Southern Utah Wilderness Alliance ▫ Center for Biological Diversity ▫ Western Watersheds Project ▫ Green River Action Network ▫ Living Rivers & Colorado Riverkeeper ▫ WildEarth Guardians ▫ Waterkeeper Alliance

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HAND DELIVERED

November 5, 2018

Ed Roberson
Utah State Director
Bureau of Land Management
440 West 200 South, Suite 500
Salt Lake City, UT 84101-1345

Re: Protest of the Utah Bureau of Land Management's, Moab Field Office, December 2018 Competitive Oil and Gas Lease Sale, Determination of NEPA Adequacy, DOI-BLM-UT-Y010-2018-0232-DNA

Dear State Director Roberson,

In accordance with 43 C.F.R. § 4.450-2 and 3120, the Southern Utah Wilderness Alliance, Center for Biological Diversity, Western Watersheds Project, WildEarth Guardians, Waterkeepers Alliance, Green River Action Network, and Living Rivers & Colorado Riverkeeper (collectively, SUWA) hereby timely protest the December 11, 2018 lease sale offering of the following 6 oil and gas lease sale parcels referred to collectively as Protest Parcels.[1]

UT1218-246 (UTU93702), UT1218-255 (UTU93711), UT1218-256 (UTU93712), UT1218-258 (UTU93714), UT1218-259 (UTU93715), UT1218-177 (UTU76858)

See generally BLM, December 2018 Competitive Oil and Gas Lease Sale, Moab Field Office, Determination of NEPA Adequacy, DOI-BLM-UT-Y010-2018-0232-DNA. For the reasons discussed in SUWA's scoping comments and the reasons discussed *infra*, BLM's decision to sell the Protest Parcels violates numerous federal laws including the National Environmental Policy Act (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), 54 U.S.C. §§ 300101 *et seq.*; the Administrative Procedures Act (APA), 5 U.S.C. §§ 551-59, 701-06, and the Clean Air Act (CAA), 42 U.S.C. §§ 7401 *et seq.*, and the regulations and policies that implement these laws.[2]

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[1] Unless otherwise noted, each argument set forth herein applies to all Protest Parcels.
[2] SUWA incorporates by reference CBD et al., Scoping Comments on the Utah December 2018 Oil and Gas Lease Sale (July 31, 2018) (attached).

I. BLM Failed to Provide Meaningful Opportunity for Public Participation Under NEPA and FLPMA.

Public participation in review of agency actions is foundational to NEPA, FLPMA and BLM's oil and gas leasing policy, assisting the agency with conducting more thorough, efficient and effective environmental review. A key, overarching purpose of NEPA is to increase public knowledge and participation in agency decision-making. NEPA requires that agencies make "*diligent efforts* to involve the public in preparing and implementing their NEPA procedures." 40 C.F.R. § 1506.6(a) (emphasis added); *see also id.* § 1500.1(b) ("NEPA procedures must ensure that environmental information is available to public officials and citizens before decisions are made and before actions are taken."). FLPMA similarly requires public involvement in public land management decisions. *See e.g.*, 43 U.S.C. § 1739(e) ("In exercising his authorities under this Act, the Secretary, by regulation, shall establish procedures … to give the … public adequate notice and an opportunity to comment upon the formulation of standards and criteria for, and to participate in, the preparation and execution of plans and programs for, and the management of, public lands."); *id.* § 1712(a) & (h).

This lease sale was conducted pursuant to BLM Instruction Memorandum (IM) 2018-034, Updating Oil and Gas Leasing Reform – Land Use Planning and Lease Parcel Reviews (Jan 31, 2018). IM 2018-034 replaced IM 2010-117, Oil and Gas Leasing Reform, Land Use Planning and Lease Parcel Reviews (May 17, 2010). IM 2018-034 purports to "streamline the leasing process" by severely limiting opportunities for public involvement. In this lease sale, BLM provided only a 15 day "scoping period" and a 10 day protest period for the parcels at issue in this protest. BLM did not release any draft environmental analyses for public review and comment. This truncated opportunity for public participation is illegal.

On September 21, 2018, the Chief U.S. Magistrate Judge Bush of the District of Idaho issued a Memorandum Decision and Preliminary Injunction in *Western Watersheds Project v. Zinke*, Case No. 1:18-cv-00187-REB (D. Idaho Sept. 21, 2018) (attached). That decision enjoins and restrains BLM from implementing certain specified provisions of IM 2018-034 for fourth quarter/December 2018 and future lease sales "contained in whole or in part within the Sage-Grouse Plan Amendments' recognized 'Planning Area Boundaries." *W. Watersheds Project*, at 50.

Although the Protest Parcels fall outside designated greater sage-grouse habitat, the court's reasoning applies with equal force to those parcels, including the unlawful requirements of IM 2018-034.

In his Memorandum Decision and Order, Judge Bush held that the plaintiffs are likely to succeed on the merits of both their substantive and procedural challenges to IM 2018-034 under FLPMA, 43 U.S.C. §§ 1712(a) & (h), 1739(e), NEPA 43 U.S.C. § 4332(C), 40 C.F.R. § 1506.6, and theAPA, 5 U.S.C. § 706(2). The court reviewed BLM's IM 2018-034 and concluded it constitutes final agency action with respect to several critical elements of the BLM's oil and gas leasing process, including (a) BLM decisions whether or not to permit public involvement, (b) length of public review and comment, and (c) length of public protests of oil and gas lease sales. *W. Watersheds Project*, at 23-34. As the court noted, "the burden of such constraints upon public

participation and compressed protest periods falls most heavily upon members of the public, as those who have nominated potential lease parcels and BLM have had far more time to evaluate and consider the details of such parcels." *Id.* at 25.

In reviewing the plaintiff's claims, and BLM's defenses, the court determined that the plaintiffs are likely to succeed on the merits of the claim that IM 2018-034's constraints on public participation are (1) procedurally invalid, because BLM imposed binding requirements for oil and gas leasing on BLM-administered lands and minerals without required public notice and comment, *id.* at 33-34, and (2) that IM 2018-034 "improperly constrains public participation in BLM oil and gas leasing decisions," *id.* at 36. The Moab field office's procedures for the December 2018 oil and gas lease sale have followed the very same provisions of IM 2018-034 that the court held to be unlawful.

Judge Bush concluded that the plaintiffs are likely to succeed on the fundamental question of whether BLM's statutory obligations require a minimum level of public involvement in leasing decisions with irrevocable, long-lasting consequences for the lands and minerals BLM manages on behalf of the public, and that the IM 2018-034 procedures fall short of those obligations. The court found:

> It is well-settled that public involvement in oil and gas leasing is required under FLPMA and NEPA. . . . On a very fundamental level, it strains common sense to see how these requirements are fulfilled when just comparing IM 2018-034 to IM 2010-117. That is, how can it be said that IM 2018-034 provides the required public participation 'to the fullest extent possible' and 'to the extent practicable,' when it is dramatically more restrictive (at least on the issue of public participation) than the previously-established IM (IM 2010-117) it only recently replaced?

W. Watersheds Project, at 36-37. The court went on to state:

> IM 2018-034 jettisoned prior processes, practices, and norms in favor of changes that emphasized economic maximization to the detriment if not outright exclusion of pre-decisional opportunities for the public to contribute to the decisionmaking process affecting the management of public lands. That choice was problematic when considering the Congressional directives for public involvement contained in FLPMA and NEPA and the apparent shortcomings of IM 2018-034 in allowing for public participation in BLM oil and gas leasing decisions.

Id. 40-41. Reviewing the record, the court further concluded that:

> in this case, the record contains significant evidence indicating that BLM made an intentional decision to limit the opportunity for (and even in some circumstances to preclude entirely) any contemporaneous public involvement in decisions

> concerning whether to grant oil and gas leases on federal lands. . . . The evidence illustrates that the intended result of the at-issue decisions was to dramatically reduce and even eliminate public participation in the future decision-making process. Doing so certainly serves to meet the stated "purpose" of IM 2018-034 – that is, reducing or precluding public participation will "streamline the leasing process to alleviate unnecessary impediments and burdens, to expedite the offering of lands for lease . . . ." *Yet, the route chosen by BLM to reach that destination is problematic because the public involvement requirements of FLPMA and NEPA cannot be set aside in the name of expediting oil and gas lease sales. The benefits of public involvement and the mechanism by which public involvement is obtained are not 'unnecessary impediments and burdens*."

Id. at 41 (emphasis added). Because of the court's clear legal conclusion that BLM, through IM 2018-034's procedures, unlawfully eliminated required minimum levels of public involvement in mineral leasing decisions, any subsequent leasing decisions carried out under the procedures of IM 2018-034 are unlawful and any leases issued subject to cancellation. As the court noted, "In not being allowed to participate at the leasing decision stage, or in having to hurriedly clamber to do so because of IM 2018-034's changes because of the limited time frame and other constraints upon public participation, *oil and gas leases have been (and will be) issued without the full benefit of public input*." *Id.* at 42-43 (emphasis added). Although the court, in the balancing the hardships at issue in that case declined to vacate third-quarter oil and gas lease sales that have already taken place, *id.* at 46-49, BLM is now fully on notice of the serious legal deficiencies inherent in the restricted public involvement procedures of IM 2018-034.

In BLM's haste to implement "energy dominance" policies and to curtain or eliminate public involvement in lease sale decisions, the BLM and Department of Interior ran afoul of NEPA, FLPMA, and the APA in both its promulgation of IM 2018-034, and by unlawfully employing its procedures for this lease sale. Past participation in landscape-scale planning decisions, or the possibility of subsequent participation in permitting decision once irrevocable commitments of development rights have already been conveyed, are no substitute for the legally-required duty on BLM to provide meaningful public participation in leasing decisions.

Because the entire process of identifying, reviewing, and offering oil and gas lease sales for BLM's December 2018 leasing process is fundamentally compromised by the unlawful provisions of IM 2018-034, BLM must defer all parcels in the December 2018 lease sale.

II. Leasing is the Point of Irretrievable Commitment of Resources

It is critical that BLM undertake satisfactory comprehensive NEPA analysis before deciding to offer, sell and issue the Protest Parcels; subsequent approvals by BLM will not be able to completely eliminate potential environmental impacts. Unfortunately, BLM has not fully analyzed potential irreversible and irretrievable impacts that could flow from its leasing decision. The sale of leases without no surface occupancy (NSO) stipulations represents a full and

irretrievable commitment of resources. BLM cannot make such a commitment without adequate analysis:

> BLM regulations, the courts and [Interior Board of Land Appeals ("Board")] precedent proceed under the notion that the issuance of a lease without an NSO stipulation conveys to the lessee an interest and a right so secure that full NEPA review must be conducted prior to the decision to lease.

S. Utah Wilderness Alliance, 159 IBLA 220, 241 (2003); *see also Pennaco Energy, Inc. v. U.S. Dep't of the Interior*, 377 F.3d 1147, 1159 (10th Cir. 2004) ("Agencies are required to satisfy the NEPA 'before committing themselves irretrievably to a given course of action, so that the action can be shaped to account for environmental values.'" (quoting *Sierra Club v. Hodel*, 848 F.2d 1068, 1093 (10th Cir. 1988))). Thus, in *Southern Utah Wilderness Alliance*, the IBLA explained that

> [t]he courts have held that the Department must prepare an [environmental impact statement ("EIS")] before it may decide to issue such "non-NSO" oil and gas leases. The reason . . . is that a "non-NSO" lease "does not reserve to the government the absolute right to prevent all surface disturbing activities" and thus its issuance constitutes "an irretrievable commitment of resources" under section 102 of NEPA.

159 IBLA at 241 (quoting *Friends of Southeast's Future v. Morrison*, 153 F.3d 1059, 1063 (9th Cir. 1998)).

As the Board has recognized, "[i]f BLM has not retained the authority to preclude *all* surface disturbance activity, then the decision to lease is itself the point of 'irreversible, irretrievable commitment of resources' mandating the preparation of an EIS.'" *Union Oil Co. of Cal.*, 102 IBLA 187, 189 (1988) (quoting *Sierra Club v. Peterson*, 717 F.2d 1409, 1412 (D.C. Cir. 1983)) (emphasis added); *see also S. Utah Wilderness Alliance*, 159 IBLA at 241-43 (same); *Sierra Club, Or. Chapter*, 87 IBLA 1, 5 (1985) (finding that because issuance of non-NSO oil and gas leases constitutes an irreversible commitment of resources, BLM cannot defer preparation of an EIS unless it either retains authority to preclude development or issues the leases as NSO).

BLM itself identifies lease issuance as the point of irretrievable commitment of resources:

> The BLM has a statutory responsibility under NEPA to analyze and document the direct, indirect and cumulative impacts of past, present and reasonably foreseeable future actions resulting from Federally authorized fluid minerals activities. *By law, these impacts must be analyzed before the agency makes an irreversible commitment. In the fluid minerals program, this commitment occurs at the point of lease issuance.*

BLM, H – 1624-1 – Planning for Fluid Mineral Resources § I.B.2, at I-2 (Jan. 28, 2013) (emphasis added) (attached); *see also S. Utah Wilderness Alliance v. Norton*, 457 F. Supp. 2d 1253, 1256 (D. Utah 2006) ("In sum, 'in the fluid minerals program, the point of irretrievable

and irreversible commitment occurs at the point of lease issuance." (quoting *Pennaco*, 377 F.3d at 1160) (internal alterations omitted)).

In the present case, BLM has failed to analyze all reasonable, foreseeable potential impacts of oil and gas development from the above-listed leases and instead has unlawfully delayed that analysis to a later date, as discussed below.

III. BLM Cannot Rely on a Determination of NEPA Adequacy

A DNA is not a NEPA document but rather is an administrative convenience which "confirms that an action is adequately analyzed in existing NEPA document(s) and is in conformance with the land use plan." BLM, National Environmental Policy Act Handbook H-1790-1 § 5.1 (Jan. 2008) (BLM Handbook 1790) (attached). A DNA "does not itself provide NEPA analysis." Dep't of the Interior, Departmental Manual Part 516, Chapter 11: Managing the NEPA Process Bureau of Land Management § 11.6(b) (May 8, 2008) (attached). BLM properly relies on a DNA to authorize an activity only if 1) the proposed action is adequately covered by relevant existing analyses, data, and records; and 2) there are no new circumstances, new information, or unanticipated or unanalyzed environmental impacts that warrant new or supplemental analysis. *See id.* § 11.6(a), (b). Stated differently, BLM has identified the following questions to consider before deciding to proceed with a DNA:

- Is the new proposed action a feature of, or essentially similar to, an alternative analyzed in the existing NEPA document(s)?
- Is the range of alternatives analyzed in the existing NEPA document(s) appropriate with respect to the new proposed action, given environmental concerns, interests, and resource values?
- Is the existing analysis valid in light of any new information or circumstances?
- Are the direct, indirect, and cumulative effects that would result from implementation of the new proposed action similar (both quantitatively and qualitatively) to those analyzed in the existing NEPA document?

BLM Handbook 1790 § 5.1.2. Notably, if the answer to *any* of these questions is "no" then BLM itself concedes that "a new EA or EIS must be prepared." *Id.* Here, the answer to several of these questions is "no" and thus BLM must prepare a new NEPA analysis to support its leasing proposal.

a. BLM's Past Use of DNAs Demonstrates the Inappropriateness of Its Use of the Lease Sale DNA

Utah BLM's recent, limited use of DNA's in the oil and gas development context demonstrates the inappropriateness of BLM's attempt to rely on a DNA here. In those instances, BLM prepared a DNA to 1) re-authorize the *same* project previously analyzed and authorized in a site-specific NEPA document, 2) authorize a minor modification to the *same* project previously

analyzed and authorized in a site-specific NEPA document, or 3) authorize a step-down version of a project previously analyzed and authorized in a site-specific NEPA document. For example:

- In Finley Resources, Inc. Pelican 15-4A-7-20 Oil Well, DOI-BLM-UT-G010-2017-0046-DNA (April 2017) (Finley DNA) (attached), BLM prepared a DNA that tiered to a site-specific EA because the "project ha[d] remained similar to the original proposal with two minimal changes. First, Finley ha[d] requested to move the project 101 feet to the northeast. Second, the 0060-EA analyze[d] a total surface disturbance of 4 acres and the newly proposed project ha[d] reduced the surface disturbance to 2.4 acres." *Id.* at *3.

- In QEP Energy Company's RW 9C1-16A Pipeline Reroute, DOI-BLM-UT-G010-2015-0170 (DNA) (Sept. 2015) (attached), BLM prepared a DNA to approve slight alterations to the placement of a pipeline in the Uinta Basin. The *same* pipeline had already been analyzed in a site-specific environmental assessment including NEPA alternatives and its direct, indirect, and cumulative impacts. *See id.* at *15.

- In Koch Exploration North Alger 27-31 Multi Well Pad, DOI-BLM-UT-G010-2015-0128-DNA (Oct. 2015) (attached), BLM prepared a DNA to approve a drilling project in which the direct, indirect, and cumulative impacts of that development had previously been analyzed in an environmental assessment. In other words, the development activities were a step-down of the *exact same* activities analyzed in the environmental assessment.

- In EnCana/Crescent Point-Lease Reinstatement, DOI-BLM-UT-G010-2015-0123-DNA (May 2017) (EnCana DNA) (attached), BLM prepared a DNA to reinstate the *same* oil and gas leases previously analyzed and authorized in the November 2016 competitive oil and gas lease sale environmental assessment. *Id.* at 2.

In each of these scenarios, BLM initially prepared NEPA documents to analyze the site-specific direct, indirect, and cumulative impacts of the exact same (or nearly identical) project authorized in the DNA, and the purpose and need statement for each project was the exact same as envisioned in the DNA. For example, the EA for the Finley Resources Inc. drilling project had the stated objective to decide "whether or not to approve the APDs." Finley Proposes The Pelican 15-3A-7-20, 15-4A-7-20, 15-6A-7-20 Wells, DOI-BLM-UT-G010-2016-0060-EA at 2 (Oct. 2016) (attached). The DNA which relied on that EA modified the decision by allowing the already authorized well to be drilled 101 feet to the northeast in an area with a smaller surface disturbing footprint. *See* Finley DNA at *3. Similarly, the EnCana DNA relied on the environmental assessment prepared for the November 2016 competitive oil and gas lease sale, the stated purpose and need of which was to "respond" to lease nominations and to promote oil and gas development on public lands, respectively. *See* November 2016 Competitive Oil and Gas Lease Sale, DOI-BLM-UT-G010-2016-033-EA at 2 (Oct. 2016) (attached). Moreover, the site-specific direct, indirect, and cumulative impacts of the leases to be reinstated in the EnCana

DNA – UTU-75675 and UTU-74837 – had been analyzed in that EA. *See* EnCana DNA at 2 (citing to the EA through which the leases were analyzed and subsequently issued).[3]

b. The Moab RMP, Moab MLP, and Canyon Country District March 2018 Competitive Oil and Gas Lease Sale EA did not Analyze all of the Site-Specific Direct, Indirect, and Cumulative Impacts of the Issuance and Development of the Protest Parcels

BLM attempts to shirk its NEPA duties by tiering to the Moab Master Leasing Plan and Proposed Resource Management Plan Amendments/Final Environmental Impact Statement (MLP/FEIS) and Record of Decision, DOI-BLM-UT-Y010-2012-0108-EIS (Dec. 2016) (Moab MLP), the Moab Field Office Proposed Resource Management Plan and Final Environmental Impact Statement (Aug. 2008) (Moab RMP), and Canyon Country District 2018 Competitive Oil and Gas Lease Sale Environmental Assessment, DOI-BLM-UT-Y010-2017-0240-EA (Nov. 2017) (March 2018 EA) (attached). These documents have not fulfilled BLM's NEPA obligations for this lease sale.

The programmatic RMP relied upon by BLM did not analyze site-specific direct, indirect, and cumulative impacts of oil and gas leasing and development for the Protest Parcels. The Moab MLP, while more narrowly focused than the RMPs, based its impact analysis on broad-level assumptions "for purposes of equitably *comparing the alternatives* . . . based on observations, historic trends and professional judgment." Moab MLP FEIS at 4-2 (emphasis added). It may be appropriate for BLM to rely on the Moab MLP for certain site-specific NEPA analyses, but BLM cannot rely on the Moab MLP (or any NEPA document) for analysis that was not prepared. For its part, the March 2018 EA analyzed site-specific impacts for entirely different lease parcels with unique resource issues.[4] BLM cannot rely on these NEPA documents for impact analyses for air quality and greenhouse gas (GHG) emissions for the December 2018 lease sale because the requisite site-specific analysis was never prepared.

NEPA requires BLM to take a hard look at all environmental impacts of a proposed action. This includes direct, indirect, and cumulative impacts. Direct effects are "caused by the action and occur at the same time and place." 40 C.F.R. § 1508.8(a). Indirect effects are "caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable." *Id.* at § 1508.8(b). Cumulative impact "is the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions." *Id.* § 1508.7.

[3] SUWA does not concede that BLM's reliance on these DNA's satisfied its NEPA hard look mandate. However, they are illustrative of the narrow nature and scope of projects for which BLM has prepared a DNA.

[4] To the extent that the DNA relies on the March 2018 EA, that EA suffered from a number of deficiencies, including failure to comply with the NHPA and NEPA in its treatment of cultural resources, failure to take a hard look at impacts to air quality and climate change from increased greenhouse gas emissions, and failure to analyze a reasonable range of alternatives. *See* SUWA et al., Protest of the BLM, Canyon Country District's Notice of Competitive Oil and Gas Lease Sale to be Held on or around March 20, 2018 (Jan. 2018) (SUWA March 2018 EA Protest) (attached). BLM cannot rely on deficient NEPA analysis to support its use of a DNA in this lease sale. SUWA's protest is incorporated herein.

i. BLM Failed to Take a Hard Look at Air Quality and GHG Emissions Impacts

BLM inappropriately relied upon the Moab RMP and Moab MLP for its analysis of air quality and greenhouse gas emission. *See* Lease Sale DNA App. C at 1-2. The Moab MLP admittedly did not analyze site-specific air quality impacts from oil and gas leasing and development because, as explained by BLM at that time, "certain information is unavailable or requires site-specific information to analyze." Moab MLP FEIS at 4-2. The lack of such information prohibited the MLP from analyzing air quality impacts based on quantitative data, and it recognized the subsequent need to do so prior to lease issuance:

> Due to a lack of quantitative data, some impacts can be discussed only in qualitative terms. *Subsequent project-level NEPA documents will provide the opportunity to collect site specific data and analyze these data in quantitative terms.*

Moab MLP FEIS at 4-2 (emphasis added). The MLP likewise did not perform site-specific air quality modeling analysis for similar reasons:

> Since the MLP is a planning document, and no specific projects are being proposed or analyzed in the Planning Area, modeling conducted for this analysis is by necessity speculative.

Id. at 4-5. Nor did the Moab MLP contain near-field analysis for site-specific authorizations because

> Specific characteristics of the source to be modeled . . . are required to conduct this analysis, and, given the nature of this planning level air quality analysis, that information is not available.

Id. at 4-10. Similarly, neither the Moab RMP nor the Moab MLP analyzed the direct, indirect, or cumulative impacts to human health or the environment from increased GHG emissions and climate change. *See, e.g.*, Moab MLP FEIS at 4-16 (explaining that the MLP did not analyze GHG emissions impacts because "[i]t is not currently possible to calculate an impact from this number, or to assign a significance value to these calculated emissions).[5]

It is immaterial with regard to site-specific NEPA impact analysis that BLM has attached air quality and greenhouse gas leasing stipulations to the Protest Parcels. *See* DNA App. C at 2. Lease stipulations and notices are developed to mitigate impacts to human health and the environment, pursuant to FLPMA and the MLA, *see, e.g.*, 43 U.S.C. §§ 1701(a)(8), 1712, 43

[5] BLM does not rely on its analysis in the March 2018 EA. *See* Lease Sale DNA App. C at 1-2 ("There is no change from the analyses competed [sic] for the 2008 Moab RMP or the 2016 Moab MLP."). SUWA notes that the air quality analysis in that EA also failed to comply with NEPA for the reasons discussed in SUWA's March 2018 EA Protest. *See* SUWA March 2018 EA Protest, at 10-21. Accordingly, BLM cannot rely on that deficient analysis to support leasing the Protest Parcels.

C.F.R. § 3101.1-3, not to analyze site-specific direct, indirect, and cumulative impacts, as required by NEPA. *See, e.g.*, 40 C.F.R. §§ 1508.7, 1508.8.

Second, BLM cannot unlawfully delay its NEPA analysis to the APD stage. As discussed *supra*, the issuance of an oil and gas lease parcel without non-waivable NSO stipulations is an irretrievable commitment of resources and thus an "assessment of all reasonably foreseeable impacts must occur at the earliest practicable point, and must take place before an irretrievable commitment of resources is made." *N.M. ex rel. Richardson v. Bureau of Land Mgmt.*, 565 F.3d 683, 718 (10th Cir. 2009). "In the fluid minerals program, this commitment occurs at the point of lease issuance." BLM Handbook 1624 § B.2. Here, BLM is unlawfully attempting to do the opposite.

c. BLM Cannot Rely Upon Prior NEPA Alternatives Analyses to Support this Lease Sale

NEPA requires agencies to study, develop, and describe appropriate alternatives and their comparative effects in every proposal involving unresolved resource conflicts, regardless of whether it prepares an EA or an EIS. 42 U.S.C. § 4332(2)(E); 40 C.F.R. § 1508.9(b). While an agency need not select a particular alternative, *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989), the alternatives requirement ensures that an agency fully consider—and show the public that it considered—less environmentally harmful means to its proposed action that would accomplish the same goal. 40 C.F.R. §§ 1500.1(b); 1500.2(d), (e); *see Bob Marshall Alliance v. Hodel*, 852 F.2d 1223, 1228 (9th Cir. 1988), *cert. denied sub nom.*, 489 U.S. 1066 (1989) ("NEPA's requirement that alternatives be studied, developed and described both guides the substance of environmental decisionmaking and provides evidence that the mandated decisionmaking process has actually taken place.").

In an EA, the agency must include a brief discussion of both alternatives and the environmental impacts of those alternatives. 40 C.F.R. § 1508.9(b). Though a "concise" document, *id.* § 1508.9(a), an EA's alternatives analysis must still present "information sufficient to permit a reasoned choice of alternatives as far as environmental aspects are concerned." *Flowers*, 359 F.3d at 1277. Moreover, agencies cannot dismiss alternatives "in a conclusory and perfunctory manner that do[es] not support a conclusion that it was unreasonable to consider them as viable alternatives in an EA." *Davis v. Mineta*, 302 F.3d at 1122.

The range of alternatives an agency must analyze is dictated by a "rule of reason and practicality" based on the agency's stated purpose and need for the project. *Davis*, 302 F.3d at1120 (citation omitted). The reasonableness of an alternative is measured in two ways. First, it must accomplish the purpose and need of the proposed action. *N.M. ex rel. Richardson*, 565 F.3d at 709. Second, it must fall within the agency's statutory mandate. *Id.* An alternative that is reasonable on its face must also be practical—"non-speculative … and bounded by some notion of feasibility." *Utahns for Better Transp. v. U.S. Dep't of Transp*, 305 F.3d 1152, 1172 (10th Cir. 2002).

An agency has broad discretion to define its objectives for a project proposal. However, after "defining the objectives of an action," the agency must "provide legitimate consideration to alternatives that fall between the obvious extremes." *Colo. Envtl. Coal. v. Dombeck*, 185 F.3d

1162, 1175 (10th Cir. 1999). Stated differently, a broadly defined objective demands that a broader range of alternatives be analyzed by the agency:

> It is the BLM purpose and need for action that will dictate the range of alternatives and provide a basis for the rationale for eventual selection of an alternative in a decision. . . .
> ….
> … *The broader the purpose and need statement, the broader the range of alternatives that must be analyzed*.

BLM Handbook 1790-1 §§ 6.2, 6.2.1, pgs. 35-26 (emphasis added).

At all times, the analyzed range of alternatives must be "sufficient to permit a reasoned choice of alternatives as far as environmental aspects are concerned." *N.M. ex rel. Richardson*, 565 F.3d at 708 (citation omitted). An EA must demonstrate that the agency took a "hard look" at alternatives – a "thoughtful and probing reflection of the possible impacts associated with the proposed project" so as to "provide a reviewing court with the necessary factual specificity to conduct its review." *Silverton Snowmobile Club v. U.S. Forest Serv.*, 433 F.3d 772, 781 (10th Cir. 2006); *see also* 40 C.F.R. § 1508.9(a)(1). Courts will not defer to a void and thus the administrative record must contain evidence – not merely conclusory statements by the agency – that the agency did in fact take a hard look at a broad range of NEPA alternatives. *See High Country Conservation Advocates v. U.S. Forest Serv.*, 52 F. Supp. 3d 1174, 1186 (D. Colo. 2014).

i. The Lease Sale is Neither a Feature of, Nor Similar to, an Alternative Analyzed in the NEPA Documents BLM Relies Upon

BLM has never analyzed leasing the Protest Parcels in a NEPA document. BLM asserts that the sale of the Protest Parcels was a feature of the alternatives included in the Moab RMP FEIS and Moab MLP FEIS which "specifically analyzed" impacts from oil and gas leasing. Lease Sale DNA at 5. Not so. The alternatives analyzed in a land use plan and the alternatives analyzed in an oil and gas lease sale are fundamentally different. The alternatives developed for the Moab RMP informed BLM's decision regarding how to allocate resources across 1.8 million acres of federal public land. *See* Moab RMP FEIS at ES-1. It is a 30,000 foot level of analysis offering no insight into specific resource conflicts at the lease sale stage. The sale of the Protest Parcels was similarly not a feature of alternatives analyzed in the Moab MLP FEIS. The Moab MLP was also a programmatic document; it did not analyze the impacts of leasing particular parcels, but rather evaluated different potential development scenarios and identified potential resource conflicts and impacts on a broad level. *See* Moab MLP FEIS at 1-2.

The March 2018 EA also did not analyze the potential impacts from leasing the Protest Parcels. It analyzed leasing parcels nearby, but with different site-specific resource issues and impacts.

ii. The Range of Alternatives BLM Considered in the Moab RMP, Moab MLP and March 2018 EA are Inapposite with Respect to the Proposed Lease Sale

The range of alternatives an agency must analyze depends upon the purpose and need of a proposed action. *Davis*, 302 F.3d at1120 (citation omitted). The alternatives analyzed in the Moab RMP and the Moab MLP were *not* oil and gas leasing alternatives and thus cannot be relied on to satisfy BLM's NEPA alternatives obligations in the present matter. Instead, those alternatives considered only broad level resource allocations for entire field offices (or large planning areas) such as designating Federal public lands as open or closed to oil and gas leasing and development. Notably they did not make site-specific leasing decisions or mandate that any particular parcels be offered for lease. The dissimilarities between those alternatives and an oil and gas leasing alternative is made clear by examining BLM's stated purpose and need for each of those documents.

- BLM's stated purpose for the Moab RMP was "to provide a comprehensive framework for BLM management of public lands within the [planning area] and allocation of resources pursuant to the multiple-use and sustained-yield requirements of FLPMA[.]" Moab FEIS at 1-1.

- BLM's stated purpose for the Moab MLP was "to 1) evaluate in-field considerations such as optimal parcel configurations and potential development scenarios; 2) identify and address potential resource conflicts and environmental impacts from development; 3) develop mitigation strategies through leasing stipulations and best management practices; and 4) consider a range of new constraints, including prohibiting surface occupancy or closing areas to leasing." Moab MLP FEIS at 1-2. And BLM's stated need for that document is to provide "additional planning and analysis . . . prior to new or additional leasing and development." *Id.*

There are no similarities between the purpose and need statements of the Moab RMP or Moab MLP and the purpose for which BLM has prepared the Lease Sale DNA – to consider offering certain parcels for lease. As noted *supra*, RMPs and MLP are programmatic field-office-wide (or large planning area wide) NEPA documents that made broad level management decisions regarding resource values under BLM's management, not site-specific leasing decisions. Likewise, they did not analyze the site-specific direct, indirect, and cumulative impacts of leasing the Protest Parcels. Accordingly, BLM cannot rely on the alternatives analysis contained therein to support its NEPA analysis in the Proposed Action.

The alternatives analysis contained in the March 2018 EA also does not satisfy BLM's obligations under NEPA. First, the alternatives BLM analyzed in that EA related to entirely distinct oil and gas lease parcels implicating different environmental concerns and resource values than the Protest Parcels. *Compare* March 2018 EA App. B *with* Lease Sale DNA App. B; *see also* SUWA Map_Moab FO March 2018_Dec. 2018 Parcels (attached). Second, in that lease sale, BLM analyzed only the extreme lease nothing or lease everything alternatives despite the broad purpose and need of that lease sale "to respond to the nominations or expressions of interest for oil and gas leasing on specific federal mineral estate." March 2018 EA at 3; *see also*

SUWA March 2018 EA Protest at 24-29. The agency failed to analyze any middle-ground reasonable, feasible alternatives that would have both responded to the purpose and need of that lease sale and minimized impacts to sensitive resources. *See* SUWA March 2018 EA Protest BLM at 24-29. BLM cannot rely upon a deficient NEPA alternatives analysis to support this DNA.

iii. BLM Failed to Respond to or Consider SUWA's Recommended Alternative

Furthermore, NEPA has twin aims: 1) NEPA "places upon an agency the obligation to consider every significant aspect of the environmental impact of a proposed action," and 2) "it ensures that the agency will inform the public that it has indeed considered environmental concerns in its decisionmaking process." *Baltimore Gas and Elec. Co. v. Natural Res. Def. Council, Inc.*, 462 U.S. 87, 97 (1983) (citations and quotations omitted). The second objective requires BLM to respond to substantive comments provided by members of the public, including SUWA. *Utahns for Better Transp.*, 305 F.3d at 1165 (explaining that under NEPA Federal agencies must "respond to substantive issues raised in comments.") (citing 40 C.F.R. § 1503.4(a)). This obligation "is more than a technical requirement." *Id.*

Under the APA it is a "fundamental tenet of administrative law" that federal agencies respond to all significant comments. *See Natural Res. Def. Council v. EPA*, 859 F.2d 156, 188 (D.C. Cir. 1988). "[T]he opportunity to comment is meaningless unless the agency responds to significant points raised by the public." *ACLU v. FCC*, 823 F.2d 1554, 1581 (D.C. Cir. 1987) (citing *Alabama Power Co. v. Costle*, 636 F.2d 323, 384 (D.C. Cir. 1979)). A comment is "significant" when "if true, [it] raise[s] points relevant to the agency's decision and which, if adopted, would require a change in an agency's proposed [action]." *Home Box Office v. FCC*, 567 F.2d 9, 35, n.58 (D.C. Cir. 1977). An agency's failure to respond to comments "demonstrates that the agency's decision was not based on a consideration of the relevant factors." *Sierra Club v. EPA*, 353 F.3d 976, 986 (D.C. Cir. 2004); *see also Natural Res. Def. Council v. EPA*, 859 F.2d at 188 ("The fundamental purpose of the response requirement is, of course, to show that the agency has indeed considered all significant points articulated by the public.").

In its scoping comments SUWA recommended BLM consider the following alternative:

- A "mitigation leasing" alternative where BLM would attach additional mitigation measures and best management practices to each lease, including controlled surface use and NSO stipulations to protect sensitive resources including cultural resources.

SUWA et al., Scoping Comments on Utah BLM December 2018 Lease Sale 20-21 (July 31, 2018) (attached). BLM has not responded to SUWA's proposed alternative.

Moreover, BLM never disputed that SUWA's recommended alternative would accomplish the purpose and need of holding a quarterly lease sale (*e.g.*, to respond to parcel nominations, and to promote oil and gas development on public domain), is technically and economically feasible, and would have a lesser impact to the environment. BLM's purpose and need for a competitive

oil and gas lease sale is very broad and thus the range of alternatives that could satisfy such an objective is correspondingly broad. There can be no legitimate dispute that SUWA's recommended alternative is technically and economically feasible.

It is likewise indisputable that SUWA's recommended alternative will have lesser impacts to resource values including cultural resources. Therefore, BLM's failure to provide any response to SUWA's recommended alternative, or to consider those alternatives in a NEPA document, violated NEPA.

IV. BLM's Treatment of Cultural Resources Violated the NHPA and NEPA

BLM has dual obligations when considering the impacts of its undertakings on cultural resources. Pursuant to Section 106 of the NHPA, BLM must "make a reasonable and food faith effort" to identify cultural resources that may be affected by an undertaking. 36 C.F.R. § 800.4(b)(1). Pursuant to NEPA, BLM must take a "hard look" at the effects of the proposed action. *Silverton Snowmobile Club*, 433 F.3d at 781. BLM must comply with both statutes at the leasing stage.

a. BLM's Treatment of Cultural Resources Violated the NHPA

Congress enacted the NHPA in 1966 to implement a broad national policy encouraging the preservation and protection of America's historic and cultural resources. *See* 54 U.S.C. § 300101. The heart of the NHPA is Section 106, which prohibits federal agencies from approving any federal "undertaking" unless the agency takes into account the effects of the undertaking on historic properties that are included in or eligible for inclusion in the National Register of Historic Places. 54 U.S.C. §§ 306108, 300320; *see also Pueblo of Sandia v. United States*, 50 F.3d 856, 859 (10th Cir. 1995). Section 106 is a "stop, look, and listen provision" that requires federal agencies to consider the effects of their actions and programs on historic properties and sacred sites before implementation. *Muckleshoot Indian Tribe v. U.S. Forest Serv.*, 177 F.3d 800, 805 (9th Cir. 1999).

To adequately "take into account" the impacts on archeological resources, all federal agencies must comply with binding Section 106 regulations established by the Advisory Council on Historic Preservation (Advisory Council). Under these regulations, the first step in the Section 106 process is for an agency to determine whether the "proposed [f]ederal action is an undertaking as defined in [Section] 800.16(y)." 36 C.F.R. § 800.3(a). Undertakings include any permit or approval authorizing use of federal lands. *Id.* § 800.16(y). If the proposed action is an undertaking, the agency must determine "whether it is a type of activity that has the potential to cause effects on historic properties." *Id.* § 800.3(a). An effect is defined broadly to include direct, indirect and/or cumulative adverse effects that might alter the characteristics that make a cultural site eligible for listing in the National Register of Historic Places. *See id.* § 800.5(a)(1); *id.* § 800.16(i); 65 Fed. Reg. 77,698, 77,712 (Dec. 12, 2000).

The agency next "[d]etermine[s] and document[s] the area of potential effects" and then "[r]eview[s] existing information on historic properties within [that] area." 36 C.F.R. § 800.4(a)(1)-(2). "Based on the information gathered, . . . the agency . . . shall take the steps

necessary to identify historic properties within the area of potential effects." *Id.* § 800.4(b). "The agency shall make a reasonable and good faith effort to carry out appropriate identification efforts." *Id.* § 800.4(b)(1). If the undertaking is a type of activity with the potential to affect historic properties then the agency must determine whether in fact those properties "may be affected" by the particular undertaking at hand. *Id.* § 800.4(d)(2).[6] If the agency official concludes that there *may be* an adverse effect, it engages the public and consults further with the state historic preservation officer, Native American tribes, any consulting parties, and the Advisory Council in an effort to resolve the adverse effects. *Id.* §§ 800.5(d)(2), 800.6.

Leasing is the point at which BLM makes an irretrievable commitment of resources such that BLM can no longer preclude surface disturbing activities on lease parcels. *See, e.g., Union Oil Co. of Cal et al.*, 102 IBLA at 189. Accordingly, BLM must fully comply with the NHPA at the leasing stage. It has failed to do so here.

SUWA is a consulting party for the December 2018 lease sale. *See* Letter from Edwin Roberson, State Director, BLM, to Laura Peterson, SUWA (July 10, 2018) (attached). BLM provided SUWA and others with a cultural resources report that included a determination that the proposed lease sale would have "no adverse effect" on cultural resources. *See* BLM, December 2018 Lease Sale Cultural Report 32 (Sept. 2018) (Cultural Report) (attached). On October 2, 2018, SUWA submitted comments on BLM's determination of no adverse effect and disagreed with that determination. *See* SUWA, Comments on the Determination of No Adverse Effect for the December 2018 Oil and Gas Lease Sale (Oct. 2018) (attached). On October 17, 2018, BLM responded to SUWA's comments and indicated that portions of the report had been revised. *See* Letter from Kent Hoffman, BLM to Stephen Bloch, SUWA (Oct. 2018) (attached). SUWA has not been provided with a revised report. Accordingly, **SUWA reserves the right to supplement this protest when it receives and reviews BLM's final cultural resources report.**

i. BLM's No Adverse Effect Determination is Unsupported and Arbitrary.

BLM's conclusion that the sale and issuance of the Protest Parcels will result in "no adverse effect" to historic properties is arbitrary and capricious. NHPA regulations provide that BLM must determine whether an undertaking *may* have an adverse effect on historic properties. *See* 36 C.F.R. § 800.4(d)(2); 36 C.F.R. § 800.5(a). Recently, the ACHP reiterated to BLM that "[a]n adverse effect finding does not need to be predicated on a certainty." *See* Letter from Reid J. Nelson, Director in the Office of Federal Agency Programs, Advisory Council on Historic Preservation, to Ester McCullough, Vernal Field Office Manager, Bureau of Land Management (Dec. 12, 2016) (attached). Furthermore, "adverse effects" are defined broadly and include impacts to a historic property's "location, design, setting, materials, workmanship, or association." 36 C.F.R. § 800.5(a)(1). As noted above, adverse effects include "[i]ntroduction of visual, atmospheric or audible elements that diminish the integrity of the property's significant historic features." *Id.* § 800.5(a)(2)(v).

[6] BLM may also determine that there are no historic properties present or there are historic properties present but the undertaking will have no effect upon them, at which point it consults with the State Historic Preservation Officer and notifies relevant Native American tribes of its conclusion. *Id.* § 800.4(d)(1).

First, BLM provides no support for its claim that each parcel within the Moab field office can accommodate reasonably foreseeable development. *See* Cultural Report at 9-12. The agency simply claims that direct impacts can be avoided by "judicious well placement" and visual and auditory effects can be avoided based on topographic variation and design features such as camouflage. *See, e.g., id.* at 10. This ignores the fact that oil and gas drilling is an industrial activity with the potential for wide ranging adverse effects. Ground clearing for well construction includes use of scrapers, backhoes, excavators, dozers and graders that can permanently damage archaeological sites. *See, e.g.*, BLM, Vernal Field Office, December 2018 Oil and Gas Lease Sale Environmental Assessment, DOI-BLM-UT-G010-2018-EA App. F at 1 (Sept. 2018) (attached). Industrial equipment in a largely pristine setting can adversely affect a sites setting feeling and association. These effects cannot be avoided simply through judicial well placement and flat paint in a topographically complex environment.

Second, BLM's no adverse effect determination entirely ignores indirect effects to historic properties such as "increased rock art exposure to dust resulting from increased traffic on roads … the potential to increase public access, potentially leading to increased vandalism and looting." *See e.g.*, BLM, September 2018 Oil and Gas Lease Sale, DOI-BLM-UT-0000-2018-0001-EA 50 (July 2018) (attached) (detailing potential indirect impacts to cultural resources in the lease sale context). Things like topographic complexity and judicious well placement will not ameliorate these indirect effects. As discussed above, an effect is defined broadly to include potential indirect and cumulative adverse effects. *See* 36 C.F.R. § 800.5(a)(1). BLM must account for these indirect effects. It has failed to do so.

Finally, BLM improperly premised its no adverse effect determination on discretionary lease stipulations. While BLM can, in some circumstances use conditions – like stipulations – to support its no adverse effect determination, those conditions must "avoid adverse effects." 36 C.F.R. § 800.5(b). The stipulations BLM relies upon here provide no such assurance. The Standard Cultural Resources Stipulation, H-3120-1 – which is attached to all parcels in the lease sale – only states that leases may contain historic properties and BLM *may* require modification to exploration and development proposals. Cultural Report at 9-10. BLM thus expressly retains the discretion to approve development that will result in adverse effects. Furthermore, by its plain terms this stipulation does not protect historic properties within BLM's identified APE; it only protects those historic properties within a given parcel's boundaries. The stipulation applies only to "historic properties and/or resources" found on "[t]his lease." Furthermore, BLM does not maintain the authority to preclude all surface disturbance.

b. BLM Failed to take a Hard Look at Impacts to Cultural Resources

In addition to BLM's obligations under the NHPA, NEPA requires BLM to take a "hard look" at the environmental effects of a proposed action. *Silverton Snowmobile Club*, 433 F.3d at 781. That "hard look" requires a "thoughtful and probing reflection of the possible impacts associated with the proposed project." *Id.* (internal quotation omitted). "General statements about 'possible' effects" are not sufficient. *Neighbors of Cuddy Mountain v. U.S. Forest Serv.*, 137 F.3d 1372, 1380 (9th Cir. 1998).

As discussed herein, BLM must undertake sufficient comprehensive NEPA analysis before deciding to offer, sell and issue the Protest Parcels because subsequent approvals by BLM will not be able to completely eliminate potential impacts to cultural resources. "If BLM has not retained the authority to preclude *all* surface disturbing activity, then the decision to lease is itself the point of 'irreversible, irretrievable commitment of resources.'" *Union of Oil Co. of Cal.*, 102 IBLA at 189. BLM – even with the attached lease stipulations – does not retain the authority to preclude all surface disturbing activity on the lease parcels. Accordingly, it must take a hard look at impacts to cultural resources at the leasing stage. It has not done so here.

First, BLM makes no attempt to discuss or assess potential impacts to cultural resources in the Cultural Report. The Cultural Report simply states that judicious well placement and design features would mitigate any potential adverse effects – without ever discussing what the potential impacts to cultural resources may be. *See generally* Cultural Report at 9-11. Rather than evaluate and explain potential effects, the Cultural Report only asserts – without support – that potential effects will be limited by the temporary nature of drilling activities and camouflaging permanent structures. *Id.* at 3-4. This does not satisfy NEPA's hard look requirements.

Further, pursuant to NEPA, BLM must analyze potential impacts to *all cultural resources*, not just historic properties. *See* BLM Manual 8100, The Foundations For Managing Cultural Resources (2004) (attached) ("Cultural Resources need not be determined eligible for the National Register of Historic Places … to receive consideration under the National Environmental Policy Act."). BLM has not done so here. Instead, it focused its discussion on only those cultural resources that are eligible for listing in the National Register of Historic Places. *See generally* Cultural Report. The Cultural Report does not contains a discussion of impacts to cultural resources – regardless of whether those cultural resources are eligible for listing on the national register. It does not contain even a cursory discussion of potential direct, indirect and cumulative impacts to resources.

Because BLM cannot preclude – and may allow – impacts to cultural resources, it must take a "hard look" at impacts to cultural resources *before* leasing. It has not done so here.

V. "Parcel" 277 Is Partially in Bears Ears National Monument

Approximately 30 acres of federal public land encompassed in "parcel" 277 are located in Bears Ears National Monument and excluded from mineral leasing by former President Obama's monument proclamation. *See* 82 Fed. Reg. 1139, Establishment of the Bears Ears National Monument (Dec. 28, 2016). "Parcel" 277 was a longstanding noncompetitive offer to lease, serialized as UTU-76858 – an offer dating back to 1997, which BLM "accepted" (*i.e.*, BLM issued the lease) in the spring of 2018. *See* Southern Utah Wilderness Alliance, Notice of Appeal Re: Issuance of Oil and Gas Lease UTU-76858 (explaining the prior history with regard to this lease) (notice of appeal and exhibits thereto attached). BLM suspended UTU-76858 following the filing of SUWA's notice of appeal in that matter. *See* Letter from BLM to Liberty Petroleum Corp. (April 20, 2018) (suspending the lease in order to prepare curative NEPA analysis) (attached); IBLA No. 2018-101, Unopposed Motion to Dismiss (May 23, 2018) (stating that the lease had been suspended as a result of SUWA's appeal) (attached).

BLM's issuance of UTU-76858 with regard to the portion thereof that overlaps with Bears Ears National Monument was unlawful and contrary to the monument proclamation. 82 Fed. Reg. at 1143 ("All Federal lands . . . within the boundaries of the monument are hereby appropriated and withdrawn from all forms of entry, location, selection, sale, or other disposition under the public land laws"). The December 28, 2016, monument designation pre-dated BLM's issuance of UTU-76858 in 2018 and therefore was an unequivocal and express rejection of the 1997 offer to lease, making BLM's issuance thereof unlawful. Moreover, President Trump's unlawful reduction of the Bears Ears National Monument boundary has no impact on this result. *See* 2017 WL 5988611 (Dec. 4, 2017), Presidential Proclamation Modifying the Bears Ears National Monument. BLM's prior attempt to issue UTU-76858 (for the portions in Bears Ears National Monument) was unlawful as is any subsequent attempt to prepare "curative" NEPA analysis to justify that prior leasing decision.

Further, a DNA could not and would not constitute "curative" NEPA analysis. BLM specifically noted that it must review UTU-76858 pursuant to NEPA. *See* Letter from BLM to Liberty Petroleum. As discussed *supra*, a DNA is not a NEPA document. BLM can only rely on a DNA where it has analyzed the site specific impacts of a proposed action and there are no new circumstances or information warranting supplemental analysis. BLM Handbook 1790 § 5.1.2. That is not the case here. BLM cannot lease the approximately 30 acres of the parcel that are encompassed within Bears Ears National Monument. To the extent that it can lease the remaining acreage, BLM must undertake new *NEPA* analysis, including analyzing site-specific direct, indirect and cumulative impacts of leasing and reasonably foreseeable development on Bears Ears National Monument.[7]

[7] BLM also committed to notify SUWA thirty days before issuing a decision on whether to: (1) lift the suspension without modifying the stipulations and notices currently attached to the lease; (2) lift the suspension with modified or new stipulations and notices attached to the lease, or (3) rescind the prior issuance of the lease. *See* IBLA No. 2018-101, Unopposed Motion to Dismiss at 2. To date, BLM has made no such notification.

REQUEST FOR RELIEF

SUWA respectfully requests the withdrawal of the Protest Parcels from the December 11, 2018 competitive oil and gas lease sale until such time as BLM resolves the above-discussed violations.

This protest is brought by and through the undersigned on behalf of SUWA. The members and staff of SUWA reside, work, recreate, or regularly visit the areas to be impacted by the proposed lease sale and therefore have an interest in, and will be adversely affected by, the proposed action.

DATED: November 5, 2018

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