

Page: 1 of 19 09/15/2014 02:00 PM TO:18015394237 FROM: Matthew Sandler
PHONE #3035795162

Recipient Information

To: Utah BLM
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Sent on: Monday, September 15 2014 at 4:58 PM EDT

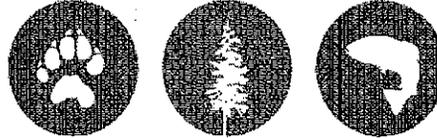
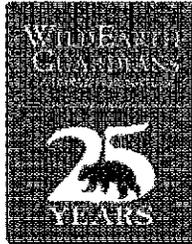
fax

See Attached Protest to the November 2014 Utah oil and gas lease sale.



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Page: 2 of 19 09/15/2014 02:00 PM TO:18015394237 FROM: Matthew Sandler
PHONE #3035795162



ROCKY MOUNTAIN WILD

Juan Palma
Bureau of Land Management
Utah State Office
PO Box 45155
Salt Lake City, Utah 84145

September 15, 2014



Re: Protest of the Bureau of Land Management's November 2014 Utah Notice of Competitive Oil and Gas Lease Sale of Parcels with High Conservation Value

Dear Director Palma:

In accordance with 43 C.F.R. §§ 4.450-2; 3120.1-3, Rocky Mountain Wild and WildEarth Guardians ("Protesting Parties") protest the November 18, 2014 sale of the following parcels.

I. Protested Parcels

UTU90741	White Tailed Prairie Dog Area
UTU90752	Uinta Basin Hookless Cactus
UTU90753	Uinta Basin Hookless Cactus
UTU90755	Uinta Basin Hookless Cactus
UTU90756	Uinta Basin Hookless Cactus, Sage-Grouse PPH
UTU90757	Uinta Basin Hookless Cactus
UTU90758	Uinta Basin Hookless Cactus, ACEC
UTU90759	Uinta Basin Hookless Cactus, ACEC
UTU90760	Uinta Basin Hookless Cactus
UTU90761	Uinta Basin Hookless Cactus, ACEC
UTU90762	Graham's Penstemon, Uinta Basin Hookless Cactus
UTU90763	Graham's Penstemon, Uinta Basin Hookless Cactus, ACEC
UTU90764	Graham's Penstemon, Uinta Basin Hookless Cactus, Pariette Cactus
UTU90765	White-Tailed Prairie Dog, Uinta Basin Hookless and Pariette Cactus
UTU90766	Graham's Penstemon, Uinta Basin Hookless Cactus, ACEC
UTU90767	Graham's Penstemon, Uinta Basin Hookless Cactus, ACEC
UTU90768	Graham's Penstemon, Uinta Basin Hookless Cactus
UTU90769	Uinta Basin Hookless Cactus

Page: 3 of 19 09/15/2014 02:00 PM TO:18015394237 FROM: Matthew Sandler
PHONE #3035795162

UTU90771	Uinta Basin Hookless Cactus, White River Penstemon
UTU90772	Graham's Penstemon
UTU90773	Graham's Penstemon
UTU90775	Graham's Penstemon, White-River Penstemon
UTU90779	White-Tailed Prairie Dog
UTU90780	White-Tailed Prairie Dog
UTU90781	Graham's Penstemon, White-River Penstemon
UTU90783	White-Tailed Prairie Dog
UTU90784	White-River Penstemon
UTU90785	White-River Penstemon
UTU90786	Graham's Penstemon, White-River Penstemon
UTU90787	Graham's Penstemon, White-River Penstemon
UTU90788	Graham's Penstemon, White-River Penstemon

II. Protesting Parties

Rocky Mountain Wild is a non-profit environmental organization based in Denver, Colorado, that works to conserve and recover the native species and ecosystems of the Greater Southern Rockies using the best available science. RMW was formed in July 2011 by the merging of two organizations, Center for Native Ecosystems ("CNE") and Colorado Wild, and is the legal successor to both parties. Colorado Wild has worked for over a decade to protect, preserve, and restore the native plants and animals of the Southern Rocky Mountains.

Both CNE and Colorado Wild have a well-established history of participation in Bureau of Land Management ("BLM") planning and management activities, including participation in Colorado BLM oil and gas leasing decisions and the planning processes for the various Colorado BLM Field Offices ("FO"). RMW continues the work of each organization to save endangered species and preserve landscapes and critical ecosystems. It achieves these goals by working with biologists and landowners, utilizing GIS technology to promote understanding of complex land-use issues, and monitoring government agencies whose actions affect endangered and threatened species. Its members include approximately 1200 outdoor enthusiasts, wildlife conservationists, scientists, and concerned citizens across the country.

RMW's staff and members visit, recreate on, and use lands on or near the parcels proposed for leasing. Our staff and members enjoy various activities on or near land proposed for leasing, including viewing and studying rare and imperiled wildlife and native ecosystems, hiking, camping, taking photographs, and experiencing solitude. Our staff and members plan to return to the subject lands in the future to engage in these activities, and to observe and monitor rare and imperiled species and native ecosystems. We are collectively committed to ensuring that federal agencies properly manage rare and imperiled species and native ecosystems. Members and professional staff of RMW are conducting research and advocacy to protect the populations and habitat of rare and imperiled species discussed herein. RMW has worked to protect the lesser prairie-chicken. We advocate for Endangered Species Act protection, strong agency regulations, public awareness, and protection of habitat. Our members and staff value the important role that areas of high conservation value should play in safeguarding rare and imperiled species and natural communities, and other unique resources on public land.

Our members' interests in rare and imperiled species and ecosystems on BLM lands will be adversely affected if the sale of these parcels proceeds as proposed. Oil and gas leasing and subsequent mineral development on the protested parcels, if approved without response to public comments made under the National Environmental Policy Act ("NEPA"), consultation required by

Page: 4 of 19 09/15/2014 02:00 PM TO:18015394237 FROM: Matthew Sandler
PHONE #3035795162

the Endangered Species Act ("ESA"), and appropriate safeguards to minimize negative impacts, is likely to result in a greatly increased risk of significant harm to rare and imperiled species and native ecosystems. As a result, BLM's decision to lease the protested parcels is not based on the best available science and will result in significant harm to rare and imperiled species and native ecosystems. The proposed leasing of the protested parcels will harm our members' interests in the continued use of these public lands, and the rare and imperiled species they support. Therefore protestors have legally recognizable interests that will be affected by the proposed action.

WildEarth Guardians (Guardians) is a non-profit conservation group with thousands of members in Colorado and other states. Guardians is dedicated to protecting wildlife, wild rivers, and wild places throughout the American West. Guardians has a particular interest in the conservation of greater sage grouse, and has a Sagebrush Sea Campaign dedicated to the protection and recovery of this bird and other species inhabiting sagebrush steppe ecosystems. Members of Guardians utilize land and water resources within and near these areas for hiking, camping, recreational, scientific study, photography, and aesthetic uses. Guardians and its members are actively involved in BLM oil and gas activities in this region and participate in National Environmental Policy Act (NEPA) stages of BLM oil and gas leasing and projects by submitting comments. Guardians has a long record of advocating for preventing the impacts of oil and gas development from destroying lands and wildlife in Colorado and throughout the West. As a consequence, Guardians and its members would be adversely affected by the sale of the lease parcels being protested here and they have an interest in this matter.

Matthew Sandler, Staff Attorney for Rocky Mountain Wild, and Erik Molvar, Sagebrush Sea Campaign Director for WildEarth Guardians are authorized to file this protest on behalf of the Protesting Parties.

III. Affected Resources

Oil and gas, and geothermal exploration and development authorized through the proposed leasing of the protested parcels is likely to have significant negative impacts on the greater sage-grouse, black-footed ferret, rare plants, and other wildlife species. Leasing of the protested parcels is also likely to have significant impacts on lands of high conservation value. Lands of high conservation value that may be significantly impacted by the proposed leasing include Areas of Critical Environmental Concern. Exhibit 1, attached, is RMW's internal screen results.

A. Imperiled Species

1) Greater Sage-Grouse

Parcel UTU90756 is within greater sage-grouse Preliminary Priority Habitat. Oil and gas development authorized by the leasing of the protested parcel will have significant impacts on greater sage-grouse

Given the pendency of the Utah Greater Sage-Grouse RMP Amendment EIS, and the perilous status of the sage grouse with regard to Endangered Species listing, these lands should all be deferred from leasing pending an outcome of the RMP amendments. 'No leasing in Core Areas' is one reasonable alternative which BLM has been asked to consider in its Sage Grouse Plan Amendments process, and also in its RMP revisions by BLM Instruction Memorandum requiring that National Technical Team recommendations be analyzed in detail, and leasing Core Area lands regardless of what screening mechanisms they have been subjected to will violate CEQ guidance. BLM appears to have deferred all parcels and portions of parcels falling

Page: 5 of 19 09/15/2014 02:00 PM TO:18015394237 FROM: Matthew Sandler
PHONE #3035795162

within Preliminary Priority Habitat (PPH) from the upcoming lease sale. All portions of these parcels falling within Preliminary General Habitat (PGH) should be deferred as well, in order to retain the decision space for "no leasing" or No Surface Occupancy for Preliminary General Habitats under the sage grouse-related RMP revisions and amendments currently underway, which provide the only legally sufficient EIS underpinning to allow leasing in the habitat of a Candidate Species. Because all PPH and all PGH habitats should be deferred entirely from the lease auction, these parcels and any others entire comprised of a combination of PPH and PGH should be deferred or withdrawn from the lease sale, at least until the Utah sage grouse plan amendment has been completed. And for any lease upon which sage grouse may be found, a legally sound impacts analysis is required prior to leasing, taking into account the significant new information that has come to light in recent years, and considering the potential for significant impacts to sage grouse using that parcel.

Newly published science indicates that noise standards need to be applied as lease stipulations in order to prevent significant impacts to sage grouse. Blickley and Patricelli (2012)¹ found that low-frequency noise from oil and gas development can interfere with the audibility of male sage grouse vocalizations:

"We found that noise produced by natural gas infrastructure was dominated by low frequencies, with substantial overlap in frequency with Greater Sage grouse acoustic displays. Such overlap predicted substantial masking, reducing the active space of detection and discrimination of all vocalization components, and particularly affecting low-frequency and low-amplitude notes. Such masking could increase the difficulty of mate assessment for lekking Greater Sage grouse."

These researchers went on to state, "Ultimately, increased difficulty in finding leks or assessing males on the leks may lead to lower female attendance on noisy leks compared with quieter locations. Males may also avoid leks with high levels of noise if they perceive that their vocalizations are masked." Noise also causes stress to sage grouse. According to Blickley et al. (2012b:1)², "We found strong support for an impact of noise playback on stress levels, with 16.7% higher mean FCM [fecal corticoids, an index of stress] levels in samples from noise leks compared with samples from paired control leks. Taken together with results from a previous study finding declines in male lek attendance in response to noise playbacks, these results suggest that chronic noise pollution can cause greater sage grouse to avoid otherwise suitable habitat, and can cause elevated stress levels in the birds who remain in noisy areas." They went on to note, "Noise at energy development sites is less seasonal and more widespread and may thus affect birds at all life stages, with a potentially greater impact on stress levels."

According to Blickley et al. (2010), "The cumulative impacts of noise on individuals can manifest at the population level in various ways that can potentially range from population declines up to regional extinction. If species already threatened or endangered due to habitat loss avoid noisy areas and abandon otherwise suitable habitat because of a particular sensitivity to noise, their status becomes even more critical."

A newly available scientific study conducted in Wyoming evaluates the impacts of development-related noise on sage grouse (Patricelli et al. 2012, attached). Patricelli also recommends that noise be limited to 10 A-weighted decibels above the ambient noise level, but points out that 39 decibels is not the appropriate ambient noise level for their Lander Field Office

Page: 6 of 19 09/15/2014 02:00 PM TO:18015394237 FROM: Matthew Sandler
PHONE #3035795162

¹ Blickley, J.L., and G.L. Patricelli. 2012. Potential acoustic masking of greater sage-grouse (*Centrocercus urophasianus*) display components by chronic industrial noise. *Ornith. Monogr.* 74: 23-35.

² Blickley J.L., Word K.R., Krakauer A.H., Phillips J.L., Sells S.N., et al. 2012b. Experimental Chronic Noise Is Related to Elevated Fecal Corticosteroid Metabolites in Lekking Male Greater Sage-Grouse (*Centrocercus urophasianus*). *PLoS ONE* 7(11): e50462. doi:10.1371/journal.pone.0050462.

Page: 7 of 19 09/15/2014 02:00 PM TO:18015394237 FROM: Matthew Sandler
 PHONE #3035795162

study site (and generally), but instead that 20 to 22 decibels is the actual background noise level measured at sage grouse leks. Attachment at unnumbered 2. To achieve these levels, these researchers recommend: "Therefore to avoid disruptive activity in areas crucial to mating, nesting and brood-rearing activities, we recommend that roads should be sited (or traffic should be seasonally limited) within 0.7-0.8 miles from the edge of these areas." *Id.*

Blickley et al. (2012)³ played back recorded continuous and intermittent anthropogenic sounds associated with natural gas drilling and roads at leks. For 3 breeding seasons, they monitored sage grouse abundance at leks with and without noise. Peak male attendance (i.e., abundance) at leks experimentally treated with noise from natural gas drilling and roads decreased 29% and 73%, respectively, relative to paired controls. Decreases in abundance at leks treated with noise occurred in the first year of the study and continued throughout the experiment. Intermittent noise had a greater effect than continuous noise. Female attendance averaged a decrease of 48%; male attendance averaged a decrease of 51%. Road noise leks decreased by 73% versus control leks; drilling noise leks decreased 29% versus control leks. There were residual effects of noise after the treatment ceased. These researchers concluded that sage grouse do not habituate to noise impacts over time.

An adequate regulatory mechanism to address impacts from human-caused noise would be to require that noise levels be limited to 32 dBA at the edge of important sage grouse habitats. This should be attached as a stipulation to all leases in the vicinity of sage grouse leks. In the interest of assisting BLM to compile an adequate 'hard look' at impacts of noise, we have attached these peer-reviewed studies to our comments.

We request that all parcels listed above be deferred from the lease sale pending analysis of whether large-block unleased parcels inside Core Areas are being leased, pursuant to IM 2012-043. ~~BLM should do its best to keep largely unleased areas of public land in Priority and General Habitats unleased, regardless of mineral ownership patterns.~~ Grouse populations rangewide have been declining for the past 50 years, and recently grouse populations have continued to decline. These declines are attributable at least in part to habitat loss due to mining and energy development and associated roads, and to habitat fragmentation due to roads and well fields. Oil and gas development poses perhaps the greatest threat to sage-grouse viability in the region. The area within 2 to 3 miles of a sage-grouse lek is crucial to both the breeding activities and nesting success of local sage-grouse populations. In a study near Pinedale, sage-grouse from disturbed leks where gas development occurred within 3 km of the lek site showed lower nesting rates (and hence lower reproduction), traveled farther to nest, and selected greater shrub cover than grouse from undisturbed leks.⁴ According to this study, impacts of oil and gas development to sage-grouse include (1) direct habitat loss from new construction, (2) increased human activity and pumping noise causing displacement, (3) increased legal and illegal harvest, (4) direct mortality

³ Blickley, J.L., D. Blackwood, and G.L. Patricelli. 2012a. Experimental Evidence for the Effects of Chronic Anthropogenic Noise on Abundance of Greater Sage-Grouse at Leks. *Conserv. Biol.* 26:461-471.

⁴ Lyon, A.G. 2000. The potential effects of natural gas development on sage-grouse (*Centrocercus urophasianus*) near Pinedale, Wyoming. M.S. Thesis, Univ. of Wyoming, 121 pp. A copy is attached to the BCA June 2008 Lease Protest as Exhibit 34.

Page: 8 of 19 09/15/2014 02:00 PM TO: 18015394237 FROM: Matthew Sandler
PHONE #3035795162

associated with reserve pits, and (5) lowered water tables resulting in herbaceous vegetation loss. These impacts have not been thoroughly evaluated in the RMPs with full NEPA analysis.

Lease parcels should also be screened against Sage Grouse ACECs proposed in the context of the statewide Sage Grouse Plan Amendments EIS process. Many of the proposed ACECs have for proposed management withdrawal from future oil and gas leasing. Parcels in each of these areas should be deferred pending the outcome of the Sage Grouse Plan Amendments process, so that a proper decision can be made regarding whether or not to lease them and/or appropriate stipulations can be attached, per IM 2004-110 Change 1. BLM should also consider whether any parcels fall within proposed Sage Grouse ACECs. In the forthcoming RMP revisions, it is our expectation that the BLM will be considering the designation of several Core Areas as Sage Grouse ACECs, to be managed for no future leasing for oil and gas development.

The current standard sage grouse stipulations that apply outside Core Areas are biologically inadequate, and their effectiveness has not been established by BLM. Indeed, scientific studies demonstrate that these mitigation measures fail to maintain sage grouse populations in the face of full-field development, and significant impacts in terms of displacement of sage grouse from otherwise suitable habitat as well as significant population declines have been documented. BLM should not issue these sage grouse parcels unless a rigorous set of stipulations, far stronger than those provided in the EA (such as NSO stipulations), are applied to the parcels. This should include either the following combination:

- 2-mile No Surface Occupancy buffers surrounding leks;
- 3-mile Timing Limitation Stipulations surrounding leks during the breeding and nesting season prohibiting not just construction and drilling activities but also production-related vehicle traffic and human presence;
- No overhead powerlines within 5 miles of leks,

or at minimum new Timing Limitation Stipulations that extend 3 miles from the lek and restrict production-related activities in addition to drilling and construction, as has been proposed by BLM under the Lander RMP DEIS (Record 4095),⁵ paired with a prohibition on overhead power lines within 5 miles of leks. If these stipulations are implemented together with even stronger measures for Core and Connectivity Areas, the BLM could make a credible case that impacts from leasing would not result in significant impacts.

Outside Core Areas, current sage grouse lease stipulations provide an NSO stipulation of ¼ mile around active sage grouse leks. This is a ridiculously inadequate amount of protection for the lekking grouse during the breeding period, nevermind for hens nesting on lands surrounding the lek. Studies have shown that the majority of hens nest within 3 miles of a lek, and that a 5.3-mile buffer would encompass almost all nesting birds in some cases. For Core Areas, the most scientifically supportable metric for NSO buffers would be 2 miles from the lek to protect breeding birds (after Holloran 2005, finding impacts from post-drilling production extend 1.9 miles from the wellsite)⁴ and 5.3 miles to protect nesting birds, with the understanding that the

⁵ BLM. 2011. Lander Draft RMP and EIS at 106.

Page: 9 of 19 09/15/2014 02:00 PM TO:18015394237 FROM: Matthew Sandler
PHONE #3035795162

impacts of drilling and production activity would extend into the NSO buffer area from wells arrayed along its edge.

Because leks sites are used traditionally year after year and represent selection for optimal breeding and nesting habitat, it is crucially important to protect the area surrounding lek sites from impacts. In his University of Wyoming dissertation on the impacts of oil and gas development on sage grouse, Matthew Holloran stated, "current development stipulations are inadequate to maintain greater sage grouse breeding populations in natural gas fields."⁶ (Notably, these exact stipulations are being applied by BLM in this lease sale for non-Core Area sage grouse habitat parcels). The area within 2 or 3 miles of a sage grouse lek is crucial to both the breeding activities and nesting success of local sage grouse populations. Dr. Clait Braun, the world's most eminent expert on sage grouse, has recommended NSO buffers of 3 miles from lek sites, based on the uncertainty of protecting sage grouse nesting habitat with smaller buffers.⁷ Thus, the prohibition of surface disturbance within 3 miles of a sage grouse lek is the absolute minimum starting point for sage grouse conservation.

Other important findings on the negative impacts of oil and gas operations on sage grouse and their implications for the species are contained in three studies recently accepted for publication.⁸ Sage grouse mitigation measures have been demonstrated to be ineffective at maintaining this species at pre-development levels in the face of oil and gas development by Holloran (2005) and Naugle et al. (2006). This study found an 85% decline of sage grouse populations in the Powder River Basin of northeastern Wyoming since the onset of coalbed methane development there. BLM has repeatedly failed to provide any analysis, through field experiments or literature reviews, examining the effectiveness of the standard quarter-mile buffers where disturbance would be "avoided." There is substantial new information in recent studies to warrant supplemental NEPA analysis of the impacts of oil and gas development to sage grouse. It is incumbent upon BLM to consider the most recent scientific evidence regarding the status of this species and to develop mitigation measures which will ensure the species is not moved toward listing under the Endangered Species Act. It is clear from the scientific evidence that the current protections are inadequate and are contributing to the further decline of the bird's populations. This information constitutes significant new information that requires amendment of the Resource Management Plans before additional oil and gas leasing can move forward.

⁶ M. Holloran. Dec. 2005. Greater Sage-Grouse Population Response to Natural Gas Field Development in Western Wyoming, at 57. This study is attached to the BCA June 2008 Lease Protest as Exhibit 35.

⁷ C. Braun. May 2006. A Blueprint for Sage-grouse Conservation and Recovery. Grouse, Inc. This study is available online at <http://www.voiceforthewild.org/SageGrouseStudies/Braunblueprint2006.pdf>.

⁸ Doherty, K.E., D.E. Naugle, B.L. Walker, and J.M. Graham. 2008. Greater sage-grouse winter habitat selection and energy development. *Journal of Wildlife Management* 72:187-195. Attached to the BCA June 2008 Lease Protest as Exhibit 37.

Walker, B.L., D.E. Naugle, and K.E. Doherty. 2007. Greater sage-grouse population response to energy development and habitat loss. *Journal of Wildlife Management* 71:2644-2654. Attached to the BCA June 2008 Lease Protest as Exhibit 38.

Walker, B.L., D.E. Naugle, K.E. Doherty, and T.E. Cornish. 2007. West Nile virus and greater sage-grouse: estimating infection rate in a wild bird population. *Avian Diseases* 51:In Press. Attached to the BCA June 2008 Lease Protest as Exhibit 39.

Page: 10 of 19 09/15/2014 02:00 PM TO:18015394237 FROM: Matthew Sandler
PHONE #3035795162

Western Game and Fish Department biologists have reached a consensus that the Timing Limitation Stipulations proposed for sage grouse in this lease sale are ineffective in the face of standard oil and gas development practices. These stipulations have likewise been condemned as inadequate by the U.S. Fish and Wildlife Service and renowned sage grouse expert Dr. Clait Braun. The BLM itself has been forced to admit that "New information from monitoring and studies indicate that current RMP decisions/actions may move the species toward listing...conflicts with current BLM decision to implement BLM's sensitive species policy" and "New information and science indicate 1985 RMP Decisions, as amended, may not be adequate for sage grouse."⁹ Continued application of stipulations known to be ineffective in the face of strong evidence that they do not work, and continuing to drive the sage grouse toward ESA listing in violation of BLM Sensitive Species policy, is arbitrary and capricious and an abuse of discretion under the Administrative Procedures Act.

BLM has the scientific information needed to recognize that any use of these parcels will result in further population declines, propelling the sage grouse ahead of other "priorities" on the ESA "candidate list." Again, it is in all interested parties favor (conservation groups, potential lessees, BLM and other federal agencies) for BLM to determine specific "modifications" prior to issuing leases, such as NSO restrictions. If the BLM fails to do so through site-specific environmental review before the APD stage, the agency will violate the "jeopardy" prohibition in the Endangered Species Act and will not adhere to the directive of Secretary Salazar and the Department of Interior's announced leasing reforms.

We recommend against the sale of any lease parcels which contain sage grouse leks, nesting habitat, breeding habitat, wintering habitat and brood-rearing habitat. We request that these parcels be withdrawn from the lease sale. Failing withdrawal of the parcels, parcel-by-parcel NEPA analysis should occur (we have seen no evidence of this in the November 2014 Leasing EAs), and NSO stipulations must be placed on all lease parcels with sage grouse leks. In addition, three-mile buffers must be placed around all leks. It is critical that these stipulations be attached at the leasing stage, when BLM has the maximum authority to restrict activities on these crucial habitats for the protection of the species, and that no exceptions to the stipulations be granted. BLM's failure to do so will permit oil and gas development activities which will contribute to declining sage grouse populations and ultimately listing by the U.S. Fish and Wildlife Service as a threatened or endangered species, in violation of BLM's duty to take all actions necessary to prevent listing under its Sensitive Species Manual.

In 2010, the greater sage grouse became a Candidate Species under the Endangered Species Act, and a final listing determination is due by court order in September of 2016. These facts constitute significant new information that has not been addressed in programmatic NEPA analysis for any of the Resource Management Plans that support the Wyoming November 2014 oil and gas lease sale. In addition, numerous scientific studies have been published indicating that BLM mitigation measures in these plans are insufficient and will not prevent significant impacts to sage grouse, and these studies also constitute significant new information not addressed in RMP decisionmaking. Finally, in 2013 the U.S. Fish and Wildlife Service identified

⁹ Sage grouse plan amendment land user information meeting PowerPoint, available online at http://www.blm.gov/pgdata/etc/medialib/blm/wy/information/NEPA/bfdocs/sagegrouse.Par.94571.File.dat/May28_Infomtg.pdf. Site last visited 7/16/2008.

Priority Areas for Conservation, and BLM subsequently identified Preliminary Priority Habitats and Preliminary General Habitats in its Utah RMP Amendment Draft EIS, which also constitute

Page: 11 of 19 09/15/2014 02:00 PM TO:18015394237 FROM: Matthew Sandler
PHONE #3035795162

significant new information, potentially significant impacts to which have yet to be addressed through an EIS.

We remain concerned that development activities on the sage grouse parcels noted above will result in significant impacts to sage grouse occupying these parcels and/or the habitats nearby, and the BLM's programmatic NEPA underlying this lease sale does not adequately address these significant impacts in light of new information. Therefore, the requisite NEPA analysis to support the leasing of the sage grouse parcels listed above in the absence of an Environmental Impact Statement does not exist.

We are also concerned that BLM has not fulfilled its duties pursuant to NEPA to take a hard look at environmental impacts to sage grouse outside PPH. The greater sage grouse is a BLM Sensitive Species and Candidate Species under the Endangered Species Act, yet is not listed in the Table 4.3 enumeration of species affected by the Vernal lease sale, and indeed is not mentioned at all in the Affected Environment section of the document. There is a similar absence in the Price EA. Neither document examines (or even mentions) potential impacts to sage grouse. This is a NEPA 'hard look' deficiency.

2) Graham's Penstemon and White-River Penstemon:

Parcels UTU90762, UTU90763, UTU90764, UTU90766, UTU90767, UTU90768, UTU90772, UTU90773, UTU90775, UTU90781, UTU90786, UTU90787, and UTU90788 overlaps with Graham's penstemon occurrences according to Utah Division of Wildlife Resources data. This plant was proposed threatened species (79 FR 25806), until a recent "Conservation Agreement" allegedly rendered this listing unnecessary (See July 2014 Conservation Agreement). As a signatory to this "Conservation Agreement", BLM should not be leasing parcels in Graham's and White-River Penstemon habitat. The "Conservation Agreement" was premised on the protections it would afford the species and this leasing decision is undercutting this assertion. Oil and gas development is one of many threats to this species. See Attachment 1 to our EA Comments. Leasing these parcels is arbitrary and capricious and will ultimately support ESA listing rather than a "Conservation Agreement."

Uinta Basin Hookless and Pariette Cactus:

Parcel UTU90752, UTU90753, UTU90755, UTU90756, UTU90757, UTU90758, UTU90759, UTU90760, UTU90761, UTU90762, UTU90763, UTU90764, UTU90765, UTU90766, UTU90767, UTU90768, UTU90769, UTU90771 are near a Uinta Basin hookless and Pariette cactus occurrence. The Uinta Basin hookless and Pariette cactus are listed as threatened under the Endangered Species Act. Prior to 2009 it was believed that these cactus were the same species. However, even after determining that they are actually unique species, the FWS did not change the status of the species. The FWS has not designated critical habitat for these cactus. Occurrence data is the best science regarding where these cactus occur and areas that should be protected from development. BLM should have consulted with FWS prior to leasing these parcels. Failure to comply with the Endangered Species Act renders this leasing decision illegal.

White-Tailed Prairie Dog:

Parcels UTU90741, UTU90765, UTU90779, UTU90780, and UTU90783 overlap with white-tailed prairie dog colonies. The white-tailed prairie dog is listed as a BLM Species of Concern. Only parcels UTU90741 and UTU90783 have stipulations aimed at protecting the white-tailed prairie dog. UT-S-218 restricts surface-disturbing activities within 660 feet of prairie dog colonies. The other parcels contain no such stipulation. Drilling and production operations have

Page: 12 of 19 09/15/2014 02:00 PM TO:18015394237 FROM: Matthew Sandler
PHONE #3035795162

potentially significant impacts on prairie dogs, through causing habitat loss and fragmentation, direct mortality from vehicle strikes, and causing dust pollution and chemical spills that negatively affect plant growth and habitat productivity, as well as offering additional perches for raptors, corvids, and other predators.

Rocky Mountain Wild protested the RMPs for the Moab, Price, and Vernal Field Offices due to inadequate consideration of white-tailed prairie dogs in the adopted management alternatives. In these protests we argued that the 660 foot boundary (UT-S-218) is arbitrary and inadequate to protect the species and ensure its recovery from its current population decline. We ask BLM to implement at least a half-mile No Surface Occupancy stipulation for prairie dog colonies (or at least analyze this more protective buffer in the final EA). Further, this stipulation should be expanded to include historical habitat as well.

A large amount of the predicted habitat for white-tailed prairie dogs (56%) occurs on BLM lands. Thus, BLM management plays a much larger role in white-tailed prairie dog endangerment, and could also be instrumental for recovery. We ask BLM to remove these parcels that overlap with white-tailed prairie dog habitat, or at the least to place protective stipulations on all the parcels.

B. Areas of High Conservation Value

1). Area of Critical Environmental Concern:

Parcels UTU90758, UTU90759, and UTU90761, are within the Nine Mile Canyon Area of Critical Environmental Concern ("ACEC"). Parcel UTU90767 is within the Lower Green River Corridor ACEC.

a. The Nine Mile Canyon has outstanding ACEC values.

The Nine Mile Canyon is very scenic with steep, red-walled canyons, contrasting with pleasing rural and historical farmsteads. The area offers exceptional opportunities for interpretation of outstanding historical and cultural properties. The area includes habitat for two federally listed plant species, which are endemic to the area: toad-flax cress and Uinta Basin hookless cactus. For the visitor-sight-seeing enjoyment and historical research is rich with scenic and cultural appeal.¹

b. The Lower Green River Corridor area has outstanding ACEC values.

The Green River provides critical habitat for four special status fish species: Colorado Squawfish, humpback chub, bonytail chub, and razorback sucker.

The area provides habitat for eleven special status species: bald eagle, peregrine falcon, whooping crane, western yellow-billed cuckoo, Swainson's hawk, western snowy plover, long-billed curlew, white-faced ibis, spotted bat, river otter, and the Uinta Basin hookless cactus.

¹ http://www.blm.gov/ut/st/en/fo/vernal/more_blm_special_areas.html

The Lower segment of the Green River has scenic qualities and undeveloped natural areas producing high quality recreation opportunities.

Leasing within ACEC will negatively impact the nature of these special areas. Even with stipulations, development will still require access to the mineral reserves. Drilling adjacent to the ACEC boundary will impact the ACEC. Further some of the stipulations aimed at protecting these areas can be waived, modified, or exempted. Leasing within ACEC boundaries is improper and these parcels should be withdrawn.

IV. Statement of Reasons

Oil and gas leasing in this sensitive and diminished area should avoid all further deleterious consequences. The protested parcels will have negative impacts on habitat for imperiled species and sensitive environments. BLM has failed to adequately analyze the impacts of this leasing and should withdraw the protested parcels.

a. The Decision Fails to Adequately Analyze the Direct, Indirect, and Cumulative Affects of Leasing These Parcels:

NEPA dictates that BLM take a "hard look" at the environmental consequences of a proposed action and the requisite environmental analysis "must be appropriate to the action in question." *Metcalf v. Daley*, 214 F.3d 1135, 1151 (9th Cir. 2000); *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 348 (1989). In order to take the "hard look" required by NEPA, BLM is required to assess impacts that include: "ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, *whether direct, indirect, or cumulative.*" 40 C.F.R. § 1508.8 (emphasis added). "[C]umulative impact analysis must be timely. It is not appropriate to defer consideration of cumulative impacts to a future date when meaningful consideration can be given now." *Kern v. US. Bureau of Land Management*, 284 F.3d 1062, 1075 (9th Cir. 2000); *Neighbors of Cuddy Mountain v. United States Forest Service*, 137 F.3d 1372, 1380 (9th Cir. 1998); *City of Tenakee Springs v. Clough*, 915 F.2d 1308, 1312-1313 (9th Cir. 1990). The BLM failed to adequately analyze potential direct, indirect, and cumulative impacts of the proposed leasing on the greater sage-grouse, black-footed ferret, imperiled plants and other species throughout the planning area.

"In determining the scope of the required NEPA analysis, an agency must consider not only the proposed action, but also three types of related actions – 'connected actions', similar 'actions', and 'cumulative actions'. 40 C.F.R. 1508.25(a). "Cumulative actions" are those" which when viewed with other proposed actions have cumulatively significant impacts." *Id. at 1508.25 (a)(2)*. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts. 40 C.F.R. 1508.27 (b)(7).

² http://www.blm.gov/ut/st/en/fo/vernal/more_blm_special_areas/lower_green_river.print.html

Page: 14 of 19 09/15/2014 02:00 PM TO:18015394237 FROM: Matthew Sandler
PHONE #3035795162

In this leasing decision, BLM has failed to analyze the cumulative impacts of developing the parcels for which includes, road construction, clearing native vegetation, water and air impacts, hydraulic fracturing impacts, species impacts, and other known, direct, and cumulative impacts of the leasing decision. Failure to include this analysis in the NEPA documents renders this decision arbitrary, capricious and against the law.

b. The BLM has failed to adequately analyze the effectiveness of the lease stipulations and other mitigation measures in the Environmental Assessment, and the determination that lease stipulations and other mitigation measures will prevent significant impacts to lesser prairie-chicken is arbitrary and capricious:

A complete discussion of steps that can be taken to mitigate adverse environmental impacts is an important ingredient of the NEPA process. *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 351 (1989). "Without such a discussion, neither the agency nor other interested groups and individuals can properly evaluate the severity of the adverse effects." *Id.* In recognition of the importance of a discussion of mitigation measures, Council on Environmental Quality (CEQ) regulations "require that the agency discuss possible mitigation measures in defining the scope of the EIS, 40 CFR § 1508.25(b), in discussing alternatives to the proposed action, § 1502.14(f), and consequences of that action, § 1502.16(h), and in explaining its ultimate decision, § 1505.2(c)." *Id. at 352.* When a proposed action will result in impacts to resources, the Agency is obligated to describe what mitigating efforts it could pursue to off-set the damages that would result from the proposed action. *See 40 C.F.C. § 1502.16(h) (2009)* (stating that an EIS "shall include discussions of . . . [m]eans to mitigate adverse environmental impacts").

"Mitigation must 'be discussed in sufficient detail to ensure that environmental consequences have been fairly evaluated.'" *Carmel-by-the-Sea v. U.S. Dep't of Transp.*, 123 F.3d 1142, 1154 (9th Cir. 1996). (quoting *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 353 (1989)). The Ninth Circuit explained that fair evaluation requires agencies to "analyze[] the mitigation measures in detail [and] explain how effective the measures would be. A mere listing of mitigation measures is insufficient to qualify as the reasoned discussion required by NEPA." *Nw. Indian Cemetery Protective Ass'n v. Peterson*, 764 F.2d 581, 588 (9th Cir. 1985), *rev'd on other grounds*, 485 U.S. 439 (1988).

In *Davis v. Mineta*, the Tenth Circuit found that federal agencies did not comply with NEPA when they relied on the possibility of mitigation measures in issuing a FONSI. According to the court, "[m]itigation measures may be relied upon to make a finding of no significant impact only if they are imposed by statute or regulation, or submitted by an applicant or agency as part of the original proposal. As a general rule, the regulations contemplate that agencies should use a broad approach in defining significance and should not rely on the possibility of mitigation as an excuse to avoid the EIS requirement." *Davis v. Mineta*, 302 F.3d 1104, 1125 (10th Cir. 2002)

The BLM must evaluate the effectiveness of the mitigation measures used in leasing with the best available science. "The information must be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA." *40 C.F.R. § 1500.1(b) (2009)*. "For this reason, agencies are under an affirmative mandate to 'insure the professional integrity, including scientific integrity, of the discussions and analyses in

Page: 15 of 19 09/15/2014 02:00 PM TO:18015394237 FROM: Matthew Sandler
PHONE #3035795162

environmental impact statements[,] identify any methodologies used and . . . make explicit reference by footnote to the scientific and other sources relied upon for conclusions[.]” *Envtl. Def. v. U.S. Army Corps of Eng’rs*, 515 F. Supp. 2d 69, 78 (D.D.C. 2007) (citing 40 C.F.R. § 1502.24 (2009)). If there is scientific uncertainty NEPA imposes the mandatory duties to: (1) disclose the scientific uncertainty; (2) complete independent research and gather information if no adequate information exists unless costs are exorbitant or the means of obtaining the information are not known; and (3) evaluate the potential, reasonably foreseeable impacts in the absence of relevant information. *See* 40 C.F.R. § 1502.22 (2009).

c. BLM Failed to Consider Significant New Information:

None of the NEPA documents, to which the leasing is tied, address significant new information now available on the greater sage-grouse, Graham’s and White River penstemon, Uinta Basin and Pariette cactus, or the white-tailed prairie dog. 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 effect of [its] planned action, even after a proposal has received initial approval.’” *Friends of the Clearwater v. Dombek*, 222 F.3d 552, 557 (9th Cir. 2000) (quoting *Marsh v. Or. Natural Res. Council*, 490 U.S. 360, 374 (1989)).

In order to satisfy the “hard look” requirement, the BLM must supplement its existing environmental analyses when new circumstances “raise[] significant new information relevant to environmental concerns . . .” *Portland Audubon Soc’y v. Babbitt*, 998 F.2d 705, 708 (9th Cir. 2000). Agencies are required to “prepare supplements to either draft or final environmental impacts 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) (2009). The Supreme Court has held that a supplemental EIS must be prepared if “new information is sufficient to show that the remaining action will ‘affect the quality of the human environment’ in a significant manner or to a significant extent not already considered . . .” *Marsh v. Or. Natural Res. Council*, 490 U.S. 390, 374 (1989); *see* 42 U.S.C. § 4332(2)(C) (2009). In a recent Utah case, the court held that the “Utah BLM ignored significant new information when it decided to lease the sixteen parcels at issue without first conducting a supplemental NEPA analysis.” *So. Utah Wilderness Alliance v. Norton*, 457 F. Supp. 2d 1253, 1267 (D. Utah 2006). The analysis relied upon failed to reflect significant new information regarding the wilderness characteristics of the parcels at issue. *Id.* Further, in *Center for Native Ecosystems*, the Interior Board of Land Appeals held that once the BLM has identified existing NEPA documents, it is the responsibility of the relevant field office reviewers to determine whether there were “significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.” *Center for Native Ecosystems*, 170 IBLA 331, 346 (2006) (“CNE 1”).

The BLM has failed to consider recent research on greater sage-grouse that is directly relevant to analyzing the likely impacts of the proposed leasing and subsequent development on greater sage-grouse. The findings of the Technical Report constitutes significant new information that call into question the conclusions of the past NEPA documents to which the proposed leasing and development is tied. The findings of the Technical Team were available to BLM at the time of the preparation of the DNA documents for the proposed action, but were not

Page: 16 of 19 09/15/2014 02:00 PM TO:18015394237 FROM: Matthew Sandler
PHONE #3035795162

considered. We demonstrate that these findings are directly relevant to analysis of the impacts of the proposed leasing and development on the greater sage-grouse. The findings of the Technical report are contrary to information presented in the NEPA documents to which the proposed leasing is tiered, and suggest that the proposed action will have significant impacts on greater sage-grouse that have not been adequately considered in the NEPA documents at issue here. Further, BLM has collected the best available science regarding the greater sage-grouse throughout the current RMP amendment process. This information was not analyzed in the EIS supporting this leasing decision. As such, a supplemental EIS should be completed, or BLM should not lease parcels in sage-grouse habitat until after the amendment process is complete. In this same light, there has been significant new information about the Graham's and White River penstemon which has not been adequately analyzed in making this leasing decision. The conservation agreement and the documents supporting ESA listing were not adequately analyzed. This significant new information about these plant species must help guide this leasing decision. As a signatory to the Conservation Agreement, BLM is aware of this information and is bound to consider how leasing parcels in the species occupied range will undercut that agreement. None of the NEPA documents to which the leasing is tiered, adequately address this significant new information. The BLM must address this significant new information in order to comply with NEPA.

V. Federal Land Policy Management Act

a. **The BLM failed to Prevent Undue and Unnecessary Degradation to greater sage-grouse, Graham's and White River penstemon, Uinta Basin and Pariette cactus, or the white-tailed prairie dog and Has Failed to Meet its Obligations Under BLM Manual 6840:**

The BLM has a duty under the Federal Land Policy and Management Act ("FLPMA") to prevent unnecessary and undue degradation to the lands under its management. "In managing the public lands the [Secretary of Interior] shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands." *43 U.S.C. § 1732(b)*. The use of the imperative language "shall" makes clear that Congress intended to leave the Secretary no discretion in administering the Act. *NRDC v. Jamison*, 815 F. Supp. 454, 468 (D.D.C. 1992). "The court in *Mineral Policy Ctr. v. Norton* [found] that in enacting FLPMA, Congress's intent was clear: Interior is to prevent, not only unnecessary degradation, but also degradation that, while necessary . . . is undue or excessive." *Mineral Policy Ctr. v. Norton*, 292 F. Supp. 2d 30, 43 (D.D.C. 2003). In addition, that court held that "FLPMA, by its plain terms, vests the Secretary of the Interior with the authority – and indeed the obligation – to disapprove of an otherwise permissible . . . operation because the operation though necessary . . . would unduly harm or degrade the public land." *Id.* at 49.

The purpose of Section 6840 of the BLM Manual is to provide policy and guidance for the conservation of BLM special status species and the ecosystems upon which they depend on BLM-administered lands. BLM special status species are:

(1) species listed or proposed for listing under the Endangered Species Act (ESA), and

Page: 17 of 19 09/15/2014 02:00 PM TO:18015394237 FROM: Matthew Sandler
PHONE #3035795162

(2) species requiring special management consideration to promote their conservation and reduce the likelihood and need for future listing under the ESA.

The objectives of the special status species policy are:

A. To conserve and/or recover ESA-listed species and the ecosystems on which they depend so that ESA protections are no longer needed for these species.

B. To initiate proactive conservation measures that reduce or eliminate threats to Bureau sensitive species to minimize the likelihood of and need for listing of these species under the ESA.

BLM's act of leasing the protested parcels violates FLPMA and its own manual. Leasing actions must comply with both of these guiding documents. Failure to comply with the agencies legal requirements by preventing undue and unnecessary degradation to the greater sage-grouse, Graham's and White River penstemon, Uinta Basin and Pariette cactus, and the white-tailed prairie dog renders this action arbitrary and capricious.

b. BLM Must Mitigate Adverse Effects

The BLM must mitigate the adverse effects on the aforementioned imperiled species in order to comply with the "unnecessary and undue degradation" standard of FLPMA. BLM must also mitigate adverse effects on sensitive resources within ACEC. *Kendall's Concerned Area Residents*, 129 IBLA 130, 138; see 42 C.F.R. 3809.2-1(b). The BLM has failed to minimize adverse impacts of oil and gas development on the aforementioned species and lands of high conservation value rendering this decision arbitrary and capricious.

c. Consistency

The BLM is violating FLPMA because it is not being consistent with the policies of state, tribal, and other agencies in its conservation policies greater sage-grouse, Graham's and White River penstemon, Uinta Basin and Pariette cactus, or the white-tailed prairie dog. FLPMA requires the BLM to seek to "be consistent with officially approved and adopted resource related policies and programs . . . of other federal agencies, State and local governments and Indian tribes." 43 C.F.R. § 1610.3-2; see 43 U.S.C. § 1712(c)(9). Other agencies, including the Fish and Wildlife Service, would fully comply with the mandates of the Endangered Species Act, NEPA, and other binding regulations. BLM is failing to adhere to the consistent calls for protection of these imperiled species rendering this decision arbitrary and capricious.

VI. Endangered Species Act

The U.S. Fish and Wildlife Service has announced that the greater sage-grouse, Graham's and White River penstemon, and Uinta Basin and Pariette cactus warrants protection under the Endangered Species Act. One reason for these listing determinations was a lack of regulatory mechanisms to protect the species. BLMs actions in leasing this occupied habitat for energy development further demonstrates the agencies lack of protective mechanisms. This leasing is going to contribute to the need to list these species. Consultation with FWS should have been conducted to ensure adequate protection for this candidate species. This leasing decision is violating the ESA and the protested parcels must be withdrawn.

a. Duty to Conserve and Duty to Engage in Recovery Planning

In addition to consultation requirements, federal agencies are bound by two affirmative obligations under the ESA. Section 7(a)(1) states that federal agencies shall "seek to conserve [listed] species and shall utilize their authorities in furtherance of the purposes of [the] Act." 16 U.S.C. § 1536(a)(1). A number of courts have held that the duty to conserve imposes an independent duty upon agencies to give the conservation of a listed species top priority. *Carson-Truckee Water Conserv. Dist. v. Watt*, 549 F. Supp. 704 (D. Nev. 1982) citing *TVA v. Hill*, 437 U.S. 153, 184 (1978); *Bensman v. U.S. Forest Serv.*, 984 F. Supp. 1242, 1246 (D. Mont. 1997). The ESA also states that the Secretary "shall develop and implement plans for the conservation and survival [of listed species] unless he finds that such a plan will not promote the conservation of the species." 16 U.S.C § 1533(f)(1). BLMs leasing of the protested parcels is violating the ESA.

VII. BLM has Discretion to Not Lease

Under the statutory and regulatory provisions authorizing this lease sale, the BLM has full discretion over whether or not to offer these lease parcels for sale. The Mineral Leasing Act of 1920 ("MLA") provides that "[a]ll lands subject to disposition under this chapter which are known or believed to contain oil and gas deposits may be leased by the Secretary." 30 U.S.C. § 226(a) (2009) (emphasis added). The Supreme Court has concluded that this "left the Secretary discretion to refuse to issue any lease at all on a given tract." *Udall v. Tallman*, 380 U.S. 1, 4 (1965); see also *Wyo. Ex rel. Sullivan v. Lujan*, 969 F.2d 877 (10th Cir. 1992); *McDonald v. Clark*, 771 F.2d 460, 463 (10th Cir. 1985) ("While the [Mineral Leasing Act] gives the Secretary the authority to lease government lands under oil and gas leases, this power is discretionary rather than mandatory y."); *Burglin v. Morton*, 527 F.2d 486, 488 (9th Cir. 1975).

Submitting a leasing application vests no rights to the applicant or potential bidders. The BLM retains the authority not to lease. "The filing of an application which has been accepted does not give any right to lease, or generate a legal interest which reduces or restricts the discretion vested in the secretary whether or not to issue leases for the lands involved." *Duesing v. Udall*, 350 F.2d 748, 750-51 (D.C. Cir. 1965), cert. den. 383 U.S. 912 (1966); see also *Bob Marshall Alliance v. Hodel*, 852 F.2d 1223, 1230 (9th Cir. 1988); *Pease v. Udall*, 332 F.2d 62, 63 (9th Cir. 1964); *Geosearch v. Andrus*, 508 F. Supp. 839, 842 (D.C. Wyo. 1981).

The arguments set forth in detail above demonstrate that exercise of the discretion not to lease the protested parcels is appropriate and necessary. Withdrawing the protested parcels from the lease sale until BLM has met its legal obligations to conduct an adequate NEPA analysis, upheld the requirements of the Endangered Species Act, and met the requirements of IM 2010-117 and other BLM regulations is a proper exercise of BLM's discretion under the MLA. BLM has no legal obligation to lease the disputed parcels and is required to withdraw them until the agencies have complied with the applicable law.

Page: 19 of 19 09/15/2014 02:00 PM TO:18015394237 FROM: Matthew Sandler
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VIII. Conclusion & Request for Relief

The Protesting Parties therefore requests that the BLM withdraw the protested parcels from the November 2014 lease sale.

Sincerely,



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