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August 6, 2007

Selma Sierra –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 (August 2007) Concerning 50 Parcels

Greetings,

In accordance with 43 C.F.R. §§ 4.450-2 and 3120.1-3, the Southern Utah Wilderness Alliance (SUWA) hereby timely protests the August 21, 2007 offering, in Salt Lake City, Utah, of the following 50 parcels in the Fillmore field office:

UT 0807-006, UT 0807-007, UT 0807-013, UT 0807-017, UT 0807-036, UT 0807-037, UT 0807-078, UT 0807-083, UT0807-050, UT0807-051, UT0807-052, UT0807-053, UT0807-054, UT0807-055, UT0807-056, UT0807-057, UT0807-058, UT0807-059, UT0807-060, UT0807-061, UT0807-062, UT0807-063, UT0807-066, UT0807-067, UT0807-068, UT0807-069, UT0807-070, UT0807-071, UT0807-072, UT0807-073, UT0807-074, UT0807-075, UT0807-076, UT0807-077, UT0807-078, UT0807-079, UT0807-0880, UT0807-081, UT0807-082, UT0807-083, UT0807-084, UT0807-085, UT0807-086, UT0807-087, UT0807-088, UT0807-095, UT0807-096, UT0807-097, UT0807-098, and UT0807-099 (50 parcels).

As explained below, the Bureau of Land Management's (BLM's) decision to sell the 50 parcels at issue in this protest violates the National Environmental Policy Act, 42 U.S.C.

§§ 4321 et seq. (NEPA) and the regulations and policies that implement this law.

SUWA requests that BLM withdraw these 50 lease parcels from sale until the agency has fully complied with NEPA. Alternatively, the agency could attach

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unconditional no-surface occupancy stipulations to each parcel and proceed with the sale of these parcels.

The grounds of this Protest are as follows:

A. Leasing the Contested Parcels Violates NEPA

1. 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). See Southern Utah Wilderness Alliance v. Norton, 457 F. Supp. 2d at 1264-69 (discussing supplemental NEPA requirement in the context of oil and gas leasing and concluding that BLM acted arbitrarily by proceeding with oil and gas lease sale without first preparing supplemental NEPA analyses). NEPA’s implementing regulations 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 Fillmore field office failed to take a hard look at new information and new circumstances that have come to light since BLM finalized the House Range Resource Area Resource Management Plan (RMP) and subsequent oil and gas EA. See also Pennaco Energy, 377 F.3d at 1162 (explaining that documentations of NEPA adequacy (DNAs) determine whether “previously issued NEPA documents were sufficient to satisfy the ‘hard look’ standard,” and are not independent NEPA analyses); Southern Utah Wilderness Alliance, 457 F. Supp. 2d at 1255-56 (discussing DNAs). In addition, to the extent that the Fillmore field office took the required hard look, their conclusions that they need not prepare supplemental NEPA analyses was arbitrary and capricious.

Specifically, the BLM’s House Range Resource Area RMP falls short in discussing the extent of sensitive species found within areas proposed for leasing within the Fillmore field office. It also contains inadequate and antiquated information regarding big game mammals. The following species have Utah State University GAP Data as well as additional Utah Division of Wildlife Resources data predicting that certain protested parcels in the Fillmore field office may contain critical, high value, or substantial habitat for the following species within any one of the lease parcels in UT0807-050 through UT0807-063, UT0807-066 through UT0807-088, and UT0807-095 through UT0807-099:

- Ferruginous Hawk: High-value habitat.
- Burrowing Owl: High-value habitat.

- Long-Billed Curlew: Critical habitat.
- Swainson's Hawk: High-value habitat.
- Bobolink: High-value habitat.
- Osprey: High-value habitat.
- Sage Grouse: Critical habitat.
- Ringtail Cat: Critical habitat.
- Virgin River Montane Vole: Critical habitat.
- Big Free-Tailed Bat: Substantial habitat.
- Mule Deer: High-value habitat, high-value winter habitat.
- Pronghorn: High-value habitat.

2. The BLM's August 2007 Lease Sale Violates the House Range Resource Area RMP

The BLM is required to manage public lands in conformance with developed land use plans. *See* 43 U.S.C. § 1732. The August 2007 lease sale contains numerous conflicts with the House Range Resource Area RMP, principally regarding no surface occupancy and other special stipulations (categories 2 and 3). The lease sale DNA, in general, ignores these conflicts. The BLM has a duty to not only disclose them, but to eliminate them. The following parcels conflict with the full extent of no surface occupancy stipulations (Category 3) and/or special stipulations (Category 2) found in the House Range Resource Area RMP (as contained on Map 9 of the House Range Resource Area RMP/record of decision): UT 0807-006, UT 0807-007, UT 0807-013, UT 0807-017, UT 0807-036, UT 0807-037, UT 0807-078, and UT 0807-083.

REQUEST FOR RELIEF

SUWA requests the following appropriate relief: (1) the withdrawal of the 50 protested parcels from the August 21, 2007 Competitive Oil and Gas Lease Sale until such time as the agency has complied with NEPA or, in the alternative, (2) the withdrawal of the 50 protested parcels until such time as the BLM attaches unconditional 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. Members and staff of SUWA reside, work, recreate, or regularly visit the areas to be impacted by the proposed lease sale and therefore have an interest in, and will be affected and impacted by, the proposed action.

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