HAND DELIVERED

May 1, 2006

Gene Terland – Acting State Director
Utah State Director, Bureau of Land Management
440 West 200 South, 5th Floor
P.O. Box 45155
Salt Lake City, Utah 84145-0155

Re: Protest of Bureau of Land Management's Notice of Competitive Oil and Gas Lease Sale – May 26, 2006 Concerning 134 Parcels in Carbon, Emery, Uintah, Duchesne, Grand, and San Juan Counties

Greetings,

In accordance with 43 C.F.R. §§ 4.450-2 and 3120.1-3, the Southern Utah Wilderness Alliance, the Natural Resources Defense Council, The Wilderness Society, and the National Trust for Historic Preservation (collectively referred to as "SUWA") hereby protest the May 16, 2006 offering, in Salt Lake City, Utah, of the following 134 parcels in the Monticello, Vernal, Moab, and Price field offices:

Monticello field office: UT 0506-286, UT 0506-297, UT 0506-305, UT 0506 306, UT 0506-307 (5 parcels)

Vernal field office: UT 0506-223, UT 0506-224, UT 0506-225, UT 0506-226, UT 0506-263, UT 0506-274, UT 0506-275, UT 0506-276, UT 0506-278, UT 0506-289, UT 0506-290, UT 0506-291, UT 0506-297A, UT 0506-298, UT 0506-299 (15 parcels)

Moab field office: UT 0506- 299A (1 parcel)

Price field office: UT 0506-120, UT 0506-121, UT 0506-122, UT 0506-123, UT 0506-124, UT 0506-125, UT 0506-126, UT 0506-127, UT 0506-128, UT 0506-129, UT 0506-130, UT 0506-131, UT 0506-132, UT 0506-133, UT 0506-134, UT 0506-135, UT 0506-136, UT 0506-137, UT 0506-163, UT 0506-164, UT 0506-165, UT 0506-166, UT 0506-167, UT 0506-168, UT 0506-169, UT 0506-170, UT 0506-171, UT 0506-172, UT 0506-174, UT 0506-177, UT 0506-184,

UT 0506-185, UT 0506-186, UT 0506-187, UT 0506-188, UT 0506-189, UT 0506-190, UT 0506-191, UT 0506-194, UT 0506-195, UT 0506-196, UT 0506-204A, UT 0506-205, UT 0506-206, UT 0506-207, UT 0506-208, UT 0506-209, UT 0506-210, UT 0506-211, UT 0506-212, UT 0506-213, UT 0506-214, UT 0506-215, UT 0506-216, UT 0506-217, UT 0506-218, UT 0506-219, UT 0506-220, UT 0506-220A, UT 0506-220B, UT 0506-220C, UT 0506-220D, UT 0506-220E, UT 0506-220F, UT 0506-220G, UT 0506-221, UT 0506-222, UT 0506-227, UT 0506-228, UT 0506-231, UT 0506-232, UT 0506-233, UT 0506-234, UT 0506-235, UT 0506-243, UT 0506-244, UT 0506-245, UT 0506-246, UT 0506-248, UT 0506-249, UT 0506-250, UT 0506-251, UT 0506-252, UT 0506-253, UT 0506-253A, UT 0506-253B, UT 0506-253C, UT 0506-253D, UT 0506-253E, UT 0506-253F, UT 0506-253G, UT 0506-253H, UT 0506-253I, UT 0506-253J, UT 0506-253K, UT 0506-253L, UT 0506-259, UT 0506-260, UT 0506-261 UT 0506-262, UT 0506-262A, UT 0506-262B, UT 0506-262C, UT 0506-269, UT 0506- 269A, UT 0506-269B, UT 0506-269C, UT 0506-269D, UT 0506-269E, UT 0506-269F, UT 0506- 269G, UT 0506-269H, UT 0506-269I, (103 parcels)

As explained below, the Bureau of Land Management's (BLM's) decision to sell the 134 parcels at issue in this protest violates the National Environmental Policy Act, 42 U.S.C. §§ 4321 et seq. (NEPA) and the National Historic Preservation Act, 16 U.S.C. §§ 470 et seq. (NHPA), and the regulations and policies that implement these laws.

In sum, SUWA requests that BLM withdraw these 134 lease parcels from sale until the agency has fully complied with NEPA and the NHPA.

The grounds of this Protest are as follows:

A. Leasing the Contested Parcels Violates NEPA

1. Inadequate Pre-Leasing NEPA Analysis

NEPA requires that the BLM prepare a pre-leasing NEPA document that fully considers and analyzes the no-leasing alternative before the agency engages in an irretrievable commitment of resources, i.e., the sale of non-no surface occupancy oil and gas leases. Bob Marshall Alliance v. Hodel, 852 F.2d 1223, 1228-30 (9th Cir. 1988) (requiring full analysis of no-leasing alternative even if EIS not required). See Southern Utah Wilderness Alliance, 164 IBLA 118, 124 (2004) (quoting Pennaco Energy, Inc. v.

U.S. Dep't of the Interior, 377 F.3d 1147, 1162 (10th Cir. 2004)) (reversing and remanding Utah BLM decision to lease seven parcels in Kanab field office because of inadequate pre-leasing NEPA analysis). Importantly, BLM's pre-leasing analysis must be contained in its already completed NEPA analyses because, as the IBLA recognized in Southern Utah Wilderness Alliance, "DNAs are not themselves documents that may be tiered to NEPA documents, but are used to determine the sufficiency of previously issued NEPA documents." 164 IBLA at 123 (citing Pennaco, 377 F.3d at 1162).

In Southern Utah Wilderness Alliance, 166 IBLA 270, 285 (2005), the IBLA expressly concluded that BLM has not conducted an adequate pre-leasing NEPA analysis to support the sale and issuance of oil and gas leases within the Price River planning area. Thus, BLM's decision to offer, sell, and issue the following 62 leases – contrary to the IBLA's decision in Southern Utah Wilderness Alliance, that BLM lacks the requisite NEPA analysis to do so – is arbitrary and capricious: UT 0506-163, UT 0506-164, UT 0506-165, UT 0506-166, UT 0506-167, UT 0506-168, UT 0506-169, UT 0506-170, UT 0506-171, UT 0506-172, UT 0506-174, UT 0506-177, UT 0506-184, UT 0506-185, UT 0506-186, UT 0506-187, UT 0506-188, UT 0506-189, UT 0506-190, UT 0506-191, UT 0506-194, UT 0506-195, UT 0506-196, UT 0506-204A, UT 0506-205, UT 0506-206, UT 0506-207, UT 0506-208, UT 0506-209, UT 0506-210, UT 0506-211, UT 0506-212, UT 0506-213, UT 0506-214, UT 0506-215, UT 0506-216, UT 0506-217, UT 0506-218, UT 0506-219, UT 0506-220, UT 0506-227, UT 0506-228, UT 0506-231, UT 0506-232, UT 0506-233, UT 0506-234, UT 0506-235, UT 0506-243, UT 0506-244, UT 0506-245, UT

0506-246, UT 0506-248, UT 0506-249, UT 0506-250, UT 0506-251, UT 0506-252, UT 0506-253, UT 0506-259, UT 0506-260, UT 0506-261 UT 0506-262, and UT 0506-269.[1]

2. BLM Should Defer 110 Parcels in the Price, Vernal, and Monticello Field Offices Pursuant to Instruction Memorandum No. 2004-110 (Change 1) and 40 C.F.R. § 1506.1

BLM Instruction Memorandum No. 2004-100 (Change 1) "re-emphasizes the importance of considering temporary deferral of oil, gas, and geothermal leasing in those areas with active land use planning activities" such as the Price, Vernal, and Monticello field offices. This IM further directs BLM "to consider temporarily deferring oil, gas, and geothermal leasing on federal lands with land use plans that are currently being revised." The IM provides non-exclusive examples of when deferral may be appropriate – including instances where the preferred alternative would designate lands in leasing categories 2-4. The IM does not, however, in any way restrict BLM from deferring oil and gas leasing decisions to those examples. NEPA implementing regulation 40 C.F.R. § 1506.1 is consistent with this interpretation as it provides that while BLM is in the midst of an environmental analysis, such as the Price and Vernal land use planning/NEPA process, the agency must not take any action "which would . . . [l]imit the choice of reasonable alternatives." See also 40 C.F.R. § 1502.2(f) (while preparing environmental impact statements, federal "[a]gencies shall not commit resources prejudicing selection of alternatives before making a final decision (§ 1506.1).").[2] Another section of that same regulation directs that while BLM is preparing a required

[1] The fact that BLM has sought reconsideration of the IBLA's decision in Southern Utah Wilderness Alliance does not change the fact that it is the Interior Department's position that the sale of these 62 parcels will violate NEPA. See 43 C.F.R. § 4.403.

[2] BLM's historic interpretation of this regulation – found most recently in Section VII.E of the agency's land use planning handbook –confirmed this interpretation of 40 C.F.R. § 1506.1.

EIS "and the [proposed] action is not covered by an existing program statement," that BLM must not to take actions that may "prejudice the ultimate decision on the program." 40 C.F.R. § 1506.1(c). The regulation continues that "[i]nterim action prejudices the ultimate decision on the program when it tends to determine subsequent development or limit alternatives." Id. (emphasis added). While BLM has a land use plan and NEPA analysis in place for the lands at issue in these three field offices, the agency's own February 2000 Report to Congress – Land Use Planning for Sustainable Resource Decisions made clear that existing land use plans such as the San Rafael RMP/EIS do not accurately reflect current, unanticipated levels of interest and attention. See BLM Report to Congress – Land Use Planning for Sustainable Development (Feb. 2000), at 4, 7, 31 (attached hereto as Exhibit 1).

A decision by BLM to restrict the application of IM 2004-100 (Change 1) and 40 C.F.R. § 1506.1 to instances where there is a potential conflict with only the preferred alternative would indicate that BLM had prejudged the outcome of the land use planning and NEPA process, in violation of NEPA. In other words, when BLM is in the midst of a land use planning process and considering alternate land uses and protections for certain tracts recently nominated for oil and gas leasing, it is entirely appropriate – and indeed mandated by NEPA – for BLM to defer leasing those lands pending completion of the land use plan. This is particularly true here, where oil and gas leasing under existing NEPA analyses and land use plans would limit or eliminate from consideration alternatives in the ongoing preparation of the Price, Vernal and Monticello DRMPs/DEISs.[3]

[3] As IM 2004-110 (Change 1) makes clear, "[t]his policy [of deferral] may delay, but will not, in and of itself, reduce the production of energy."

The numbered points below identify instances where BLM should defer leasing until the Price, Vernal, and Monticello DRMPs/DEISs are finalized, in accordance with IM 2004-110 (Change 1) and 40 C.F.R § 1506.1:

1. *Labyrinth Canyon – UT 0506-269A, UT 0506-269F, and UT 0506-269H*: The Price field office December 2004 oil and gas lease sale DNA identified these three parcels for deferral until the Price DRMP/DEIS is finalized: "Portions of these parcels are within the Labyrinth Canyon SRMA on land identified as being in ROS Class P and SPNM where special prescriptions are being proposed in the preferred alternative for the Price RMP Draft EIS. Special management prescriptions in the Draft RMP would change future methodology and analytical approach to land management in these areas." See Price field office oil and gas lease sale DNA (December 2004) (attached as Exhibit 2). In addition, the Price December 2004 DNA noted that "[t]he cumulative impacts of leasing parcels UT 1204-196, UT 1204-200, UT 1204-203, [and] UT 1204-204 . . . when combined to the proposals in the preferred alternative of the Price RMP Draft EIS to apply special management prescriptions to these lands within the Labyrinth Canyon Special Recreation Management Area have not been fully considered in previous NEPA analysis."

   The Price field office February 2006 oil and gas lease sale DNA also noted that parcel UT 0206-197 (now UT 0506-269A) is located along a stretch of the Green River which is proposed as suitable for wild and scenic river status in the Price draft RMP EIS. The direct and indirect effects of the changes in leasing categories and possible special designations in the area have not been analyzed in previous NEPA documents." But see Supplemental Information for the Preliminary February 2006 List – Oil and Gas Competitive Lease Sale (arguing that these three parcels should included in February 2006 lease sale, but ignoring various levels of protection that even the preferred alternative would afford these areas [i.e., wild and scenic river designation]).

   BLM's preferred alternative would also designate all or some of these parcels as VRM 1 (they are currently VRM 2 and 4). Thus, even under IM 2004-110 (Change 1), BLM should defer leasing these three parcels until the Price RMP is finalized.

2. *Temple-Cottonwood-Dugout Proposed ACEC – UT 0506-220A, UT 0506-220B, UT 0506-220C, UT 0506-220D, UT 0506-220E, UT 0506-220F, UT 0506-220G, UT 0506-253A, UT 0506-253B, UT 0506-253C, UT 0506-253D, UT 0506-253E, UT 0506-253F, UT 0506-253G, UT 0506-253H, UT 0506-253I, UT 0506-253J, UT 0506-253K, UT 0506-253L*: The Price DRMP/DEIS, Alternative C considers designating the 80,818 acres Temple-Cottonwood-Dugout ACEC. The proposed ACEC is described as being designed to "protect a unique, natural desert ecosystem with exemplary opportunities for primitive recreation and wildlife viewing in a landscape of huge skies, varied geologic forms, and unique riparian ecosystems." See also Price DNA at Attachment 1, 11-12 (explaining that

proposed Temple-Cottonwood-Dugout Wash ACEC has significant cultural values that comprise "the relevant and important resources for the ACEC."). BLM has noted that "[t]he solitude of the area . . . is believed to be threatened by oil and gas exploration and development activities," among other things. The proposed ACEC would be open to oil and gas leasing with Category 3 (no-surface occupancy) stipulations, an option that may be foreclosed by a decision to proceed with leasing at this time. See Price DRMP/DEIS at 2-123. These lands are currently designated as Category 1 – open to leasing with standard stipulations. BLM also incorrectly concludes that standard lease stipulations and unenforceable lease notices can protect these resources. See Price DNA at Attachment 1, 11-12. But see 43 C.F.R. § 3101.1-3 (explaining that lease notices are informational in nature and do not change lessee obligations; "An information notice has no legal consequences, except to give notice of existing requirements . . .") (emphasis added).

3. *Mussentuchit Badlands Proposed ACEC – UT 0506-120, UT 0506-121, UT 0506-122, UT 0506-123, UT 0506-124, UT 0506-125, UT 0506-126, UT 0506-127, UT 0506-129, UT 0506-130, UT 0506-131, UT 0506-132, UT 0506-133, UT 0506-134, UT 0506-135, UT 0506-136*: The Price DNA identifies the Mussentuchit Badlands proposed ACEC as an area having "relevant and important values that make [it a] potential ACEC[] for further consideration in the ongoing Price RMP revision." See Price DNA at Attachment 1, 11. The Price DRMP/DEIS, however, while identifying that SUWA nominated the Mussentuchit Badlands as an ACEC, contains no further analysis of this proposal, nor any discussion about the values identified by SUWA. See Price DRMP/DEIS at Appendix 26. It is thus unclear whether BLM is considering potential designation of a Mussentuchit Badlands ACEC, and if so, whether the agency is considering protecting the values identified by SUWA by closing the area to leasing (as proposed by SUWA) or through no surface occupancy stipulations and/or special timing/restrictive stipulations. For this reason alone, BLM should defer leasing these parcels until both the agency and the public understand whether BLM is considering designating a Mussentuchit Badlands ACEC, what relevant and important values are at risk, and what stipulations are necessary to protect those values.

4. *San Rafael River Proposed ACEC, Antelope Valley-Sweetwater Reef Proposed ACEC, Cedar Mountain Proposed ACEC, Cedar Mountain Proposed ACEC, Price River Proposed ACEC*: SUWA nominated the following five ACECs as part of the Price field office's RMP process, but that office has never officially responded to SUWA's nominations: **San Rafael River Proposed ACEC** (UT 0506-262A, UT 0506-262B, UT 0506-262C, UT 0506-269B, UT 0506-269C, UT 0506-269D, UT 0506-269F, and UT 0506-269I); **Antelope Valley-Sweetwater Reef Proposed ACEC** (UT 0506-269A, UT 0506-269B, UT 0506-269C, UT 0506-269D, UT 0506-269F, UT 0506-269G, UT 0506-269H, UT 0506-269I); **Cedar Mountain Proposed ACEC (near Mussentuchit Badlands)** (UT 0506-128, UT 0506-131, UT 0506-132, UT 0506-133, UT 0506-135); **Cedar Mountain Proposed ACEC (near Price River)** (UT 0506-163, UT 0506-164, UT 0506-165, UT 0506-166, UT 0506-167, UT 0506-168, UT 0506-169, UT

0506-170, UT 0506-171, UT 0506-172, UT 0506-174, UT 0506-177, UT 0506-189, UT 0506-190, UT 0506-191); **Price River Proposed ACEC** (UT 0506-184, UT 0506-185, UT 0506-186, UT 0506-187, UT 0506-188, UT 0506-189, UT 0506-190, UT 0506-191, UT 0506-206, UT 0506-208, UT 0506-209, UT 0506-210, UT 0506-211, UT 0506-212, UT 0506-213, UT 0506-214, UT 0506-215, UT 0506-216, UT 0506-217, UT 0506-218, UT 0506-219). See Price DRMP/DEIS at Appendix 26 (ACEC evaluations for the Price resource management plan; identifying the preceding five nominated ACEC); see also SUWA Map – Price BLM Field Office Proposed Areas of Critical Environmental Concern (attached hereto as Exhibit 3).

The Price DRMP/DEIS Appendix 26 also identifies that SUWA nominated Mussentuchit Badlands ACEC as an ACEC, but that BLM determined to lack the necessary relevance and importance and thus did not carry forward in the DRMP/DEIS. See Price DRMP/DEIS at Appendix 26, at unpaginated 3-4. Nevertheless, in the Price field office DNA prepared for this lease sale, BLM states that the Price field office

> determined that several areas do in fact have relevant and important values that make them potential ACECs for further consideration in the ongoing Price RMP revision. It is BLM policy to protect the relevant and important values of each potential ACEC until planning can be completed and the decision made as to whether or not to formally designate the areas as ACEC.

Price DNA, Attachment 1 at 11. The Price DNA then proceeds to discuss the SUWA nominated "Potential Mussentuchit Badlands ACEC," the potential impacts from oil and gas leasing and development, and whether current stipulations are adequate to protect the relevant and important values in that proposed ACEC. Likewise, the Price DNA "Deferral Rationale – Areas of Critical Environmental Concern" discusses the relevant and important values found within the Lower Price River Proposed ACEC and yet this was another ACEC that was not identified in the Price DRMP/DEIS as being carried forward for further analysis and consideration. See Price DNA, Deferral Rationale.

SUWA is understandably concerned that – given BLM's discussion about the relevant and important values in the potential Mussentuchit Badlands and Lower Price River ACECs – that BLM has also revisited the five SUWA nominated ACECs listed above and determined that they too have relevant and important values, and yet that has been no similar analysis to determine whether or not existing lease stipulations are adequate to protect those resources from oil and gas development. The Price DNA and Price DRMP/DEIS are silent on this question.

The lands in each of these proposed ACECs are currently designated as Category 1 and 2 – open to leasing with standard/special stipulations, compare SUWA Map – Price BLM Field Office Proposed Areas of Critical Environmental Concern (attached as Exhibit 3) with Price DRMP/DEIS at Map 2-27, but SUWA's ACEC nominations proposed closing these areas to future oil and gas leasing.

In sum, deferral of oil and gas leasing in the SUWA nominated San Rafael River Proposed ACEC, Antelope Valley-Sweetwater Reef Proposed ACEC, Cedar Mountain Proposed ACEC, Cedar Mountain Proposed ACEC, and Price River Proposed ACEC is appropriate to ensure that BLM – in its hurry to lease – is not precluding future management of protection of these places and their important and relevant values as ACECs.

5. *Nine Mile Canyon Proposed ACEC (Vernal field office) – UT 0506-223, UT 0506-224, UT 0506-225, UT 0506-226, UT 0506-263*: The Vernal field office DNA asserts in conclusory fashion that oil and gas leasing within the proposed Nine Mile Canyon ACEC may proceed because "management constraints" in the existing RMP "would be sufficient to protect the relevant and important values [cultural resources, special status plant species, and high quality scenery values] of the potential ACEC." Vernal DNA, Attachment 2 at 3. To the contrary, much of this area is currently open to leasing with standard category 1 stipulations and these are simply insufficient to protect the values identified by BLM itself as well as others for protection as an ACEC.[4] See Vernal DRMP/DEIS at Figure 13 (Alternative C would designate the Nine Mile Canyon Proposed ACEC as open for leasing subject to category 3 – no surface occupancy stipulations). Thus, the Vernal BLM archeologist noted in the DNA that physical preservation, alone, "of a significant site, district, or area is not enough to preserve the feeling, sense of setting in the landscape, and human emotions and beliefs concerning these properties." Id. at 9-14 (noting that the NHPA's implementing regulations – 36 C.F.R. § 800.5(a)(1)(i)(ii)(v) highlight that leasing without adequate protections, as well as destruction of a site's setting, constitutes a negative effect). Oil and gas development will, without a doubt, have these types of negative direct and indirect impacts to cultural resources within the Nine Mile Canyon Proposed ACEC. Deferral of these five parcels is thus appropriate until BLM completes the Vernal land use planning process.

6. *Main Canyon Proposed ACEC – UT 0506-274, UT 0506-275, UT 0506-276, UT 0506-278, UT 0506-279*: The Vernal field office DNA asserts in conclusory fashion that oil and gas leasing within the proposed Main Canyon ACEC may proceed because "management constraints" in the existing RMP "would be sufficient to protect the relevant and important values [cultural and historic resources and natural systems] of the potential ACEC." Vernal DNA, Attachment 2 at 3-4. To the contrary, much of this area is currently open to leasing with category 2 timing/special stipulations and these are simply insufficient to protect the values identified by BLM itself for protection as an ACEC.

7. *Bitter Creek/P.R. Springs Proposed ACEC – UT 0506-290, UT 0506-298, UT 0506-299*: The Vernal field office DNA asserts in conclusory fashion that oil and

[4] In addition to being considered as a potential ACEC, the greater Nine Mile Canyon area has been nominated for listing on the National Register and has been identified by the National Trust for Historic Preservation on its most endangered list because of energy development. Vernal DNA, Attachment 2 at 11-12.

gas leasing within the proposed Bitter Creek/P.R. Springs ACEC may proceed because "management constraints" in the existing RMP "would be sufficient to protect the relevant and important values [cultural and historic resources and natural systems] of the potential ACEC." Vernal DNA, Attachment 2 at 4. To the contrary, much of this area is currently open to leasing with category 2 timing/special stipulations and these are simply insufficient to protect the values identified by BLM itself – as well as SUWA – for protection as an ACEC. For example, the Vernal DRMP/DEIS Alternative C is considering designating some of this proposed ACEC as closed entirely to leasing (at least, for example, UT 0506-297A). See Vernal DRMP/DEIS, at Figures 13 and 24. A decision by BLM to offer, sell, and issue these three leases would illegally preclude protection of the Bitter Creek/P.R. Springs Proposed ACEC will the full compliment of protections currently being considered by BLM; deferral of these leases is thus appropriate.

8. *San Juan River Proposed ACEC and Wild and Scenic River Designation (San Juan River – Recreational)* – UT 0506-286 and UT 0506-297: The Monticello field office is currently preparing a draft RMP/EIS and in that process considering designation of just under 10 miles of the San Juan River as "recreational" under the Wild and Scenic Rivers Act (for fish, wildlife, and cultural/historic resources). See Monticello DNA at 8 (discussing Wild and Scenic River status/ for the San Juan River). The Monticello field office is also considering the designation of a San Juan River ACEC. Id. Indeed, the Monticello office incorrectly assumed that standard lease terms and conditions (including the 200 meter/60 day rule) could protect special resources, particularly cultural resources. Effects to cultural and historic properties, however, are measures not only in direct damage, but also indirect impacts, such as impacts to natural settings. See, e.g., 36 C.F.R. § 8005.(a)(1) (v) (explaining adverse effects as including, but not limited to, the "[i]ntroduction of visual, atmospheric or audible elements that diminish the integrity of the property's significant historic features). Oil and gas leasing and development will harm theses resources and potentially derail these special designations, and thus leasing should thus be delayed pending the completion of the Monticello RMP.

3. BLM Failed to Take the Required "Hard Look" at Whether Its Existing Analyses Are Valid in Light of New Information or Circumstances.

NEPA requires federal agencies to take a hard look at new information or circumstances concerning the environmental effects of a federal action even after an environmental assessment (EA) or an environmental impact statement (EIS) has been prepared, and to supplement the existing environmental analyses if the new circumstances "raise[] significant new information relevant to environmental concerns."

Portland Audubon Soc'y v. Babbitt, 998 F.2d 705, 708-09 (9th Cir. 1993). Specifically, an "agency must be alert to new information that may alter the results of its original environmental analysis, and continue to take a 'hard look' at the environmental effects of [its] planned actions." Friends of the Clearwater v. Dombeck, 222 F.3d 552, 557 (9th Cir. 2000). NEPA's implementing regulations further underscore an agency's duty to be alert to, and to fully analyze, potentially significant new information. The regulations declare that an agency "shall prepare supplements to either draft or final environmental impact statements if . . . there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts." 40 C.F.R § 1502.9(c)(1)(ii) (emphasis added).

As explained below, the Price, Vernal, and Moab field offices failed to take a hard look at new information and new circumstances that have come to light since BLM finalized the Price EAR, the San Rafael RMP/EIS, the Grand RMP/EIS, the Book Cliffs RMP/EIS, and the Diamond Mountain RMP/EIS, as well as subsequent oil and gas EAs. See also Pennaco Energy, 377 F.3d at 1162 (explaining that DNAs determine whether "previously issued NEPA documents were sufficient to satisfy the 'hard look' standard," and are not independent NEPA analyses). In addition, to the extent that the Price, Vernal, and Moab field offices took the required hard look, their conclusion that they need not prepare supplemental NEPA analyses was arbitrary and capricious.

A. *Wilderness Inventory Areas (WIA)*

BLM has arbitrarily determined that the sale of the following 45 lease parcels located in whole or in-part within the Labyrinth Canyon WIA, Desolation Canyon WIA, Cedar Mountain WIA, Muddy Creek/Crack Canyon WIA, and Price River WIA is appropriate – despite acknowledging that there is "significant new information" about the

area's wilderness characteristics that is not considered in current NEPA analyses: **Muddy Creek/Crack Canyon WIA**: UT 0506-124, UT 0506-125, UT 0506-126, UT 0506-127, UT 0506-130, UT 0506-131, UT 0506-132, UT 0506-133, UT 0506-134, UT 0506-135, UT 0506-136, and UT 0506-137; **Cedar Mountain WIA**: UT 0506-128; **Price River WIA**: UT 0506-163, UT 0506-164, UT 0506-165, UT 0506-166, UT 0506-167, UT 0506-168, UT 0506-169, UT 0506-170, UT 0506-171, UT 0506-174, UT 0506-177, UT 0506-184, UT 0506-186, UT 0506-188, UT 0506-204A, UT 0506-205, UT 0506-206, UT 0506-207, UT 0506-216, and UT 0506-217**; Labyrinth Canyon WIA:** UT 0506-269A, UT 0506-269B, UT 0506-269F, UT 0506-269G, and UT 0506-269I; and, **Desolation Canyon WIA**: UT 0506-243, UT 0506-244, UT 0506-245, UT 0506-248, UT 0506-249, and UT 0506-253, and UT 0506-263.

The Crack Canyon/Muddy Creek WIA, Cedar Mountain WIA, Labyrinth Canyon WIA, and Desolation Canyon WIA were inventoried between 1996-98 by the BLM as part of the agency's larger Utah wilderness inventory and determined to contain the necessary wilderness characteristics as defined in the Wilderness Act, 16 U.S.C. §§ 1131 et seq., for potential entry into the National Wilderness Preservation System. See Utah Wilderness Inventory, at vii-ix (1999) (excerpts attached as Exhibit 4).[5] As the BLM's wilderness inventory documentation explained,

> The Secretary's instructions to the BLM were to "focus on the conditions on the disputed ground today, and to obtain the most professional, objective, and accurate report possible so we can put the inventory questions to rest and move on." [The Secretary] asked the BLM to assemble a team of experienced, career professionals and directed them to

[5] The Price River WIA was inventoried on-the-ground at or around 2001-02 by agency staff and determined to contain the necessary wilderness characteristics as defined in the Wilderness Act, 16 U.S.C. §§ 1131 et seq., for potential entry into the National Wilderness Preservation System. See Price DNA at 9 (identifying Price River WIA).

> apply the same legal criteria used in the earlier inventory and the same definition of wilderness contained in the 1964 Wilderness Act.

Utah Wilderness Inventory, at vii (emphasis added). As the result of this review, the BLM determined that its earlier wilderness inventories had failed to recognize 2.6 million acres of lands that met the applicable criteria in its prior reviews, including the Squaw and Papoose Canyon WIA. See State of Utah v. Babbitt, 137 F.3d 1193, 1198-99 (10th Cir. 1998) (discussing history of BLM's Utah wilderness inventories). Importantly, the San Rafael RMP/EIS, Price EAR, Diamond Mountain RMP/EIS, and Book Cliffs RMP/EIS – all prepared after the 1978-80 wilderness inventory – did not reanalyze the wilderness characteristics of lands that were passed over for wilderness study area status. Rather, that plan and its accompanying NEPA analysis merely adopted the conclusion that lands not identified as WSAs did not contain wilderness characteristics.

As part of its 1996-98 wilderness inventory (and 2001-02 inventory for the Price River WIA), BLM compiled comprehensive case files to support its findings that these five WIAs have wilderness characteristics, including numerous aerial and on-the-ground photographs, as well as a detailed narrative with accompanying source materials and SUWA incorporates these documents, located in the Utah State office, by reference to this protest. See also Utah Wilderness Inventory, at 79 (Labyrinth Canyon WIA); id. at 80 (Cedar Mountain WIA); id. at 86 (Muddy Creek/Crack Canyon WIA); id. at 127 (Desolation Canyon WIA) (attached as Exhibit 4). Based on the candid statements in these wilderness files that the 1998 Wilderness Inventory provided significant new information that has not been analyzed in existing NEPA documentation, it is clear that these 46 parcels must be removed from the May 2006 sale list. BLM's failure to do so is a clear violation of NEPA because: (a) the 1996-98 wilderness inventory (and 2001-02 Price River inventory) is undeniably new information, as BLM itself admits; (b) these

wilderness inventories meet the textbook definition of what constitutes "significant" information; and (c) the sale of non-NSO leases constitutes an irreversible and irretrievable commitment of resources and thus requires a pre-leasing EIS.

Moreover, BLM cannot credibly claim that it has ever taken a hard look at the impact that oil and gas development would have on the wilderness characteristics of the WIAs because the wilderness case files post-date the all the NEPA analyses and accompanying land use plans relied upon by BLM here.[6] At the time that those documents were prepared, the BLM did not know that these areas contained wilderness quality lands. Hence, those NEPA analyses (and land use plans) do not contain the type of site specific information about the wilderness characteristics of the Muddy Creek/Crack Canyon WIA, Cedar Mountain WIA, Price River WIA, Labyrinth Canyon WIA, and Desolation Canyon WIA that was provided in the BLM's own 1998 (and subsequent) wilderness inventory evaluation, nor could it analyze the impacts of energy development on those characteristics. That BLM's earlier land use plans and NEPA analyses may have discussed in general terms the values of these lands, is no substitute for the required hard look at the impacts of oil and gas development on wilderness characteristics. See Pennaco Energy, 377 F.3d at 1162 (explaining that DNAs determine whether "previously issued NEPA documents were sufficient to satisfy the 'hard look' standard," and are not independent NEPA analyses). In sum, BLM's own wilderness inventory evaluations and comprehensive case files constitute precisely the type of significant new information that requires additional environmental analysis before BLM approves the irreversible commitment of resources – the May 2006 lease sale.

[6] Of course, the Price EAR was not accompanied by a contemporaneous land use plan; the Price River MFP was prepared several years later.

B. *Reasonable Probability Determinations (RPDs)*[7]

SUWA has provided new and significant information to the BLM regarding the wilderness characteristics of the following six proposed wilderness units (totaling 31 parcels) and BLM has determined that there is a "reasonable probability" that these units "may have" wilderness characteristics: **Lost Spring Wash** (UT 0506-249, UT 0506-250, UT 0506-251, UT 0506-252, and UT 0506-253), **San Rafael River** (UT 0506-220A, UT 0506-220B, UT 0506-220C, UT 0506-220D, UT 0506-220E, UT 0506-220F, UT 0506-220G, UT 0506-253A, UT 0506-253B, UT 0506-253C, UT 0506-253D, UT 0506-253E, UT 0506-253F, UT 0506-253G, UT 0506-253H, UT 0506-253I, UT 0506-253J, UT 0506-253K, UT 0506-253L, UT 0506-269F, and UT 0506-269I), **Sweetwater Reef** (UT 0506-253K and UT 0506-253L), **Flat Tops** (UT 0506-222), **Hideout Canyon** (UT 0506-299A), and, **Sweet Water** (UT 0506-297A) proposed wilderness units and BLM has determined that there is a "reasonable probability" that these units "may have" wilderness characteristics. See Evaluation of New Information Suggesting that an Area of Public Lands has Wilderness Characteristics for San Rafael River, Sweetwater Reef, Hideout Canyon, Sweet Water Canyon, and Flat Tops (RPDs attached as Exhibit 5).

The same concerns identified supra regarding the Price and Vernal field offices outdated NEPA analyses and land use plans applies to these lands that BLM determined have a reasonable probability that they may contain wilderness characteristics. Specifically, BLM's plans and analyses assumed that – based on earlier desk exercise inventories the lands now encompassed by the Lost Spring Wash, Sweetwater Reef, San

[7] In the Price field office DNA prepared for the December 2004 lease sale, agency staff correctly determined that oil and gas leasing should be delayed until information regarding wilderness characteristics in the Sweetwater Reef and San Rafael River proposed wilderness areas was evaluated to determine if it was significant new information.

Rafael River, Flat Tops. Hideout Canyon, and Sweet Water proposed wilderness units lacked wilderness character altogether. The information that SUWA has supplied to BLM – and that BLM has reviewed and confirmed – is undeniably new, significant information about the on-the-ground conditions of these lands. Thus, BLM must prepare a supplemental NEPA analysis to evaluate this information before leasing these parcels.

C. *BLM Specialist Concerns*

Monticello field office staff identified pertinent lease notices developed by BLM and the U.S. Fish and Wildlife Service for parcels UT 0506-286 and UT 0506-297 regarding the Southwestern Willow Flycatcher and Endangered Fish Species. See Monticello DNA, Memorandum from Monticello field office manager to U.S. Fish and Wildlife Service Field Supervisor at unpaginated 4-5 (Feb. 10, 2006). These notices are inexplicably missing here. The record does not contain an explanation why these concerns were not incorporated into the appropriate lease sale notices for this sale, and thus BLM should defer leasing until these notices have been attached to the two leases. A decision not to include these stipulations and notices – without documentation and support by agency staff – would be arbitrary and capricious.

4. Failure to Analyze Impacts of Oil and Gas Leasing and Development to Capitol Reef National Park.

To ensure that the combined effects of separate activities do not escape consideration, NEPA requires BLM to consider cumulative environmental impacts in its environmental analyses. See Davis v. Mineta, 302 F.3d 1104, 1125 (10th Cir. 2002); see also Grand Canyon Trust v. Federal Aviation Admin., 290 F.3d 339, 345-47 (D.C. Cir. 2002). NEPA's regulations provide that "effects" includes ecological, aesthetic, and historic impacts, "whether direct, indirect, or cumulative." 40 C.F.R. § 1508.8. "Cumulative impact," in turn, is defined as:

> 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. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

Id. § 1508.7.

Based on these regulations, NEPA documents must provide useful analysis of past, present, and future actions. City of Carmel-By-The-Sea v. U.S. Dept. of Transp., 123 F.3d 1142, 1160 (9th Cir. 1997); Muckleshoot Indian Tribe v. U.S. Forest Serv., 177 F.3d 800, 809-810 (9th Cir. 1999). As the D.C. Circuit has held, the fact that a project may result in even a small incremental increase in the overall impacts to a resource is meaningless if "there is no way to determine . . . whether [this small increase] in addition to the other [impacts], will 'significantly affect' the quality of the human environment." Grand Canyon Trust, 290 F.3d at 346.

Here, the Price field office DNA failed to analyze the potentially significant direct, indirect, and cumulative impacts of the development of the following 18 parcels to Capitol Reef National Park: UT 0506-120, UT 0506-121, UT 0506-122, UT 0506-123, UT 0506-124, UT 0506-125, UT 0506-126, UT 0506-127, UT 0506-128, UT 0506-129, UT 0506-130, UT 0506-131, UT 0506-132, UT 0506-133, UT 0506-134, UT 0506-135, UT 0506-136, and UT 0506-137. Indeed, the DNA makes virtually no mention of the proximity of these parcels to the Park, nor does it directly address or respond to the issues raised by Superintendent Albert Hendricks in his March 17, 2006 letter to BLM expressing his concerns about the sale of these 18 leases to park resources. (Attached as Exhibit 6). In particular, the DNA failed to consider not only the effects of development of these leases on Capitol Reef National Park, but also the cumulative impacts on the Park that will occur as a result of the combination of this lease sale, along with other

recent fluid mineral development activity in the Last Chance Desert region (including the Last Chance natural gas field) and the potential development of "shut-in" wells in the Oil Well Bench/Last Chance Desert region, as well as other past, present and reasonably foreseeable future activities that could affect the Park.

Parcels UT 0506-126 and UT 0506-127 are located immediately adjacent to the Cathedral Valley area of Capitol Reef National Park. See Map – Capitol Reef/Sevier River Area Lease Parcels (Federal Lease Sale – Utah BLM, May 16, 2006) (attached as Exhibit 7). Indeed, the Park Superintendent specifically requested that BLM include no surface occupancy stipulations on these two parcels, but BLM has inexplicably refused to do so. See Hendricks letter at 1. BLM's several lease notices attached to these two parcels are simply no substitute for concrete lease stipulations and BLM should – at a minimum – withdraw these two parcels from the May 2006 lease sale to confer with the Park Service. See 43 C.F.R. § 3101.1-3 (explaining that lease notices are informational in nature and do not change lessee obligations; "An information notice has no legal consequences, except to give notice of existing requirements . . .") (emphasis added). In addition, Superintendent Hendricks specifically requested that BLM include a lease stipulation – not a lease notice – regarding access to the Last Chance Desert region. See Hendricks letter at 2. BLM has not included this stipulation, instead relying on an unenforceable lease notice to communicate the Park's concerns.

Oil and gas exploration and development on these 18 parcels threatens a number of the Park's resources, as described in Superintendent Hendricks' letter, including: viewshed, night skies, natural quiet, and access and traffic. Furthermore, development of this parcel, in combination with further development of the Last Chance natural gas field will impact a number of the Park's resources. Nevertheless, the BLM has not analyzed

the impacts of potential development of these 18 parcels on the resources of Capitol Reef National Park. The BLM's decision to offer these 18 parcels without the requisite NEPA analysis violates its duty to evaluate, consider, and take a hard look at the impacts of these lease sales on the resources identified by the Capitol Reef National Park Superintendent.

B. Leasing the Contested Parcels Violates the NHPA[8]

BLM's decision to sell and issue leases for the 134 parcels at issue in this protest violates § 106 of the NHPA, 16 U.S.C. § 470(f) and its implementing regulations, 36 C.F.R. §§ 800 et seq. Specifically, BLM's determination that the May 2006 oil and gas lease sale will have "No Adverse Effect" is arbitrary and capricious.[9]

As Utah BLM has recognized for some time, the sale of an oil and gas lease is the point of "irreversible and irretrievable" commitment and is therefore an "undertaking" under the NHPA. See BLM Manual H-1624-1, Planning for Fluid Mineral Resources, Chapter I(B)(2); see also 36 C.F.R. § 800.16(y); Montana Wilderness Assoc. v. Fry, 310 F. Supp. 2d 1127, 1152-53 (D. Mont. 2004); Southern Utah Wilderness Alliance, 164 IBLA at 21-28. The NHPA's implementing regulations further confirm that the

[8] To the extent that BLM's issued Instruction Memorandum 2005-003 Cultural Resources and Tribal Consultation for Fluid Mineral Leasing, Oct. 5, 2004, is inconsistent with the Interior Board of Land Appeals' decision in Southern Utah Wilderness Alliance, 164 IBLA 1 (2004), the BLM must comply with the IBLA's interpretation of the agency's duties under the NHPA. See 43 C.F.R. § 4.1(b)(3).

[9] The November 2005 Price field office DNA and multiple staff reports that considered the impacts of oil and gas leasing to historic properties in the virtually the same geographic area as the May 2006 lease sale arrived at different conclusions as to whether that lease sale had "no potential to effect," "no effect," or "no adverse effect" on cultural resources. The final DNA worksheet stated that the lease sale would have "no effect" on historic properties. See November 2005 Price DNA at 5 (attached as Exhibit 8). In its letter to SHPO, however, BLM conceded that the sale of 26 parcels in the San Rafael Desert region "could result in adverse effects." See Letter from Patrick Gubbins to Wilson Martin, August 30, 2005. The Price field office May 2006 oil and gas lease sale DNA took a different approach and alleged that the lease sale would have "no adverse effect" to historic properties.

"[t]ransfer, lease, or sale of property out of federal ownership and control without adequate and legally enforceable restrictions or conditions to ensure long-term preservation of the property's historic significance" constitutes an "adverse effect" on historic properties. Id. § 800.5(a)(2)(vii) (emphasis added). See 65 Fed. Reg. 77689, 77720 (Dec. 12, 2000) (Protection of Historic Properties – Final Rule; Revision of Current Regulations) (discussing intent of § 800.5(a)(2)(iii)).

The May 2006 Price, Vernal, Moab, and Monticello DNAs, however, erroneously conclude that the sale of the 134 leases at issue in this protest will have "no adverse effect" on historic properties. Each office consulted with the Utah SHPO regarding this lease sale[10] and the SHPO gave a reluctant, qualified concurrence of a no adverse effect determination based on several conditions that do not appear to have been met and thus directly calling into question whether SHPO's concurrence remains valid. For example, the SHPO concurred with the Vernal field office's "no adverse effect" finding based on the field office's assurance that "leasing will not include canyons or side canyon bottom areas within ¼ mile of the canyon rim." See Letter from Matthew Seddon, Deputy SHPO to Timothy Faircloth, Vernal BLM (March 31, 2006). Based on SUWA's review of parcels UT 0506-223, UT 0506-224, UT 0506-225, UT 0506-226, and UT 0506-263, these conditions do not appear to have been met.

[10] It is unclear whether the Price field office has consulted with the Utah SHPO for all of the parcels proposed for lease in that office for the May 2006 lease sale. In its March 22, 2006 letter to BLM, SHPO states that it concurs with a "no adverse effect" finding only for parcel UT 0506-271A. See Price DNA, Attachment 4 (letter from Matthew Seddon, Deputy SHPO to Patrick Gubbins, Price BLM, March 22, 2006). If BLM consulted with SHPO for prior lease sales regarding these parcels, BLM has not disclosed whether SHPO concurred with a "no adverse effect" finding, or if BLM even proposed such a finding. BLM will indisputably violate the NHPA if it issues leases in the Price field office without concurrence from SHPO.

In addition, each field office DNA/letter to SHPO asserts that at least one well can be placed somewhere on each particular lease parcel without adversely affecting cultural properties. See, e.g., Price DNA, at 8 (describing "one well" assumption). SHPO, however, qualified its concurrence of BLM's assertion by stating that SHPO lacks expertise in engineering and other technical considerations regarding well placement and was relying on BLM's assertions to presume that "single well placement and access is theoretically possible anywhere within the parcels." See, e.g., Letter from Matthew Seddon, Deputy SHPO to Timothy Faircloth, Vernal BLM (March 31, 2006), at 1-2. BLM's assertion, however, that one well can be placed somewhere on every single lease parcel at issue in this protest (as well as for every parcel being proposed for sale at the May 2006 lease sale), is unfounded. See 36 C.F.R. § 800.5(a)(1) (describing direct and indirect adverse effects, including "changes of the character of the property's use or of physical features within the property's setting that contribute to its historic significance.").

For example, as SHPO stated in its March 1, 2006 letter to the Monticello field office:

> We note that your analyst identified a number of parcels (307, 293, 302, 303, 284, 286, 306) where site density is high and listed at 1-3 sites per acre. Since wells are often at least one acre in size, it is difficult for us to determine on that information alone how it will be possible to place a well on these parcels without affecting cultural resources. We assume that the analysis also considered the site size, type, and placement in environmental locales to determine that even in high density areas there are locations where single wells and associated roads may be placed without affecting resources.

Letter from Matthew Seddon, Deputy SHPO to Sandra Meyers, Monticello BLM (March 1, 2006) (emphasis added). SHPO's assumption, however that BLM field office specialists from the Monticello and other field offices have actually considered and made

specific findings regarding potential well placement/access roads and pipelines for each parcel vis-à-vis their impacts to historic properties is unfounded. Indeed, no such record exists and limited attempts by BLM to correct this lack of record evidence amount to little more than unsubstantiated assertions. See, e.g., Monticello DNA, Appendix E (supplemental reports) (Addendum to the May 2006 oil and gas lease sale; arguing that site density of parcels 307, 293, 302, 303, 284, 286, 306 will permit "drilling one well with associated activities within the lease parcel"). In short, SHPO's concurrence is premised on an unsupported and unsupportable assertion by BLM that one well and access roads, etc. can be placed on every lease parcel at issue in this appeal without adverse effects to historic properties.

In addition, the May 2006 Price DNA erroneously concludes that, despite the field office archeologist's well-documented conclusions in the November 2005 lease sale DNA that any level of oil and gas exploration activities (activities authorized by the sale of non-NSO oil and gas leases) in the San Rafael Desert region will adversely affect cultural resources, the sale of the Price field office parcels located in this region will in fact have "no adverse effect" on historic properties. See November 2005 Price DNA, at 5 (asserting that Price field office managers "determined that because there is no documentation, field work, cultural survey documentation, science, or clear rationale, to substantiate a 'may adversely effect' determination, to change the determination to no effect and move forward with leasing these parcels.") (attached as Exhibit 8). See also February 2006 Price DNA at 6. But see id. Cultural Resource Assessment of BLM's Offered Oil & Gas Lease Sale Parcels #UT1105-048 TO UT1105-059, UT1105-064 TO UT1105-065, UT1105-071 TO UT1105-086, UT1105-093 TO UT1105-099; Carbon and

Emery Counties, Utah at unnumbered 7-9 (parcel assessment)[11] (describing affected environment for San Rafael Desert parcels and – relying on decades of personal experience, research and discussions with other archeologists – detailing risk to cultural resources from leasing and development; concluding that the "[l]ease of these parcels will adversely affect historic properties."); Letter from Patrick Gubbins to Wilson Martin, SHPO (Aug. 30, 2005) (admitting that the sale of San Rafael Desert region leases "could result in adverse effects" to cultural resources) (included in November 2005 Price DNA – attached as Exhibit 8). That BLM has included unenforceable lease notices to some parcels being proposed for sale in this region is insufficient for BLM to propose a "no adverse effect" finding (as stated in the DNA) and thus BLM's decision to proceed with the sale of these parcels is arbitrary and capricious.

In addition, brief conversations with, or form letters to, tribal councils or leaders regarding the potential effects of oil and gas leasing and development are insufficient to meet BLM's duty under the NHPA to make a "reasonable and good faith effort" to seek information from Native American tribes. See Pueblo of Sandia v. United States, 50 F.3d 856 (10th Cir. 1995). To the extent that BLM's field offices undertook limited efforts to involve Native American tribes, these efforts were inadequate because the form letters, legal descriptions, and maps do not inform the various Native American tribes that these offices had arrived at a "no historic properties affected" findings and thus were seeking agreement to that finding, as opposed to soliciting general comments about the undertaking. In particular, the form letters sent to various tribes by the Price field office managers did not explain the research that the field office archeologist had prepared a earlier for the November 2005 regarding the sale of parcels in the San Rafael River and

[11] This report is included in the November 2005 Price DNA, Appendix C (Staff Reports).

Sweetwater Reef areas (generally referred to as the "San Rafael Desert") or detail the archeologist's concerns about adverse effects to this important area from any future exploration activities.

BLM is further violating the NHPA by failing to adequately consult with members of the interested public regarding the effects of leasing all the protested parcels. Such consultation must take place before the BLM makes an irreversible and irretrievable commitment of resources – in other words before the May 2006 lease sale. See Southern Utah Wilderness Alliance, 164 IBLA 1 (2004). The NHPA requires BLM to "determine and document the area of potential effects, as defined in [36 C.F.R.] § 800.16(d)," identify historic properties, and to affirmatively seek out information from the SHPO, Native American tribes, consulting parties, and other individuals and organizations likely to have information or concerns about the undertaking's potential effects on historic properties. 36 C.F.R. § 800.4(a). See Southern Utah Wilderness Alliance, 164 IBLA at 23-24 (quoting Montana Wilderness Assoc., 310 F. Supp. 2d at 1152-53). The NHPA further states that BLM shall utilize the information gathered from the source listed above and in consultation with at a minimum the SHPO, Native American tribes, and consulting parties "identify historic properties within the area of potential affect." Id. § 800.4(b). See id. § 800.04(b)(1) (discussing the "level of effort" required in the identification process as a "reasonable and good faith effort to carry out appropriate identification efforts").

The DNA process also violates the NHPA and Protocol § IV.C., which states that "BLM will seek and consider the views of the public when carrying out the actions under

terms of this Protocol."[12] As BLM's DNA forms plainly state, the DNA process is an "internal decision process" and thus there is no opportunity for the public to participate in the identification of known eligible or potentially eligible historic properties. Permitting public participation only at the "protest stage," or arguing that the time period for seeking public input ended when BLM completed its dated resource management plans, is not equivalent to encouraging participation in an open NEPA process, and BLM should withdraw the 134 parcels in the Price, Monticello, Vernal, and Moab field offices that are the subject of this protest.

[12] Because the National Programmatic Agreement – which the Utah Protocol agreement is tiered from – was signed in 1997, well before the current NHPA regulations were put in place, it is questionable whether either document remains valid. This further reinforces the need for BLM to fully comply with the NHPA's Section 106 process.

REQUEST FOR RELIEF

SUWA requests the following appropriate relief: (1) the withdrawal of the 134 protested parcels from the May 2006 Competitive Oil and Gas Lease Sale until such time as the agency has complied with NEPA and the NHPA or, in the alternative (2) withdrawal of the 134 protested parcels until such time as the BLM attaches no-surface occupancy stipulations to all protested parcels.

This protest is brought by and through the undersigned legal counsel on behalf of the Southern Utah Wilderness Alliance, the Natural Resources Defense Council, The Wilderness Society, and the National Trust for Historic Preservation. Members and staff of these organizations 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 affected and impacted by, the proposed action.

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