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Re: Request for Correction or Supplementation of the Oil Shale and Tar Sands
Programmatic Draft Environmental Impact Statement

Dear Mr. Pool:

Washington County requests that the Bureau of Land Management (BLM) consider and analyze new information documenting 2012 technological advances for the extraction of oil from shale and tar sands, and addressing the previously identified scientific controversies relating to the claimed environmental impacts of oil shale and tar sands development. The Oil Shale and Tar Sands Programmatic Draft Environmental Impact Statement (OS/TS PDEIS) was published in February 2012. Washington County supports Uintah County as a cooperating agency on the PEIS who submitted comments for the scoping period and the PDEIS. Washington County also supports Uintah County who identified a number of issues in dispute, including how the new extraction techniques for both oil shale and tar sands disturb less surface area, use less water and leave a significantly smaller footprint.

Claiming that the newer techniques were not commercially feasible, the OS/TS PDEIS retained older assumptions of environmental impact that are no longer accurate. Since the close of the comment period several companies have completed testing, which confirms the economic feasibility of oil shale development. This information makes the environmental impacts of the

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No Action Alternative very similar to those of the Preferred Alternatives. Washington County supports Uintah County and asks that the new information be analyzed in a supplement with a 45 day public comment period and/or assessed pursuant to the Information Quality Act (IQA) procedures as requested in this letter.

This new information complements the issues raised by Uintah County in its April 2012 comments. BLM justified the revision of the oil shale and tar sands PFEIS based on the need “to take a *fresh look* at the land use plan allocation decisions made in the 2008 ROD associated with the Programmatic EIS, in order to consider which lands should be open to future leasing of oil shale and tar sands resources.” 76 Fed. Reg. 21003 (2012) (emphasis added). It further states that:

As there are no economically viable ways yet known to extract and process oil shale for commercial purposes, and Utah tar sands deposits are not at present a proven commercially-viable energy source, the BLM, through its planning process, intends to take a hard look at whether it is appropriate for approximately 2,000,000 acres to remain available for potential development of oil shale, and approximately 431,224 acres of public land to remain available for potential development of tar sands.

The new information contradicts the premise of the OS/TS PDEIS that oil shale and tar sands are not commercially feasible, and will have significant environmental impacts. Since the 2008 ROD, several companies have been developing oil shale pursuant to the Research Demonstration and Development (RD&D) leases. The related advances in oil shale technology and actual experience with this technology by Red Leaf Resources Inc. and Enefit, two companies operating in Colorado and Utah under RD&D leases, demonstrate that these techniques are commercially viable. The results of recent testing confirm feasibility and compel supplementation.

This new information about the underlying technologies directly relates to the OS/TS PDEIS assumptions on environmental impacts. The new technologies use less water, cause significantly less surface disturbance, and use less electrical power than assumed in the 2008 FEIS. By using outdated information as the basis to compare the alternatives, BLM justifies closing 75% of the public land previously classified as suitable for oil shale or tar sands development. The OS/TS PDEIS exaggerates the environmental impacts of oil shale and tar sands extraction and development. The OS/TS PDEIS states that oil shale and tar sands development will require more than one barrel of water for each barrel of oil, when far less water is required. The OS/TS PDEIS makes equally significant errors in the size of the surface disturbance and amount of electrical power needed. These outdated and contradicted assumptions of environmental impact allow BLM to conclude that oil shale and tar sands development is not commercially viable and that Alternatives 2b and 2 are the preferred alternatives.

Washington County believes the failure to use new information about the oil shale and tar sands extraction techniques only confirms BLM's failure to look at new data. Several PDEIS chapters, especially Chapter 3 and the Appendices in the OS/TS PDEIS are largely unchanged from the 2008 FEIS. By excluding new information regarding oil shale and tar sands technology, BLM also failed to acknowledge scientific controversies regarding environmental impacts of oil shale and tar sands extraction and development. Unless BLM addresses these deficiencies, the proposed FEIS and ROD will suffer fatal flaws.

The new test information confirms the need to change the assumptions in the OS/TS PDEIS that the new techniques are not commercially feasible. It also demonstrates the need to alter the environmental analysis to reflect reduced environmental impacts from oil shale and tar sands development. NEPA requires a supplement to incorporate this new data. See 40 C.F.R. §1502.9(c).

The conclusion that oil shale and tar sands development is not commercially viable is inaccurate and ignores new and relevant information recently confirmed by Uintah County's comments. If the OS/TS PDEIS took the required *fresh look* at the 2008 ROD, then it would have to correct the PDEIS assumptions. BLM's failure to incorporate this new information or to address the scientific disputes violates NEPA and the Information Quality Act (IQA), and calls for revision or supplementation of the PDEIS.

This request will not unduly delay final agency action and Washington County understands that Uintah County can show a reasonable likelihood that it will suffer actual harm if the information is not used. If the information does not comply with the Guidelines, such that non-compliance presents "significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts," then BLM must remedy the situation by re-proposing a rule or supplementing an EIS. Washington County supports Uintah County in having the highest potential for production of both oil shale and tar sands in the State of Utah. The current preferred alternative will limit any development to the small RD&D leases, thereby costing Uintah County and other local government entities significant revenues.

Washington County understands that Uintah County submitted comments during the public comment period for the OS/TS PDEIS, the new information testing the technology and further substantiating its commercial feasibility did not exist. The OS/TS PDEIS does not comply with the IQA and IQA Guidelines because BLM relied on outdated and inaccurate scientific data. Therefore, BLM must correct or supplement the OS/TS PDEIS. Along with Uintah County, Washington County would expect a response from BLM on the request to correct the scientific data or supplement the OS/TS PDEIS within 60 days.

As an independent basis for reconsidering the draft, Washington County supports Uintah County in asking that BLM prepare a supplement to new information and technology regarding oil shale and tar sands extraction and development and revision of estimated direct, indirect and cumulative environmental impacts. This revision would also address scientific controversies that

have an effect on the human environment in accordance with NEPA. 40 C.F.R. §1508.27(b)(4); *Middle Rio Grande Conservation Dist. v. Norton*, 294 F.3d 1220, 1229 (10th Cir. 2002). BLM must insure professional integrity, including scientific integrity, of the discussions and analyses in the EIS. 40 C.F.R. §1502.24.

An agency must prepare a supplement to a draft or final EIS if “(1) [t]he agency makes substantial changes in the proposed action that are relevant to environmental concerns or (2) [t]here 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). A supplement may also be prepared if the agency determines that the purposes of NEPA would be furthered by doing so. *Id.* at §1502.9(c)(2). BLM further calls for supplementation when a new alternative is added that is outside the spectrum of alternatives already analyzed. BLM NEPA Handbook H-1790-1, at 29 (Jan. 30, 2008).

NEPA requires that an agency take a “hard look” at the environmental effects of the proposed action, even after a proposal has received its initial approval. *Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 374 (1989). While an agency need not supplement an EIS every time new information is made available, if the new information shows that the remaining action will “affec[t] the quality of the human environment” in a significant manner or to a significant extent not already considered, then preparation of a supplemental EIS is appropriate.

The successful oil shale and tar sands development by several companies using different technologies after the close of the OS/TS PDEIS public comment period is significant new information relevant to environmental concerns and bears on the impact of the proposed federal action. BLM has not included this new information and data in its analysis of alternatives and their corresponding effects on the human environment. This information changes the assumed environmental impacts of Alternative 1, the No Action Alternative, and also the premise upon which the Preferred Alternatives rest. The new scientific information and technology show that oil shale and tar sands development is economically feasible contrary to the conclusions in the OS/TS PDEIS. Further, the use of this technology will have fewer environmental impacts, including less water, electrical power, and surface disturbance. *See Commonwealth of Massachusetts v. Watt*, 716 F.2d 946, 948-49 (1st Cir. 1983) (Supplementation of an EIS may be required when modifications to a proposed action, although lessening environmental impacts, also alter the overall cost-benefit analysis of the proposed action.). Therefore, supplementation of the OS/TS PDEIS is appropriate and would benefit the analysis of the alternatives and corresponding environmental impacts.

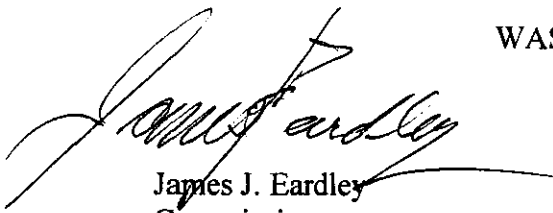
Supplementation is also appropriate because portions of the OS/TS PDEIS, such as Chapter 3 and the Appendices, are admittedly outdated. The assumptions from these sections (Chapter 3 and the Appendices) are carried throughout the analysis of the direct and indirect impacts in Chapter 2, and the cumulative effects analysis in Chapters 4-6. This outdated information and analysis dates from the 2008 PFEIS and was probably developed more than five years ago. BLM has a continuing duty to evaluate new information especially when it is relying on

information from an EIS that is four to seven years old. *See Citizens Against Toxic Sprays, Inc. v. Clark*, 720 F.2d 1475, 1480 (9th Cir. 1983) (“In general, an EIS concerning an ongoing action more than five years old should be carefully examined to determine whether a supplement is needed.”). This is especially true when the accuracy of the scientific assumptions is contested.

In Summary, Washington County appreciates the opportunity to comment during the OS/TS PEIS process and to also support other counties particularly Uintah County in this process. At this point however it is clear that there is a need for a new draft or a substantive supplement. Failure to incorporate the new information and address the scientific controversy regarding the anticipated impacts of new technology on extraction of oil from oil shale and tar sands will violate both NEPA and IQA.

Sincerely,

WASHINGTON COUNTY COMMISSION



James J. Eardley
Commissioner



Alan D. Gardner
Chair



Dennis Drake
Commissioner