



southern  
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**BY ELECTRONIC MAIL ([Stephanie.Howard@blm.gov](mailto:Stephanie.Howard@blm.gov)) AND FIRST CLASS MAIL  
(Attachments Sent Via Hard Copy)**

July 19, 2007

Ms. Stephanie Howard  
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*Re: Enduring Resources' Saddletree Draw Leasing and Rock House  
Development Proposal, Draft Environmental Assessment  
UT-080-07-671 (June 2007)*

Greetings:

Southern Utah Wilderness Alliance, Natural Resources Defense Council, and The Wilderness Society (collectively "SUWA") appreciate the opportunity to submit comments on the Enduring Resources' Saddletree Draw Leasing and Rock House Development Proposal, Draft Environmental Assessment UT-080-07-671 (June 2007) (the "Rock House EA" or the "EA"). SUWA members regularly use and enjoy Utah's spectacular public lands in the project area, particularly the region surrounding the White River and within the White River Wilderness Inventory Area (WIA), and are intensely interested in public lands issues such as this proposed development project and the associated facilities that would also be constructed.

In short, the BLM's Rock House EA complies with neither the letter nor the spirit of several important federal environmental and historic preservation laws, including the National Environmental Policy Act (NEPA) and the National Historic Preservation Act (NHPA). The EA neither fully informs the public or the decision maker as to all of the issues associated with this proposal, nor does it adequately analyze the potential impacts of the proposed action to many of the resources that the BLM manages. In addition, the EA never truly considers cancellation of lease UTU 81737, even though the agency retains complete authority to do so.

SUWA offers the following specific comments and looks forward to reviewing BLM's detailed responses to each issue raised below:

**1. THE ROCK HOUSE EA VIOLATES NEPA.**

**A. The Rock House EA Fails to Provide Independent Evaluation of Information Provided by the Applicant.**

Pursuant to 40 C.F.R. § 1506.5 (a)-(b), BLM must independently evaluate all environmental information provided by Enduring Resources' (Enduring's) third party consultants that prepared the Rock House EA. *See* EA at 6-2.

- Specifically, the BLM must disclose who provided independent analysis of the information submitted by Enduring and Enduring's third-party consultants and the qualifications of those reviewers.
- The BLM should particularly scrutinize the information submitted on well locations and directional drilling for every alternative contained in the EA as this is a critical component of the proposed project. As presented, every development alternative violates the current Book Cliffs Resource Management Plan (RMP). In addition, the Resource Protection Alternative fails to even significantly minimize surface impacts when compared to the other development alternatives, particularly Alternative C. *Compare* EA at 2-9 to -12, *with* EA at 2-1 to -9, 2-12 to -17. The BLM must also scrutinize the EA's dismissal of the lease exchange alternative, since it relies on erroneous information. *See* EA at 2-24 to -25. In his comment, Mr. Ken Kreckel, a professional geophysicist with over thirty years of experience in oil and gas exploration and development in North America (including Utah) and abroad, has pointed out many of the shortcomings of the current proposed drilling program and alternatives; in addition, he also disputes the BLM dismissal of the lease exchange alternative. *See* Ken Kreckel, Comments on the Environmental Assessment UT-080-07-671, Enduring Resources' Saddletree Draw Leasing and Rock House Development Proposal (Kreckel Comments) (attached as Exhibit 1). SUWA expressly incorporates Mr. Kreckel's comments by reference. Alternate well locations and directional drilling would help avoid encroachment on and loss of wilderness character in the White River unit and in the proposed White River Area of Critical Environmental Concern (ACEC). In addition, these changes would help minimize impacts to wildlife, vegetation, soils, recreation, and cultural resources. Finally, a lease exchange would ultimately resolve the unrepairable conflicts that exist between this development in this area and the BLM's current and pending land-use plans.

**B. BLM's Selection of the Range of Alternatives Violates NEPA.**

NEPA requires federal agencies to "study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources." 42 U.S.C. § 4332(2)(E). As stated in 40 C.F.R. § 1508.9(b), this statutory provision is independent of the environmental impact statement (EIS) requirement and mandates that agencies seek

alternatives for *all* proposals, including those for which the agency prepares only an environmental assessment. *Davis v. Mineta*, 302 F.3d 1104, 1120 (10th Cir. 2002) (“A properly-drafted [environmental assessment] must include a discussion of appropriate alternatives to the proposed project.”) (citing 42 U.S.C. § 4332(2)(E) and 40 C.F.R. § 1508.9(b)). *See also Bob Marshall Alliance v. Hodel*, 852 F.2d 1223, 1228-29 (9th Cir. 1988) (“[C]onsideration of alternatives is critical to the goals of NEPA even where a proposed action does not trigger the EIS process . . . . In short, any proposed federal action involving unresolved conflicts as to the proper use of resources triggers NEPA’s consideration of alternatives requirement, whether or not an EIS is also required.”); *River Road Alliance, Inc. v. Corps of Eng’rs*, 764 F.2d 445, 452 (7th Cir. 1985) (“This requirement is independent of the question of environmental impact statements, and operative even if the agency finds no significant environmental impact. *For nonsignificant impact does not equal no impact; so if an even less harmful alternative is feasible, it ought to be considered.*”) (emphasis added) (internal citation omitted).

Both the Tenth Circuit and Interior Board of Land Appeals apply a “rule of reason” analysis to determine whether the range of alternatives BLM considered, “and the extent to which it discuss[ed] them,” was adequate. *Utahns for Better Transp. v. Dep’t of Transp.*, 305 F.3d 11521166-67 (10th 2002) (citing *City of Grapevine v. Dep’t of Transp.*, 17 F.3d 1502, 1506 (D.C. Cir. 1994)). *See Owen Severance et al.*, 163 IBLA 208, 220 (2004). A reasonable alternative is one that is “non-speculative . . . and bounded by some notion of feasibility.” *Utahns for Better Transp.*, 305 F.3d at 1172 (citing *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council*, 435 U.S. 519, 551 (1978)) (additional citations omitted). While an agency may not “completely ignor[e] a private applicant’s objectives” in evaluating the reasonableness of alternatives, *Colorado Env’tl. Coalition v. Dombeck*, 185 F.3d 1162, 1174-75 (10th Cir. 1999) (citations omitted), neither may it let these objectives control its consideration of alternatives. On the contrary, “the evaluation of alternatives mandated by [the National Environmental Policy Act] is to be an evaluation of alternative means to accomplish the general goals of an action; it is not an evaluation of the alternative means by which a particular applicant can reach his goals.” *Id.* at 1174 (citations omitted).

This section of SUWA’s comments – addressing the range of alternatives – was prepared with the assistance of Mr. Ken Kreckel. Mr. Kreckel points out in his comments that the Rock House EA fails to consider numerous alternatives that would reduce surface impact and that would violate fewer current stipulations found in the Book Cliffs RMP and in the Draft Vernal RMP. *See generally* Kreckel Comments. In addition, he also points out that sufficient information exists for the BLM to fully study and analyze a lease exchange option. *Id.* It is important to note that Mr. Kreckel’s alternatives may not completely eliminate conflicts between the current Book Cliffs RMP, the Draft Vernal RMP, and other resource values. *Id.* However, in as much as these conflicts are found in his alternatives, they are greatly reduced when compared to the Rock House EA’s current range of development alternatives. The BLM is responsible for disclosing the full nature of these conflicts and for attempting to eliminate them. Such irreconcilable conflicts serve to underscore the need for the agency to prepare an EIS to fully evaluate and disclose the environmental impacts of this project and demonstrate the feasibility and

attractiveness of a lease exchange/buyback alternative. Regardless of what alternative BLM ultimately selects (with the exception of the lease exchange/buyback alternative discussed immediately below), it must also prepare a land use plan amendment to address this conflict and permit the public to review this proposed change to the land use plan

The BLM must fully analyze and consider a lease exchange/buyback alternative since well production data is readily available in the area, such estimates are not completely reliant on well production, and it is the only alternative that will accomplish the stated goals of the BLM in the Book Cliffs RMP and the Draft Vernal RMP.

The significant points from Mr. Kreckel's comments are summarized below:

- The Rock House EA's Alternatives A, B, and C all violate existing no surface occupancy (NSO) stipulations.
- None of the alternatives in the EA actually consider the elimination of all leasing and disturbance on UTU 81737. Mr. Kreckel has prepared a potential alternative that would eliminate leasing and disturbance on this lease completely.
- Mr. Kreckel has also prepared two additional alternatives that would greatly reduce surface impacts.
- The BLM should consider requiring Enduring to pipe water from the unnamed wash located principally on state trust lands, sitting west of Saddletree Wash.
- The BLM should re-evaluate its dismissal of the lease exchange alternative. All of the assertions made in eliminating this alternative were based on incorrect assumptions and information.

**B. The Rock House EA Fails to Take a "Hard Look" at Resource Damage that Will Likely Be Caused by the Proposed Project.**

The EA fails to take a "hard look" at the impacts of the proposed project on a proposed area of critical environmental concern (ACEC), access issues to fee lands located within the project area, cultural resources, watershed resources, recreation, soils, wildlife, vegetation, visual resources, a proposed wild and scenic river, wilderness character, sound, and air quality. NEPA requires that BLM take a "hard look" when it analyzes and evaluates the impacts of proposed project "utilizing public comment and the best available scientific information." *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989). Moreover, NEPA requires that federal agencies carefully consider relevant "detailed information concerning significant environmental impacts" and share that information with the public in the environmental assessment. *See Blue Mountain Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1212 (9<sup>th</sup> Cir. 1998). An environmental assessment's general statements about "possible" effects and "some risk" do not constitute a "hard look" absent a showing of why more definitive information

could not be provided. *Neighbors of Cuddy Mountain v. U.S. Forest Serv.*, 137 F.3d 1372, 1380 (9<sup>th</sup> Cir. 1998).

In addition to evaluating the proposed project's direct effects, BLM must take a hard look at indirect effects. *See* 40 C.F.R. § 1508.8; *Airport Neighbors Alliance, Inc. v. United States*, 90 F.3d 426, 432-33 (10<sup>th</sup> Cir. 1996) (NEPA requires agencies to consider indirect environmental effects of proposed action).

The BLM failed to take a "hard look" at the potential impacts from the proposed action in the following areas:

- Proposed White River ACEC
  - The EA fails to fully consider the cumulative impacts of this project and others to the important values of the proposed ACEC, such as boating, recreation, and the Goblin City overlook. It dismisses impacts that might result from this project to those values, even though any alternative will undoubtedly significantly impact such values. Because of these impacts the BLM must prepare an EIS.
  - The EA's discussion of the ACEC completely fails to disclose the fact that BLM has retained authority to cancel UTU 81737. *See* EA at 4-1 to -2. There is no statement that impacts will be significantly diminished or eliminate altogether from Alternative B because of lease cancellation. *See id.*
  - The EA quantifies direct surface impacts to the ACEC, however it contains no discussion or quantification of the indirect impacts of well pads, roads, and pipelines, which will extend beyond acreage figures. *See* EA at 4-1 to -2.
- Access to Fee Lands in Project Area
  - The Rock House EA improperly dismisses the role of the BLM in regards to the possible wells located on the fee lands of Section 30, T10S R23E. The BLM may not have authority over those lands, however, the BLM does have some authority and influence over access to these parcels. *See* EA at 4-1. There is no discussion of the extent of this authority and the type of access that Enduring may receive to these fee lands.
- Cultural Resources
  - Mr. Jerry Spangler, an archeologist with substantial experience evaluating and understanding the causes and effects of adverse effects to cultural and historic properties throughout the West, has prepared comments regarding the Rock House EA. *See* Jerry Spangler, Colorado Plateau Archeological

Alliance, Comments (July 10, 2007) (Spangler Comments) (attached as Exhibit 2). SUWA expressly incorporates Mr. Spangler's comments by reference.

- Mr. Spangler's comments highlight the principal inadequacies with the Rock House EA's cultural resource impact analysis:
  - The BLM has failed to consult with Native American tribes early in the planning process.
  - The Rock House EA incorrectly assumes that site avoidance means that no significant impacts will result from the project.
  - The acknowledgement of indirect effects fails to create adequate mitigation measures to avoid such impacts.
  - The BLM should undertake a Class III block survey or a Class II sample survey of the region to determine actual site density.
  - Roads facilitate vandalism. The BLM should adopt one of the alternatives proposed by Mr. Kreckel as they will reduce the number of roads in the area and the likelihood of vandalism.
- Watershed Resources
  - Mr. David Atkins, a water quality expert with substantial experience evaluating impacts from extractive projects, has prepared comments regarding the Rock House EA. *See* David Atkins, Comments on Environmental Assessment for Enduring Resources' Saddletree Draw Leasing and Rock House Development Proposal, UT-080-07-671 (Atkins Comments) (attached as Exhibit 3). SUWA expressly incorporates Mr. Atkins's comments by reference.
  - Mr. Atkins's comments highlight the principal inadequacies of the Rock House EA regarding watershed resources:
    - The Rock House EA's characterization of the existing conditions in the project area is inadequate. Existing surface and groundwater conditions are not characterized neither are the conditions of groundwater near existing wells – along with the effectiveness of mitigation measures.
    - Cumulative impacts from other developments in the area along with this project could result in significant impacts.

- The cumulative impacts analysis fails to consider water that may be produced after wells are operating.
- The Rock House EA does not develop any sort of criteria that will guide when closed-loop technology will be used.
- There is no mention of water quality monitoring and associated water quality standards that will be established for this project.
- The Book Cliffs RMP requires that the BLM prepare a watershed resource management plan for the White River. *See* Book Cliffs RMP at 65. The BLM must prepare a watershed resource management plan before approving this project so that it may fully and completely analyze the impacts of this proposal on the watershed of the White River.
- The watershed discussion fails to analyze the likelihood that increased erosion and sedimentation will lead to increased turbidity and biological oxygen demand (BOD) in the White River. This possibility must be discussed, in particular, it must evaluate the effect that this would have on aquatic life of the White River.
- Recreation
  - The Rock House EA admits that the proposed project will result in a lost and/or a diminished recreational experience for those visiting the area. *See* EA at 4-12. This would come from a “perceived reduction in desired setting and recreational experience,” impacts to the Goblin City overlook, a decreased experience at the Atchee Wash campsite, the visibility of facilities from the river, sound issues, and increased off-road vehicle (ORV) use in the project area, among other things. EA at 4-13 to -14. Because of these significant impacts to recreation on the White River – as well as the overall significant change to the quiet, backcountry experience found by visitors to this remote river – the BLM must prepare an EIS. The BLM must also consider additional alternatives that would eliminate these impacts.
  - The Book Cliffs RMP closes portions of the project area to ORV travel. *See* Book Cliffs RMP at 57-58. The Rock House EA improperly waives away substantive discussion of increased illegal ORV use in this closed area. *See* EA at 4-14. Because of the increased illegal ORV use that will result in the area the BLM must prepare an EIS to evaluate this significant impact. The BLM must also consider the alternative of requiring Enduring to pipe water from the unnamed state section wash located west of Saddletree Wash.

- The Book Cliffs RMP requires the BLM to prepare and implement a White River Recreation Management Plan, to prepare an ORV designation plan for lands south of the White River, and to publish those designations and implement the ORV plan. Book Cliffs RMP at 61-62. The BLM has not prepared these plans or fulfilled these steps. It must do so before approving this project.
- Soils
  - The Rock House EA incorrectly assumes that long-term surface disturbance will be much less than the initial surface disturbance due to reclamation measures. See EA at 2-6, 2-12, 2-16, 2-20. The EA also assumes that erosion rates will no longer increase once reclamation succeeds in stabilizing soils. However, the EA appears to incorrectly assume that reclamation will reduce the size of the initial disturbance from the construction activity and that reclamation before the retirement of producing wells will be productive. Compare Rock House EA at 11-13, 15, 42-43 (suggesting that reclamation will reduce initial disturbance from pipelines, pads, and roads) with BLM, North Chapita Natural Gas Well Development Project, Environmental Assessment No. UT-080-2003-0307V, at 81-82 (March 2006) (“Recent BLM monitoring has documented that interim reclamation efforts in oil and gas development areas have largely been unsuccessful at establishing soil stability and vegetation. Accordingly, BLM field inspections are indicating that initial disturbance should be more accurately portrayed as long-term impacts for the life of the project.”). Although the EA may implicitly admit that this is the case for well pad reclamation, it fails to apply these same finding to road and pipeline corridor construction. The Rock House EA does not fully evaluate how these recent BLM findings would affect the estimates of yearly soil erosion and vegetation loss for the project area.
  - The Rock House EA contains no discussion of biological soil crusts or their distribution in the project area and their potential to be impacted by this project. The BLM should consult such resources as the following: Belnap, J., “Recovery Rates of Cryptobiotic Crusts: Inoculant Use and Assessment Methods,” 53 *Great Basin Naturalist* (1), 89-95 (1994). Belnap, J., et al., “Biological Soil Crusts: Ecology and Management,” U.S. Dep’t of the Interior, BLM, Technical Reference 1730-2 (2001). Johansen, J.R. and S.R. Rushforth, “Cryptogamic Crusts: Seasonal Variation in Algae Populations in the Tintic Mountains, Juab County, Utah, USA,” 45 *Great Basin Naturalist* 14-21 (1985).
  - The Rock House EA describes potential erosion rates that would be rather high. See EA at 4-17 to -18. This is a significant impact and requires the preparation of an EIS.



- Wildlife
  - The Rock House EA states that bald eagles could be impacted by the noise of the generator located along the White River but ultimately concludes that bald eagles would not be impacted by the noise based on erroneous figures for sound levels in the project area. *See* EA at 4-19. As discussed below, the sound analysis suffers from significant defects that make it impossible for the agency to conclude that generator sound levels would be minor. *See, infra*, at 12. In addition, the Rock House has cited no support for its conclusion that noise levels of the type it describes would not impact bald eagles.
  - Because of these defects regarding analysis of effects to bald eagles the BLM must prepare an EIS.
  - A recently released study has shown that sage grouse are declining at a rapid pace in areas of gas development. *See* Dustin Bleizeffer, “Studies: Drilling Imperils Grouse,” *Casper Star Tribune* (July 5, 2007), <http://www.trib.com/articles/2007/07/05/news/wyoming/d9242fbe70a20aeb8725730e00036584.txt>. The Rock House EA itself states that sage grouse are affected by human activity. *See* EA at 4-20. However, despite such research, the EA inexplicably concludes that while individual birds may be affected there is not likely to be a decrease in sage grouse viability. *See id.*
  - The EA also fails to consider the likelihood that the increased energy development activity in the area will lead to increased rates of poaching. *See* Patrick O’Driscoll, “Poachers Making a Killing in West’s Oil and Gas Fields,” *Deseret News* (from *USA Today*), Feb. 26, 2007.
  - The Rock House EA contains no discussion of the potential impacts to federally listed and state sensitive fish species from increased turbidity and BOD in the White River.
- Vegetation
  - The Rock House EA lacks any substantial discussion of the potential impacts of invasive and noxious weeds on existing, native vegetation. This appears to be a significant omission since the EA states that this project will likely result in the introduction and spread of invasive and noxious weed species. *See* EA at 4-12. The Rock House EA admits that invasive and noxious weeds could be a “potential impact” to habitat of two special status plan species within the project area but then inappropriately concludes that such impacts would not be significant. *See* EA at 4-25. Without further analysis it is improper for the BLM to conclude that impacts to vegetation will not be significant.

- As with the soils section discussed earlier, the improper disturbance estimates lead to an underestimate of the true impacts of this project on vegetation. *See, supra*, at 8.
- Visual Resources
  - Currently, the project area is largely untrammled and hosts impressive views of the surrounding area. The Goblin City overlook, the riverside campsites, and other areas offer recreationists outstanding views of the natural surroundings. It contains “deep canyons, high ridges, cliffs, and unique geological features.” EA at 3-21. The EA fails to discuss and analyze these unique resources in the visuals section and therefore understates the true impacts on visual resources from the proposed project.
  - The Rock House EA summarily dismisses potential conflicts with visual resource management (VRM) classifications in the Draft Vernal RMP. Although, as the EA states, Enduring retains some rights regarding access and development, that in no way permits to BLM to avoid analysis and discussion of how those impacts might be minimized. *See* EA at 4-27.
  - The visual impacts from Alternative B are expected to be the same as those from the other development alternatives. *See* EA at 4-27. This fact indicates a significant failing of Alternative B itself, as the BLM has not even developed a development alternative that would result in fewer visual impacts.
  - The Book Cliffs RMP discusses significant and very stringent restrictions regarding visual impacts in the White River viewshed. *See* Book Cliffs RMP at 17-28. Acknowledgement of these restrictions and the conflicts that the present proposal creates is completely absent from the Rock House EA. These conflicts certainly represent significant impacts and must be evaluated in an EIS.
- Proposed Wild and Scenic River Designation
  - The Rock House EA states that the new development associated with the present plans for this project would directly impact the tentative classification of this area as part of the National Wild and Scenic River System. EA at 4-28. However, the EA then suggests that this significant impact is not really so significant because the area had been considered eligible for “wild” designation before. *See id.* This inexplicable conclusion ignores the potential disqualification of the area due to augmented rates of access and use in this proposed “wild” corridor. It also ignores the substantial intrusion of a generator in the area and water pumps. In addition, these potentially significant impacts to the resources

supporting BLM's proposal to designate this stretch of the river as "wild" require the preparation of an EIS.

- These potential impacts also favor the use of the state section wash for water delivery to the project area.
- Wilderness Character
  - Currently, the White River wilderness characteristics area is largely untrammled and serves as an island of primitive solitude amongst the ever-increasing oil and gas development in the Uintah Basin. It is remote, wild, contains abundant natural quiet, and hosts a unique river canyon system enjoyed by many for its beauty and naturalness. It contains "deep canyons, high ridges, cliffs, and unique geological features" along with groves of cottonwood trees in the canyon bottom. *See EA at 3-21.*
  - The proposed project would significantly impact wilderness characteristics in the area. The BLM must disclose this in its environmental analysis. This necessitates the preparation of an EIS.
  - The naturalness of the area, the size of the wilderness characteristics area, the opportunities for solitude, and the denigration of opportunities for primitive and unconfined recreation would all be severely impacted by the proposed project development. The Rock House EA understates the extent of these impacts because of inadequate analysis regarding auditory impacts, soil impacts, vegetation impacts, visual, and recreational impacts.
  - The Rock House EA fails to consider the impacts of the proposed project to perceived naturalness outside of the immediate physical boundaries of the proposed well pad and road upgrades after drilling has finished. This proposed project will affect visitor perceptions of naturalness and opportunities for solitude in an area much greater than acreage figures presented in the EA. *See EA at 4-29 to -30.* Although the EA mentions that these values will be impacted in the project area, it does not attempt to quantify this impact or the extent of the impact to perceived naturalness and solitude beyond the acres of terrain denuded of vegetation and after the drilling operations have ceased (while production continues). *See id.* Thus, the proposed project has the potential to impact wilderness character to an extent much greater than is discussed in the Rock House EA.
  - The Rock House EA does not analyze the impacts to supplemental values of the White River wilderness characteristics area.
  - Again, Alternative B completely fails to accomplish its purpose of protecting resources in the project area because the impacts from this alternative would be no different than the other alternatives, even though it

would allegedly cancel UTU 81737. *See* EA at 4-30. The EA also mentions that impacts from this alternative would be proportional to the level of development, yet it fails to quantify and discuss this level of development.

- Sound
  - Mr. Skip Ambrose, a sound engineer with substantial experience evaluating auditory impacts from human activity in natural setting has prepared comments regarding the Rock House EA. *See* Skip Ambrose, Comments (submit independently). SUWA expressly incorporates Mr. Amroses's comments by reference.
  - Mr. Ambroses's comments highlight the principal inadequacies of the Rock House EA regarding noise and sound issues from the riverside generator.
    - The Rock House EA likely overstates the actual sound level of the White River near the mouth of Saddletree Draw. *See* EA at 4-13 to -14. The EA provides no information regarding the way in which noise levels were measured at this location and how they were measured. Were the instruments used capable of measuring sound levels as low as 5 dBA? It is possible that actual noise levels in this location could be somewhere between 10-15 dBA, even dropping as low as 5 dBA. At such rates, the generator would be very noticeable, loud, and intrusive.
  - SUWA also incorporates the expert comments that it previously submitted regarding sound issues for the last environmental analysis of this project; the issues raised in those comments have not been addressed in this EA. *See* Richard Kolano, Kolano and Saha Engineers, Inc., Comments (Nov. 20, 2006) (attached as Exhibit 4).
    - These comments state that the generator would impact recreational users, that the noise level predictions for the generator are erroneous, that the background noise level of the river is likely not representative of noise levels year round, that the EA lacks noise measurements from other locations within the project area, and that the EA fails to address the noise impacts from other well drilling activities.
- Air Quality
  - As part of its air quality comments, SUWA incorporates and adopts the contents of a comment letter from Ms. Megan Williams to the BLM regarding the Rock House EA. These comments were submitted

separately from SUWA's. Briefly, Ms. Williams raises the following points:

- The BLM must conduct a more thorough quantitative analysis of air quality impacts for the Rock House EA.
- The Rock House EA emissions inventory is likely incomplete and under-predicts emissions from sources.
- The EA fails to include an adequate analysis of air quality impacts.

### **C. The Rock House EA Violates the Book Cliffs RMP**

The BLM is required to manage public lands in conformance with developed land use plans. *See* 43 U.S.C. § 1732. As explained above, the Rock House EA contains numerous conflicts with the Book Cliffs RMP, principally regarding management of visual resources and protections for the White River area. The EA, in general, ignores these conflicts. The BLM has a duty to not only disclose them, but to eliminate them. The BLM also must prepare a number of management plans detailed in these comments, which it has committed to do in the Book Cliffs RMP, before proceeding with its analysis of the project. The BLM should consider new alternatives that would eliminate conflicts with the Book Cliffs RMP, would cancel lease UTU 81737, and that would greatly reduce surface impacts from this proposed project – as proposed by Mr. Kreckel.

### **D. The Rock House EA Fails To Properly Analyze Indirect and Cumulative Impacts.**

The Council on Environmental Quality recognizes that “the most devastating environmental effects may result not from the direct effects of a particular action, but from the combination of individual minor effects of multiple actions over time.” CEQ, *Considering Cumulative Effects Under The National Environmental Policy Act* (1997). As the D.C. Circuit has explained, “[a] meaningful cumulative impact analysis must identify (1) the area in which the effects of the proposed project will be felt; (2) the impacts that are expected in that area from the proposed project; (3) other actions – past, present, and proposed, and reasonably foreseeable – that have had or are expected to have impacts in the same area; (4) the impacts or expected impacts from these other actions; and (5) the overall impact that can be expected if the individual impacts are allowed to accumulate.” *Grand Canyon Trust v. Federal Aviation Admin*, 290 F.3d 339, 345-47 (D.C. Cir. 2002). Furthermore, NEPA requires that BLM's cumulative impacts analysis provide “some *quantified* or *detailed* information,” because “[w]ithout such information, neither courts nor the public . . . can be assured that the [agency] provided the hard look that it is required to provide.” *Neighbors of Cuddy Mountain v. United States Forest Service*, 137 F.3d 1372, 1379 (9<sup>th</sup> Cir. 1998) (emphasis added).

General statements about ‘possible’ effects and ‘some risk’ do not constitute a ‘hard look’ absent an explanation of why more definitive information could not be

provided.” See *Blue Mountains Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1214 (9<sup>th</sup> Cir. 1998). The Rock House EA fails to quantify or identify preexisting and ongoing impacts. Cumulative impacts analysis clearly requires that past and present actions be included in the analysis as well. The EA should include analysis and quantification of past and present impacts as well as cumulative future impacts, specifically it should also analyze the impacts from off-road vehicle use in the area of the project.

- The BLM omitted discussion of past, present, and future off-road vehicle use in the area. This error prevents the BLM from being able to accurately evaluate long-term cumulative impacts.
- The EA also fails to consider cumulative impacts to cultural resources as discussed in the comments of Mr. Spangler.
- The Rock House EA does not discuss the potential cumulative impacts to threatened, endangered, and sensitive species along with other wildlife from the inevitable erosion and run-off that will result from this project and others, such as increased turbidity in the White River.
- The Rock House EA fails to fully analyze cumulative impacts to the White River wilderness characteristics from other past, present, and reasonably foreseeable actions because it does not consider the every potential project in the area. For example, it failed to evaluate a nearby oil shale project proposed by Oil Shale Exploration Company. This failing applies to every aspect of the cumulative impacts analysis and is not limited to wilderness characteristics alone.

**E. Both Alternatives A, B, and C Violate NEPA by Prematurely Limiting Reasonable Alternatives in Ongoing Planning Efforts.**

Regulations implementing NEPA prohibit actions that would limit the BLM’s choice of reasonable alternatives in ongoing planning processes. 40 C.F.R. § 1506.1(a)(2). Similarly, to the extent that the proposed alternatives are not covered by an existing program statement, those alternatives must not “prejudice the ultimate decision” of the forthcoming Vernal RMP by tending to determine development or limit alternatives. See 40 C.F.R. § 1506.1(c)(3). Finally, FLPMA requires the BLM to “give priority to the designation and protection of areas of critical environmental concern” in the planning process. 43 U.S.C. § 1712(c)(3).

The proposed project comes in the midst of significant planning processes, including the preparation of the Vernal Field Office’s RMP and the consideration of an ACEC nomination in the area. As explained below, a decision on the proposed project should wait until after these ongoing planning efforts are complete or consider a directional drilling alternative that would eliminate impacts to the proposed ACEC, as proposed by Mr. Kreckel.

The development alternatives allow intensive well development in the portions of the project area that include the proposed White River ACEC. Such drilling will cause direct impacts such as increased traffic, increased noise, visual intrusions, degradation or destruction of natural and cultural resources, preclusion of recreational activities, and the like. In short, the proposed activity will lead to a variety of impacts that will effectively foreclose certain future land management options. This is not allowed when the BLM is currently in the midst of a regional planning process.

- The proposed action authorizes landscape-changing activity. Selection of either development alternative would limit the BLM's choice of reasonable alternatives in the ongoing Vernal RMP process because it would allow a fundamental change in the character of the project area. Selection of any development alternative in the EA effectively precludes other reasonable, less-extractive land use alternatives in the Vernal RMP. *See* 40 C.F.R. § 1506.1(a)(2). A decision on the Enduring proposal should wait until after the Vernal RMP process is completed.
- Among the reasonable choices available in the Vernal RMP process are management decisions that would lead to increased restrictions on portions of the project area (such as management of certain parcels as Areas of Critical Environmental Concern in which oil and gas leasing would be prohibited). *See* Draft Vernal RMP at 2-55. Because these management decisions may not be compatible with intensive gas development, approval of such exploration must wait until after the RMP process.

#### **F. The BLM Must Prepare an EIS to Evaluate the Impacts of This Proposed Development.**

The BLM must prepare an EIS to fully evaluate and consider the potentially significant impacts from this proposed development. *See, e.g., Ocean Advocates v. U.S. Army Corps of Eng'rs*, 361 F.3d 1108, 1124 (9<sup>th</sup> Cir. 2004) (“[A]n EIS must be prepared if ‘substantial questions are raised as to whether a project . . . may cause significant degradation of some human environmental factors.’”) (emphasis in the original). To trigger the requirement to prepare an EIS, “plaintiff need not show that significant effects *will in fact occur*,’ [but] raising ‘substantial questions whether a project may have a significant effect’ is sufficient.” *Id.* (quoting *Idaho Sporting Cong. v. Thomas*, 137 F.3d 1146, 1149-50 (9<sup>th</sup> Cir. 1998)) (additional citations omitted) (emphasis in original). *See also National Audubon Soc’y v. Hoffman*, 132 F.3d 7, 18 (2d Cir. 1997) (“[W]hen it is a close call whether there will be a significant environmental impact from a proposed action, an EIS should be prepared.”) (emphasis added); *Natural Resources Defense Council v. Herrington*, 768 F.2d 1355, 1430 (D.C. Cir. 1985) (agency must make a “convincing case that [the impacts of its action are] insignificant”).

CEQ regulations identify specific factors that an agency must evaluate in determining “significance.” 40 C.F.R. § 1508.27(b). “[T]he existence of one or more significance factors can justify setting aside a FONSI and remanding either for further

consideration of those factors or preparation of an EIS.” *Fund for Animals v. Norton*, 281 F. Supp. 2d 209, 235 (D.D.C. 2003).

Below is a brief, non-exclusive listing of impacts that necessitate the preparation of and EIS:

- The proposed project will have significant impacts on the relevant values of the proposed White River ACEC.
- The Rock House EA acknowledges that cultural resources are likely to be subject to indirect impacts. *See* EA at 4-3.
- Cumulative impacts from this project combined with other foreseeable development in the area could result in significant impacts to water quality.
- This project will significantly impacts visitors’ recreational experience in the area. *See* EA at 4-12 to -15.
- Illegal ORV use will increase in closed portions of the White River. EA at 4-14.
- The Rock House EA describes potential erosion rates that would be rather high. *See* EA at 4-17 to -18. This may be a significant impact and require the preparation of an EIS.
- The Rock House relies on erroneous data and fails to justify certain assertions regarding impacts to bald eagles from the proposed project; these effects could result in significant impacts. *See* EA at 4-19.
- The Rock House EA declares that human activity can affect sage grouse; the potential impacts from this project could thus rise to the level of significant. *See* EA at 4-19 to -20.
- The project could result in “potential impact[s]” to special status plant species in the area and to the increased likelihood of illegal collection. *See* EA at 4-25.
- The Rock House EA would violate a number of stipulations and restrictions intended to protect resources that were developed in the Book Cliffs RMP.
- Project-related development near the White River would directly impact the tentative wild classification of this river for inclusion in the National Wild and Scenic River System. *See* EA at 4-28.
- The wilderness characteristics of the project area would be significantly impacted and completely lost by this proposed development.



- The Rock House EA states that invasive and noxious weeds are a major concern in the Uintah Basin. EA at 5-8. Cumulative impacts from this project and others are substantially likely to exacerbate this spread of undesirable species. This is raised to the level of a significant impact.
- Because of encroachment from invasive and noxious weeds and other impacts from oil and gas development in the area, the two special status plant species in the project area are likely to be significantly impacted.
- Past, present, and reasonably foreseeable development in the project area could lead to large cumulative impacts in the White River ACEC, ranging from nearly 15% to 32% of the VRM II areas being affected by development. *See* EA at 5-13. This is a significant impact that must be evaluated in an EIS.
- Past, present, and reasonably foreseeable development in the project area could lead to large cumulative impacts in the White River wilderness characteristics area; over 21% of this area would lose wilderness character as a result of this project. *See* EA at 5-15. The White River wilderness characteristics area is a unique and natural setting that is currently untrammelled. *See, supra*, at 11. This is a significant impact that must be evaluated in an EIS.
- Many, if not most of the soil types found within the project area are possibly subject to high rates of erosion and have characteristics that make reclamation difficult. *See* EA at 3-11 to -13.

## **2. FAILURE TO COMPLY WITH NHPA.**

The Rock House EA fails to comply with the NHPA because it fails to: (1) accurately identify the proposed project's "area of potential of effects," (2) assess adverse effects to historic properties from the proposed project, and (3) consult with the State Historic Preservation Officer and Indian Tribes..

### **A. NHPA - Background**

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* 16 U.S.C. §§ 470(b), 470-1. NHPA requires federal agencies to "take[ ]into account any adverse effects on historical places from actions concerning that property." *Friends of the Atglen-Susquehanna Trail Inc. v. Surface Transp. Bd.*, 252 F.3d 246, 252 (3<sup>rd</sup> Cir. 2001); *see* 16 U.S.C. §§ 470(f), 470h-2(d).

Pursuant to NHPA Section 106, before approving any undertaking a federal agency must identify all historic properties that may be affected by the undertaking, and must assess the effects of the project on those properties. *See* 36 C.F.R. §§ 800.4, 800.5. The procedural nature of Section 106 reinforces the importance of strict adherence to the binding process set out in the NHPA regulations: "While Section 106 may seem to be no

more than a ‘command to consider,’ . . . the language is mandatory and the scope is broad.” *United States v. 62.20 Acres of Land, More or Less*, 639 F.2d 299, 302 (5<sup>th</sup> Cir. 1981).

**B. BLM Failed to Accurately Identify the Area of Potential Effect**

In establishing the scope of a particular undertaking, the agency must “[d]etermine and document the area of potential effects” (the “APE”), *see* 36 C.F.R. § 800.4(a), which is defined as “the geographic area or areas which an undertaking may *directly or indirectly* cause alterations in the character or use of historic properties, if any such properties exist.” *Id.* § 800.16(d) (emphasis added). “Under NHPA regulations, an agency official responsible for NEPA compliance must determine the area of potential effects of the undertaking and then take a series of steps to gather information on that area and evaluate whether the undertaking has an adverse impact on historical properties in it.” *Crutchfield v. U.S. Army Corps of Eng’rs*, 154 F. Supp.2d 878, 905 (E.D.Va. 2001) (*citing* 36 C.F.R. § 804.4(a)). NHPA’s implementing regulations broadly define APE to include direct and indirect effects.

- The BLM failed to identify the area of potential effect (APE) thereby limiting its ability to identify historic properties and understand the potential effects of the proposed action. *See* 36 C.F.R. §§ 800.4, 800.16. The APE is likely to extend beyond the project area boundary.

**C. BLM Did Not Fully Assess Adverse Effects to Historic Properties from the Proposed Action.**

The EA does not fully assess adverse effects to historic properties from the proposed action, as required under 36 C.F.R. §§ 800.4 and 800.5.

- Mr. Spangler documents the inadequacies of the Rock House EA in this regard.

**D. BLM Failed to Consult with the State Historic Preservation Officer and Failed to Disclose Which Indian Tribes Were Consulted.**

BLM is required to consult with the State Historic Preservation Office (SHPO) and Native American tribes regarding the potential effects of an undertaking such as the proposed action. *See* 36 C.F.R. §§ 800.3 and 800.4. In addition, should BLM determine that the proposed action will result in a “no historic properties affected” finding, the documentation supporting such a finding must be made available to the public for inspection. *Id.* § 800.4(d)(1). The EA does not document that BLM has consulted with the SHPO. In addition, the EA does not disclose which Native American tribes were consulted in this process, the BLM should disclose this. Finally, BLM has not made any information regarding historic properties available for public inspection.

If the effects of the project may be adverse, the agency must then seek ways to avoid, minimize, or mitigate those adverse effects, in consultation with the State Historic Preservation Officer and the relevant Indian tribes. *See* 36 C.F.R. § 800.5. Regulations define “adverse effect” to encompass a wide range of potential direct, indirect, and cumulative impacts: “[a]n adverse effect is found when an undertaking *may alter, directly or indirectly*, any of the characteristics of a historic property . . . . *Adverse effects may include reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance or be cumulative.*” 36 C.F.R. § 800.5(a)(1) (emphasis added). The last sentence in this section (36 C.F.R. § 800.5(a)(1)) is intended to amplify the indirect effects concept, similar to the NEPA regulations, which call for consideration of such effects when they are reasonably foreseeable effects.<sup>1</sup> If the agency determines that the action would have an adverse effect on an historic property, it begins consultation to identify ways to avoid, minimize, or mitigate adverse effects. *See* 36 C.F.R. § 800.5. Mr. Spangler details why consultation with various Native American tribes is necessary before this project proceeds any further.

SUWA welcomes the opportunity to meet with you and your staff to discuss our concerns regarding the proposed action and this environmental assessment. Please let me know if you would be willing to meet with SUWA staff. I look forward to hearing from you.

Sincerely,

David Garbett  
Legal Fellow

Cc: Johanna Wald  
Natural Resources Defense Council

Suzanne Jones  
The Wilderness Society

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<sup>1</sup> *See* 36 C.F.R. § 800.5(a)(2) (examples of adverse effects include, but are not limited to, (i) “[p]hysical destruction of or damage to all or part of the property;” (iii) “[r]emoval of the property from its historic location;” and (iv) “[c]hange of the character of the property’s use or physical features within the property’s setting that contribute to its historic significance.”).