under our Escalante Valley grouping. Sites still could be encountered in a drilling program, but there should be plenty of room for shifts in placement. Standard procedures for APD clearances will insure that this is done, if necessary.

Northeast Parowan Valley. The parcels here not previously treated with (19,20,21,22) occupy about 5200 acre, 2/3 of which are on the gentle slopes to the valley floor, and the balance on the relatively steep foothill slopes at the base of the Hurricane Cliffs. The parcels are in part bounded by U-20 on the north, as well as by I-15 on the west.

For a relatively small area, there is a pretty good number of projects reported, including several of some size that offer a decent look at the local resource. Very telling are two block inventories, totaling about 3/4 of a section, located one each to the north and

south of Swayback Knoll. Not a single site was surfaced by this Class III work, which fits well with experience in most of the Parowan Valley where lower slopes and/or valley floor are involved (there are of course some marked but highly localized exceptions). Overlapping blocks at the intersection of I-15 and U-20, totaling about 120 acres show a couple of minor lithic scatters, but these are near the big Fremont Wash., which is known to support sites.

An inventory done in advance of upgrade work along U-20 surfaced several sites, a couple of some substance, along the last mile or so before Bone Hollow opens into the valley. There are springs in this area, and while the sites along the road have been given mitigation treatment, they are indicative of a decent density in what is probably a rather restricted area. In view of the U-20 work, a reconnaissance inventory about parallel to the highway - and a bit to the south - only surfaced two sites, but one, in a fairly high saddle, is as nice a Paiute locality as one could ask for. A couple of additional linear jobs on the upper portions of the easier slopes surfaced nothing.

Leasing in this area should pose no particular problems with cultural resources. As indicated, there are some sites on the foothill slopes, especially near the waters, but these could easily be accounted for - and avoided - in standard APD operations.

Parowan Gap. Parowan Gap has a rather checkered history relevant to recent oil and gas leasing. It has also figured prominently in the planning for and implementation of a very recent seismic program; which, in turn, has strongly influenced what is being presented herein relevant to leasing in the vicinity of the "Gap." Further, the Gap is widely known and has a lot of appeal to a number of groups: environmental, rock art aficionados, and the interested public at large. Finally, and of great importance, it is of major interest and concern to various Native American groups, often for reasons not easily grasped by those of us trying to afford protection and strike balances between various groups and interests. Perhaps a little history and definition would be in order, then.

In a locational/definitional frame, Parowan Gap has two quite specific but overlapping connotations - and it seems to be developing a couple more, perhaps not quite as precisely defined. First, and most commonly, reference is to a strong, very extensive and impressive, but highly localized concentration of petroglyphs in the striking little defile cutting thru the outcrop line right at the margin of Cedar Valley. This core area was designated as a National Register Property in 1975, and has been afforded some light development by BLM (fences, parking area, interpretive signing). Iron County has also done some fencing and debris clean-up along the road and the walking trails that run thru the petroglyph area. The area designated in the National Register nomination is rather small, on the order of only about 40 acres; even smaller, at 17 acres, is the "No Surface Occupancy" (NSO) designation placed on the Gap in the last planning round in the old Cedar District.. Where this number came from is unclear.

The second common reference to a "Gap" is to the ca. 3-mile-long, canyon-like pass thru the Red Hills that connects Parowan Valley to Cedar Valley. The petroglyph site/Register Property is at the extreme west end of this feature. This is a very easy passage and is in part an old water cut. With only a few feet rise in level, water (given that it is there in the first place) from the Little Salt Lake would run into the passage. A good, paved road runs from Parowan, thru the Gap(s), and connects with the Minersville highway about 2.5 miles west of the petroglyph concentration. Since the

development of the "pig farms" west of Minersville, this has been taking a lot of use - and is of some concern relevant to the petroglyph panels. While getting from one valley to another would not have been much of a stretch prehistorically - Gap or not, this, as noted is a very easy passage and the petroglyph concentration indicates great focus and importance - no doubt far beyond ease of travel. This concept is extremely central and important to the discussion here, and to what we do about the Gap vis-a-vis oil and gas leasing.

In 1997, an "ISTEA" contract was awarded to Garth Norman's ARCON consulting firm for inventory of the rock art and other resources of the Gap and production of a plan of development focused on the big petroglyph site. For context, excavation in a small, deep, badly vandalized rock shelter across from the big petroglyph concentration was also included. A really excellent job was done of documenting the rock art in the Gap, and the excavation was quite credible - showing Fremont and Paiute materials covering some excellent petroglyph panels. While a development plan was produced, including a recommendation for routing the road around the rock art site, it is in something of a limbo status due to contractual problems that need not be explored here.

What does need to be explored a bit, and this is probably as good a place as any, is what we know about the resources of the bigger gap, the National Register property aside. Actually, besides the rock art concentration, there is not a lot of tangible cultural resource known in and around the Gap, either size. There is the rockshelter, noted above, that has been partially excavated, there is a nice petroglyph panel on private land at the east end of the big gap, and there are some dinosaur print casts known for an area on the north side, again towards the east end of the pass. Norman's inventory, focused on the basin east of the Register site, surfaced only a few minor sites - lithic and ground stone scatters, but also a number of cairns thought to be integral to the use of the Gap as an astronomical observatory, as noted in more detail below. Also, the very recent "Parowan 2-D" seismic program ran lines out of Parowan Valley, across the Red Hills, and into Cedar Valley. Running close to the Register property on the north and south - with a cross-cutting line close on the east thru the little basin, these showed very few sites on the Cedar Valley side, very little thru the basin, but some nice localities thru the hills, as well as some exceptional Archaic scatters on the Little Salt Lake. All-in-all, however, the resources known for the gap(s) are neither dense nor exceptional, save, of course the big rock art site and whatever might be associated with that, obvious or not.

To return to the ARCON work, and as alluded to above, the most remarkable thing to come out of the effort was the concept of the Gap as an astronomical observatory. Such sites are being reported for the American Southwest, and are well known in central America. Two individuals, Garth Norman, the P.I. for the ISTEA project, and a colleague, Nal Morris, collaborated on the initial work, but have since "divided up the blankets," professionally, and gone their separate ways - but both still with great interest and focus on the Gap. Nal, in fact, in concert with Parowan City, presents a very interesting and entertaining program at the Gap at the time of the summer solstice, including viewing the setting of the sun from a cairn though to be prehistoric and deemed to be there for that exact purpose. Several other cairns through and surrounding the basin are presented as view points for other events of the solar calendar - solstice, equinox, and even "cross-quarter" events.

The interpretations offered by Norman and Morris relevant to use of the Gap as an observatory are both interesting and, from my limited perspective, very complex - including a great deal more than the calendric implications of the annual solstic show. I have neither the depth nor the interest to try to evaluate all of this. I do, however, take the stance that some of what they are saying fits exactly with the needs and capabilities of groups operating at the level of socio-cultural development evidenced for the Formative peoples - the "Fremont" - that occupied the valleys of the Parowan Front from ca. A.D. 500 to 1200 or so. Closely aligned culturally, at least, with the better known southwestern Anasazi groups, these people were residing in permanent villages supported by the practice of maize agriculture.

Given that these agricultural people were using the Gap as a solar/lunar observatory, a whole "Pandora's Box" of implications arise therefrom. These folk would not have gone out there simply to see what time in the cycle it was, and then returned home. There probably would have been all sorts of ceremonies, celebrations, supplications, healings, initiations, and who knows what all - probably run in part at a family/clan level, but also by part-time religious practitioners, probably something on the order of a "Shaman." While the focus of all this may have been on the "Gap" of concentrated rock art, it is virtually beyond question that a wider area was of great importance, also - some sort of sacred locale with strong socio/religious connotations, but no fenced boundaries.

And therein lies the rub in trying to decide what to do about the Gap vis-a-vis leasing for oil and gas exploration (and possible development), or any other sort of undertaking for that matter - leasing is simply the issue at hand. In very simple terms, what comes to the fore here is a rather vast difference in conceptualization of how the world should be viewed and divided up. The predominant Anglo culture wants things precisely defined and wholly tangible - nice tidy units with square corners, exact definitions, and strong concreteness. The Native American cultures bring to the table, to which they were invited via several recent pieces of legislation (and, we trust, some good will), a very different perspective that sees things in a more holistic, integrated manner, not as a great series of pigeonholes.

As noted above, the National Register Property and the NSO area are tiny little things, and beyond question not large enough to address anyone's concerns about the Gap. When the Gap vis-a-vis leasing became an obvious, surprisingly widely expressed concern in the recent spate of oil and gas work, some 10,636 acres, in six big lease parcels, were deferred. This may or may not have been enough area to address all concerns, but it was obviously way too much to suit industry, particularly following the investment in the large seismic program focused squarely on the area. Thus, all of the parcels showed up again on the Feb. 06 maps.

Since the initial deferrals, BLM has been working with the Native Americans - as well as industry - in an attempt to find a position acceptable to all. Traditionally, we have worked with the Paiutes on local matters (see the section on consultation, below). However, in part because of the apparent Fremont ties, a dialogue was opened with the Hopi, who have expressed great interest in the Gap and in having input on that and other matters. Of particularly interest, especially from BLM's perspective, was that the Hopi appeared amenable to having the Paiutes speak for them in at least some local cultural resource matters.

A meeting was planned for several months ago that would bring the Hopi, the Paiutes, and BLM together in Kanab to discuss various matters, particularly the Gap and the concept of the Paiutes carrying the consultation load for SW Utah. It proved difficult to get a date, however, and by the time one could be set - pretty much in an emergency mode - the major topic was Parowan Gap, oil and gas leasing, and future development implications. As a result of discussions at the meeting, BLM produced a map, actually based on a view shed study, but of course also focused on aliquot 40-acre sections, nice square corners and all. As this is being written, that map is in the hands of the Hopi and the Paiutes. We will get comments, but not before this report is due.

Native American comments, as well as those of industry could substantially change what we are proposing, as depicted on the enclosed maps, both large and small scale. Essentially this is simply a reconfiguration of the 6 previously deferred lease parcels surrounding the Gap area. Pieces have been carved from some of the parcels to create a new parcel some 1807 acres in size that takes in, of course, the Register property, but also the east basin and all of the observation cairns, and the "tail" running out the pass to the Little Salt Lake. We are herein asking for deferral of that construct - if favorably viewed by consulting parties - not just for the current offering, but also until we can conduct further NEPA analysis and can formalize something similar.

On a related matter, we are also asking again for deferral of a portion of the Parcel 53 segment on and around Black Point. The east portion of this piece may actually relate to Parowan Gap, but even if not, it is almost solid archeological site. There is a big rock art concentration on the face of the flow, a big lithic and ground stone scatter east of the long series of panels, scattered and smaller panels, and rock shelters, with and without rock art associations. It is doubtful that we could find a 5-acre piece on the tract not in direct conflict with some sort of archeology.

While the Gap is, and may continue to be, something of a knotty problem, there is no question that BLM can protect known, as well as yet undiscovered resources, from any and all impacts associated with projects of any sort, certainly including leasing - we are well set up to do that. Protecting things that we cannot see or identify, the "intangibles," may be a lot more difficult, and something in which we will require considerable help from others.

#### Native American Notification/Consultation.

Since March, 1999, the Cedar City Field Office, along with the Fillmore, Richfield, and St. George offices, have had in place a "Memorandum of Understanding Concerning Communication and Cooperation" with the Paiute Indian Tribe of Utah and the five bands that comprise the Tribe. While this document is more far-reaching in scope, very central is that BLM will notify the Tribe of any actions that might be of interest or concern to the Tribe, and further, that the Tribe will provide a written response indicating whether or not there are concerns, and if so, what these might be. Areas of concern are outlined in Appendix I to the document and of course include such things as leases and drilling and the like. The written response is to be, at least, a form letter with blocks to check, a comment section, and signature lines. The Tribe, as noted above, has been notified of the February lease offerings, as well as of our efforts to get a workable solution for Parowan Gap - they have not had time yet to respond specifically. They have, however, provided us with a letter (attached) expressing keen interest and concern over the Gap and surrounding areas.

relationship between the Tribe and the Cedar City Field Office, and we fully intend to continue in that vein. We believe that this arrangement is serving the needs and meeting the concerns of both the Tribe and the BLM, as well as protecting sensitive resources and localities. As outlined above, the Hopi have become involved in this particular exercise, and have expressed considerable interest in both the Gap and in continued input in cultural resource matters in this area - perhaps acting at times through the Paiute. Good things can come of this and we look forward to Hopi comments on the Gap proposal outlined above.

#### Effect Determinations and Utah SHPO Consultation.

This need not be a lengthy section, since it is believed that the information presented above provides a strong basis for our stance on the effects of this sort of undertaking, even with Parowan Gap in the mix and at this point not wholly accommodated. Especially this is true when taken in view of the nature and extent of the resources surfaced in the foregoing analyses, as well as the general characteristics of the field office resources.

The Cedar City Field Office, as are most similar units in the Utah BLM, is operating under a "Protocol" between the Utah SHPO and the BLM that was developed under the authority of a National Cultural Programmatic Agreement. The aim of developing the Utah agreement was to streamline and simplify, where possible, the requirements to "consult" with the SHPO on a large and varied scope and scale of "undertakings." The core purpose of the Protocol is to provide very specific operational guidance as to how to go about this.

There are many procedures and guidelines stipulated in the Protocol. Two we see as very pertinent in the oil and gas leasing realm. First, certain undertakings with certain levels of effect determinations require only documentation and "informational notification" to the SHPO, rather than formal consultation and comment soliciting. Such cases are to be forwarded on a quarterly basis, rather than individually as they occur. The SHPO usually favors us with a "concurrence" response, but may also comment - or simply time out. Secondly, for purposes of the Protocol, a determination of "No Historic Properties Affected" has been expanded to include "eligible sites present, but not affected."

Therefore, and again, in view of the foregoing analysis and documentation, the Cedar City Field Office is very comfortable with viewing the February 2007 lease offering as a "No Historic Properties Affected" action. However, because of the interest in Parowan Gap, and the potential sensitivity involved with that matter, BLM will follow another track with notification, that of soliciting the SHPO's comments. We are going to wait just a few days, however, to do this, hoping that we will receive comments from the Native Americans on the new Gap map. And we are going back to the "informational" way of doing SHPO business in future leasing undertakings, unless something else untoward shows up.

Gardiner F. Dalley  
Field Office Archeologist