



United States Department of the Interior



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DECISION

Southern Utah Wilderness Alliance : Protests of the Inclusion of Certain
425 East 100 South : Lease Parcels on the November 18, 2014
Salt Lake City, Utah 84111 : Competitive Oil and Gas Lease Sale

Protests Denied in Part, Granted in Part and Dismissed in Part

I. INTRODUCTION

As mandated by the Mineral Leasing Act (“MLA”), as amended, 30 U.S.C. § 226(b)(1)(A), the Bureau of Land Management (“BLM”) Utah holds competitive sales, on a quarterly basis, during which eligible federal lands are offered oil and gas leasing. However, in exercising its responsibilities under the MLA, BLM has been afforded broad discretion to determine which eligible lands are appropriate for oil and gas leasing. *See id.* §226(a). For the purposes of determining which lands are appropriate for oil and gas leasing, BLM Utah has developed a multi-step review process (“lease parcel review process”)¹, which it completes for every competitive oil and gas lease sale.

The BLM Utah conducted a lease parcel review process in order to identify and consider the potential impacts of issuing oil and gas leases for certain lands within the BLM’s Price and Vernal Field Offices (“FOs”) that had been nominated for inclusion at the competitive oil and gas lease sale scheduled for November 18, 2014 (“November 2014 Lease Sale”). This lease parcel review process, which was conducted in accordance with the National Environmental Policy Act (“NEPA”), 42 U.S.C. § 4321 *et seq.*, BLM Washington Office (“WO”) IM No. 2010-117, *Oil and Gas Leasing Reform – Land Use Planning and Lease Parcel Reviews*, and BLM Utah IM No. 2014-006, included, among other things, coordination and consultation with various

¹ A general overview of the lease parcel review process developed and currently utilized by BLM Utah is contained in BLM Utah Instruction Memorandum (“IM”) No. 2014-006, *Oil and Gas Leasing Program NEPA Procedures Pursuant to Leasing Reform*.

federal and state agencies, Native American Tribes and members of the public, on-site visits by BLM resource specialists to each of the parcels that BLM would eventually proposed to offer for lease, multiple opportunities for public involvement, and the preparation of an environmental assessment (“EA”) document by both the Price and Vernal FOs (together “the EAs”).

On August 15, 2014, BLM Utah posted a Notice of Competitive Oil and Gas Lease Sale (“NCLS”)² which identified the parcels of land that, based upon the lease parcel review process, BLM proposed to offer for oil and gas lease at the November 2014 Lease Sale.

The NCLS also provided public notice of a 30-day public protest period, which concluded on September 15, 2014, for the parcels proposed for lease in the NCLS. During that protest period, on September 15, 2014, BLM Utah received a letter whereby the Southern Utah Wilderness Alliance, Sierra Club, Grand Canyon Trust, Natural Resources Defense Council, and The Wilderness Society (collectively “SUWA”) jointly protested BLM’s proposal in the NCLS to offer for lease at the November 2014 Lease Sale the following parcels³ (“Protested Parcels”):

Price FO parcels:

UT1114 – 034 (UTU90733) and UT1114 – 035 (UTU90734)

Vernal FO parcels:

UT1114 – 050 (UTU90747), UT1114 – 051 (UTU90748), UT1114 – 107 (UTU90752), UT1114 – 109 (UTU90753), UT1114 – 110 (UTU90754), UT1114 – 112 (UTU90755), UT1114 – 113 (UTU90756), UT1114 – 114 (UTU90757), UT1114 – 116 (UTU90758), UT1114 – 118 (UTU90759), UT1114 – 119 (UTU90760), UT1114 – 121 (UTU90761), UT1114 – 124 (UTU90762), UT1114 – 126 (UTU90763), UT1114 – 132 (UTU90764), UT1114 – 133 (UTU90765), UT1114 – 134 (UTU90766), UT1114 – 135 (UTU90767), UT1114 – 137 (UTU90768), UT1114 – 163 (UTU90774), UT1114 – 173 (UTU90776), UT1114 – 195 (UTU90781), UT1114 – 196 (UTU90782), UT1114 – 214 (UTU90784), UT1114 – 216 (UTU90785), and UT1114 – 254 (UTU90788).

Following the conclusion of the 30-day public protest period, on October 6, 2014⁴, SUWA filed with BLM a second letter of protest for the November 2014 Lease Sale. This subsequently-filed protest letter included a stated purpose of providing supplemental information regarding

² Hard copies of the NCLS were posted in the BLM Utah State Office. Electronic copies were posted and are available online on the BLM Utah Oil and Gas Lease Sales website located at: http://www.blm.gov/ut/st/en/prog/energy/oil_and_gas/oil_and_gas_lease.html

³ At pg. 46 of its September 15, 2014, protest letter, SUWA also references parcel UT1114 –248 in its discussion of the November 2014 Lease Sale parcels protested. Parcel UT1114 –248 was deferred, in its entirety, from offering at November 2014 Lease Sale prior to the posting of the NCLS and, as such, the parcel was not proposed for lease in the NCLS. As parcel UT1114 –248 will not be offered for lease at the November 2014 Lease Sale, SUWA’s protest of that parcel is dismissed as moot.

⁴ October 6, 2014, is the date that BLM received a hard-copy of SUWA’s second protest letter by mail. An electronic copy of the same subsequent SUWA protest letter was sent by SUWA (Landon Newell, SUWA Staff Attorney) via electronic mail (“e-mail”) to BLM (Justin Abernathy) on October 3, 2014. The October 6, 2014, date is referenced herein because the NCLS states that protests may be submitted in hard-copy form by hand-delivery or mail or by fax, but e-mailed protests will not be considered.

assertions alleged to have been made in SUWA's protest letter of September 15, 2014. The SUWA protest letter received on October 6, 2014, also identified for protest two parcels, UT1114 – 174 (UTU90777) and UT1114 – 176 (UTU90778), that SUWA had not previously protested in its protest letter of September 15, 2014.

In protesting the offering of the Protest Parcels at the November 2014 Lease, SUWA has generally alleged that BLM's decision to offer the parcels at November 2014 Lease Sale violates NEPA, 42 U.S.C. § 4321 *et seq.*, the Federal Land Policy and Management Act ("FLPMA"), 43 U.S.C. § 1701 *et seq.*, the National Historic Preservation Act ("NHPA"), 16 U.S.C. § 470 *et seq.*, and various other allegedly applicable laws, and associated regulations and policies.

The multiple levels of review that comprise BLM Utah's lease parcel review process includes the review and response to substantive contentions asserted within protests filed pursuant to Notices of Competitive Oil and Gas Lease Sales and 43 CFR §§ 4.450-2 and 3120.1-3. Accordingly, descriptions of each substantive contention alleged in the protests of the November 2014 Lease Sale submitted by SUWA along with the corresponding BLM responses and decisions are provided below in sections II and III of this decision.

II. DECISIONS

Following a review of the letters in protest of the November 2014 Lease Sale submitted by SUWA, I have made the following decisions regarding those protests and the Protested Parcels:

- 1) The protest letter filed by SUWA on October 3, 2014, which included the first and only protests to the offering of parcels UT1114 – 174 (UTU90777) and UT1114 – 176 (UTU90778) at the November 2014 Lease Sale, is dismissed in its entirety. Parcels UT1114 – 174 (UTU90777) and UT1114 – 176 (UTU90778) will be offered for lease at the November 2014 Lease Sale as provided for in the NCLS and Errata⁵ to that NCLS issued by this office.
- 2) The protest filed by SUWA on September 15, 2014, is granted in part with respect to parcels UT1114 – 121 (UTU90761) and UT1114 – 126 (UTU90763) and those portions of parcel UT1114 – 051 (UTU90748), which have been deferred from offering for lease at the November 2014 Lease Sale. As identified in an Errata to the NCLS issued by this office, the entireties of parcels UT1114 – 121 (UTU90761) and UT1114 – 126 (UTU90763) and portions of parcel UT1114 – 051 (UTU90748) have been deferred from offering for lease at the November 2014 Lease Sale.
- 3) The protest filed by SUWA on September 15, 2014, is dismissed in part as moot with respect to parcels UT1114 – 118 (UTU90759) and UT1114 – 173 (UTU90776) and those portions of parcels UT1114 – 113 (UTU90756) and UT1114 – 195 (UTU90781), which have been deferred from offering for lease at the November 2014 Lease Sale. As identified in an Errata to the NCLS issued by this office, the entireties of parcels UT1114 – 118 (UTU90759) and UT1114 – 173 (UTU90776) and portions of parcels UT1114 – 113 (UTU90756) and UT1114 – 195 (UTU90781) have been deferred from offering at the November 2014 Lease

⁵ Hard copies of Errata to the NCLS are posted in the BLM Utah State Office. Electronic copies of Errata are also posted and available online on the BLM Utah Oil and Gas Lease Sales website located at: http://www.blm.gov/ut/st/en/prog/energy/oil_and_gas/oil_and_gas_lease.html

Sale for reasons other than those raised in the protest submitted by SUWA.

- 4) The protest filed by SUWA on September 15, 2014, is denied in part. With exceptions only as described in decision items 1) through 3) above, the protest of the November 2014 Lease Sale filed by SUWA on September 15, 2014, has been considered and denied in all regards. The Protested Parcels will be offered for lease at the November 2014 Lease Sale as provided for in the NCLS, with the exceptions as provided in decision items 1) through 3) above and Errata to the NCLS issued by this office.

As set forth in more detail below in section III, I have determined that offering the Protested Parcels and parcels UT1114 – 174 (UTU90777) and UT1114 – 176 (UTU90778) for lease at the November 2014 Lease Sale, as provided for in the NCLS, decision items 1) through 4) above and Errata issued on the NCLS by this office, will comply with the MLA, NEPA, FLPMA, NHPA, and all other applicable laws, regulations and policies.

III. SUWA PROTEST CONTENTIONS AND BLM RESPONSES

a. SUWA Protest Letter Received Outside of the Public Protest Period

Protest Contention: Despite its untimely filing, BLM must consider the protest letter submitted by SUWA outside of the public protest period. On October 6, 2014, BLM received what constituted a second letter protesting the November 2014 Lease Sale from SUWA. The initial protest letter submitted by SUWA for the November 2014 Lease Sale was received by BLM on September 15, 2014, the final day of the 30-day public protest period provided for in the NCLS.

The second protest letter submitted by SUWA indicated that its stated purpose was to provide “supplemental information” related to SUWA’s initial and timely-filed letter of protest for the November 2014 Lease Sale. More specifically, the second protest letter offered supplemental information related to white-tailed prairie dog, wilderness characteristic inventories and yellow-billed cuckoo.

The protest letter submitted by SUWA on October 6, 2014, also proposed to protest two parcels, UT1114 – 174 (UTU90777) and UT1114 – 176 (UTU90778), that SUWA had not previously protested in its protest letter of September 15, 2014.

The SUWA has alleged that, despite its untimely filing, BLM must consider its protest letter of October 6, 2014.

BLM Response: On August 15, 2014, BLM provided public notice of the parcels proposed for lease at the November 2014 Lease Sale by posting the NCLS. In addition to providing public notice regarding the proposed lease parcels, the NCLS also provided notice as to the specific requirements for filing protests of the parcels proposed for lease. In describing the requirements for filing a protest pursuant to 43 CFR 3120.1-3, the NCLS states “[W]e must receive a protest no later than 4:30 p.m. on September 15, 2014” and “[W]e will dismiss a late-filed protest.” Thus, as it is undisputed, and even acknowledged by SUWA in the subject protest letter, that SUWA’s second protest letter, which was received by BLM on October 6, 2014, had been “late-

filed”, that protest letter must be dismissed as such a determination is consciously called provided for in the NCLS.

The dismissal of SUWA’s untimely-filed November 2014 Lease Sale protest is also consistent with guidance provided by the Interior Board of Land Appeals (“IBLA”). For example, in *Lawrence v. Smart Trust*, 129 IBLA 351, 354 (1994), the Board held that BLM may dismiss a protest as untimely filed where the protest is received after the filing deadline and sufficient notice of the filing deadline has been given. As stated above, BLM provided notice of the protest filing requirements, including the September 15, 2014, filing deadline for the 30-day public protest period, when it posted the NCLS on August 15, 2014. Considering that the NCLS seemed to provide SUWA with sufficient notice to where it could file its initial protest letter on September 15, 2014, in full compliance with the protest filing requirements, it would be without logic to allege that the NCLS failed to provide sufficient notice of the protest filing requirements with respect to SUWA’s subsequently filed protest.

The determination by this office that the untimely nature of SUWA’s October 6, 2014, protest letter compels its formal dismissal should not, however, be extrapolated so as to suggest that BLM failed to consider the “supplemental information” presented in the untimely protest letter. To the contrary, BLM has considered the relevant aspects of the information presented as “supplemental information” in SUWA’s October 6, 2014, protest letter as part of the November 2014 Lease Sale lease parcel review process, which has included BLM’s evaluation of and responses to certain protest contentions asserted in SUWA’s September 15, 2014, protest letter.

For the reasons, and as discussed above, the protest letter submitted by SUWA, which BLM received on October 6, 2014, is dismissed on account of being untimely filed.

b. SUWA Protest Letter Received on September 15, 2014

i. Alleged Violations of the National Environmental Policy Act

In the protest letter it filed with BLM on September 15, 2014 (hereafter “protest”), SUWA has alleged that offering the Protested Parcels for lease at the November 2014 Lease Sale, as proposed in the NCLS, would violate NEPA because the EAs, which the Price and Vernal FOs prepared in anticipation of the November 2014 Lease Sale and upon which BLM based the leasing proposal contained in the NCLS, failed to adequately analyze the potential impacts of leasing and oil and gas development on yellow-billed cuckoo, carbon emissions (social cost of carbon), air quality, climate change, dust on snow, wilderness characteristics, Graham’s and White River beardtongue, visual resources, water quality/resources, wetlands and riparian areas, and cultural resources. In light of the aforementioned alleged NEPA deficiencies, SUWA calls for BLM to forego in offering the Protest Parcels for lease pending the completion of “satisfactory NEPA analysis.”

In addressing SUWA’s protest contentions associated with NEPA compliance, the discussion that follows begins with introductory remarks regarding general information and concepts applicable to all of the specific items/resources (e.g. yellow-billed cuckoo) for which SUWA’s protest has alleged a NEPA inadequacy. Following the introductory remarks, the specific

items/resources of alleged NEPA inadequacy will be individually addressed. It should also be noted that, while many of the specific items/resources for which SUWA has alleged a NEPA inadequacy are addressed in detail in this decision, BLM has also previously addressed most of the NEPA inadequacies alleged by SUWA in the EAs, the Final Environmental Impact Statements (“FEISs”), Records of Decision and Approved Resource Management Plans (“ROD/RMPs”) to which the EAs tier or incorporate by reference and through the application of protective lease stipulations and lease notices to the Protest Parcels.

The NEPA is essentially a procedural statute that is intended to insure “informed and well-considered” decisions. *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 435 U.S. 519, 558 (1978). Moreover, NEPA has been designed not for the purpose of elevating environmental concerns above others, but rather to insure that the decision-making processes employed by federal agencies includes a consideration of the environmental consequences associated with their decisions. *Baltimore Gas & Elec. Co. v. Natural Resources Defense Council, Inc.*, 462 U.S. 87, 97 (1983).

To insure that federal agency decisions are made with an understanding of the potential environmental consequences associated those decisions, NEPA imposes certain procedural requirements upon the way federal agencies consider and act upon proposed actions under their control. One of these procedural requirements involves the type of document that agencies must utilize when considering the environmental consequences of a proposed action. More specifically, in most instances, federal agencies consider the environmental consequences of a proposed action by preparing either an environmental impact statement (“EIS”), an EA or both.

Pursuant to section 102(2)(C) of NEPA, 42 U.S.C. § 4332(2)(C), federal agencies must consider the potential impacts of a proposed action in an EIS if it is a “major Federal action[s] significantly affecting the quality of the human environment.” *See also* 40 CFR § 1502.3. The NEPA, the statute itself, does not further define the term “major Federal action[s] significantly affecting the quality of the human environment,” but guidance regarding this term has been provided in the Council on Environmental Quality (“CEQ”) regulations implementing NEPA, 40 CFR Part 1500 to 1508, and, for BLM, in the BLM’s NEPA Handbook. *See* 40 CFR § 1508.27; *see also* BLM NEPA Handbook H-1790-1 § 7.3. Thus, an initial question for federal agencies considering a proposed action is whether that action is one that would “significantly affect”⁶ the “human environment”⁷ under NEPA. If it does, the agency must prepare an EIS. If the agency believes that the proposed action is unlikely to significantly impact the environment or if it uncertain as whether the action will have significant impacts, in most instances, the agency will prepare an EA. *See* 40 CFR §1501.4.

The preparation of an EA will typically lead to one of two determinations. One possible determination is that a proposed action is not likely to result in significant impacts to the environment, in which case a finding of no significant impacts (“FONSI”) may be prepared to document the rationale for that determination. The other potential determination from an EA is that a proposed action is likely to significantly impact the human environment, in which case the

⁶ The terms affect, effect and impact are used interchangeably and are considered synonymous by the CEQ regulations implementing NEPA. *See* 40 CFR § 1508.8.

⁷ The term “human environment” has been defined as a broad term that includes “the natural and physical environment and the relationship of people with that environment.” 40 CFR § 1508.14.

agency must prepare an EIS if it is to proceed in considering the proposed action.

In discussing significance determinations based upon EAs and the associated documentation requirements under NEPA, it is worthwhile to also discuss the concepts of “tiering” and “incorporation by reference.” These concepts, which are provided for in the CEQ regulations implementing NEPA, are designed to reduce redundant paperwork and analysis in the NEPA process. *See* 40 CFR §§ 1502.20 and 1502.2. To summarize generally, through the use of tiering or incorporation by reference, federal agencies need not repeat analysis and content that is already contained in another NEPA document previously prepared by that agency in order to comply with NEPA. An example of how incorporation by reference and tiering is relevant to the discussion of NEPA adequacy for the November 2014 Lease Sale can be found in *Wyoming Outdoor Council*, 173 IBLA 226 (2007). In *Wyoming Outdoor Council*, the Board held that a BLM decision to proceed with a proposed action based upon an EA tiered to a programmatic EIS will be upheld, as in compliance with section 102(2)(C) of NEPA, so long as the record demonstrates that BLM has considered all relevant matters of environmental concern, taken a “hard look” at the potential environmental impacts, and made a convincing case that no significant impact will result that was not already addressed in the EIS to which the EA is tiered or that any such impact will be reduced to insignificance by the adoption of appropriate mitigation measures. 173 IBLA at 235.

Much like the BLM decision in *Wyoming Outdoor Council* discussed above, the decision to offer the Protested Parcels for lease at the November 2014 Lease Sale was made following, and based upon, two levels of NEPA analysis, which consisted of broader, programmatic EISs and EAs with a more narrow scope. More specifically, the first level of NEPA analysis for the Protested Parcels occurred when the lands encompassed by those parcels was included in the project areas analyzed by the FEISs that were prepared for and relied upon by the Price and Vernal ROD/RMPs in designating the Protested Parcels as open to leasing and in identifying the protective measures, specifically the lease stipulations and lease notice, that should be applied to the Protested Parcels in order to mitigate the potential impacts of oil and gas development on other resource values. Next, the potential environmental impacts of leasing the Protested Parcels again underwent NEPA analysis, this time at a more site-specific level, with the preparation of the EAs that were prepared specifically for the November 2014 Lease Sale. Then, based upon the NEPA analysis in the FEISs and ROD/RMPs and the EAs, BLM made the decision to offer the Protested Parcels for lease at the November 2014 Lease Sale and it also decided what protective lease stipulations and lease notices should be applied to the parcels in order to adequately reduce or eliminate the potential impacts of leasing and development on other resources to non-significant levels.

As referenced above in discussing *Wyoming Outdoor Council*, NEPA requires that BLM take a “hard look” at the potential environmental impacts of its decisions. *Id.* To satisfy NEPA’s “hard look” requirement, BLM is required to consider the direct, indirect and cumulative impacts likely to result from an action. However, NEPA’s “hard look” requirement does not require that an EA include exhaustive discussion of impacts. Rather the EA must show that the agency consider relevant environmental questions of material significance and, in doing so, made an informed decision. *See e.g. Utah Shared Access Alliance v. United States Forest Service*, 288 F. 3d 1205, 1213 (10th Cir. 2002). Further, NEPA requires that agencies consider reasonably foreseeable impacts, but it does not require extensive consideration of impacts the likelihood of which are

speculative in nature. *See e.g. Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 356 (1989).

In a broader sense, BLM sought to meet NEPA's "hard look" requirement for the lands encompassed by the Proposed Parcels by preparing the applicable FEISs and ROD/RMPs for the Price and Vernal FOs. In conducting the lease parcel process, which included the preparation of the EAs, BLM's objective was to take a "hard look" at the likely environmental consequences specifically associated with offering the Protest Parcels for Lease. In addition to, and in conjunction with, the preparation of the EAs, in conducting the lease parcel review process for the November 2014 Lease Sale, BLM consulted with various federal and state agencies, Native American Tribes and members of the public and conducted on-site visits to each of the Protest Parcels in order to verify existing knowledge and identify any potential "significant new information" regarding the potential environmental impacts of leasing the Protest Parcels.

In taking a "hard look" at the potential environmental consequences of the November 2014 Lease Sale, BLM conducted its lease parcel review process with a consideration of the BLM's "phased approach" to oil and gas development. This "phased approach" begins with the preparation of RMPs, proceeds to the leasing stage analysis and culminates with the "Application for Permit to Drill" ("APD") stage. Under this "phased approach," it is not until the APD stage that surface disturbing oil and gas activities can be authorized and, in considering surface disturbance proposed in an APD, BLM may impose "conditions of approval" ("COAs") consistent with the standard lease terms, stipulations and notice applied to the lease in order to provide site-specific protection and mitigation. *See generally* 43 CFR Subpart 3160. Moreover, at the leasing stage, BLM does not yet know the location of, or even if, surface disturbing operations will be proposed on a lease. In light of the "phased approach" to oil and gas development, BLM conducted the lease parcel review process for the November 2014 Lease Sale in such a manner where the specific reasonably foreseeable impacts were considered and impacts that were merely speculative and/or devoid of specific details were considered qualitatively and/or with an understanding that subsequent site-specific environmental analysis would be required.

In protesting the Protested Parcels based upon alleged NEPA inadequacies, many of SUWA's individual bases for alleging NEPA inadequacy have taken the approach that BLM failed to meet NEPA's "hard look" requirement because it did not engage in more site-specific analysis. As set forth below, it has been determined that the level analysis utilized in the lease parcel review process, which includes the EAs, for the November 2014 Lease Sale, was in compliance with NEPA and BLM's "phased approach" to analyzing the environmental impacts of oil and gas development.

The discussion that follows will address the specific resources/items where SUWA has alleged NEPA inadequacies.

Protest Contention: BLM violated NEPA by failing to take a "hard look" at potential impact to yellow-billed cuckoo. SUWA has alleged that BLM failed to comply with the "hard look" requirement under NEPA because the EA prepared by the Vernal FO for the November 2014 Lease Sale (hereafter "Vernal EA"), DOI-BLM-UT-G010-2014-093-EA, does not discuss the decisions by the United State Fish and Wildlife Service ("USFWS) to designate proposed

critical habitat for and the list as threatened under the Endangered Species Act (“ESA”), 16 U.S.C. § 1531 et seq., the western population of the yellow-billed cuckoo. In light of these omissions, SUWA calls for the deferral of parcels UT1114 – 132 (UTU90764) and UT1114 – 163 (UTU90774) (hereafter “parcels 132 and 163”), which overlap with proposed critical habitat for yellow-billed cuckoo, as identified by USFWS.

BLM Response: As SUWA has alleged, the Vernal EA discusses neither the designation of proposed critical habitat nor the listing as threatened under the ESA of the yellow-billed cuckoo. However, this omission in the Vernal EA is easily explained by the fact that that decision to designate proposed critical habitat occurred on the same day that the NCLS and Vernal EA were posted (August 15, 2014) and the decision to list the yellow billed cuckoo occurred nearly two-months after the posting of the NCLS and the Vernal EA (October 2, 2014).

In its protest, SUWA has alleged that the aforementioned omissions in the Vernal EA represent “significant information” and BLM’s omission of this information represents a failure by BLM to take the “hard look” required by NEPA. For several reasons, which will be briefly addressed below, it has been determined that BLM’s lease parcel review process, and its consideration of the potential impacts to yellow-billed cuckoo specifically, complies with NEPA’s “hard look requirement.

First, it should be acknowledged that SUWA assertion that as to the occurrence of proposed critical habitat for yellow-billed cuckoo in parcels 132 and 163 is accurate. However, it should also be noted that areas of proposed critical habitat encompassed by the parcels constitute only very small portion of the entire areas of the parcels. The areas of proposed critical habitat in the parcels are located in the areas of the parcels abutting the Green River.

For the reason noted above, the Vernal EA does not specifically discuss the occurrence of proposed critical habitat for yellow-billed cuckoo within parcels 132 and 163; however, the Vernal EA does discuss and analyze the potential occurrence of yellow-billed cuckoo within parcels 132 and 163. Moreover, based upon the potential occurrence for the species within parcels 132 and 163, the Vernal EA and, as a result, the NCLS have applied lease notices for the protection of yellow-billed cuckoo to the parcels 132 and 163.

The lease notices for the protection of yellow-billed cuckoo were developed and determined to provide adequate protection during programmatic consultation with USFWS, which occurred in association with the preparation of the Vernal ROD/RMP. Moreover, as part of the lease parcel review process for the November 2014 Lease Sale, BLM informally consulted with USFWS and through this consultation it was determined that the yellow-billed cuckoo lease notices, along with other protections applied to the parcels, such as the no surface occupancy stipulations applied to protect riparian areas in the vicinity of the Green River, would provide adequate protection for the yellow-billed cuckoo.

Lastly, it should be noted that as a result of the listing of the yellow-billed cuckoo as threatened under the ESA, any subsequently proposed oil and gas operations for parcels 132 and 163 will be subject to more stringent requirements to ensure adequate protections are in place for the species. For example, pursuant to the standard lease terms (BLM Form 3100-11) all rights granted under the lease are subject to compliance with the specific provisions of the ESA, including the ESA’s

section 7, 16 U.S.C. § 1536, consultation provisions.

In its protest, SUWA asserts that BLM failed to meet NEPA's "hard look" requirement because the Vernal EA omits a discussion of the decision by USFWS to designate proposed critical habitat for the yellow-billed cuckoo, but in making this assertion SUWA has not adequately identified how this omission should substantively change the analysis by BLM, some of which is discussed above, regarding yellow-billed cuckoo.

For the reason set forth above, SUWA's protest contention that the BLM failed consider potential impacts to yellow-billed cuckoo in accordance with NEPA is denied.

Protest Contention: BLM violated NEPA by failing to consider the "social cost of carbon" and by failing to take a "hard look" at impacts to climate change and air quality.

During a 30-day public comment period held for drafts of the EAs prepared by the Price (hereafter "Price EA"), DOI-BLM-UT-G021-2014-029-EA, and Vernal FOs for the November 2014 Lease Sale, SUWA submitted comments requesting that BLM include in both EAs a utilization of the "social cost of carbon" formula. The "social cost of carbon" is a formula that was developed by the United States Environmental Protection Agency ("EPA") for the purpose of estimating the economic impacts of rulemaking decisions that increase or decrease carbon emissions. *See* EPA, The Social Cost of Carbon, <http://www.epa.gov/climatechange/EPAactivities/economics/scc.html>. Both the Price and Vernal FOs responded to SUWA's request by electing not to utilize the "social cost of carbon" formula in the subject EAs. In protest, SUWA has alleged that BLM's decision not to include the "social cost of carbon" formula in the analysis within the EAs results in a violation of NEPA.

SUWA also alleges that BLM's consideration in the EAs regarding the potential impacts to air quality and climate change as a result of leasing the Protested Parcels fail to satisfy NEPA's requirement to take a "hard look" at potential environmental consequences. In asserting these protest contentions, SUWA acknowledges that BLM addressed air quality and climate change impacts in the EAs, but, in general, alleges that BLM's failure to engage in quantitative impacts analyses for air quality and climate change issues is insufficient under NEPA.

BLM Response: As noted in the comments responses in both the Price and Vernal EAs, the "social cost carbon" was designed for use during formal rulemaking, not project decision-making actions such as the November 2014 Lease Sale. Further, SUWA's protest does not point to, nor is this office aware of, any law, regulation or directive that specifically calls for the use of the "social cost of carbon" formula in the NEPA analysis for projects such as the November 2014 Lease Sale. Nevertheless, SUWA has noted and BLM acknowledges that there are examples where the "social cost of carbon" formula has been utilized outside of the rulemaking context. For example, BLM Montana recently utilized the formula in its NEPA analysis for an oil and gas lease sale.

As previously noted, at present stage, the leasing stage, in the "phased approach" to oil and gas development employed by BLM, BLM does not yet know the location, the extent or the specific procedures or technologies that would be employed in oil and gas development operations that may occur as a result of issuing leases for the Protested Parcels. Nonetheless, the EAs addressed the possibility that leasing of the Protested Parcels would result in oil and gas development

activities, which, in turn, would result in adverse impacts upon air quality and the release of carbon dioxide and other greenhouse gases into the atmosphere which could have climate change impacts.

With respect to air quality specifically, the EAs note that, due to the uncertainties at the leasing stage, accurate quantitative computer modeling estimates as to potential air quality impacts are not possible at the leasing stage and, as such, the EAs analyses as to potential air quality impacts was qualitative in nature. In addition to qualitatively addressing the potential air quality impacts of leasing the Protested Parcels, both EAs explained when data would be available such that air quality impacts could be addressed quantitatively and that appropriate analysis, including dispersion modeling, would be conducted if and when specific oil and gas development projects are proposed. Additionally, both EAs applied air quality lease stipulations to all of the Protested Parcels in order to provide BLM with an avenue for mitigating future air quality impacts if and when an APD or oil and gas field development proposal is submitted for the Protested Parcels.

The EAs also note that uniformly accepted scientific methods for assessing the impacts of greenhouse gas emissions at a regional or local scale, and particularly at the relatively small scale of the November 2014 Lease Sale project, do not exist. Moreover, despite the examples of the use of the “social cost of carbon” formula outside of the rulemaking context, at the present time, there is still considerable debate within the federal government regarding the actual costs of carbon.

In light of the complete uncertainty as to the specific location, extent, methods and technologies that would be employed for the oil and gas development operations that may result from leasing the Protested Parcels, BLM had no choice but to leave more specific analysis regarding impacts to air quality, climate change and carbon emissions to such time when it considers specific APD and/or oil and gas field development proposals. While the EAs did generally discuss the potential for carbon emissions and impacts to air quality and climate change, an attempt to be more specific and quantitatively identify the potential impacts at the present stage was not employed because such an approach would be purely speculative and offer little value with respect to the informed decision making objectives of NEPA. As previously noted, NEPA requires that agencies consider reasonably foreseeable impacts, but it does not require extensive consideration of impacts the likelihood of which are speculative in nature. *See e.g. Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 356 (1989). As such, it has been determined that BLM’s decision not to utilize the “social cost of carbon” and its consideration of air quality and climate change impacts in the EAs comply with the requirements of NEPA.

For the reasons set forth above, SUWA’s protest contentions that BLM violated NEPA by failing to consider the social cost of carbon and by failing to take a “hard look” at the potential impacts to climate change and air quality in the EAs are denied.

Protest Contention: BLM’s failure to consider the impacts of dust on snow violates NEPA. SUWA alleges that BLM’s failure to address in the Vernal EA the potential contributions that the oil and gas development that may follow leasing of the Vernal FO Protest Parcels to “dust on snow” issues and the associated impacts to climate change and river flow volumes violates NEPA. SUWA references several “recent scientific articles” in describing “dust on snow” as soil disturbances caused by “activities such as energy development, off-road use and grazing” which

lead to early snowmelt in nearby mountains when the disturbed soils are transported to the mountains by windstorms. SUWA protest at 34 (citing to Jayne Belnap *et al*, *Dust in Low Elevation Lands: What Creates It and What Can We Do About It?*, Presentation, Colorado River District Seminar, Grand Junction, Colorado [September 18, 2009], available at: http://www.crwcd.org/media/uploads/2009_09_18_Belnar_Seminar.pdf).

BLM Response: SUWA’s protest describes the “dust on snow” issue as being caused by windblown soil disturbances which ultimately have climate change and river flow impacts. However, while SUWA references several “recent scientific articles” as evidence that “dust on snow” has the potential to impact to climate change and river flow volumes, it has not specifically identified a correlation between the occurrence of “dust on snow” and the November 2014 Lease Sale, or even oil and gas development activities in Utah.

The Vernal EA’s qualitative analysis of the air quality impacts that may result from leasing and subsequent development activities on the Protest Parcels includes considerations of the potential for surface disturbances to cause fugitive dusts emissions. The Vernal EA also addresses the application of dust abatement practices for the purpose of protecting and/or mitigation impacts to other resource values and, as stated above, climate change.

Despite the Vernal EA’s consideration of fugitive dust and climate change, issues which SUWA has identified as causes and impacts for “dust on snow,” SUWA, nonetheless, asserts that NEPA requires BLM to consider “dust on snow” as a discrete impact within the Vernal EA. Moreover, in alleging that BLM must consider “dust on snow” issues in the Vernal EA, SUWA’s protest also acknowledges that “there may not be a method for modeling dust on snow impacts at the present time.” SUWA protest at 35. Thus, and in other words, SUWA has asserted that NEPA requires BLM to specifically analyze a potential impact even though it is acknowledged that there is currently no scientific method available for analyzing said impact.

As was noted in the response above regarding climate change and air quality, NEPA does not require extensive consideration of impacts that are merely speculative in nature. *See e.g. Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 356 (1989). In light of the absence of a method for measuring and analyzing “dust on snow,” as well as the uncertainty at the present time as to the specific location, extent, methods and technologies that would be employed for oil and gas development operations that may result from leasing the Protested Parcels, it is clear that the “dust on snow” is speculative to warrant discrete analysis in the Vernal EA.

For the reasons discussed above, SUWA’s protest on the basis “dust on snow” considerations is denied.

Protest Contention: BLM failed to consider impacts to wilderness characteristics. Pursuant to section 201 of FLPMA, 43 U.S.C. §1711, BLM is required to maintain, on a continuing basis, an inventory of the public lands and their resources and other values, which includes wilderness characteristics. BLM Manual 6310, *Conducting Wilderness Characteristics Inventory on BLM Lands*, which was released in March 2012, constitutes the most current guidance on how BLM is

to fulfill its responsibility under FLPMA to maintain inventories as to the presence of wilderness characteristics on the public lands.

On July 14, 2014, during the public comment period held for a draft of the Vernal EA, SUWA submitted to BLM six wilderness characteristics inventory reports (“SUWA’s WC submissions”), which encompassed lands within the following Protested Parcel in the Vernal FO: UT1114 – 051 (UTU90748), UT1114 – 109 (UTU90753), UT1114 – 110 (UTU90754), UT1114 – 112 (UTU90755), UT1114 – 113 (UTU90756), UT1114 – 114 (UTU90757), UT1114 – 116 (UTU90758), UT1114 – 134 (UTU90766), UT1114 – 195 (UTU90781), UT1114 – 214 (UTU90784), and UT1114 – 216 (UTU90785).

A review by BLM of SUWA’s WC submissions revealed that, except for a portion of parcel UT1114 – 051 (UTU90748), all of the lands within the Protested Parcels that overlapped with SUWA’s WC submissions had previously been inventoried and determined not to possess wilderness characteristics by BLM. Following its initial review, BLM replied to SUWA’s WC submissions in Appendix E (Public Comments and Responses) of the Vernal EA by stating, in part, the following:

“BLM has preliminarily reviewed [SUWA’s WC submissions] and determined that all [of] the submitted inventories have been ... inventoried by the BLM....Given the onsite visits [to the Protested Parcels by BLM in March and April of 2014], the previous [BLM] inventories...it has been determined that [SUWA’s WC submissions] do not constitute significant new information.”

In its protest, SUWA alleges that BLM’s review of SUWA’s WC submissions, specifically BLM’s decisions not to re-inventory or update its inventories for the subject lands, was “arbitrary and capricious” and in violation of requirements under section 201 of FLPMA, 43 U.S.C. § 1711, and BLM Manual 6310 to maintain “on a continuing basis” an inventory of the public lands.

It is also alleged by SUWA that offering the Protested Parcels overlapping with SUWA’s WC submissions for lease would violate NEPA, because BLM’s review of SUWA’s WC submissions failed to take the requisite “hard look” at potential impacts to wilderness characteristics.

In addition, while it did not submit any wilderness characteristics inventory reports for any of the Protested Parcels in the Price FO, SUWA, nonetheless, alleges that it has provided “information demonstrating that the proposed action may impact wilderness characteristics” with respect to Price FO parcels UT1114 – 034 (UTU90733) and UT1114 – 035 (UTU90734) and, as a result, BLM must update existing inventories and/or re-inventory for wilderness characteristics pursuant to BLM Manual 6310 before parcels UT1114 – 034 (UTU90733) and UT1114 – 035 (UTU90734) may be offered for lease.

BLM Response: The lease parcel review process conducted by BLM for the November 2014 Lease Sale included reviews of the analyses and management decisions in the ROD/RMPs, and associated FEISs, for the Price and Vernal FOs, as well as reviews of all resource information

and data obtained by BLM following the issuance of the applicable ROD/RMPs, of relevance to the Protested Parcels. These reviews included examinations of all wilderness character inventory information relevant to the Protested Parcels. The lease parcel review process also included on-site visits conducted by BLM resource specialists, which included a wilderness specialist, to the Protested Parcels in March and April of 2014 in order to verify existing knowledge and data and identify any new information for the subject lands.

As noted in the EAs, during the lease parcel review process, BLM identified wilderness characteristics in several of the Protested Parcels, but none of the areas that BLM identified as possessing wilderness characteristics occur on lands encompassed by SUWA's WC submission.

While BLM's lease parcel review process did not identify wilderness characteristics within SUWA's WC submissions, it did identify lands within parcel UT1114 – 051 (UTU90748) that overlap with one of SUWA's WC submissions, specifically the "Currant Canyon" wilderness character inventory report submitted by SUWA, that had not been inventoried for the presence of wilderness characteristics by BLM. As a result of this discovery, BLM has decided to defer from offering for lease, pending additional review by BLM, the portions of parcel UT1114 – 051 (UTU90748) that overlap with SUWA's "Currant Canyon" wilderness character inventory submission. Thus, SUWA's protest is granted in part with respect to those portions of parcel UT1114 – 051 (UTU90748) that overlap with SUWA's WC submissions, which BLM has not inventoried for the presence of wilderness characteristics. The portions of parcel UT1114 – 051 (UTU90748) that have been deferred from offering at the November 2014 Lease Sale are identified in an Errata to the NCSL issued by this office.

Aside from aforementioned portions of parcel UT1114 – 051 (UTU90748), all other lands within the Protested Parcels that overlap with SUWA's WC submissions have been inventoried and identified as not possessing wilderness characteristics by BLM. To be more specific, BLM inventoried the lands that overlap both the Protested Parcels and SUWA's WC submissions, and determined that wilderness characteristics were not present, as a part of the following wilderness characteristics inventories: the Desolation Canyon Area inventory unit (approved by the authorized officer in 2007) included lands within parcel UT1114 – 134 (UTU90766); the Bad Lands Cliffs inventory unit (approved by the authorized officer in 2011) included lands within parcels UT1114 – 051 (UTU90748), UT1114 – 109 (UTU90753), UT1114 – 110 (UTU90754), UT1114 – 112 (UTU90755), UT1114 – 113 (UTU90756), UT1114 – 114 (UTU90757), and UT1114 – 116 (UTU90758); the White River Area inventory unit (approved by the authorized officer in 2007) included lands within parcels UT1114 – 195 (UTU90781), UT1114 – 214 (UTU90784), and UT1114 – 216 (UTU90785); the Evacuation Creek A inventory unit (approved by the authorized officer in 2011) included lands within parcel UT1114 – 214 (UTU90784); and the Gate 1 inventory unit (approved by the authorized officer in 2012) included lands within parcel UT1114 – 051 (UTU90748).

As stated above, BLM verified its previous determinations regarding the absence of wilderness characteristics on the lands within SUWA's WC submissions and the Protested Parcels when

BLM resource specialists, including a wilderness specialist, conducted on-site visits to each of the Protested Parcels in March and April of 2014. During those visits, no significant changes from the conditions identified in the previous BLM wilderness characteristics inventories were observed.

Despite the review by BLM of SUWA's WC submissions discussed above, SUWA, nonetheless, contends that BLM's review was insufficient because it did not perform an update or re-inventory of the lands purported to contain wilderness characteristics exactly as identified in SUWA's WC submissions. In taking this position, SUWA relies upon BLM Manual 6310 by stating that it "specifically states that BLM *will* update its wilderness characteristics inventory" any time the public submits wilderness characteristics information or identifies wilderness characteristics as an issue during the NEPA process. SUWA protest at 37. However, in making this contention, SUWA has inaccurately described the provisions in BLM Manual 6310 to which it refers. More specifically, the provisions of BLM Manual 6310, which SUWA has described as stating "BLM *will* update its wilderness characteristics inventory," in actuality provides that "BLM *will consider* whether to update a wilderness characteristics inventory." BLM Manual § 6310.06(A). Thus, it is obvious from the actual language in BLM Manual 6310 that BLM is only required to *consider* whether it would be appropriate to update an existing wilderness characteristics inventory or conduct a new inventory when it receives a wilderness characteristics inventory report from the public.

With respect to the November 2014 Lease Sale and SUWA's WC submissions, it is clear that BLM fulfilled the requirement under BLM Manual 6310 to *consider* SUWA's WC submissions. More specifically, considering BLM's prior inventory of the Protested Parcels and its review and responses (in the Vernal EA and with this decision) to SUWA's WC submissions during the lease parcel review process, the assertion that BLM failed, as a procedural matter, to fulfill its inventory responsibilities under section 201 of FLPMA and BLM Manual 6310 is clearly without merit.

In light of the preceding determination, it then follows that SUWA's protest contention on the basis of SUWA's WC submissions can only be viewed as difference in opinions regarding BLM's determination that the subject lands within the Protested Parcels do not possess wilderness characteristics. In instances of differing professional opinions, deference will typically be afforded to the professional judgment of BLM's resource specialists. *See, e.g., Utah Wilderness Association*, 86 IBLA 89, 90-91 (1985). Even without affording deference to the professional judgment of BLM's technical experts, SUWA's protest and SUWA's WC submissions would still seem to fall short of providing convincing evidence to overturn BLM's previous wilderness characteristics determinations. In general, SUWA's challenges to BLM's wilderness characteristics determinations consists of disagreements as to how boundaries for wilderness characteristics areas should be drawn and assertions that BLM did not actually inventory the lands it claims to have inventories. However, SUWA's challenges as to BLM's wilderness characteristics determinations would appear to be directly discredited by the BLM inventories and the verification of those inventories during site-visits discussed above. Thus, SUWA's protest contention under section 201 of FLPMA and BLM Manual 6310, to the extent

that it challenges the substantive wilderness character determinations by BLM, has also been determined to lack merit.

In light of the above determinations that BLM's review of SUWA's WC submissions complied with the requirements imposed by section 201 of FLPMA and BLM Manual 6310, SUWA's associated protest contention alleging that BLM's review of SUWA's WC submissions failed to take the requisite "hard look" under NEPA at potential impacts to wilderness characteristics is also denied. Clearly, by reviewing SUWA's WC submissions in manner that complied with FLPMA and BLM Manual 6310 and with its determination, based upon that review, to affirm its prior determination that the subject lands do not possess wilderness characteristics, BLM took the "hard look" at potential impacts to wilderness characteristics required by NEPA. Moreover, in light of the determination that wilderness characteristics are not present, it follows that significant impact to wilderness characteristics should not be expected to result from leasing of the Protest Parcels lands that overlap SUWA's WC submissions.

SUWA has also protested Price FO parcels UT1114 – 034 (UTU90733) and UT1114 – 035 (UTU90734) based upon wilderness character issues. More specifically, and as noted above, while it did not submit wilderness characteristics inventory reports pursuant to BLM Manual 6310 for any of the Protested Parcels in the Price FO, SUWA, nonetheless, alleges that it has provided "information demonstrating that the proposed action may impact wilderness characteristics" with respect to Price FO parcels UT1114 – 034 (UTU90733) and UT1114 – 035 (UTU90734) and, as a result, these parcels should be deferred from offering for lease at the November 2014 Lease Sale pending BLM's update of its wilderness characteristics inventories in accordance BLM Manual 6310. SUWA protest at 38.

As was the case in its protest of Vernal FO parcels based upon wilderness characteristics issues, SUWA also relies upon an incorrect interpretation of BLM Manual 6310 to supports its protest of Price FO parcels UT1114 – 034 (UTU90733) and UT1114 – 035 (UTU90734). More specifically, SUWA describes BLM Manual 6310 as requiring to BLM update its wilderness characteristics inventory any time the public submits wilderness characteristics information or identifies wilderness characteristics as an issue during the NEPA process. As previously stated, the inaccuracy of SUWA's interpretation is made evident simply by reading the actual language of BLM Manual 6310, which states, in part, "BLM will *consider* whether to update a wilderness characteristics inventory." BLM Manual § 6310.06(A). Clearly, BLM Manual 6310 requires BLM to *consider* whether it should update its existing wilderness characteristics inventories when it is receives a wilderness character inventory report from the public, but it does not impose, as SUWA suggests, an unconditional mandate that BLM update its wilderness character inventories.

However, before even addressing BLM's responsibilities under BLM Manual 6310 in instances where it has received wilderness character inventory information from the public, the nature of the wilderness characteristics information provided by SUWA for parcels UT1114 – 034 (UTU90733) and UT1114 – 035 (UTU90734) should first be discussed. First, as stated above, unlike with its protest of the Vernal FO parcels, SUWA did not submit a wilderness characteristics inventory report pursuant to BLM Manual 6310 for Price FO parcels UT1114 –

034 (UTU90733) and UT1114 – 035 (UTU90734). Instead, in protesting parcels UT1114 – 034 (UTU90733) and UT1114 – 035 (UTU90734), SUWA points to “information demonstrating that the proposed action may impact wilderness characteristics” that it alleges to have provided to the Price FO. SUWA protest at 38. However, SUWA’s protest does not include a detailed discussion regarding the specific “information demonstrating that the proposed action may impact wilderness characteristics” it alleges to have provided. Thus, even if it is assumed, as SUWA’s alleges, that BLM Manual 6310 requires BLM to update its wilderness characteristics inventories any time the public submits wilderness characteristics information, SUWA’s protest does not even identify specific wilderness characteristics information that has been submitted for parcels UT1114 – 034 (UTU90733) and UT1114 – 035 (UTU90734).

Even it is assumed that SUWA submitted specific wilderness characteristics information for parcels UT1114 – 034 (UTU90733) and UT1114 – 035 (UTU90734), it would appear that BLM fulfilled its requirement under BLM Manual 6310 to *consider* any such wilderness character information during the lease parcel review process. As identified in the Price EA, BLM previously inventoried the lands within parcel UT1114 – 035 (UTU90734), as part of the Price River wilderness inventory area, and determined that lands within the parcel did contain wilderness characteristics. However, after considering the wilderness characteristics present on the lands within parcel UT1114 – 035 (UTU90734), the Price FO ROD/RMP made the decision that the subject lands would not be managed for their wilderness values and the lands were designated for multiple-use, including oil and gas leasing. Aside from parcel UT1114 – 035 (UTU90734), the lease parcel review process conducted for the November 2014 Lease Sale did not identify wilderness characteristics in any other Price FO parcels, including parcel UT1114 – 034 (UTU90733). As with parcel UT1114 – 035 (UTU90734), the Price FO ROD/RMP decided that the land within parcel UT1114 – 034 (UTU90733) would not be managed for wilderness values and the subject lands within that parcel were also designated as available for oil and gas leasing by the Price FO ROD/RMP. On-site visits to parcel UT1114 – 034 (UTU90733) and UT1114 – 035 (UTU90734) by BLM staff in April 2014 verified existing knowledge regarding wilderness characteristics for the parcels. Clearly, BLM has considered wilderness characteristics with respect to parcels UT1114 – 034 (UTU90733) and UT1114 – 035 (UTU90734). Further, as SUWA’s protest fails to identify significant, or even specific, information with respect to wilderness characteristics for parcels UT1114 – 034 (UTU90733) and UT1114 – 035 (UTU90734) that BLM has not previously considered, SUWA’s protest of those parcels with respect to wilderness characteristics issues and requirements under FLPMA, BLM Manual 6310 and NEPA, are denied.

As set forth above, SUWA’s protest contentions based upon wilderness characteristics are denied for all of the Protested Parcels list above, except for those portions of parcel UT1114 – 051 (UTU90748) that have been deferred. With respect to the portions of parcel UT1114 – 051 (UTU90748) that have been deferred, SUWA’s protest is granted in part.

Protest Contention: BLM violated NEPA by failing to take a “hard look” at potential impacts to Graham’s beardtongue and White River beardtongue. SUWA has alleged that BLM failed to comply with the “hard look” requirement under NEPA because the prepared EA by the Vernal FO for the November 2014 Lease Sale does not adequately address certain conservation measures provided for in a conservation agreement (hereafter “Penstemon CA”) executed by BLM, USFWS, and others, in July 2014, for the conservation of the Graham’s

beardtongue (*Penstemon grahamii*) and White River beardtongue (*P. scariosus* var. *albifluvis*). Specifically, SUWA has protested parcels UT1114 – 121 (UTU90761), UT1114 – 126 (UTU90763), UT1114 – 214 (UTU90784), UT1114 – 248, and UT1114 – 254 (UTU90788), which SUWA has identified as overlapping with “conservation areas” identified within the Penstemon CA.

BLM Response: SUWA’s protest as to parcels UT1114 – 121 (UTU90761), and UT1114 – 126 (UTU90763) is granted. These parcels have been identified as encompassing lands within the “conservation areas” identified in the Penstemon CA. The BLM has decided to defer these parcels from offering at the November 2014 Lease Sale in order to ensure that the conservation team provided for under Penstemon CA has an opportunity to evaluate the proposed lease parcel lands in accordance with the objectives and provisions of the CA before a leasing decision is made.

SUWA’s protest contention with respect to parcels UT1114 – 248, and UT1114 – 254 (UTU90788) is dismissed as moot. Prior to the posting of the NCLS, parcel UT1114 – 248, in its entirety, and all portions of parcel UT1114 – 254 (UTU90788) that overlap with “conservation areas” identified in the Penstemon CA were deferred from offering at the November 2014 Lease Sale.

As SUWA has alleged, parcel UT1114 – 214 (UTU90784) also contain “conservation area” lands identified by the Penstemon CA. In its protest, SUWA has alleged that the Vernal EA fails to take the “hard look” required by NEPA because it does not adequately address certain conservation measures provided for in the Penstemon CA. For several reasons, which will be briefly addressed below, it has been determined that BLM’s lease parcel review process, and its consideration of the potential impacts to Graham’s beardtongue and White River beardtongue with respect to parcel UT1114 – 214 (UTU90784) specifically, are in compliance with NEPA.

First, it is clear that BLM considered the Penstemon CA as a part of the lease parcel review process because, as identified above, in consideration of the Penstemon CA, BLM elected to defer certain parcels and portions of parcels within the “conservation areas” identified by the Penstemon CA, including all of the parcels protested by SUWA pursuant to the Penstemon CA, except for parcel UT1114 – 214 (UTU90784). The BLM also addressed the potential for impacts to White River beardtongue in parcel in UT1114 – 214 (UTU90784) in Chapters 3 and 4 and Appendix E (Public Comments and Responses) of the Vernal EA.

The “conservation area” lands encompassed by the parcel UT1114 – 214 (UTU90784) constitute only very small portion of the entire area of the parcel. To be specific, the areas of “conservation area” lands within parcel UT1114 – 214 (UTU90784) are located in the areas of the parcels near the White River. As part of the lease parcel review process for the November 2014 Lease Sale, BLM informally consulted with USFWS and this consultation, in conjunction with the internal elements of BLM’s lease parcel review process, lead BLM to determine that parcel UT1114 – 214 (UTU90784) could be leased and developed in manner that is consistent with the conservation measures and objectives of the Penstemon CA. In particular, BLM considered the small area and specific location of the “conservation area” lands within parcel UT1114 – 214 (UTU90784), along with the protections that would be applied to the parcel, which include the ability, under the standard lease terms and 43 CFR 3101-1.2, to require that operations be

relocated by up to 200 meters and no surface occupancy stipulations applied to the areas of the parcel near the White River for the protection of riparian and other river related values, in arriving at the determination that leasing parcel UT1114 – 214 (UTU90784), as provided for in the NCLS, would include adequate protections for Graham’s beardtongue and White River beardtongue.

For the reasons discussed above, SUWA’s protest contention that the BLM failed to take a “hard look” at the potential impacts to Graham’s beardtongue and White River beardtongue for parcel UT1114 – 214 (UTU90784) is denied.

Protest Contention: BLM failed to consider significant new information related to visual resources. In 2011, after the issuance of the ROD/RMPs for the Price and Vernal FOs, BLM completed a visual resources inventory (“VRI”). SUWA has alleged that the 2011 VRI identified scenic qualities in portions of certain parcels that differ from the visual resource management (VRM) classes provided for under the Vernal ROD/RMP. SUWA asserts that the differences between the VRI and the VRM identified in the Vernal ROD/RMP constitute “significant new information” under NEPA, which would require preparation of an EIS.

BLM Response: The VRI is a snapshot in time of scenic quality in a particular area; it does not change an area’s VRM class under an RMP. The Vernal ROD/RMP VRM Classes are the management decisions for the Vernal Field Office’s visual resources. See map 16a of the Vernal RMP/ROD. Simply because of its completion subsequent to the Vernal ROD/RMP, the VRI constitutes “new information” with respect to the Vernal ROD/RMP and the associated FEIS, but SUWA has not provided convincing evidence that the VRI represents “significant” new information. As a part of the November 2014 Lease Sale lease parcel review process, the BLM considered the visual resources for each of the Protested Parcels and a visual resources lease stipulation has been applied to all of the parcels in order to provide for VRM class mitigation.

For the reasons set forth above, SUWA’s protest on the basis of visual resources is denied.

Protest Contention: BLM violated NEPA by failing to take a “hard look” at potential impacts to water quality/resources.

BLM Response: As documented in the EAs, leasing of the Protest Parcels would not, by itself, authorized oil and gas development operations that would result in impacts to water quality/resources. Nonetheless, it was assumed for analysis purposes during the lease parcel review process that one well would be drilled on each of the Protested Parcels. Consistent with BLM’s “phased approach” to oil and gas development, it was also assumed that before an oil or gas well could be drilled on any of the Protested Parcels an APD would have to be submitted. Further, any such APD would require that the proponent submit not only site specific reclamation plans, but site specific surface operating procedures. These surface operating procedures (“SOP”) will outline what the lease operator intends on doing in dealing with the surface environment that is utilized to get to the oil bearing zones on the subject leases. This SOP will have to address concerns with water amounts used, any mitigation towards storm water control, and overall reclamation for the proposed development locations. Since this action will acquire additional analysis at the site-specific level, any water quality concerns will be analyzed at that time and any such site-specific analysis will be documented in accordance with NEPA.

That analysis will also take into account the Utah Division of Water Quality's 2014 Integrated Report on the conditions of rivers, streams, lakes, and wetlands. This and other supporting documentation will be utilized to assess the site specific concerns that may exist for future actions proposed within the Protested Parcels. Site specific environmental concerns cannot be analyzed in great detail until a specific development proposal, with a specific location and SOP, is received on any of the leases. Furthermore, any development proposed on the Protested Parcels would be subject to the standard lease terms, the protective lease notices and stipulations identified in the EAs and the NCLS (including the river corridors, soils/slopes, and riparian/floodplains/water reserves stipulations), and all applicable laws, regulations, and onshore orders in existence at the time of lease issuance. The EAs anticipated that through BLM's "phased approach" to oil and gas development and the protections that are applied to the Protested Parcels, there would be adequate protection for water quality/resources at the site specific stage. For the reasons mentioned above, BLM analyzed potential water quality/resources at a level that was appropriate for the level of specificity available at the leasing stage and by doing so BLM met its requirement under NEPA to take a "hard look" at potential impacts to water quality/resources.

Based upon the considerations above, this protest contention is denied.

Protest Contention: BLM violated NEPA by failing to take a "hard look" at potential impacts to wetlands and riparian areas. SUWA has alleged that BLM failed to take a "hard look" at impacts to wetlands and riparian areas for the following Vernal FO Protested Parcels: UT1114 – 118 (UTU90759), UT1114 – 121 (UTU90761), UT1114 – 126 (UTU90763), UT1114 – 132 (UTU90764), UT1114 – 134 (UTU90766), UT1114 – 135 (UTU90767), UT1114 – 137 (UTU90768), UT1114 – 173 (UTU90776), UT1114 – 195 (UTU90781), UT1114 – 196 (UTU90782), UT1114 – 214 (UTU90784), and UT1114 – 216 (UTU90785).

BLM Response: SUWA's protest contention is dismissed as moot with respect to the following parcels, which have been deferred from offering at the November 2014 Lease Sale: UT1114 – 118 (UTU90759), UT1114 – 121 (UTU90761), UT1114 – 126 (UTU90763), and UT1114 – 173 (UTU90776).

For reasons discussed briefly below, SUWA's protest with respect parcels UT1114 – 132 (UTU90764), UT1114 – 134 (UTU90766), UT1114 – 135 (UTU90767), UT1114 – 137 (UTU90768), UT1114 – 195 (UTU90781), UT1114 – 196 (UTU90782), UT1114 – 214 (UTU90784), and UT1114 – 216 (UTU90785) on the basis BLM failed to take a "hard look" at impacts to wetlands and riparian areas is denied.

The Vernal ROD/RMP, and the associated FEIS, considered the potential impacts associated with oil and gas development to riparian and wetland areas and, as a result of this consideration, no surface occupancy stipulations for the protection of riparian/wetlands areas were developed and have been applied to parcels UT1114 – 132 (UTU90764), UT1114 – 134 (UTU90766), UT1114 – 135 (UTU90767), UT1114 – 195 (UTU90781), UT1114 – 196 (UTU90782), and UT1114 – 214 (UTU90784). Then, during the lease parcel review process for the November 2014 Lease Sale, BLM reviewed the adequacy, in light of existing conditions, of the protective measures provided for in the ROD/RMP for Vernal FO. These reviews included on-site visits conducted by BLM resource specialists to the Protested Parcels in March and April of 2014 in

order to verify existing knowledge and data and identify any new information for the subject lands. During these on-site significant changes from the conditions as provided for in the ROD/RMP were not identified for the Protested Parcels. In light of analysis and consideration for riparian and wetlands areas in the Vernal ROD/RMP and in preparation of the Vernal EA, it has been determined that BLM took the requisite “hard look” under NEPA at potential impacts to riparian and wetlands areas.

For the reason set forth above, this protest contention is denied.

Protest Contention: BLM failed to sufficiently analyze cultural resources in violation of NEPA and NHPA.

BLM Response: See response to this protest contention in section III(b)(ii) – Other Protest Contentions

ii. Other Protest Contentions

Protest Contention: BLM failed to analyze and prevent impacts to relevant and important values. In this protest contention, SUWA identifies lands within the Protested Parcels that overlap with areas that had been included within four proposed areas of critical environmental concern (“ACECs”), which were identified during the land use planning process for the Vernal ROD/RMP as possessing relevant and important values, but for which the Vernal ROD/RMP ultimately decided not to designate as ACECs. In their protest, SUWA asserts that BLM failed to analyze and prevent impacts to relevant and important values on certain lands where the Protested Parcels overlap with the aforementioned four proposed, but not designated, ACECs. The four proposed ACECs and the associated Protested Parcels identified by SUWA in this protest contention are as follows: Main Canyon proposed ACEC: parcel UT1114 – 173 (UTU90776); White River proposed ACEC: parcels UT1114 – 195 (UTU90781), UT1114 – 214 (UTU90784), and UT1114 – 216 (UTU90785); Four Mile Wash proposed ACEC: parcels UT1114 – 134 (UTU90766) and UT1114 – 137 (UTU90768); and Nine Mile Canyon Expansion proposed ACEC: parcel UT1114 – 126 (UTU90763).

BLM Response: This protest contention is dismissed as moot as it relates to the Main Canyon proposed ACEC and the Nine Mile Canyon Expansion proposed ACEC because parcels UT1114 – 173 (UTU90776) and UT1114 – 126 (UTU90763), respectively, have been deferred from the November 2014 Lease Sale.

For reasons that will be briefly addressed below, this protest contention is denied with respect to (the Four Mile Wash proposed ACEC) parcels UT1114 – 134 (UTU90766), UT1114 – 137 (UTU90768) and (the White River proposed ACEC) parcels UT1114 – 195 (UTU90781), UT1114 – 214 (UTU90784), and UT1114 – 216 (UTU90785).

The BLM is required to identify and consider areas that meet the criteria of “relevance” and “importance” for designation and protection as ACECs during the land use planning process. *See* 43 CFR §16107-2; *see also* 43 U.S.C. § 1712. The key to this requirement with respect to the protest contention at hand is that it is imposed during the land use planning process. With respect to both the Four Mile Wash and the White River proposed ACECs referenced in SUWA’s

protest, the Vernal ROD/RMP considered and elected not to manage the subject areas as ACECs. Further, for both proposed ACECs, the Vernal ROD/RMP explained its rationale for not designating the areas as ACECs, which includes explanations as to why BLM believed that the relevant and important values within the areas not designated as ACECs would be adequately protected by means other than ACEC designation. Vernal ROD/RMP at 35-43. In essence, if BLM were to uphold this particular protest contention, it would be a decision that disregards the management designation for the subject lands in the Vernal RMP, which included designating the lands as open to oil and gas leasing, that is made outside of the land use planning process. Such an approach would be in violation of BLM's mandate to establish land use plans and manage the public lands in manner that "conform[s] to the approved [land use] plan." 43 U.S.C. § 1712; 43 CFR § 1610.5-3. Clearly, it would not be justified for this office to take such an approach.

For the reason set forth above, this protest contention is denied.

Protest Contention: BLM failed to show compliance with federal air quality standards.

BLM Response: See response to protest contentions that BLM violated NEPA by failing to consider the "social cost of carbon" and by failing to take a "hard look" at impacts to climate change and air quality in section III(b)(i) above.

Protest Contention: BLM has not fulfilled commitments in the Gasco project FEIS/ROD.

BLM Response: In this protest contention, SUWA argues that "[t]he Vernal EA relies on the Gasco Final Environmental Impact Statement ("Gasco EIS") and Record of Decision ("ROD") for cumulative air quality analysis" and that because certain Protest Parcels evaluated are within the project area of the Gasco EIS "any flaws...[in the Gasco EIS] also infect the Vernal EA." SUWA protest at 13-14. This assertion by SUWA inaccurately describes the Vernal EA's use of the analysis in the Gasco EIS. Contrary to SUWA's protest contention, the Vernal EA merely refers to the Gasco EIS, along with the Greater Natural Buttes EIS, in its qualitative cumulative impacts analysis for air quality. The general purpose of this reference to the Gasco EIS was to consider the potential emissions of the November 2014 Lease Sale in comparison with other regional emissions. The Vernal EA and Gasco EIS each stand alone.

In addition to its attempt to draw correlations between alleged flaws in the Gasco EIS and the Vernal EA, SUWA asserts protest contentions for the Vernal EA on the basis of alleged failures by BLM in meeting certain obligation under the Gasco EIS/ROD. However, SUWA has not provided a convincing rationale as to why the Vernal EA should serve as a forum for objections to the implementation of the Gasco EIS/ROD. The Vernal EA and its consideration of certain parcels within the general Gasco EIS project area is not a component of the Gasco EIS and, as BLM has done with the Vernal EA, the November Lease Sale should be evaluated from a NEPA perspective independent from the Gasco EIS. With respect to the NEPA adequacy of the Vernal EA's air quality analysis, this issue has been addressed in the response to the protest contention that BLM violated NEPA by failing to consider the "social cost of carbon" and by failing to take a "hard look" at impacts to climate change and air quality in section III(b)(i) above.

For reason referenced above, this protest contention is denied.

Protest Contention: BLM failed to sufficiently analyze cultural resources in violation of NEPA and NHPA.

BLM Response: In order to identify and assess the potential impacts that leasing the subject November 2014 Lease Sale parcels might have on cultural resources, including historic properties that are listed or eligible for listing on the National Register of Historic Places pursuant to the NHPA, BLM cultural resources specialists reviewed and analyzed existing records for cultural resources within the areas of potential effects (“APEs”) for the November 2014 Lease Sale. These cultural resources records reviews and analyses indicated cultural resource densities that, when considered along with the protective measures applicable to each of the subject lease parcels (i.e. standard lease terms and lease notices and stipulations), lead BLM to determine that the issuance and subsequent development of the November 2014 Lease Sale parcels could occur without having significant adverse impacts upon cultural resources. With respect to those cultural resources eligible for protection under NHPA specifically, in accordance with NHPA and its implementing regulations at 36 CFR Part 800, the Price and Vernal FOs made determinations of “No Historic Properties Effected” and “No Adverse Effect” to historic properties, respectively, for the November 2014 Lease Sale.

In order to provide notice of and solicit additional information and consultation regarding its reviews and determinations as to the potential impacts to cultural resources that could result from the November 2014 Lease Sale, BLM sent letters to the Utah State Historic Preservation Office (“SHPO”) and potentially interested Native American Tribes.

In a letter dated May 14, 2014, SHPO provided its written concurrence for the Price FO’s determination of No Historic Properties Affected by the November 2014 Lease Sale. Likewise, on June 4, 2014, SHPO provided its written concurrence for the determination by the Vernal FO of No Adverse Effect to historic properties by the November 2014 Lease Sale.

The BLM took a “hard look” at the potential environmental impacts of the November 2014 Lease Sale upon cultural resources with a consideration of the BLM’s “phased approach” to oil and gas development. As noted, under this “phased approach,” it is not until the APD stage that surface disturbing oil and gas activities can be authorized and, in considering surface disturbances proposed in an APD, BLM may impose COAs consistent with the standard lease terms, stipulations and notice applied to the lease in order to provide site-specific protection and mitigation. *See generally* 43 CFR Subpart 3160. Furthermore, the following has been included as a formal stipulation on all of the Protested Parcels:

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, Native American Graves Protection and Repatriation Act, E.O. 13007, or other statutes and executive orders. The BLM will not approve any ground disturbing activities that may affect any such properties or resources until it completes its obligations under applicable requirements of the NHPA and other authorities. The BLM may require modification to exploration or development proposals to protect such properties, or disapprove any activity that is likely to result in adverse effects that cannot be successfully avoided, minimized or mitigated.

The NHPA is designed to ensure that federal agencies identify and consider historic properties in federal undertaking. *The Mandan, Hidatsa, and Arikara Nation*, 164 IBLA 343, 347 (2005) (“Mandan”). Further, the IBLA has endorsed the use of a phase approach to compliance with section 106 of the NHPA in circumstances where no surface-disturbing activity is to occur until

the section 106 process is complete. *See, e.g.* Southern Utah Wilderness Alliance, 177 IBLA 89, 98 (2009). In light of the actions of the Vernal and Price FO with to consider impacts to cultural resources associated with the November 2014 Lease Sale, it is clear that BLM has adequately considered potential impacts to cultural resources in compliance with NHPA and NEPA.

As set forth above, this protest contention is denied.

IV. CONCLUSION AND APPEAL RIGHTS

To the extent that SUWA has raised any allegations not specifically discussed herein, they have been considered and are found to be without merit.

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 C.F.R. Part 4 and Form 1842-1 (Enclosure 1). If an appeal is taken, the notice of appeal must be filed in this office (at the address shown on the enclosed Form) within 30 days from receipt of this decision. The appellant has the burden of showing that the decision appealed from is in error.

If you wish to file a petition for a stay pursuant to 43 C.F.R. Part 4, Subpart B § 4.21, during the time that your appeal is being reviewed by the Board, the petition must show sufficient justification based on the standards listed below. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulations, a petition for a stay of a decision pending appeal shall be evaluated based on the following standards:

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

Copies of the notice of appeal, petition for stay, and statement of reasons also must be submitted to the Office of the Regional Solicitor, Intermountain Region, 125 South State Street, Suite 6201, Salt Lake City, Utah 84138, at the same time the original documents are filed in this office. Please direct any questions regarding this decision to Justin Abernathy, Fluid Minerals Leasing Coordinator, at 801-539-4067.

/s/ Juan Palma

Juan Palma
State Director

Enclosure

1. Form 1842-1

cc: James Karkut, Office of the Solicitor, Intermountain Region,
125 South State Street, Suite 6201, Salt Lake City, UT 84138