APPENDIX M:

COOPERATING AGENCY AND U.S. ENVIRONMENTAL PROTECTION AGENCY LETTERS

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APPENDIX M:

COOPERATING AGENCY AND U.S. ENVIRONMENTAL PROTECTION AGENCY LETTERS

M.1 COOPERATING AGENCY LETTERS

Several of the cooperating agencies, notably the States of Utah and Wyoming, and Uintah County, Utah, submitted comments on the Draft 2012 Oil Shale and Tar Sands (OSTS) Programmatic Environmental Impact Statement (PEIS), wherein they asserted that the Preferred Alternative presented in the 2012 Draft OSTS PEIS is inconsistent with their officially approved or adopted resource-related plans, policies, or programs.

Specifically, the State of Wyoming has stated that the Preferred Alternative in the Draft Bureau of Land Management (BLM) Plan is inconsistent with the Governor's Executive Order 2011-5, which does not preclude mineral development in core population areas for sage-grouse; rather, it establishes conditions designed to maintain and enhance greater sage-grouse habitat. The BLM has modified the Preferred Alternative's approach from the Draft PEIS in the Final PEIS/Proposed Plan to maintain consistency with Wyoming's Greater Sage-grouse Core Area Protection Strategy. This is also more consistent with how the BLM is managing sage-grouse habitat for other resources in Wyoming.

The State of Wyoming has also indicated that the 2012 Draft OSTS PEIS is inconsistent with the Wyoming Environmental Quality Council's April 10, 2008, Very Rare and Uncommon Designation for the Adobe Town Area. The Council's designation allows for in situ or underground mining to take place in this area, and only closes the area to surface mining for oil shale resources, while the Preferred Alternative in the Draft PEIS excludes the entire area from leasing and development. The BLM has determined that because we are in the embryonic stages of achieving economic oil shale production in the United States on public lands, at this time, it is important to continue to manage the Adobe Town area conservatively with regard to oil shale leasing and development, and thus the exclusions set out for the Adobe Town area in the Draft PEIS will continue under the Final PEIS/Proposed Plan Amendment.

For its part, Uintah County has adopted into its General Plan, language that states, "Further, additional lands in Uintah County should be approved for full oil shale and/or oil sands leasing and development if they either have a minimum resource thickness of 15 feet, or are estimated to produce a minimum yield of 15 gallons of oil per ton of ore." To the extent that the County asserts this language is inconsistent with the PEIS, it is important to note that Section 369 of the 2005 Energy Policy Act directed the Secretary of the Interior to complete a PEIS for a commercial leasing program for oil shale and tar sands resources on public lands, with an emphasis on the "most geologically prospective areas" in Colorado, Utah, and Wyoming. In preparing that PEIS in 2008, the BLM determined that the most geologically prospective areas should be identified on the basis of the grade and thickness of the deposits. The Secretary, through the BLM, determined the meaning of this phrase in 2008, and has carried it forward into this 2012 planning initiative, which is consistent with the Energy Policy Act's focus on appropriate development of these energy resources, for the reasons explained in Section 1.2 of the Draft 2012 PEIS. The standards developed by the U.S. Geological Survey (USGS)

Conservation Division, and subsequently adopted by the BLM, use 15 gal/ton and 15 ft thick as the prospectively valuable classification standard for oil shale resources. When the USGS was in charge of leasing oil shale resources in the 1970s and early 1980s, the USGS further defined oil shale leasing area criteria on a regional basis as 25 gal/ton and 25 feet thick. For both planning initiatives, the 2008 PEIS, and this 2012 PEIS, the most geologically prospective resources in Colorado and Utah are defined as those deposits that yield 25 gal/ton or more and are 25 ft thick or greater. In Wyoming, where the oil shale resource is not of as high a quality as it is in Colorado and Utah, the most geologically prospective resources are defined as those deposits that yield 15 gal/ton or more and are 15 ft thick or greater. The intent of using these definitions for planning purposes is to establish an area inside of which applications for leases can be accepted. Industry can make its own determinations on what target it may want to pursue within that area. An alternative that would apply the Wyoming criteria to Colorado and Utah was considered but eliminated from detailed analysis in the PEIS, as discussed in Section 2.5.2. In that discussion, it is reasoned that it would not make economic sense to open larger areas in Colorado and Utah to potential oil shale leasing where the resource is of low grade and unlikely to be developed at this time, because interest in future leasing would be directed at higher grade deposits. It is further noted that, in the future, additional planning and National Environmental Policy Act of 1969 (NEPA) analysis could be conducted to open areas with lower grade deposits if economically warranted.

The State of Utah stated that the Draft OSTS PEIS is inconsistent with state law, specifically, Utah Code Section 63J-8-103(4), which provides that, “the public lands should not be segregated into separate geographical areas for management that resembles the management of wilderness, wilderness areas, wildlands, and the like.”

The State of Utah and Duchesne and Uintah Counties in Utah, expressed concerns that the BLM Proposed Plan is not consistent with the Energy Zones established by the State of Utah and Uintah, Duchesne, and Daggett Counties in the 2012 Uintah Basin Energy Zone legislation (Utah Code Sections 63J-8-102 and 105.5) containing oil shale and tar sands resources that provides for energy development as the priority use within this Zone.

Uintah County, Utah, also expressed concerns that the PEIS was inconsistent with the County Plan for Managing and Developing Oil Shale and Oil Sands Resources within the Borders of Uintah County.

To the extent the Final PEIS/Proposed Plan Amendment is inconsistent with state and county plans, policies, or programs, the BLM nevertheless believes that because of the nascent character of the oil shale and tar sands technologies, a measured approach should be taken to oil shale and tar sands resources leasing and development.

In addition, several of the cooperating agencies passed County Resolutions objecting to this planning process and its proposed outcome. To the extent that the Final PEIS/Proposed Plan Amendment is inconsistent with the County Resolutions, the BLM believes it is necessary to maintain a focus on research, development and demonstration projects. This will allow the BLM to obtain more information about technological and environmental consequences before committing to broad-scale development. The cooperating agency comments follow, and the responses can be found in the Comment Response Document in Volume 5 of this Final OSTS PEIS.

CARBON COUNTY 18 94 COAL IS KING

"Strength Through Diversity"

May 1, 2012

Oil Shale and Tar Sands Resources Draft Programmatic EIS
Argonne National Laboratory
9700 South Cass Avenue—EVS/240
Argonne, IL 60439.
Sent Via Email Transmission:
http://ostseis.anl.gov

Michael Milovich
Commissioner
(435) 636-3272

John Jones
Commissioner
(435) 636-3271

Jae Potter
Commissioner
(435) 636-3273

Re: *Carbon County, Utah's Comments on the Draft Programmatic Environmental Impact Statement (PEIS) and Possible Land Use Amendments for Allocation of Oil Shale and Tar Sands Resources on Lands Administered by the BLM in Colorado, Utah and Wyoming.*

To Whom It May Concern,

The Board of Commissioners of Carbon County, Utah appreciates the opportunity to work with the Bureau of Land Management (BLM) as a Cooperating Agency in the preparation of the Draft PEIS for the Allocation of Oil Shale and Tar Sands Resources on Lands in Colorado, Utah, and Wyoming.

Carbon County expects that our comments will be used for creating a plan to support and further the multiple use mandates of the BLM and the utilization of our natural resources in the best interest of the American public. We expect these comments to be included as a part of the administrative record for the action and given due consideration. We also strongly support the comments rendered by the State of Utah and those from our adjoining counties (Duchesne and Uintah counties) who are also involved in this endeavor.

As you know Carbon County worked with BLM along with State agencies and counties from Utah, Colorado and Wyoming as well as various other agencies of the Federal Government hoping to help development a reasonable draft to management for exploration and extraction of Oil Shale and Tar Sands in an region containing the largest volume of oil in the world. At the end of a very rapid and whimsical experience that lasted almost four months BLM felt they could substitute this effort for the existing Oil Shale and Tar Sands program that took the previous administration three years of cooperative agency review between public comments to finalize. At the end of reviews of sometimes as much as 1000 or more pages of information with a 2-week deadline the Cooperators were asked to consider an alternative they could support as the, "Agency Preferred

Alternative." The Cooperators not directly under the control of the Federal Administration were mostly unanimous in their position to make the No Action Alternative, (The Alternative that would leave the existing OS&TS program in tact) as their agency preferred alternative.

Some time after that and before this PEIS was released for public comment decisions were made at the highest level of the Department of Interior to add two sub-alternatives to the four alternatives for oil shale and made the, Agency Preferred Alternative. Their reasoning for ignoring our recommendation after asked and replacing it with an option that we as cooperators were not asked to consider or support was stated as, thus far, technological and economic conditions have not combined to support a sustained commercial oil shale industry in the United States, and tar sands is not at present a proven commercially-viable energy source, the DOI/BLM is adding these oil shale alternatives in support of the BLM and the Department's emphasis on a robust RD&D program.

Although many of the cooperators informed BLM of many countries using technology to extract Oil Shale and Tar Sands and in one case Uintah County, Utah provided a slide presentation of the Commissioners visiting a site in Estonia that has been economically producing oil from Tar Sands for many years, the BLM chose to ignore the facts and go with the spin.

The new Preferred Alternative; Alternative 2 known as the Conservation Focus Alternative is analyzes removing from possible oil shale and tar sands leasing the following kinds of areas:

1. All areas that the BLM has identified or may identify as a result of inventories conducted during this planning process, as lands containing wilderness characteristics (preliminary information may be found in chapters 2 and 3 of the 2008 Programmatic EIS;

2. The whole of the Adobe Town ''Very Rare or Uncommon'' area, as designated by the Wyoming Environment Quality Council on April 10, 2008;

3. Core or priority sage grouse habitat, as defined by such guidance as the BLM or the Department of the Interior may issue;

4. All areas of critical environmental concern (ACEC) located within the areas analyzed in the September 2008 Oil Shale and Tar Sands Resources Leasing Final EIS; and

5. All areas identified as excluded from commercial oil shale and tar sands leasing in Alternative C of the September 2008 OSTS Programmatic EIS.

Also, under this Alternative lands open for future leasing consideration would be the same as those in Alternative 2(a), but only for oil shale Research, Development, and Demonstration (RD&D) leases. The BLM would issue a commercial lease only when a lessee satisfies the conditions of its RD&D lease and the regulations at 43 C.F.R. subpart 3926 for conversion to a commercial lease. The preference right acreage, if any, which would be included in the converted lease, would be specified in the RD&D lease.

The Record of Decision (ROD) for the 2008 OSTS PEIS amended 10 land use plans in Colorado, Utah, and Wyoming to make approximately 2 million acres of public lands available for potential leasing and development of oil shale and approximately 430,000 acres available for tar sands leasing. Together with the regulations published in 2006 and 2008 for oil shale and tar sands resources, the 2008 OSTS PEIS and subsequent land use amendments constituted a reasonable and rational establishment of an oil shale and tar sands program as mandated in the Energy Policy Act of 2005, which was approved and passed by Congress. The oil shale and tar sands program from which the 2008 OSTS PEIS and related regulations came was a reasonable response to the fact that the recoverable oil equivalent from oil shale and tar sands resources in northeastern Utah, northwestern Colorado and southwestern Wyoming exceeds 4 trillion barrels per the latest USGS scientific estimate would been available to the American public for extraction and use.

The preferred alternative in the 2012 OSTS PEIS drastically shrinks, diminishes and in many areas outright reverses virtually all of the lands made available for Oil Shale and Tar Sands development in 2008, and does so using the same data and science. Such a drastic reversal in lands available for Oil Shale and Tar Sands development between the 2008 PEIS and the 2012 preferred alternative, violates the regulatory standards from the Task Force requirements of certainty for industry and investors; and would probably also violate the Data Quality Act of 2000.

Regarding the preliminary purpose and need statement in the notice of intent, which states the PEIS will analyze removing from oil shale and tar sands leasing "All areas that the BLM has identified or may identify as a result of inventories conducted during this planning process, as lands containing wilderness characteristics.

On April 14, 2011, the BLM caused to be published in the Federal Register, Volume 76, No 72/Thursday, April 14, 2011, pages 21003-21005, a notice of intent to prepare the above-referenced 2012 OSTS PEIS. The notice of intent further states at page 21004:

> Lands that the BLM identifies as having wilderness characteristics will be considered during this planning initiative, as described above, and consistent with Secretarial Order No. 3310, dated Dec. 22, 2010, and BLM Manuals 6301 and 6302. Future leasing of lands determined by the BLM to have wilderness characteristics, if compatible with the allocation decisions stemming from this initiative, will subsequently be assessed in accordance with BLM Manual 6303, as appropriate (i.e., where the BLM has not determined, consistent with BLM Manual 6302, whether the lands with wilderness characteristics at issue should be receive a wild lands designation, BLM Manual 6303 will apply.)

This language documents the BLM's intent to implement, administer and/or enforce Secretarial Order 3310 and one or more of the BLM guidance manuals promulgated under Order 3310. Carbon County and others have reminded BLM that any attempt by the BLM to implement, administer and/or enforce Secretarial Order 3310, including any effort by the BLM to proceed

further on the above-referenced Programmatic EIS, violates the spending moratorium of Section 1769 of the April 21, 2011 Congressional Continuing Resolution to Fund Fiscal Year 2011 through September 30, 2011, which states:

For the fiscal year ending September 30, 2011, none of the funds made available by this division or any other Act may be used to implement, administer, or enforce Secretarial Order No. 3310 issued by the Secretary of the Interior on December 22, 2010. The spending moratorium has been carried forward in all subsequent Congressional spending resolutions up to and including the current spending resolution and the 2012 OSTS PEIS, is an admitted attempt by the BLM to implement, administer and/or enforce Secretarial Order 3310 and its policies and objectives, all in violation of the Spending Moratorium of the 2011 Continuing Resolution. BLM in no way can distance this PEIS from Order 3310. Truly, no excuse rendered will avail. All one has to do is look at the provisions of the PEIS in light of the February 2011 court settlement agreement, to realize that the center-piece of this effort is to repeal oil shale and tar sands development on lands with so-called wilderness characteristics, which have just about everything to do with the now defunct Order 3310 Wildlands Policy. It is brazen disregard of the CR, for the BLM to now pretend that this PEIS – hostile as it is to oil shale and tar sands development on "wilderness characteristics" lands, suddenly has nothing to do with the now defunct and Congressionally barred Wildlands Order. BLM apparently is too blatant to even bother amending the April 14th NOI, which expressly ties this PEIS to the CR barred Order 3310 Wildlands Policy. It is either sheer brazenness, or bureaucratic inability to alter BLM's pro-stance of Order 3310 allowing its continued direction to move along on the same illegal course despite the moratorium of the CR. At this point even though through the review process of this PEIS the references to Secretarial Order 3310 might be removed; it will never legitimatize this project. It underscores this administration's motivation to stop all domestic sources of energy from being explored and extracted.

BLM stated that they have recently completed updating its inventory of lands with wilderness characteristics in each of the three states for the planning area, and the status of several areas originally proposed to be Areas of Critical Environmental Concern (ACECs) in Utah has changed since the preparation of the 2008 PEIS. In light of the combined weight of these several developments, as well as other policy considerations, the BLM has decided to take another look at the land use plan allocations made in the 2008 ROD

That is an incorrect statement for the RMPs in Utah. The only legitimate inventorying of lands with wilderness characteristics in Utah was completed as part of the process to revise the six Resource Management Plans (RMPs) in Utah (Price, Vernal, Moab, Monticello, Richfield and Kanab). Out of that process the Price BLM Field Office identified 97,100 acres of wilderness characteristics lands suitable for wilderness characteristics management. Additionally, the lands looked at for Wilderness Characteristics through the RMP on the West Tavaputs where this PEIS would apply in Carbon County was found as having a higher value for oil and gas production. Map R-11 of the Price RMP/ROD states, "Non-WSA Lands with Wilderness Characteristics not Carried Forward into the Approved Plan." Therefore, in our view, any attempt to augment wilderness characteristics inventory already completed in Utah would be invalid, because it was done under the

auspices of now defunct Secretarial Order 3310, which is barred by the moratorium (see discussion above). Moreover, no attempt has been made to amend any of the Utah RMP determinations of wilderness characteristics lands worthy of wilderness characteristics management. Therefore, any attempt to try to prop up the supposed necessity of the present PEIS with notions of so-called 'recently completed' wilderness characteristics inventories is invalid and merely belies further the illegitimate agenda-driven nature of this PEIS.

Further, while the updated inventory of lands with wilderness characteristics has been considered in the development of the alternatives and will be considered in the analysis of environmental consequences of possible future leasing and development, BLM noted in the April 14, 2011, NOI, "because this is a targeted planning process focusing on allocation of oil shale and tar sands resources, this planning initiative will not consider designating Wild Lands." further exposes the invalid, circular nature of BLM's concerted effort with the wilderness advocacy group lawsuit plaintiffs to manufacture a de facto wilderness allocation without legitimately amending an existing RMP and without complying with the 2003 Utah-Norton Wilderness Settlement Agreement. The updated inventory of lands (illegitimate as it is) appears to be a step toward ultimate designation of the implementation of Secretarial Order 3310. That is a transparent assertion, especially when considered in light of the April 14, 2011 NOI which clearly parked this whole effort under the Wildlands Order. This is all about an agenda to ratchet down a previously legitimate allocation of oil shale and tar sands lands to conform to the lawsuit plaintiffs' own vision of wilderness designation, plain and simple.

Since BLM has categorically given the involved State and Counties an open door treatment in allowing us to join them as a cooperating agency and the thrown out our comments and recommendations, violated the Energy Policy Act, The Data quality Act and the Congressional moratorium on Wildlands secretarial order 3310 and then placed into the draft an Agency preferred alternative that was never commented on by the cooperators and in place before the public comment process took place, Carbon County believes that this entire process should be thrown out and the existing Oil Shale and Tar Sands regulations be implemented without any need to amend RMP's that considered and planned for it during the RMP process.

Included with these comments is our Resolution No. 2012-02 that we want incorporated as part of the comments. It had been pleasure to comment again with the hope some of this information will be used or at least considered on this go-round. But judging by our past experience we will tend not to expect much from this agency to support the security of this nation to allow domestic extraction and production of its own natural resources.

Very truly yours,
CARBON COUNTY BOARD OF COMMISSIONERS

Michael S. Milovich
Commission Chairman

RESOLUTION NO. 2012-02

RESOLUTION OF CARBON COUNTY STATE OF UTAH

OPPOSING THE BLM'S 2012 OIL SHALE AND TAR SANDS PROGRAMMATIC ENVIRONMENTAL IMPACT STATEMENT, BLM PROJECT # WO-300-1310-PP-OSHL (HEREAFTER 2011 OSTS PEIS) FOR LANDS ADMINISTERED BY THE BLM IN COLORADO, UTAH AND WYOMING,

This Resolution is adopted in open meeting by the Board of Commissioners of Carbon County, Utah in order to redress the many violations of law, regulation, and policy by the BLM with respect to the BLM's 2012 OSTS PEIS.

BACKGROUND

As background to this Resolution, Carbon County, Utah recites the following grievances:

WHEREAS, On April 14, 2011, the BLM caused to be published in the Federal Register, Volume 76, No 72/Thursday, April 14, 2011, pages 21003-21005, a notice of intent to prepare the above-referenced 2012 OSTS PEIS; and

WHEREAS, the preliminary purpose and need statement in the notice of intent, states the PEIS will analyze removing from oil shale and tar sands leasing "All areas that the BLM has identified or may identify as a result of inventories conducted during this planning process, as lands containing wilderness characteristics[.]" *Id.*, at page 21004; and

WHEREAS, the notice of intent further states at page 21004:

> Lands that the BLM identifies as having wilderness characteristics will be considered during this planning initiative, as described above, and consistent with Secretarial Order No. 3310, dated Dec. 22, 2010, and BLM Manuals 6301 and 6302. Future leasing of lands determined by the BLM to have wilderness characteristics, if compatible with the allocation decisions stemming from this initiative, will subsequently be assessed in accordance with BLM Manual 6303, as appropriate (i.e., where the BLM has not determined, consistent with BLM Manual 6302, whether the lands with wilderness characteristics at issue should be receive a wild lands designation, BLM Manual 6303 will apply); and

WHEREAS, this language documents the BLM's intent to implement, administer and/or enforce Secretarial Order 3310 and one or more of the BLM guidance manuals promulgated under Order 3310; and

WHEREAS, any attempt by the BLM to implement, administer and/or enforce Secretarial Order 3310, including any effort by the BLM to proceed further on the above-referenced Programmatic

EIS, violates the spending moratorium of Section 1769 of the April 21, 2011 Congressional Continuing Resolution to Fund Fiscal Year 2011 through September 30, 2011, which states:

> For the fiscal year ending September 30, 2011, none of the funds made available by this division or any other Act may be used to implement, administer, or enforce Secretarial Order No. 3310 issued by the Secretary of the Interior on December 22, 2010; and

WHEREAS, this spending moratorium has been carried forward in all subsequent Congressional spending resolutions up to and including the current spending resolution; and
WHEREAS, the 2012 OSTS PEIS, is an admitted attempt by the BLM to implement, administer and/or enforce Secretarial Order 3310 and its policies and objectives, all in violation of the Spending Moratorium of the 2011 Continuing Resolution; and

WHEREAS, the 2008 Oil Shale and Tar Sands Programmatic EIS (2008 OSTS PEIS) was required under Section 369 (d) (1) of the Energy Policy Act of 2005 and was prepared in cooperation with 14 federal, state, and local governmental organizations; and

WHEREAS THE 2008 OSTS PEIS was 3 years in the making, and it honored the input of a task force of Governors and other stakeholders as per requirement of the 2005 Energy Policy Act;

WHEREAS, the Record of Decision (ROD) for the 2008 OSTS PEIS amended 10 land use plans in Colorado, Utah, and Wyoming to make approximately 2 million acres of public lands available for potential leasing and development of oil shale and approximately 430,000 acres available for tar sands leasing. Together with the regulations published in 2006 and 2008 for oil shale and tar sands resources, the 2008 OSTS PEIS and subsequent land use amendments constituted a reasonable and rational establishment of an oil shale and tar sands program as mandated in the Energy Policy Act of 2005; and

WHEREAS, the oil shale and tar sands program to which the 2008 OSTS PEIS and related regulations gave birth, was a reasonable response to the fact that oil shale and tar sands resources in the Green River Formation located in northeastern Utah, northwestern Colorado and southwestern Wyoming may reach 8 trillion barrels of oil; and

WHEREAS, the preferred alternative in the draft 2012 OSTS PEIS drastically shrinks, diminishes and in many areas outright reverses virtually all of the lands made available for Oil Shale and Tar Sands development in 2008, and does so using the same data and science; and

WHEREAS, such a drastic reversal in lands available for Oil Shale and Tar Sands development between the 2008 PEIS and the 2012 preferred alternative, violates regulatory ran Task Force requirements of certainty for industry and investors; and

WHEREAS such a drastic reversal of lands available for Oil Shale and Tar Sands development in 2008, constitutes a de facto, piece-meal revision of previous BLM Resource Management Plans, in violation of the Section 202 Planning Process under FLPMA;

WHEREAS, the preferred alternative in the draft 2012 OSTS PEIS entirely ignores the input of the task force and stakeholders which the 2005 Energy Policy Act directed the BLM to honor and follow; and moreover the draft 2012 OSTS PEIS may well violate various memoranda of understanding (MOUs) with counties which require the BLM to publish the written input of cooperators who disagree with the preferred alternative;

WHEREAS the draft 2012 OSTS PEIS preferred alternative significantly restricts the acreage allotted in the 2008 PEIS for research and development leasing;

WHEREAS the draft 2012 OSTS PEIS preferred alternative threatens to arbitrarily undermine the process and the work utilized in creation of the 2008 OSTS PEIS, and essentially dismantle a reasonable and rational oil shale and tar sands program in violation of Section 369 of the 2005 Energy Policy Act; and

WHEREAS, the 2012 OSTS PEIS preferred alternative is the creature of a friendly lawsuit settlement agreement between the BLM and ideological opponents to oil shale development, and is therefore entirely pre-determined and pre-decisional in violation of NEPA, with no apparent rationale for revising the acreages approved in 2008; and

WHEREAS, the BLM has settled on a preferred alternative in the 2012 OSTS PEIS admittedly without having first analyzed its impacts; BLM should be required to withdraw the preferred status of the alternative until it has performed this analysis; and

WHEREAS, the acreage approved for Oil Shale and Tar Sands development in the draft 2012 OSTS PEIS preferred alternative bears no rational relationship to the stated purpose and need;

WHEREAS, the Department of Energy has basically abdicated the responsibility Congress placed upon it to defend and uphold a viable oil shale energy program in America, leaving it instead to the BLM encumbered by a host of anti-oil shale pro-wilderness groups steering BLM's every move;

WHEREAS, the alternative adopted in the ROD of the 2008 OSTS PEIS is now the No Action Alternative of the draft 2012 OSTS PEIS; and

WHEREAS, the 2008 OSTS PEIS chosen alternative is consistent with the multiple use, sustained yield of the Federal Land Policy Management Act (FLPMA); and

WHEREAS, the 2008 OSTS PEIS chosen alternative is consistent with county general plans and policies which call for responsible development of available energy resources; and

WHEREAS, the development and production of oil from oil shale has been proven beyond a doubt to be technologically and economically feasible; and

WHEREAS, this same technology to extract oil from the oil shale rock is not only economically feasible, *but it requires little to no consumption of water,* contrary to the myths which falsely claim that oil shale extraction requires large consumption of water resources; and

WHERAS, the energy captured in the extract of oil from shale (natural gas capture, etc.,) more than makes up for energy consumed in that extraction process, thus dispelling the myth that the oil shale extraction process consumes more energy than it produces;

WHEREAS, the rising price of gasoline, coupled with ever increasing loss of good paying jobs due to the Administration's policies against energy development on western public lands, result in increasing hardships for families and the local economy, to the point where some fear the window of opportunity is about to close for a civil, lawful and orderly response as citizens feel more and more pressured and desperate financially; and

WHEREAS, the 2012 OSTS PEIS improperly limits technology testing to strictly in situ efforts and does not allow for development of other technologies; and

WHEREAS, the BLM has left insufficient time for the public and cooperators to meaningfully comment on the public draft 2012 OSTS PEIS by the present comment deadline of May 4, 2012, because a highly relevant commercial oil shale BLM regulation is not due to be published until May 15, 2012 and the public should have the right to view that regulation first and then submit comments on the draft 2012 OSTS PEIS in light of that regulation; and

WHEREAS, the same problems with lack of consistency with local plans and policies and failure to honor the input of cooperators and all stakeholders, also besets many public lands EIS projects, in addition to the 2012 OSTS PEIS. The cooperators from Utah and Wyoming have already unanimously requested for the No-Action alternative in the draft 2012 OSTS PEIS become the preferred alternative.

RESOLUTION

NOW THEREFORE, BE IT RESOLVED BY CARBON COUNTY, STATE OF UTAH AS FOLLOWS:

1. Carbon County, Utah declares the BLM's continuing to administer and carry out the 2012 OSTS PEIS to be an open contempt and flaunting of the Congressional Spending Moratorium first imposed in the 2011 Continuing Resolution and carried forward in all subsequent Congressional spending resolutions up to and including the present;

2. Carbon County calls upon the BLM to cease all further activities with respect to administering and carrying out the 2012 OSTS PEIS, because doing so constitutes an open contempt and violation of the Congressional Spending Moratorium against implementing, administering and/or enforcing Secretarial Order 3310, which Spending Moratorium was first imposed in the 2011 Continuing Resolution and carried forward in all subsequent Congressional spending resolutions up to and including the present;

3. Carbon County calls upon the BLM to immediately cease and desist all activities related to the above-referenced 2012 OSTS PEIS and immediately publish a revised notice in the

Federal Register signifying its cessation of all work on the Programmatic EIS in obedience to the above-quoted Spending Moratorium. Otherwise, the BLM would be in contempt of Congress;

4. Should BLM continue to go forward with the 2012 OSTS PEIS regardless of these grievances, the only legally, viable alternative would be if the BLM adopted the No-Action Alternative, which is identical to the Alternative chosen in the ROD of the 2008 OSTS PEIS;

5. The BLM should extend the May 4, 2012 deadline for public comment on the draft 2012 OSTS PEIS at least 30 days after publication of the expected oil shale regulation due to be published on or around May 15, 2012.

6. The BLM should honor the input of cooperators, particularly if they are local governments, as required by Section 202(c)(9) of FLPMA, in all matters, not just with respect to the 2012 OSTS PEIS.

Passed this 4th day of April, 2012

BOARD OF CARBON COUNTY COMMISSIONERS

Michael S. Milovich, Chairman

Commissioner Milovich voted Absent
Commissioner Jones voted Yea
Commissioner Potter voted Yea

ATTEST:

Robert P. Pero, County Clerk/Auditor

mail_ostseisarchives

From: ostseiswebmaster@anl.gov
Sent: Monday, April 23, 2012 1:29 PM
To: mail_ostseisarchives; ostseiswebmaster@anl.gov
Subject: Oil Shale and Tar Sands Comment OSTS2012D50110

Thank you for your comment, Mike Braaten.

The comment tracking number that has been assigned to your comment is OSTS2012D50110. Please refer to the comment tracking number in all correspondence relating to this comment.

Comment Date: April 23, 2012 01:28:40PM CDT

Oil Shale and Tar Sands
2012 Draft EIS Comment: OSTS2012D50110

First Name: Mike
Last Name: Braaten
Organization: City of Rifle, Colorado - City Council
Address: 202 Railroad Ave.
City: Rifle
State: CO
Zip: 81650
Country: USA
Email: mbraaten@rifleco.org

Comment Submitted:
The City Council of the City of Rifle greatly appreciates the Department of the Interior, Bureau of Land Management's review of past decisions regarding oil shale leasing and development and offers the following comments:

The City of Rifle, Colorado (population 9,500) sits at the base of the oil-shale rich Roan Plateau in the Piceance Basin. When commercial development of oil shale occurs, our community and region will again be the likely epicenter of oil shale development as it was in the late 1970s and early 1980s. Unfortunately, in 1982, our community was also the epicenter of the oil shale bust that resulted in an economic depression in our region that spanned close to two decades.

In recent years our community and region was heavily impacted by natural gas exploration and production occurring in nearby private and public lands. Natural gas development brought significant growth to our community and placed considerable demands upon our municipal infrastructure, resulted in a shortage of affordable housing and essential community workforce, caused material and labor costs to skyrocket and strained social services and law enforcement capacities. Full-blown commercial development of oil shale may have similar impacts to our community and region.

Although we are supportive of the current Oil Shale research and development activities, given oil shale's history in our region, the City wants to ensure that we understand the impacts that may result from commercial production and from each company's technologies on our community and region. Such questions as: What will development mean for our economy – both positive and negative aspects? How much water will be used, for what, and how will local watersheds be affected? How will our infrastructure, community services and facilities be impacted, including roads, water, sewer, housing, law enforcement, etc.? How will production activities be powered? How will the environment and wildlife be affected? What will be the impacts relating to hunting, fishing and recreation in the oil shale development areas? Often

we hear anecdotal responses to these questions, but like the industry, we need factual data on which to base our planning and infrastructure investment decisions.

We want to ensure that communities expected to be impacted by commercial development of oil shale have the appropriate and necessary financial resources to address and cope with the effects of production. Our community has learned from past energy development "booms" that investment in community services, facilities, and infrastructure is needed many years in advance of commercial production and the associated tax revenue. Additionally, as municipalities and counties in Colorado have experienced in recent years, energy tax revenues that have historically flowed to local governments to respond to energy development impacts have been usurped by the State Legislature to balance their budget in this down economy.

As in past comments on Oil Shale Development, the Rifle City Council strongly supports action by the federal government to develop an oil shale cumulative community impacts study for the anticipated commercial production regions and dedicate funding to address the identified local impacts prior to approval of commercial production. Additionally, the federal government should develop an incentive program for oil shale companies to provide meaningful up-front and on-going investment in local communities and to local governments directly affected by oil shale development and production.

Instead of selecting one of the alternatives put forward by BLM, the Rifle City Council requests that whatever alternative selected requires RD&D first. Additionally, we implore Secretary Salazar, BLM officials and our Congressmen and Senators to address the above mentioned issues through the federal regulatory or legislative processes to ensure that our community and region are prepared and have the necessary assistance in place prior to the commercial development of oil shale.

Thank you for your consideration of our concerns. Respectfully submitted on behalf of the City Council of the City of Rifle, Colorado.

Questions about submitting comments over the Web? Contact us at: ostseiswebmaster@anl.gov or call the Oil Shale and Tar Sands Webmaster at (630)252-5705.

COALITION OF LOCAL GOVERNMENTS
925 SAGE AVENUE, SUITE 302
KEMMERER, WY 83101

COUNTY COMMISSIONS AND CONSERVATION DISTRICTS FOR CARBON, FREMONT, LINCOLN, SWEETWATER, UINTA, AND SUBLETTE – WYOMING

May 4, 2012

VIA E-MAIL, NO ORIGINAL MAILED
http://ostseis.anl.gov/involve/comments/index.cfm
Oil Shale and Tar Sands Resources Draft Programmatic EIS
Argonne National Laboratory
9700 South Cass Avenue
EVS/240
Argonne, Illinois 60439

Re: Comments by the Coalition of Local Governments on the Allocation of Oil Shale and Tar Sands Resources on Lands Administered, Propose to Amend 10 Land Use Plans in Colorado, Utah and Wyoming

Dear Sir or Madam:

The Coalition of Local Governments (CLG) hereby submits its comments on the Oil Shale and Tar Sands Programmatic Draft Environmental Impact Statement (OS/TS PDEIS). The Coalition is an organization of Wyoming local governments including Little Snake River Conservation District, Lincoln County, Lincoln Conservation District, Sublette County, Sublette County Conservation District, Sweetwater County, Sweetwater County Conservation District, Uinta County and Uinta County Conservation District. The Coalition members are cooperating agencies on the PDEIS.

CLG members established this organization to ensure that federal land decisions were consistent with the local governments' plans and policies and to pool their expertise and resources. The Coalition members have more than eight years of experience as cooperating agencies and have worked on more than 25 projects and land use plans, including numerous energy projects. CLG members are currently working on the sage grouse Resource Management Plan (RMP) revisions in Wyoming.

As an initial matter, the Coalition notes that the due dates for these comments were poorly stated. The Notice of Availability for the Oil Shale Tar Sands PDEIS was published on February 3, 2012 by the Environmental Protection Agency, 77 Fed. Reg. 5513 (2012) and by the BLM on February 6, 2012. 77 Fed. Reg. 5833 (2012). The BLM notice provided that comments were due within 90 days of the EPA publication, which would be May 3, 2012. The EPA notice, however, incorrectly states that the comments were due May 2, 2012. To further confuse matters, the BLM web site states that the comments are due May 4, 2012. Several local governments formally requested additional time but in the absence of a response from BLM, the Coalition is filing these comments on May 4, 2012.

1. WYOMING LOCAL GOVERNMENT ALTERNATIVE

The Wyoming local governments support the land allocations in Alternative 1 for the oil shale program in Wyoming. Because Wyoming does not have an RD&D lease, it may well be appropriate for initial projects to start with and RD&D to determine which of the several proprietary techniques will work best. The local governments also assume that the lease stipulations that have been applied for oil and agas to protect soils, water, vegetation and fish and wildlife will also apply. In addition, the reclamation standards should also be similar given the amount of effort that has gone into Wyoming specific reclamation.

Much of the affected land is located within the boundaries of the Rock Springs Field Office (RSFO) which is currently revising its RMP. As currently postured, the designations identified in the preferred alternative for the OS/TS PDEIS will conflict with many pending RMP decisions, such as lands with wilderness character (LWCs), Areas of Critical Environmental Concern (ACECs) and other special designations. It would make more sense to allow the RSFO to handle this issue as an integral part of its energy development and land use planning in the ongoing plan revision process.

The rest of the high potential area in Wyoming is covered by the Kemmerer RMP, which was final in 2008. The OS/TS PDEIS does not provide any factual basis to revise the

RMP decisions as they apply to oil shale development. The Kemmerer RMP adopted the Wyoming sage grouse strategy to protect core area habitat.

CLG members object to the effort to revise these land use plans through the back door without the data or information that was used or being used to write the land use plans. This is especially confusing for the public lands in the RSFO. The land allocations in Alternative 1, even if only for Wyoming, should be retained especially in light of the insufficient data found in the OS/TS PDEIS.

Under the 2008 rules, 43 C.F.R. Parts 3900, 3920, 3930, Research Demonstration and Development (RD&D) leases were issued before commercial lease rules were adopted. 43 U.S.C. §15927(e). The OS/TS PDEIS would expand RD&D without any commercial leasing.

The BLM signed a settlement agreement proposes amendments to the Oil Shale Final Rule. The proposed amendments require BLM to expressly state that it has discretion to deny an application converting an RD&D lease to a commercial lease based on environmental and other resource considerations and that BLM has discretion to reject an oil shale commercial lessee's proposed plan of development based on environmental or other resource considerations. This would add additional requirements under 43 C.F.R. §3926.10.

The proposed amendments require BLM to only consider issuing a commercial oil shale lease upon application for a conversion from an RD&D lease to a commercial lease, or after BLM issues a call for expression of leasing interest. The proposed amendments also require BLM to not issue any commercial lease unless it is shown that operations can be done without unacceptable environmental risk. Finally, the proposed amendments require plans of development for oil shale commercial leases to include watershed and groundwater protection plans, and environmental protection and mitigation plans, including defined standards for each of these requirements. BLM acknowledged that approval of any conversion to a commercial lease must be preceded by a NEPA analysis.

These changes, when coupled with the discontinuous parcels made available for RD&D leasing in the OS/TS PDEIS alternatives, other than Alternative 1, will not provide the necessary assurance to industry that it will realize a return on investment. Any land configuration needs to be sufficiently contiguous that a company can recover the multi-million dollar investment that even an RD&D project requires. Alternatives 2 - 4 do not achieve that objective.

2. OS/TS PDEIS DOES NOT CONFORM TO SECTION 369 OF THE 2005 ENERGY POLICY ACT

In 2005, Congress directed BLM to establish a commercial program for development of oil shale and tar sands. Section 369 of the Energy Policy Act (2005 EP Act) adopted on August 8, 2005 relates to "Oil Shale, Tar Sands, and Other Strategic Unconventional Fuels." 42 U.S.C. §15927.That title declared it to be the United States' policy that "oil shale, tar sands, and other unconventional fuels are strategically important domestic resources that should be developed to reduce the growing dependence of the United States on politically and economically unstable sources of foreign oil imports." 42 U.S.C. § 15927(b)(1). Congress also directed that it be United States policy that commercial development of oil shale "be conducted in an environmentally sound manner, using practices that minimize impacts." 42 U.S.C. §15927(b)(2).

The 2005 EP Act required that the Interior Secretary promptly follow the completion of the programmatic EIS with regulations establishing a commercial oil shale and tar sands leasing program. 42 U.S.C. §15927(d)(2) ("Not later than 6 months after the completion of the [PEIS] under this subsection, the Secretary [of the Interior] shall publish a final regulation establishing such [commercial oil shale and tar sands leasing] program.").

Section 369 directs the Department of the Interior (DOI) to issue commercial oil shale leases 180 days after the final rules are promulgated. *Id.* Lease sales are to include consultation with states, local governments, tribal governments and others to determine the level of interest. *Id.* DOI promulgated the final rules in November 2008. 73 Fed. Reg. 69414 (2008). Rather than follow the law, DOI suspended all oil shale leasing in 2009 and has ignored its Task Force reporting obligations. 42 U.S.C. §15927(h).

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While DOI is required to file reports with Congress each year, none has been prepared since 2008. http://www.unconventionalfuels.org/publications.html. The only reports now prepared are on "Secure Fuels."

The extent of Congress' commitment to unconventional fuels including oil shale and tar sands is also found in the establishment of a Task Force. 42 U.S.C. §15927(h). Department of Energy is to create commercial strategic fuel development program and to coordinate with state and local governments. DOI was to prepare a new assessment of priority areas in the Green River Region, which includes Wyoming, Utah and Colorado. *Id.* at §15927(m)(B). The heavy oil assessment was also to be updated. *Id.* §15927(p).

BLM proceeded to implement the direction by preparing a programmatic EIS that addressed the environmental impacts of oil shale an tar sands development and identified the public lands with the best potential. Based on the two considerations, BLM identified about two million acres of public land in Wyoming, Utah and Colorado as suitable and available for oil shale and tar sands development. ROD, 2008 OS/TS PFEIS at 1-4. BLM also promulgated rules to implement the commercial leasing program. 43 C.F.R. Parts 3900, 3920, 3930, 3936.

The OS/TS PDEIS is intended to analyze the impacts of a commercial leasing program, not the RD &D program authorized in subsection (c). 42 U.S.C. §15927(c). The 2008 PFEIS accomplished this mandate but the OS/TS PDEIS does not. Instead, its identification of land omits high potential land and limits development to small and scattered areas that it makes a commercial program less feasible and is calculated to discourage commercial development. The OS/TS PDEIS admits this when it claims the changes are needed to conduct additional research. OS/TS PDEIS at 1-5. The law authorized RD&D separately and did not give the Secretary the discretion to substitute a commercial leasing program with another RD&D leasing program which applies to 25% of the land previously classified as suitable and available.

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3. OS/TS PDEIS FAILS TO CONFORM TO RMP PROCEDURES

a. OS/TS PDEIS Supersedes RMP Decisions Without Adequate Rationale

The preferred alternative will remove from development lands with alleged wilderness character, notwithstanding a congressional prohibition on changing management to protect these lands. [Continuing Appropriations Act 2011, Pub. L. 112-10 (2011CR); Continuing Appropriations Act 2012, Pub. L. 112-36 (112th Congress) H.R. 2608, 10/05/11] The OS/TS PDEIS also proposes to exclude ACECs and other areas nominated by special interest groups, including groups that sued BLM in 2009, from oil shale or tar sands leasing. In many cases, the preferred alternative vetoes recent land use planning decisions, such as those for the Kemmerer RMP. In the case of the Rock Springs RMP, the OS/TS PDEIS will essentially make decisions that bind the plan revision process, without the requisite analysis or data.

The preferred alternative excludes more than 75% of the lands previously determined to be available for oil shale or tar sands leasing. This occurs even though much of the same land area is still classified as suitable and available for oil and gas leasing.

The OS/TS PDEIS purports to override the local land use planning process by designating LWCs, proposed ACECs and other protective sites, including the ever-growing Adobe Town area. Programmatic decisions cannot override the RMP process and as such, BLM is running roughshod over the rules and procedures established for land use decisions by implementing the resource allocations well ahead of information and analysis.

The Rock Springs Field Office initiated its plan revision in Spring of 2011. Much of the Wyoming high potential area is located in the Rock Springs Field Office but the OS/TS PDEIS appears to use proposed LWCs and ACECs that have not yet been fully addressed within the cooperating agency process, let alone a DEIS. CLG members cannot even comment in this process because it would violate the confidentiality agreement that it signed with BLM. This dilemma illustrates the flaws in BLM's efforts to

impose top down decisions on LWCs and ACECs as well as the Adobe Town area, when those issues are still being addressed among the cooperating agencies. If BLM proceeds on this time table, it will eviscerate the land use planning process. This situation also suggests that national BLM has chosen to proceed without regard to its obligation to coordinate with local governments. For instance, Sweetwater County went on record a year ago as only supporting special management for the Adobe Town area within its wilderness study boundaries. The OS/TS PDEIS protects a much larger area even though the Wyoming Rare and Uncommon Area classification only prohibits non-coal surface mining and allows all other forms of mineral development. Wyo. Stat. 35-11-112(a)(v); Environmental Quality Commission rules, Chapter VII.

b. Sage Grouse Management

The State of Wyoming has been aggressively developing a sage grouse strategy for management since 2004. By 2008, the sage grouse core areas had been defined and management guidelines developed. Wyoming Gov. E.O. 2008-2, 2010-4; 2011-5. Wyoming BLM largely adopted or followed these guidelines in the RMP revisions for the Kemmerer, Pinedale and Rawlins Field Office. Thus, the candidate status of the sage grouse is not a basis to remove these lands from oil shale and tar sands development, especially in light of the significant restrictions already in place. The OS/TS PDEIS omits these entirely.

Wyoming BLM initiated a statewide RMP amendment for the sage grouse to address the 2008 executive order in fall of 2008. [BLM IM 2010-012 Sage Grouse Habitat Management, December 29, 2009; IM 2010-013 Oil and Gas Leasing Screen for Greater Sage Grouse, December 29, 2009] CLG members are cooperating agencies and this process is well along.

4. IMPLEMENTATION OF LWC CLASSIFICATIONS IN RMPS IS UNLAWFUL

A significant percent of the excluded acreage in the OS/TS PDEIS is justified on the basis that the LWCs must be protected. OS/TS PDEIS at 1-5, 2-12, 2-21, 2-52.

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a. OS/TS PDEIS violates Congressional Funding Freeze on LWC Identification and Management

On December 22, 2010, Secretary Salazar announced a new initiative to identify and manage public lands with wilderness character. Secretarial Order No. 3310 Protecting Wilderness Characteristics on Lands Managed by the Bureau of Land Management (Dec. 22, 2010).[1] This action was followed with the adoption of manuals to guide BLM employees in the implementation of the extra-wilderness designation process. The resulting controversy and outcry, not to mention Director Abbey's admission that no specific section of Federal Land Policy Management Act (FLPMA) authorized the identification of lands with wilderness character outside of Section 603, led Congress to defund the entire initiative. [Continuing Appropriations Act 2011, Pub. L. 112- 10 (2011CR); Continuing Appropriations Act 2012, Pub. L. 112-36 (112th Congress) H.R. 2608, 10/05/11]

BLM has long contended that a mere inventory of wilderness character falls within its authority, citing 43 U.S.C. §1711(a). But FLPMA is equally clear that BLM cannot change land management based on an inventory unless and until the land use plan is amended. *Id.* The OS/TS PDEIS uses an undisclosed wilderness inventory and then proposes to change the management of these areas to protect the alleged wilderness character without disclosure of the basis for BLM's determination. This is exactly what S.O. 3310 directed BLM to do. When Congress froze all funding for it, two months after the *Colorado Environmental Coalition v. Salazar* (09-0085, 09-0091) settlement, BLM's hands were tied. The apparent decision to proceed regardless of the funding freeze is in contempt of Congress and unlawful. 31 U.S.C. §1341.

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[1] The Wild Lands Policy and IM 2011-154 contradict the commitments made to the State of Utah, the U.S. Congress and the public when the Secretary stated that he would honor the Settlement Agreement between Utah and DOI (Answering Yes to the question from Senator Bennett "Do you agree that currently the Department has no authority to establish new WSAs (Post-603 WSAs) under any provision of law, such as the Wilderness Act of [sic] Section 202 of FLPMA?") The Secretary also stated BLM had no authority to impose nonimpairment management on non-WSA lands.

Calling these areas LWCs does not change the result. These areas are allegedly wilderness suitable and BLM proposes to manage them in the same manner as it would have had Congress not shut down all funding related to S.O. 3310. Changing the name from "Wildlands" to "LWCs" does not make the action any more lawful. Apparently, BLM acknowledges the difficulty and has assiduously avoided any kind of public rulemaking process to implement the switch from S.O. 3310 to IM 2011-154.

The OS/TS PDEIS contradicts Congress' clear direction that BLM cease and desist from implementing the provisions of S.O. 3310. The fact that BLM put the implementing manuals in abeyance but issued Instruction Memorandum (IM) 2011-154 that implements the Order does not excuse BLM from the clear violation of Congress' edict.[2] IM 2011-154 suffers from procedural deficiencies as well. It was issued without coordinating with local governments, public comment or in accordance with rulemaking procedures. Thus, it independently violates Federal Land Policy and Management Act (FLPMA) mandate that its provisions be implemented through rulemaking, 43 U.S.C. §1740.

An instruction memorandum issued by BLM in order to evade the funding and implementation freeze on S.O. 3310 enjoys little or no presumption of legality. *United States v. Mead Corp.*, 533 U.S. 318 (2001) (holding that the court owes little deference to agency guidelines). By implementing the IM, BLM runs a serious risk that the OS/TS PDEIS will be set aside.

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[2] The Antideficiency Act provides that "an officer or employee of the U.S. Government may not make or authorize an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation; involve the government in a contract or obligation for the payment of money before an appropriation is made unless authorized by law . . .." 31 U.S.C. §1341. The act imposes criminal penalties for violation, *Id.* at §1350, and authorizes adverse personnel action for employees that violate the law. *Id.* at §1349.

B. NO LEGAL AUTHORITY TO IMPLEMENT SECRETARIAL ORDER 3310 OR SIMILAR DIRECTION

Unlike the definition of multiple use for National Forests, 16 U.S.C. §529, FLPMA does not include wilderness as one of the statutory multiple uses. 43 U.S.C. §1702(c). Wilderness has its own definition, which is limited to Section 603. ("(i) The term 'wilderness' as used in section 1782 of this title shall have the same meaning as it does in section 1131(c) of Title 16." *Id.* §1702(i). The term 'wilderness' is found only in the definition section, 43 U.S.C. §1702(i) and the wilderness review provisions of Section 603, 43 U.S.C. §1782; 43 C.F.R. §1601.0-5(i). Section 603 is the only provision in federal law that authorizes the identification, study and recommendation of public lands for wilderness designation by Congress. Thus, BLM is not at liberty to add wilderness to other provisions in FLPMA when Congress so clearly chose not to.

Only Section 603 of FLPMA authorizes BLM to manage lands so as to not impair their wilderness character. *Tri-County Cattleman's Association Idaho Cattlemen's Association*, 60 IBLA 305, 314 (1981). There is no other statutory authority for BLM to study and manage public lands as if they were wilderness. Public lands are to be managed so as to not unduly and unnecessarily degrade the resources. (43 U.S.C. §1732(b) [nondegradation standard], except for WSAs which are managed so as to not impair the wilderness character.) Id at 1782(c).

The Interior Secretary's authority to identify public lands as wilderness study areas under Section 603 has expired. *State of Utah v. Babbitt*, 137 F.3d 1193, 1206, n.17 (10th Cir. 1998) (Secretary Babbitt wrote "I also agree with you that FLPMA's section 603 no longer provides authority to inventory BLM land in Utah for wilderness values."). BLM has attempted to claim discretion to manage lands to preserve their wilderness character but the planning rules do not so provide. The rules were revised to remove wilderness study from the general planning process and have never been amended to make wilderness study part of the land use planning process.[3]

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[3] By comparison, the Forest Service revised its planning rules to integrate wilderness study and recommendations into each plan revision. 36 C.F.R. §219.27

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Section 202 of FLPMA provides for the development and revision of land use plans. 43 U.S.C. §1712. Land use planning must have coordination with state and local governments, public involvement and be consistent with FLPMA. 43 U.S.C. §1712(a). The criteria for developing and revising land use plans, includes (1) using and observing the principles of multiple use and sustained yield set forth in FLPMA and other applicable laws, 43 U.S.C. §1712(c)(1); (2) interdisciplinary approach, §1712(c)(2); (3) priority to designate ACECs, §1712(c)(3); and (4) "to the extent consistent with the laws governing the administration of the public lands, coordinate the land use inventory, planning, and management activities of or for such lands with the land use planning and management programs of other Federal departments and agencies and of the States and local governments within which the lands are located;"§1712(c)(9). FLPMA further states: "Land use plans of the Secretary under this section shall be consistent with State and local plans to the maximum extent he finds consistent with Federal law and the purposes of this Act." Id.

Nothing in Section 202, which governs land use planning, authorizes wilderness study or wilderness-type management. The history of the planning rules shows that the word "wilderness" was deleted from the draft of the planning rules on purpose. When BLM wrote the rules governing land use plans, it originally defined a resource management plan as including "the initial determination of whether a wilderness study area shall be recommended to the President for recommendation to the Congress as suitable or unsuitable as an addition to the National Wilderness Preservation System." 43 Fed. Reg. 58764, 58768-69 (1978) draft 43 C.F.R. §1601.0-5(p)(2). The definition of a resource management plan was later revised to delete reference to wilderness study area recommendations. 44 Fed. Reg. 46386 (1979). Thus, BLM has no regulations in the land use planning chapter authorizing establishment of wilderness type areas or authorizing nonimpairment management for such lands other than designated WSAs designation pursuant to Section 603, which expired.

BLM adopted the Wild Lands Policy through three Manuals, based on its claimed discretion in FLPMA, Sections 201, 202 and 302 of FLPMA. Those provisions do not

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(1982).

support BLM's claimed authority to designate Wild Lands or LWCs or to manage them as if they were designated WSAs for nonimpairment of the wilderness character.

IM 2011-154 was adopted without proper comment procedures and without coordination with local governments. Under Section 202(a), BLM has no choice but to coordinate with local governments and to resolve conflicts in land use plans. 43 U.S.C. §1712(a). So far BLM has failed to do so on this very important issue. No Wyoming local government within the affected area supports proposed or identified LWCs. Several of the applicable local government plans oppose new wilderness character areas. BLM has clearly violated Section 202 by not coordinating both its inventory and LWC determination with the local governments.

The OS/TS PDEIS also fails to identify which, if any, inventory it has used to identify the LWCs. For example, in the Rock Springs Field Office, BLM has maps of the alleged LWCs which were identified without any coordination with local governments. The single map in the OS/TS PDEIS fails to identify these areas or to disclose the factual basis for the LWC classification. OS/TS PDEIS Figure 2.3.3-3. Thus, it is impossible to divine their location or the resource values that prompted the classification being used in the OS/TS PDEIS. If CLG had access to this information it could provide site specific documentation of the errors in the premise that these are LWCs.

These lands are not "wilderness" as that term is used in the Wilderness Act. These areas are heavily roaded and include the Wyoming Checkerboard where Anadarko owns the alternating sections. There are powerlines, rights-of-way for pipelines, wind farms as well as coal mining and oil and gas development.

It appears that the OS/TS PDEIS adopts this unofficial and inaccurate information and excluded significantly high potential public lands from oil shale leasing. CLG requested the information regarding these inventories in November and never received it. CLG assumes that for Utah the OS/TS PDEIS uses the Utah HR 1925 lands without regard to the RMP decisions that evaluated those lands in 2008.

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Figure 2.3.3-3 depicts the Wyoming LWCs without providing any other information or even labels. Chapter 6 of the OS/TS PDEIS lists the areas and acreage without providing maps or a description. The OS/TS PDEIS uses a limited and incorrect definition of wilderness. Footnote to Table 6.2.3 states: "The key characteristics of wilderness that may be considered in land use planning include an area's appearance of naturalness and the existence of outstanding opportunities for solitude or primitive and unconfined types of recreation." This statement is materially incorrect, because the definition of wilderness requires that an area be roadless and that it be greater than 5,000 acres. 16 U.S.C. §1131(a). The OS/TS PDEIS conveniently drops the first two criteria.

Table 6.1.1-2 purports to list LWCs in Wyoming, when that classification has never been adopted or even made public. The Adobe Town WSA consists of 85,710 acres. None of the listed areas correspond to WSAs designated in 1980. Since there is no information provided, CLG members cannot provide meaningful comments.

5. OS/TS PDEIS FAILS TO CONFORM TO NEPA RULES

A. PURPOSE AND NEED

"Agency action should be overturned only when the agency has 'relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.'" *Motor Vehicle Mfrs. Ass'n v. State Farm Mutual Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). The OS/TS PDEIS meets the definition of arbitrary and capricious as the explanation for the land use allocations do not have sufficient explanation or documentation to support them, and the explanation for revision runs counter to the facts.

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i. Real Purpose and Need Unaddressed

The Notice of Intent and the statement of Purpose and Need in the PDEIS omit the real basis for the new programmatic EIS. BLM settled two lawsuits, which challenged both the 2008 PFEIS Record of Decision *Colorado Environmental Coalition (CEC) v. Salazar*, No. 09-0085; and the regulations promulgated to implement an oil shale and tar sands leasing program, *Colorado Environmental Coalition (CEC) v. Salazar*, 09-0091. The conduct of the two cases and, particularly, the CEC's failure to prosecute the cases strongly suggests that this was a friendly litigation with an equally friendly settlement.[4] Plaintiffs filed the two cases in February of 2009, but the government sought numerous extensions of time to answer and settled the case shortly before the administrative records were to be filed before the court.

BLM's reconsideration of the 2008 OS/TS ROD is based entirely on the terms of the settlement in which BLM committed to this revision. *CEC v. Salazar*, #63 ¶1 ("No later than 120 days after this Settlement Agreement becomes effective, Defendants will publish a notice of intent ("NOI") to consider amending each of the land use planning decisions made by the 2008 OSTS ROD.") BLM also committed to consider excluding from oil shale and tar sands development all "lands with wilderness character" a term that did not exist until December 23, 2010. BLM also agreed to exclude existing and proposed ACECs and the Adobe Town rare and uncommon area. The state law designation of a rare and uncommon area only prohibits noncoal surface mining but allows coal mining under certain conditions, as well as oil and gas development. EQC Rules Ch. VII. It cannot apply to public land. *Calif. Coastal Commn. v. Granite Rock Co.*, 480 U.S. 572 (1987) (holding state's coastal zone management could not regulate mining on federal land).

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[4] It is ironic that the environmental plaintiffs excoriated BLM for settling the Utah wilderness inventory case with the State of Utah and yet clearly filed these two cases for the purpose of securing sweetheart terms to eviscerate the oil shale and tar sands programs.

In the rulemaking case, BLM committed to amending the oil shale and tar sands leasing rules within 15 months. BLM has made no move to initiate the changes. The settlement terms mandate the content of the final rules to a degree that violates public policy and the law, because BLM agrees in advance to what the final rules will provide. BLM also agreed to deny applications to convert RD&D leases to commercial leases based on environmental and resource considerations, to reject plans of development and to limit commercial leases to RD&D lessee after expressions of interest and detailed stipulations. *CEC v. Salazar*, No. 09-0091, Doc. No. 80-1 ¶¶1-6. The settlement predetermines the outcome of the rulemaking such that BLM has relinquished its authority and discretion.

The 2008 regulations remain in effect but cannot be implemented under the terms of the settlement, which prohibit oil shale leasing. By accepting the plaintiffs' demands for content, BLM has failed to comply with the 2005 EP Act, Section 369 to develop a commercial oil shale and tar sands leasing program.

As is clear in the OS/TS PDEIS, BLM also committed to a predetermined outcome in the programmatic EIS to reduce the potential for oil shale and tar sands development by removing 75% of the land base and limiting the remnants of the program to research and development, rather than the commercial scale mandated by federal law. The fast pace of the drafting of the OS/TS PDEIS and the fact that entire chapters are largely the same as the 2008 PFEIS. BLM is doing a rush job to issue a final decision without regard to the facts or competing legal obligations and constraints.

ii. Purpose and Need for Revision Unsupported in OS/TS PDEIS

The Notice of Intent to revise the 2008 Oil Shale and Tar Sands FEIS stated: "The BLM has decided to take a fresh look at the land use plan allocation decisions made in the 2008 ROD associated with the Programmatic EIS, in order to consider which lands should be open to future leasing of oil shale and tar sands resources." 76 Fed. Reg. 21003 (2012). The Notice of Intent went on to state that:

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

Id.

The OS/TS PDEIS expresses the purpose and need as necessary to determine which lands should be removed from the classification of available for leasing. "The purpose and need for this proposed planning action is to reassess the appropriate mix of allowable uses with respect to oil shale and tar sands leasing and potential development. Specifically, the BLM will consider amending the applicable Resource Management Plans (RMPs) to specify whether any areas in Colorado, Utah, and Wyoming currently open for application for future leasing and development of oil shale or tar sands should not be available for such application for leasing and development." PDEIS 1-4.

The criteria to exclude high potential oil shale and tar sands lands from leasing suffers several flaws. First, OS/TS PDEIS does not and indeed cannot explain how it conforms to Section 369, since BLM previously concluded that similar alternative would not conform. 2008 Record of Decision PFEIS (2008 ROD) at 22 ("Much of the most geologically prospective acreage would be excluded under Alternative C; in particular areas which are in close proximity to three of the six RD&D leases would be excluded. In addition, this unreasonably fragments the area that would be available for application, resulting in parcels that are unlikely to be explored, leased, or developed.") Second, Congress has prohibited BLM from spending federal funds to classify and manage lands as LWCs as directed in S.O. 3310. Alternatives 2-4 propose exclusions based on LWCs, thus implementing the S.O. 3310 in defiance of the ban on spending federal

funds to do so.[5] Third, all of the alternatives exclude from oil shale leasing the Adobe Town Rare & Uncommon Area, which is a state law classification that allows leasing but prohibits mining. The rare and uncommon designation cannot apply to public land, because the 1872 mining laws, as amended, preempt state law. *Calif. Coastal Commn. v. Granite Rock Co.*, 480 U.S. 572 (1987) (holding state's coastal zone management could not regulate mining on federal land).

The Coalition has previously explained that the larger Adobe Town area is not supported by Sweetwater County and impairs private land uses. Fourth, the OS/TS PDEIS provides no information about these areas, although many of the ACECs are merely proposed. Hence, there is no 'fresh look' nor does the OS/TS PDEIS disclose the new information upon which BLM is relying to support the actions proposed in the OS/TS PDEIS. The OS/TS PDEIS does not provide any information that would support the status of these areas or their exclusion. The apparent rush to complete the OS/TS PDEIS resulted in omission of the description of areas to be excluded, and this failure to describe or analyze the areas prevents the public and coordinating entities from meaningful public comment.

b. Detailed Analysis of Alternatives

The OS/TS PDEIS identifies the Preferred Alternative as 2(b).

> The BLM has selected Alternative 2(b) as the Preferred Alternative. The Preferred Alternative would make approximately 461,965 acres available for future consideration for commercial oil shale leasing and 91,045 acres available for application for commercial tar sands leasing, but only for research, development, and demonstration (RD&D) leases. The BLM would issue a commercial lease only when a lessee satisfies the conditions of its RD&D lease and the regulations at 43 CFR Subpart 3926 for

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[5] BLM's actions violate the Anti-Deficiency Act, 31 U.S.C. §1341 and the involved officials could face adverse employment actions, *Id.* at §1350, and criminal penalties, §1349.

> conversion to a commercial lease. The preference right acreage, if any, which would be included in the converted lease, would be specified in the RD&D lease.

OS/TS PDEIS at i.

The OS/TS PDEIS, however, does not contain any specific analysis of the expanded RD&D program that is being proposed in lieu of the commercial leasing program. The OS/TS PDEIS attempts to compensate for this defect by stating:

> The environmental impacts of Alternative 2(b) would be analytically indistinguishable from those of Alternative 2(a). Only the method of obtaining a lease would be different. Accordingly, the analysis in this PEIS of Alternative 2 applies fully and equally to both alternatives. To the extent there may be differences in environmental consequences between Alternative 2(a) and 2(b), these would be related to the timing of the commencement of impacts, as well as, possibly, length of disturbance. However, these issues are best addressed in the lease and/or project-specific analysis.

OS/TS PDEIS at ES-7, 2-35. The OS/TS PDEIS states that this alternative was not developed until quite late in the process.

> As the Draft PEIS was being developed, the idea for this alternative emerged. It is presented here in brief. This alternative is not noted elsewhere in the document but will be developed further in preparation of the Final PEIS. Analytically, this subalternative is indistinguishable from Alternative 2(a) in terms of environmental consequences. Therefore further environmental analysis in preparation of the Final PEIS is not anticipated, although more detailed explanation may be provided, particularly in response to comments received.

OS/TS PDEIS at 2-35.

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The OS/TS PDEIS statement that Alternative 2(b) environmental impacts are basically the same as Alternative 2(a) is untrue. Alternative 2(b) changes the timing of oil shale leasing to slow it down and this change in timing significantly changes the nature of the impacts on water, surface disturbance. NEPA requires agencies to consider direct, indirect, and cumulative effects in the context of geography and timing. 40 C.F.R. §1508.25. The preferred alternative delays in issuing RD&D leases and not issuing commercial leases will change the scope and impact and must be separately analyzed.

The very limited information about Alternative 2(b) and the omitted discussion of the imminent rule changes do not provide the public with sufficient information to determine whether, in fact, it is virtually identical to Alternative 2(a). If Alternative 2(b) is essentially the same, then BLM should and could have changed Alternative 2(a). BLM has already committed to rule changes in the CEC settlement agreement. The OS/TS PDEIS omits all discussion, even though the rulemaking is a connected action that falls within the scope of this EIS and failure to discuss the connected actions violates NEPA. 40 C.F.R. §§1501.7; 1508.25. For instance, the OS/TS PDEIS claims Alternative 2(b) will change the lease terms but provides no information on what those changes will be, other than it will only authorize RD&D leases. *Id.* at ES-7, 2-35.

NEPA requires that each alternative be analyzed in detail. 40 C.F.R. §1502.14(b) (substantial treatment must be devoted "to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits."). The discussion of alternatives in the EIS must be sufficient to permit a reasoned choice among the options." *State of Wyoming v. USDA*, 661 F.3d 1209, 1243 (10th Cir. 2011) (quoting *AWARE v. Colo. Dep't of Transp.*, 153 F.3d 1122, 1130 (10th Cir. 1998)). BLM's failure to explain the preferred alternative or its impacts on the respective states and communities, requires that BLM withdraw the draft and revise or issue a supplement to explain the preferred alternative. 40 C.F.R. 1502.9 ("If a draft statement is so inadequate as to preclude meaningful analysis, the agency shall prepare and circulate a revised draft of the appropriate portion.")

Alternative 2(b) does not conform to Section 369 because it continues the RD&D program instead of providing for a commercial leasing program. While an agency can

consider an alternative that requires additional authority, it must disclose this fact. *Forty Questions on CEQ NEPA Regulations*, 46 Fed. Reg. 18026 (1981) as amended 51 Fed. Reg. 15618 (1986), Answer to Question 2(b). The OS/TS PDEIS does not propose an amendment to the 2005 EP Act to modify the mandate.

c. Omission of Significant New Information

The Purpose and Need for the OS/TS PDEIS is justified as a "fresh look" at oil shale and tar sands development. 76 Fed. Reg. 21003 (2011). The OS/TS PDEIS is not in fact a "fresh look," it is merely a retread of an alternative previously rejected by BLM on the grounds that it would not conform to Section 369 of the 2005 EPA. [2008 ROD at 22].

The purposeful omission of new information is significant and violates NEPA. Since the 2008 ROD was signed, several companies have been developing oil shale pursuant to the RD&D leases. The OS/TS PDEIS omits these results and progress reports. Similarly advances in technologies and actual experience with these technologies has been omitted. Instead, the OS/TS PDEIS repeats throughout the conclusion that oil shale and tar sands are not commercially viable and also repeats old data regarding the amount of water, power and surface disturbance.

The OS/TS PDEIS excludes new information regarding oil shale and tar sands technology and makes very limited the use of the 2010 and 2011 USGS assessments of potential. OS/TS PDEIS 2-77. Chapter 3 and App. A are very similar, if not identical, to the 2008 FEIS and notably do not discuss oil shale extraction technology used by Red Leaf or Enefit.

The OS/TS PDEIS purports to include new information regarding sage grouse, LWCs and ACECs but the information is vague and incomplete as to preclude any kind of meaningful analysis. The OS/TS PDEIS lacks a discussion disclosing the resource values of these areas, the basis for the respective classification, or the other current land uses. The OS/TS PDEIS does not discuss the Wyoming sage grouse strategy or how BLM adopted the state strategy as an interim protection.

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Many of these areas have oil and gas leases and even production, which would contradict the description as LWCs. In Wyoming, the OS/TS PDEIS omits that these areas are also located in the Wyoming Checkerboard where the private land is owned by Anadarko, a gas development company. The OS/TS PDEIS concludes that private land is inconsistent with development when the private lands in Wyoming have been developed for decades and generally in conjunction with public lands.

While BLM could theoretically decide not to issue individual leases, it does not have the discretion to simply discard new and relevant information. This information is environmentally significant since it shows retort methods using modest amounts of water and causing significantly less surface disturbance than assumed in 2008. NEPA requires BLM to consider significant new information and this omission results in a significant bias of the OS/TS PDEIS against additional oil shale and tar sands development notwithstanding the congressional mandate to proceed with this program.

Similarly, the OS/TS PDEIS omits the statutorily required assessment of oil shale and tar sands potential. 42 U.S.C. §15927(m). The USGS Assessment reports completed in 2010 and 2011 identified additional land as having high potential but the OS/TS PDEIS did not use this report in its identification of potential lands. Instead, the OS/TS PDEIS simply modified the areas identified in 2008 and made them 75% smaller.

The omission of new information is further documented in the fact that many of the chapters, especially Chapter 3 and the Appendices, are largely unchanged from the 2008 PFEIS. This only shows that BLM limited its update the OS/TS PDEIS to the alleged LWCs and other special designations as a basis to marginalize a congressionally mandated program.

d. OS/TS PDEIS Dismissal of Technology Fails to Acknowledge Significant Scientific Controversies

At a minimum, BLM must acknowledge that there is a scientific controversy regarding its key assumptions of environmental impact and support its position. 40 C.F.R. §1508.127(b)(4); *Middle Rio Grand Conservation Dist. v. Norton*, 294 F.3d 1220, 1229

(10th Cir. 2002) (setting aside critical habitat designation EIS on the basis that "[t]he wide disparity in the estimates of water required for the designation, and the associated loss of farmland acreage, indicate that a substantial dispute exists as to the effect of the designation."). Like the above decision, there is a wide disparity in estimates of water, surface area and electrical power assumed to be necessary for oil shale development. BLM, like the USFWS, must address the disparities, especially since the newer data reflect new information.

The OS/TS PDEIS repeats the refrain that oil shale development will require more than 1 barrel of water for each barrel of oil. OS/TS PDEIS 4-3, 4-9, 4-11, 4-33, 4-47, 4-48, 5-32, 5-35, A-85. As described by Red Leaf and Enefit, two companies operating in Colorado and Utah under RD&D leases, new technology does not rely on large amounts of water in the retort process. The R&D program was intended to provide BLM with this type of information, yet it is excluded from the OS/TS PDEIS. By using outdated or erroneous assumptions, the OS/TS PDEIS exaggerates the water and power needs as well as the surface disturbance.

The same defects apply to the OS/TS PDEIS assumptions about the size of the surface disturbance and the amount of electrical power needed. OS/TS PDEIS at A-46, A-62, A-80, A-84, A-85. In part, these errors arise because the BLM never updated Chapter 3 or the Appendices. These same assumptions are carried through to Chapters 2 and 4-6, thus tainting the entire analysis with erroneous assumptions.

The above assumptions are relevant to the OS/TS PDEIS conclusion that oil shale and tar sands have not been shown to be commercially viable. OS/TS PDEIS at 2-57, 2-76, 3-238. This very curious statement cannot be reconciled with the fact that the province of Alberta has been producing oil from tar sands for more than 20 years and even transports tar sands oil to Utah for refining. Similarly, Enefit has been producing oil from oil shale for more than 30 years. The OS/TS PDEIS does not provide any definition of commercial viability but proven business operations should suffice and it is inexplicable that the OS/TS PDEIS repeats a conclusion that is contradicted by incontrovertible facts.

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The issue of commercial viability is also the basis for Alternative 2b, which would actually limit oil shale development to another RD&D program, without authorizing commercial leases. The preferred alternative rests on the highly disputed premise that oil shale is not commercially viable. NEPA requires that BLM disclose and discuss scientific controversies. The OS/TS PDEIS does not.

6. ONE-SIDED ECONOMIC AND SOCIAL ANALYSIS

The OS/TS PDEIS assumes that oil shale and tar sands development will lead to a boom and bust economic cycle. OS/TS PDEIS 2-36, 3-242. Based on that premise, the OS/TS PDEIS describes Alternative 1 as harmful and Alternatives 2-4, which feature little to no development, as beneficial. OS/TS PDEIS at ES-9, Table 2.3.2-2, Table 2.4.2-2, Table 2.6-1.

The OS/TS PDEIS omits the fact that the lands classified as high potential are in the regions where there is already a viable energy economy. For example, in southwestern Wyoming, there are several major gas fields producing conventional and coalgas, including Pinedale Anticline, Jonah, Moxa Arch, Continental Divide and Hiawatha. There are numerous other plays for oil and natural gas as well. Coal mining plays important role in Sweetwater and Lincoln Counties, with trona also in Sweetwater and Uinta Counties. Construction of wind farms and related transmission lines continues at a rapid pace as well. Thus, oil shale will add to the economy but is unlikely to be significant enough to create an economic boom.

The OS/TS PDEIS fails to consider the cumulative impacts and connected actions in this discussion of the economic and social impacts. It is true that the current energy development has generated housing shortages and pressure on existing roads. But Wyoming has one of the lowest unemployment records in the country and has weathered the severe recession, and in reality a national depression, far better than other states such as California, Oregon and Washington.

Taking the OS/TS PDEIS discussion to its logical conclusion, one would conclude that it is BLM's view that it is better for the residents of rural counties and communities to

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remain poor and isolated. OS/TS PDEIS at ES-9, Table 2.3.2-2, Table 2.4.2-2, Table 2.6-1. It is correct that the upsurge in energy development has changed western Wyoming communities. There is more traffic, more demand for housing and other services. There has also been more opportunity for jobs and to lease or sell private land related to energy projects, with the injection of cash into the economy. Certainly, the State of Wyoming and the trust beneficiaries, the University and Wyoming Game & Fish Department, have also seen significant increases in revenues, which allowed Wyoming to avoid the job losses, bank failures and bankruptcies that haunt many other states and large cities.

The oil shale program would add to the existing energy industry but would be a relatively small portion. Wyoming is already the second largest recipient of federal royalty revenues and revenues from oil shale would not significantly change that. It would, however, represent continued diversification in energy development.

7. CONCLUSIONS AND RECOMMENDATIONS

The OS/TS PDEIS suffers from a number of fatal flaws.

- Any alternative needs to conform to Section 369 of the 2005 EPA, retain the land allocations adopted in 2008 to avoid discontinuous development, and ensure that a commercial leasing program is feasible;

- Implementation of LWC management in Alternatives 2, 3 and 4 violate the congressional limitation on the expenditure of funds to implement S.O. 3310 and exceed BLM's authority;

- All of the alternatives except Alternative 1 violate FLPMA land use planning processes and rules by superseding the ongoing plan revision for the Rock Springs area;

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- OS/TS PDEIS violates NEPA
  - by failing to support the purpose and need in the PDEIS;
  - by failing to fully analyze the preferred alternative so that the public can meaningfully comment;
  - omitting significant new information regarding oil shale and tar sands potential and technological advances;
  - failing to fully disclose the basis for excluding land areas from oil shale and tar sands development, when such areas were proposed by special interest groups without providing maps, facts, or rationale to support the adoption of these proposals;
  - failing to address the scientific controversies regarding the environmental impacts and resource needs for oil shale and tar sands development.

The Coalition members appreciate the opportunity to comment on this draft, but believe that unless BLM issues a new draft or a substantive supplement, the OS/TS PDEIS cannot survive judicial scrutiny.

Sincerely,

/s/ Kent Connelly
Kent Connelly, Chairman
Coalition of Local Governments

cc: Governor Matt Mead
Senator Mike Enzi
Senator John Barrasso
Congressman Cynthia Lummis

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From:	ostseiswebmaster@anl.gov
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To:	mail_ostseisarchives; ostseiswebmaster@anl.gov
Subject:	Oil Shale and Tar Sands Comment OSTS2012D50314
Attachments:	Colorado_Public_Comments_on_Oil_Shale_PEIS_OSTS2012D50314.docx

Thank you for your comment, Ginny Brannon.

The comment tracking number that has been assigned to your comment is OSTS2012D50314. Please refer to the comment tracking number in all correspondence relating to this comment.

Comment Date: May 4, 2012 03:08:53PM CDT

Oil Shale and Tar Sands
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BLM Oil Shale and Tar Sands Resources Leasing Programmatic EIS
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RE: Comments on Programmatic Environmental Impact Statement and Possible Land Use Plan Amendments for Allocation of Oil Shale and Tar Sands Resources on Lands Administered by the Bureau of Land Management in Colorado, Utah, and Wyoming

The Colorado Department of Natural Resources (DNR) and the Colorado Department of Public Health and Environment (CDPHE) respectfully submit the following comments regarding the Department of the Interior, Bureau of Land Management's (BLM) intent to draft a Programmatic Environmental Impact Statement (PEIS) and Possible Land Use Plan Amendments for Allocation of Oil Shale and Tar Sands Resources on Lands Administered by the Bureau of Land Management in Colorado, Utah, and Wyoming.

The prospect of a new PEIS raises important issues for Coloradans, and all Americans, with respect to energy supplies, environmental protection, socioeconomic impacts, and national security. If BLM were to authorize a commercial oil shale industry in Colorado, such a development would likely constitute the largest industrial development in the State's history with enormous implications for all of Northwest Colorado and for the State.

For Colorado, there is much at stake in the outcome of this program. Colorado recognizes the importance of oil shale resources to the country and, in our uncertain world, reliable, sustainable domestic oil-based resources are increasingly important. But equally important, from Colorado's perspective, is protection of the State's exceptional environment including our wildlife and water resources.

The State continues to believe that the research and development program authorized by BLM must be developed, tested, and monitored. Colorado is host to seven of the nine federal research and development sites and we are confident these programs will yield the necessary information upon which rules and regulations and commercial leasing can be based. Because oil shale development will likely utilize untested technology with potential long-term impacts to Colorado's communities and the environment, the State has consistently opposed plans to commercialize leasing or production of federal oil shale resources prior to a meaningful evaluation of the results of the research and development projects.

For these reasons, DNR and CDPHE support the Preferred Alternative.

Northwest Colorado

Any future commercial leasing for oil shale would be in Northwest Colorado. Northwest Colorado is blessed with a remarkably diversified economy in which agriculture, tourism, recreation, hunting & fishing, natural gas & mineral development, retirement communities, and their economic drivers co-exist in a relatively balanced and supportive way. Within the Piceance Basin, Colorado is the beneficiary of some of the nation's most important wildlife resources, including robust elk populations and the largest migratory mule deer in North America. These wildlife treasures, the envy of other states, have gradually evolved and grown over the past century to the exceptional levels of today.

The Piceance Basin is home to the largest migratory mule deer herd in North America, a robust migratory elk population, one of only six greater sage-grouse populations in Colorado, populations of Colorado River cutthroat trout, and a host of other wildlife species. These wildlife resources have been built up over millennia and are of long-term statewide and national economic, ecological, and aesthetic importance. Colorado's future is reliant on these resources remaining strong and healthy.

Northwest Colorado is also the home to world-class hydrocarbon resources, holding trillions of cubic feet of clean-burning natural gas, which are currently undergoing an unprecedented gas development boom. As a result of its abundance of natural resources, Northwest Colorado is experiencing extraordinary growth in population and associated challenges. Housing affordability is a significant challenge to these local communities, and the capacity of local communities to absorb growth is already largely consumed. Much of the transportation infrastructure in these communities is in disrepair and is being severely stressed by growth pressures. The costs to repair infrastructure will require up-front financing, before revenues become available from traditional sources such as severance taxes, property taxes, sales taxes, and federal royalties.

This region is thus vitally important to Colorado's future. It is in a precarious balance in the face of extraordinary pressures precipitated by possibly the largest industrial development in the history of the state. Everything state and federal policy makers do with regard to Northwest Colorado must protect the resources, values, and diverse economies and interests found there, and we cannot simply think of this region as an area to be sacrificed for any one purpose. Yet another boom and bust cycle for energy development will be dire for Northwest Colorado, a region that retains considerable skepticism and frustration over the collapse of the oil shale boom of the 1970s. Another failed attempt at oil shale development could preclude development of this nationally significant resource for decades.

Areas of Concern

Wildlife:

Given current information regarding extraction methodology, it is difficult to accurately depict impacts to wildlife populations in association with oil shale development.

The Piceance Basin contains unique and, in many cases, irreplaceable habitats for a host of wildlife species such as Greater sage-grouse, movement corridors for big game species, winter range for North America's largest migratory mule deer herd, a large and economically important

elk population, raptors, and waters containing native cutthroat trout and endangered fish. The primary concern for wildlife due to oil shale development is the overall loss and fragmentation of valuable wildlife habitat, the feasibility of reclamation of disturbed areas, and the damage that would accrue to wildlife populations. The PEIS should include baseline wildlife monitoring and specific conservation measures for deer, elk, sage- grouse, and Colorado River cutthroat trout.

The PEIS should allow for an accurate and complete assessment of the direct, indirect, and cumulative impacts to wildlife habitats and populations both on-site and off-site that will occur from commercial-scale oil shale projects. BLM's analysis should include the impacts to big game in the event they are forced to occupy alternate winter range habitats and the effects of oil shale development on water quality and quantity in critical habitat for threatened and endangered aquatic species.

The assessment should not only factor in the direct effects of oil shale development, but also consider wildlife impacts from existing and new coal extraction areas and power plants needed to supply power to the oil shale operations and associated development, including pipelines, power lines, roads, man camps and other infrastructure.

The economic impacts from any anticipated loss of wildlife, hunting and fishing opportunity, recreation and tourism on state agencies and local communities should be reviewed in depth. All wildlife issues previously identified in the March 20, 2008 State of Colorado comment letter submitted for the 2008 Oil Shale and Tar Sands Draft PEIS are still applicable and should be included in the updated PEIS.

Water Supply:

The State is rapidly approaching full allocation of its Colorado River entitlements. It is not clear how much water would be needed for oil shale development, which probably depends on the prevailing technology. Nevertheless, if oil shale were to consume vast quantities of water, there would be corresponding impacts to the State's agricultural, recreational, and other energy sectors on the West Slope, the Front Range and even along the Eastern Plains. Hence, the State is very concerned that the water implications of this industry be understood prior to decisions regarding commercialization.

According to the Colorado Statewide Water Supply Initiative, water demands from industrial, municipal uses, even with conservation, are expected to increase 55% to 83% from 2008 levels by 2050. This forecast does not include uses for oil shale such that the PEIS should assess water needs for oil shale in the context of the state's increasing water demands.

Water Quality:

There is tremendous uncertainty regarding the environmental impacts on both surface water and ground water quality due to commercial oil shale operations. The PEIS should include baseline ground and surface water quality monitoring and address the impacts of additional growth on water and wastewater infrastructure in nearby communities. The PEIS should also address potential impacts of water withdrawals on flows upstream of wastewater facilities, and the concomitant reduction in permit limits that might result for these facilities.

Air Quality:

The PEIS should include information about potential levels of Mercury, Ozone precursors, and Hazardous Air Pollutants occurring from oil shale development.

The PEIS should include an assessment of the air quality impacts from energy development for electricity generation that is needed for future commercial oil shale development. This assessment should include impacts to visibility and public health.

The PEIS should document the large amount of information about baseline air monitoring being conducted in Colorado. The BLM should commit to conducting the monitoring studies needed in the future to assess baseline air quality conditions. This would include, for example, monitoring in both the Piceance Basin and the Flat Tops Wilderness Area.

Health:

The PEIS should present sufficient data to assess potential degradation of the human environment and resulting health impacts to the affected public, potentially resulting from direct or indirect exposure to contaminated media.

Energy Needs:

According to BLM's analysis in the 2008 PEIS, a 100,000 barrel per day oil shale operation would require all of the electricity from a 1,200 megawatt power plant. The PEIS should include an analysis of options for meeting power demands for oil shale development in a manner consistent with Colorado's renewable energy standard. The PEIS should also provide for comprehensive planning of energy development on a basin-wide scale in order to adequately assess cumulative impacts.

Infrastructure:

Because the areas of the Green River Formation are relatively sparsely populated, boom and bust cycles associated with oil shale could have disastrous effects on the communities, stressing existing infrastructure with increased population and associated needs. The PEIS should assess the needs and impacts of an industrial complex significantly greater than the infrastructure that exists today.

The Report by BBC Consulting for the Associated Governments of Northwest Colorado notes that baseline population projections already strain most municipalities such that oil shale development will cause existing towns to reach capacity and new towns may have to be built. The report further concludes that growth related capital costs are forecasted to exceed energy revenues by approximately $1.3 billion, some (but not all) of which may be covered by grant funds. The PEIS should include an assessment of how capital costs will be covered. It should include baseline data for community infrastructure capacity that can be used to assess what additional infrastructure will be required to support oil shale development. It should also include a thorough housing analysis incorporating local constraints including buildable land and infrastructure.

Cumulative Impacts:

The PEIS should include carrying capacity thresholds which have been in place for over two decades and impose objective standards to guard valuable and imperiled public resources from the cumulative impacts of oil shale development. As examples, the BLM should analyze data on the current populations of wintering mule deer and elk and update, if necessary, the number that must be supported for the benefit of the species. Likewise, the BLM should assess the likely socioeconomic impact of a significant new industry in the oil shale region, in conjunction with the current localized natural gas industry. The agency should also reevaluate the carrying capacities for air and water quality in order to assess whether they are currently adequate to protect these vitally important public resources.

Further, we reiterate that the State of Colorado is currently experiencing an unprecedented energy boom in many portions of our state. In particular, the areas that the BLM proposes to make available for application for commercial oil shale leases are experiencing rapid natural gas development. In addition, the areas the BLM proposes to make available for application for oil shale leasing are seeing increased tourism and recreation opportunities. Any oil shale leasing on top of this existing network of energy development and changing land uses must be evaluated in a cumulative fashion.

Thus, it is vitally important to the Departments and to the State of Colorado that the BLM proceeds cautiously and moves forward thoughtfully with the development of a commercial oil shale leasing program that truly looks at the cumulative impacts in a programmatic way. As the epicenter of the developable oil shale resource in the United States, Colorado has much to gain if this resource is developed responsibly, and much to lose if the risks are not assessed and managed appropriately.

Proven RD&D

Northwest Colorado is home to extraordinary oil shale resources, among the richest in the world, yielding 25 gallons of oil or more per ton of rock and estimated to hold nearly 500 billion barrels of recoverable oil shale, which is more than double the proven reserves of Saudi Arabia. Successful development of this resource could provide a substantial new source of domestic oil for the United States, which would have positive implications for our national energy policy and national security.

Given the significant oil shale resource and exigent national energy interests, Colorado is committed to seeing ongoing oil shale research and development move forward. Colorado officials have assisted BLM in reviewing applications for federal research and development leases, and the State currently hosts five of the six "first round" federal research and development leases issued in 2006 and two of the three additional "second round" research and development leases currently under BLM consideration. If successful, these research and development projects could set the foundation for a subsequent commercial oil shale industry. Because oil shale development will likely utilize untested technology with potential long-term impacts to Colorado's communities and the environment, the State has consistently opposed plans to commercialize leasing or production of federal oil shale resources prior to a meaningful evaluation of the results of the research and development projects.

Conclusion

Colorado recognizes that oil shale development may offer the potential to supplement the nation's energy supplies. Colorado's goal is that commercial oil shale development be done right – in a manner that avoids unacceptable and irreparable impacts on Colorado's land, air, water, wildlife resources, and communities and that minimizes those adverse environmental and socioeconomic impacts that would result from such development through front-end planning and financing and long-term monitoring and mitigation.

As BLM notes in the PEIS, the magnitude of the impacts cannot be quantified at this time because key information about the location of commercial projects, the technologies that may be employed, the project size or production level, development time lines, and mitigation that might be employed are not known.

Therefore, the State places great importance on a thoughtful, comprehensive PEIS, through which federal, state and local decision-makers will have the necessary tools in hand to evaluate what type of federal program makes the most sense. DNR and CDPHE remain convinced that BLM must gain critical answers to many questions before any commitment to commercial leasing occurs. BLM must similarly gain answers to such questions before any rules and regulations for commercial oil shale development can or should be finalized.

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From:	ostseiswebmaster@anl.gov
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Subject:	Oil Shale and Tar Sands Comment OSTS2012D50071
Attachments:	TSP_Oil_shale-tar_sands_4-4-12_comments_OSTS2012D50071.docx

Thank you for your comment, Jim DiLeo.

The comment tracking number that has been assigned to your comment is OSTS2012D50071. Please refer to the comment tracking number in all correspondence relating to this comment.

Comment Date: April 4, 2012 10:13:15AM CDT

Oil Shale and Tar Sands
2012 Draft EIS Comment: OSTS2012D50071

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State: CO
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Email: jim.dileo@state.co.us
Attachment: C:\fakepath\TSP Oil shale-tar sands 4-4-12 comments.docx

Questions about submitting comments over the Web? Contact us at: ostseiswebmaster@anl.gov or call the Oil Shale and Tar Sands Webmaster at (630)252-5705.

Colorado Department Of Public Health & Environment
Air Pollution Control Division
Technical Services Program
Modeling, Meteorology, and Emission Inventory Unit

Technical Memorandum

To:	Jim Dileo
From:	Kevin Briggs
CC:	Chuck Machovec, Daniel Bon, Dale Wells
Date:	April 4, 2012
Subject:	**Comments on :** Draft Programmatic Environmental Impact Statement and Possible Land Use Plan Amendments for Allocation of Oil Shale and Tar Sands Resources on Lands Administered by the Bureau of Land Management in Colorado, Utah, and Wyoming- January 2012

In Volume 2, Chapters 4 and 5, page 4-52, lines 32-38, the Draft PEIS states that

"It is not possible to predict site-specific air quality impacts until actual oil shale projects are proposed and designed. Once such a proposal is presented, impacts on these resources would be further considered in project-specific NEPA evaluations and through consultations with the BLM prior to actual development. As additional NEPA analysis is done for leasing and site specific development, it may be necessary as part of the air quality analysis to conduct air quality modeling. The types of modeling that may be performed, when warranted, include near-field modeling, far-field modeling, and photo-chemical grid modeling."

Comment:

As the RD&D projects are expanded from 160-acres to commercial leases, it is expected that local and cumulative air quality resources will be effected as stated throughout the documents. Prior to doing any NEPA analysis, an air quality modeling protocol needs to be submitted to reviewing agencies, including CDPHE, describing how near-field, far-field transport modeling and photochemical grid modeling will be performed for oil shale/tar sand development in order to reach an understanding of how the air quality impact analysis will be conducted.

In addition, given the uncertainty in actual oil shale projects that may be proposed, the magnitude of development and how those projects might be

designed, it is imperative that base line air quality be determined through a robust monitoring network prior to construction. The monitoring network should be constructed in a way to provide year-round characterization of existing air quality levels, improve the accuracy of modeling, and to improve the ability of CDPHE to issue air quality advisories to the general public if warranted by monitored conditions. It is recommended that BLM work with the State of Colorado to establish an air quality monitoring fund (or another method) to expand the existing air quality monitoring networks as deemed appropriate by CDPHE to gather meteorological and air quality data at micro, local, and regional scales for these projects. Funding levels should be sufficient to include AQRV/visibility monitoring at potentially affected mandatory federal Class I areas such as the Rocky Mountain National Park and the Flat Tops Wilderness Area. Funding should also be sufficient in order to provide and establish long term air quality monitoring throughout the project's lifetime. CDPHE also recommends that such a funding source be flexible enough to allow for future monitoring to include HAPS (such as carbonyl compounds), speciated VOCs (especially BTEX) and greenhouse gases (especially methane). Monitoring of these types of emissions are notably absent in the oil and gas development areas of western Colorado. It is recommended that the private sector proponents of oil and gas development fund the regulatory monitoring network enhancements.

mail_ostseisarchives

From: ostseiswebmaster@anl.gov
Sent: Wednesday, April 04, 2012 10:15 AM
To: mail_ostseisarchives; ostseiswebmaster@anl.gov
Subject: Oil Shale and Tar Sands Comment OSTS2012D50072
Attachments: OG_4-5-12_Team_Comments_on_Oil_Shale_PEIS_OSTS2012D50072.docx

Thank you for your comment, Jim DiLeo.

The comment tracking number that has been assigned to your comment is OSTS2012D50072. Please refer to the comment tracking number in all correspondence relating to this comment.

Comment Date: April 4, 2012 10:14:55AM CDT

Oil Shale and Tar Sands
2012 Draft EIS Comment: OSTS2012D50072

First Name: Jim
Last Name: DiLeo
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Attachment: C:\fakepath\OG 4-5-12 Team Comments on Oil Shale PEIS.docx

Questions about submitting comments over the Web? Contact us at: ostseiswebmaster@anl.gov or call the Oil Shale and Tar Sands Webmaster at (630)252-5705.

Comments on Draft Programmatic Environmental Impact Statement (PEIS) and Possible Land Use Plan Amendments for Allocation of Oil Shale and Tar Sands Resources on Lands Administered by the Bureau of Land Management in Colorado, Utah and Wyoming

General: There are very few conclusions reached in the PEIS and minimal technical data because of the speculative nature of this document. There are multiple references throughout the document to the effect that it is not possible to predict specific air quality impacts until actual oil shale projects are proposed and designed. Once a project is proposed, prior to a lease being approved a site-specific NEPA analysis must be submitted and approved. At this point, the Division's technical expertise will be best used.

Specific Comments:

Chapter 3.5.2 Existing Emissions, lines 39-41of page 3-105 states that, "...annual emission inventory data for criteria pollutants and volatile organic compounds (VOC) for 2002 for counties within and around the study are in Colorado..."

Comment: There has been significant oil and gas expansion in the Piceance region, where the Oil Shale exploration will take place, since 2002. As a result the emission inventory is outdated. A more recent data set should be obtained and used.

Chapter 4.1.3 In Situ Retort Projects, lines 12-14 of page 4-12 states that, "100% of combustible gases recovered from the formation would be dewatered, filtered of suspended solids, and consumed on site as supplemental fuel in external combustion sources."

Comment: During an APCD inspection of the Shell Mahogany project, gases recovered from the formation were flared, not used as supplemental fuel. Suggested revision is to include possibility of flaring gases.

Chapter 4.6.1Common Impacts, lines 20-21 of page 4-53 states that, "Before oil shale development could occur, additional project-specific NEPA analyses would be performed, subject to public and agency review and comment."

Comment: Given the limited information provided in the PEIS, it's at this site- and project-specific level that the technical expertise of the O&G Team can be best used.

Chapter 6.1.1.5 Air Quality (of Alternative 1), line 26 of page 6-11
Chapter 6.1.2.5 Air Quality (of Alternative 2), line 1 of page 6-73
Chapter 6.1.4.5 Air Quality (of Alternative 4), line 21 of page 6-176 all chapters state that, "If development of oil shale requires expansion of capacity of existing electric power plants..."

Comment: It is believed that the development of shale *will* require additional power capacity. Suggested revision is to strengthen this language to reflect that commercial development will more than likely require additional power capacity.

Chapter 6.1.5.5 Air Quality, lines 30-35 of page 6-229 states that, "...impacts would be considered in project-specific NEPA analyses that would be conducted at the lease (including conversion from any RD&D to a commercial lease) and development phases of projects."

Comment: It is unclear if BLM expects companies to halt production and expansion of a project from the RD&D phase to the commercial production phase or if this analysis will take place while a facility is expanding. Suggested revision: please clarify what is expected of a company and when the public and agencies have an opportunity to analyze additional impacts.

mail_ostseisarchives

From: ostseiswebmaster@anl.gov
Sent: Tuesday, April 24, 2012 11:46 AM
To: mail_ostseisarchives; ostseiswebmaster@anl.gov
Subject: Oil Shale and Tar Sands Comment OSTS2012D50119

Thank you for your comment, Roger Kuster.

The comment tracking number that has been assigned to your comment is OSTS2012D50119. Please refer to the comment tracking number in all correspondence relating to this comment.

Comment Date: April 24, 2012 11:46:15AM CDT

Oil Shale and Tar Sands
2012 Draft EIS Comment: OSTS2012D50119

First Name: Roger
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Email: kent.kuster@state.co.us

Comment Submitted:
The Division of Environmental Health and Sustainabilty (previously the Consumer Protection Division)submits the following comments: Labor camp housing is only inspected on a complaint basis. The Labor Camp regulations are the authority used to address man camps.The Labor Camp regulations were adopted in 1968 and a revision may be needed to address issues relative to amn camps.

Questions about submitting comments over the Web? Contact us at: ostseiswebmaster@anl.gov or call the Oil Shale and Tar Sands Webmaster at (630)252-5705.

mail_ostseisarchives

From: ostseiswebmaster@anl.gov
Sent: Tuesday, April 24, 2012 10:07 AM
To: mail_ostseisarchives; ostseiswebmaster@anl.gov
Subject: Oil Shale and Tar Sands Comment OSTS2012D50118

Thank you for your comment, Roger Kuster.

The comment tracking number that has been assigned to your comment is OSTS2012D50118. Please refer to the comment tracking number in all correspondence relating to this comment.

Comment Date: April 24, 2012 10:06:58AM CDT

Oil Shale and Tar Sands
2012 Draft EIS Comment: OSTS2012D50118

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Comment Submitted:
The Water Quality Control Division (Division) of the Colorado Department of Public Health and Environment continues to be concerned that the Draft PEIS inadequately addresses the cumulative impacts of the development of the oil shale and tar sands on water quality in Colorado. Specifically, the Division is concerned with the socioeconomic impacts related to public water systems and wastewater systems with respect to increased populations that will occur with development of oil shale resources in Colorado. While the PEIS discusses water withdrawals that will occur from the extraction activities, it does not take into account the additional stress upon water and wastewater infrastructure in nearby communities from both population growth and potentially reduced surface water flows due to extraction activities. In order to address this issue, the Draft PEIS should incorporate the projected population growth due to the extractive industries in communities near the leases.
The water withdrawals discussed in the Draft PEIS do not take into account the effect that reduced instream water flow could have upon NPDES permits. For example, the PEIS does not address the potential impact to wastewater facilities from water withdrawals upstream of a wastewater facility and the concomitant reduction in NPDES permit limits that result.
In Section 3.4.1.2, the Draft PEIS focuses on salinity as the key parameter for potential water quality impairment in the Colorado River Basin. The Division agrees that salinity is a significant concern in the Colorado River Basin, but is concerned that the Draft PEIS does not significantly discuss the potential contribution of other contaminants to area waters from the proposed extraction activities. The Division is especially concerned about the potential of increased selenium loading to area waters from the proposed extraction activities.
In Section 3.4.1.3, the 303(d) list of impaired water bodies needs to be updated to the current 2012 303(d) List. The current 2012 303(d) List for Colorado can be found in the Water Quality Control Commission Regulation No. 93 (http://www.cdphe.state.co.us/regulations/wqccregs/93_2012(03).pdf).

In Section 4.5.1, the Draft PEIS indicates that runoff from surface disturbances related to oil shale operations would be non-point sources. In fact, disturbances of one acre or more during construction would require a point source stormwater permit. This error is repeated in section 4.5.1.1.

Questions about submitting comments over the Web? Contact us at: ostseiswebmaster@anl.gov or call the Oil Shale and Tar Sands Webmaster at (630)252-5705.

mail_ostseisarchives

From: ostseiswebmaster@anl.gov
Sent: Monday, April 30, 2012 3:57 PM
To: mail_ostseisarchives; ostseiswebmaster@anl.gov
Subject: Oil Shale and Tar Sands Comment OSTS2012D50181
Attachments: DPEIS_OS&TS_Comment_Letter_OSTS2012D50181.docx

Thank you for your comment, Duchesne County Commissioners.

The comment tracking number that has been assigned to your comment is OSTS2012D50181. Please refer to the comment tracking number in all correspondence relating to this comment.

Comment Date: April 30, 2012 03:56:57PM CDT

Oil Shale and Tar Sands
2012 Draft EIS Comment: OSTS2012D50181

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Attachment: C:\fakepath\DPEIS OS&TS Comment Letter.docx

Comment Submitted:
See attachment

Questions about submitting comments over the Web? Contact us at: ostseiswebmaster@anl.gov or call the Oil Shale and Tar Sands Webmaster at (630)252-5705.

April 30, 2012

BLM Oil Shale & Tar Sands PEIS
Argonne National Laboratory
EVS Division, Building 240
9700 South Cass Avenue
Argonne, IL 60439

RE: Comments on Draft BLM Oil Shale & Tar Sands PEIS

Dear Reader:

Duchesne County, Utah, a cooperating agency in this environmental review process, has summarized its comments in Resolution #12-08, attached hereto and incorporated herein. Rural counties in Utah, Wyoming and Colorado containing these vast and important energy resources will not stand idly by while the Obama Administration continues to wage war on energy production in the West.

This so-called "fresh look" at lands available for oil shale and tar sands leasing is a colossal waste of the taxpayer's dollars, which practice has become all too frequent during the Obama Administration. The 2008 PEIS, which Duchesne County spent significant staff hours reviewing and commenting on, as a cooperating agency, was consistent with the Energy Policy Act of 2005, the state and local land use plans in the region (such as the Uintah Basin Utah Energy Zone designation) and the multiple use mandate of FLPMA. The draft 2012 PEIS violates all of these and makes no attempt to explain why greater consistency cannot be achieved. A copy of the Uintah Basin Utah Energy Zone Resolution #12-06, approved by Duchesne County, is attached hereto and incorporated herein by reference.

This DPEIS contains a flawed purpose and need statement based on the infamous Secretarial Order 3310, which Congress de-funded as stated in the Resolution enclosed. The DPEIS, given the substantial numbers of errors and omissions therein, shows an obvious attempt to rush this PEIS to approval before the end of the Obama Administration.

The BLM preferred Alternative, Alternative 2b, is not adequately analyzed in the DPEIS. Alternative 1 is the only alternative that can be legally justified.

The DPEIS fails to deliver the promised "fresh look" as it relies on basically the same data as the 2008 PEIS and fails to incorporate new data that has become available since 2008; especially the important data associated with new oil shale and tar sands technologies being employed on non-federal lands in the region. This failure to utilize the best available data constitutes a violation of the Federal Data Quality Act.

Duchesne County, pursuant to our Cooperating Agency Memorandum of Understanding, Section V (E) hereby informs the BLM that we disagree on substantive elements of the DPEIS. These disagreements have not been resolved through the comment period to our satisfaction. We request, in accordance with the MOU, that the BLM describe the many substantial inconsistencies between its proposed action and the objectives of Duchesne County's land use plans and policies and include a summary of Duchesne County's views (as stated in this letter and in the enclosed Resolution) in the Final PEIS.

We have conducted a page-by-page review of the four-volume DPEIS and offer the following specific comments on the content of the document:

Page ES-1, Line 19 and Page 1-4, Line 7: If the BLM has decided to take a "fresh look" at the land allocations from the 2008 PEIS, why does the 2012 DPEIS fail to utilize new data that has become available since the 2008 effort? Some sample pages where BLM has failed to incorporate new data are: Pages 2-15, 3-28, 3-29, 3-34, 3-62, 3-83, 3-85, 3-246, 3-247, 3-262, 3-268 through 270, 3-272, 4-9, 4-198 through 199 and A-109 to name a few.

Page ES-5, Line 39: The lands identified as suitable for potential leasing under the 2008 PEIS are considered the most geologically prospective oil shale and tar sands areas. It makes absolutely no sense to remove 75% of these lands from potential leasing given the strides made in technology, as demonstrated on non-federal lands, since 2008.

Page ES-6, Footnote 3: It makes no sense to remove lands from consideration because they are within ACEC's that failed to warrant designation in BLM land use plans.

Page ES-9, Line 15: BLM has ignored the low water use technologies being employed by Red Leaf Resources (Oil Shale), Temple Mountain Energy (Tar Sands) and others despite requests by cooperating agencies that such new information must be incorporated in the DPEIS to debunk the water use myth promoted by radical environmental groups.

Page 1-8, Figure 1.2-1, Page 2-14, Figure 2.3-1: These figures were not updated to reflect the latest findings from the USGS 2011 Assessment of In-Place Oil Shale Resources.

Page 1-20, Line 31: Reference is made to a text box; but it is not clear that this text box appears on Page 1-2.

Page 1-21, Lines 32-41: The BLM has failed to cooperate with state and local governments to promote consistency with their land use plans. The State of Utah and many counties containing oil shale and tar sands resources have established an Energy Zone that provides for energy development as the priority land use. The BLM has made no attempt in the DPEIS to explain why its preferred alternative cannot be more consistent with such local plans.

Page 2-1, Line 18: BLM fails to recognize that oil shale has already proven to be an economically viable resource. It has most recently been proven by Enefit American Oil, which

recently hosted Uintah County, Utah officials at their operations in Estonia. Enefit operates economically on a three-foot thick seam of oil shale. Imagine how economically they could operate on a 25-foot or greater thickness of oil shale in NE Utah, if given the chance! Commercial production has also occurred in Scotland (see Page 4-200).

Page 2-1, Line 32: This description of the alternatives is poorly worded and could lead the reader to assume that the No Action Alternative does not allocate any lands for potential leasing. The alternatives could better be described as the No Action Alternative and three ***reduced*** land allocation alternatives.

Page 2-15, Line 17: BLM has failed to recognize the plans for commercial oil shale development by TomCo Energy, a London-based energy company that plans to seek permits on SITLA lands. It's too bad that emerging companies are not able to access federal lands for their start-ups and must confine themselves to more progressive-minded state agencies and private land owners to prove the viability of their technology.

Page 2-16, Line 33…the BLM agreed to ***propose*** changes to the rule rather than ***purpose*** changes to the rule…

Page 2-35, Line 24: This paragraph demonstrates the lack of business sense by those currently in power in Washington D.C. No company is going to invest in costly oil shale technology on federal lands when such small acreages are made available under Alternative 2(b). It looks like the investments will continue on non-federal lands until the bureaucrats in Washington D.C. are replaced.

Page 2-35, Line 37: In this paragraph, the BLM admits that the preferred alternative, Alternative 2 (b), was "not noted elsewhere in the document but will be developed further in preparation of the Final PEIS. Duchesne County requests that the DPEIS be re-written and provided to us for at least a 30-day comment period after this alternative is more fully developed. It is impossible for cooperators and the general public to adequately comment on an alternative until it is fully developed in the draft PEIS.

Page 2-48, Line 8: Two periods at the end of the sentence. Page 2-48, Line 44: Delete the word "as" after the word "acreage."

Page 2-53, Tables 2.3.3-4 and 2.3.3-5, Page 2-75, Table 2.4.3-4, Page 2-76, Table 2.4.3-5: These tables needs to be re-designed to help the reader understand them. For example, in Table 2.3.3-4, the column entitled "Acres LWC and Sage Grouse needs to be moved to the right of the "Total" acreage column and then the data subtracted from that acreage to arrive at the acreage available for oil shale development after 75% of the lands with wilderness characteristics and sage grouse habitat are protected. Similar adjustments need to be made in the remaining tables.

Page 2-53, Line 14: This section is an analysis of Alternative 4. Why is Alternative 2 mentioned here?

Page 2-66, Line 7: This section is an analysis of tar sands leasing under alternative 2. Replace "oil shale" with "tar sands" in this sentence.

Page 2-68, Figure 2.4.3-1: Along the Green River, in Uintah County, there is shown a "Colorado River Wildlife Management Area." We have not heard of this area before and cannot find reference to it on the internet. Being located along the Green River, we suspect that this map designation may be in error.

Page 2-71, Line 8 and footnote 22: The paragraph beginning on Line 8 and the footnote are repetitious.

Page 2-73, Line 45: Delete the word "follow" at the end of the sentence.

Page 2-76, Lines 32-38: The alternative mentioned here should be one of the alternatives analyzed in the DPEIS. Duchesne County requests that the DPEIS be re-written to include this alternative and that the DPEIS be made available for another 90-day comment period after such amendments are made.

Page 2-80, Lines 39-41 and Lines 44-47: These sentences are poorly worded, repetitive and redundant.

Pages 2-83 to 2-109, Table 2.6-1: For Alternative 1, why does this table refer only to the White River and Book Cliffs RMPs when the Vernal RMP and perhaps others include oil shale development areas?

Page 2-95, Table 2.6-1, Wildlife: We doubt that there are "106,092 acres of raptor nests" under Alternative 1 and "103,719 acres of raptor nests" under Alternative 4.

Page 2-100, Table 2.6-1, Visual Resources: The column for Alternative 4 erroneously contains a reference to Alternative 2.

Page 2-101, Table 2.6-1, Cultural Resources: There is an acreage discrepancy (1.9 million acres vs. 2,017,714) in the Alternative 1 column.

Page 2-104, Table 2.6-1 and Page 2-127, Table 2.6-2, Socioeconomics: The positive socioeconomic impacts are understated and the negative impacts are overstated here and throughout the DPEIS.

Page 2-105, Table 2.6-1 and Page 2-128, Table 2.6-2, Environmental Justice: The positive impacts of energy development on minority and low-income populations are understated and the negative impacts are overstated here and elsewhere in the document.

Page 2-106, Table 2.6-1 and Page 2-128, Table 2.6-2, Environmental Justice: Assumptions are made that energy development will have negative effects on air and water quality and decrease

water available for agricultural use by low-income or minority populations. These assumptions are based on the myths perpetuated by radical environmental groups and do not take into account the technologies being employed on private and state lands by companies such as Red Leaf Resources.

Pages 2-111 through 2-130, Table 2.6-2: The acreage associated with tar sands leasing under Alternative 1 should be 430,686 rather than 2,017,714. The acreage associated with tar sands leasing under Alternative 2 should be 91,045 rather than 461,965. The acreage associated with tar sands leasing under Alternative 4 should be 425,790 rather than 1,963,414. See Page 2-121. Also, in this Table, the reference under Alternative 1 containing lands only within the White River and Book Cliffs RMPs appears to be erroneous. Lands within the Vernal RMP and perhaps others should be included.

Page 2-117, Table 2.6-2, Noise: The indication that there would be 1.9 million acres identified for potential tar sands leasing under this alternative is false.

Page 2-118, Table 2.6-2, Noise, (cont.): Reference is erroneously made to Alternative 2 in the Alternative 4 column.

Page 2-121, Table 2.6-2, Wildlife: We doubt that there are "7 acres of raptor nests" under Alternative 1 and "5 acres of raptor nests" under Alternative 4.

Page 3-4 and Figure 3.1.1-1: Section 3.1.1.1 notes that the Glenwood Springs BLM Field Office is now called the Colorado River Valley Field Office. However, Figure 3.1.1-1 (and several other figures throughout the document) still refer to this field office as Glenwood Springs.

Page 3-28, Line 6: The figure of 2,800 active oil and gas wells in the Vernal Field Office is out of date (2005). Data from the *Greater Uinta Basin Cumulative Impacts Technical Support Document, August 2011,* states that there are 9,036 productive wells in the region. *(http://www.blm.gov/pgdata/etc/medialib/blm/ut/vernal_fo.Par.57849.File.dat/GCW%20Cums%20TSD%2003-22-12%20final.pdf)*

Page 3-29, Line 15-20: This information regarding wild and scenic rivers is out of date (2005) and inconsistent with the ROD for the Vernal FO RMP (see Figure 14a of the Approved RMP).

Page 3-37, Line 22: What authority does the Wyoming Environmental Council have to designate an area as very rare or uncommon?

Page 3-40, Lines 16-18: The assertion is made that ACEC's, WSA's, SMA's, national historic trails and lands with wilderness characteristics support higher levels of recreation use than most BLM administered areas. The opposite is true. These areas restrict public access and types of activities allowed to the point that they actually support lower levels of recreation use or prohibit recreation use by the majority of citizens.

Page 3-44, Line 2: Erosion by wind is more likely due to the lack of natural vegetative cover than overgrazing.

Page 3-61, Line 25: Was this water data collected from 1906 **and** 1986 or from 1906 **to** 1986?

Page 3-62, Line 13-15: This section, if truly a "fresh look," should be updated to include what the BOR's Basin-wide Salinity Control Program has funded and accomplished since 2004.

Page 3-66, Section 3.4.1.4, Water Use: This entire section is flawed in that it fails to recognize modern oil shale technology being used by companies such as Red Leaf Resources, which use little to no water.

Page 3-78, Section 3.4.2.2, Surface Water Resources: This entire section is flawed in that it fails to recognize data available for the past six years; including 2011, which was a record water run-off year.

Page 3-83, Lines 38-44, Page 3-85, Lines 9-15: Again, old data (1941 to 1970) is being used when newer data is available and should be incorporated into the draft.

Pages 3-103 through 3-105: The climate change predictions on these pages are filled with contradictions; for example, there are dire predictions of both drought and increased precipitation attributed to climate change.

Pages 3-106 to 3-107, Table 3.5.2-1: The air emissions data in this table are from 2002. Newer data is available and should be incorporated into this table. Also, data from Duchesne County, Utah is not included in the table.

Page 3-120, Line 1: Duchesne County actually limits construction and mining activities to 7 AM to 9:30 PM on weekdays, 8 AM to 9:30 PM on Saturdays and 9 AM to 9:30 PM on Sundays and holidays.

Page 3-121, Line 38: A word is missing at the end of this sentence. The word could be "basin."

Page 3-134, Line 3: …are present within ~~in~~ the Green River Basin…

Page 3-197, Lines 31-32: One major threat to sage grouse populations (see Page 4-91) is West Nile Virus. This threat is left out in this section.

Page 3-238, Line 20: The 1989 Gulliford report is apparently flawed. If 700 new schools would be needed to support the oil shale industry in Garfield County, Colorado, with 3,000 teachers and staff, that calculates to about 4.3 teachers/staff members per school. Perhaps 70 new schools would be needed?

Page 3-243, Table 3.11.2-1: It appears that the cities of Blanding, Duchesne and Naples, within the Utah ROI, have been omitted from this table.

Page 3-245, Table 3.11.2-4: This table contains a mixture of data from 2004, 2007 and 2009, which makes the title of the table misleading and makes it difficult to draw conclusions from the data. Data from 2004 should be updated to 2009 data, if available.

Page 3-246, Lines 1-32: The employment data used in this section is from 2004. Updated employment data should be available in Utah from the Department of Workforce Services.

Page 3-251, Line 4, Page 3-254, Line 22, Page 3-255, Table 3.11.2-8, Page 3-261, Line 44: Duchesne is misspelled.

Page 3-262, Table 3.11.2-11: Much of the data used in developing this table is 6-8 years old and should be updated.

Pages 3-268 and 3-269, Tables 3.11.2-15 and 3.11.2-16: Much of the data used in developing these tables is 6-8 years old and should be updated.

Page 3-270 and 271: The value of recreation resources is unlikely to be underestimated as many agencies have been known to inflate their visitation counts to justify the budget they wish to obtain. Also, a recent study by Utah State University [*The Economic Costs of Wilderness, June, 2011*] finds that wilderness areas actually have a negative impact on the local economy rather than a positive impact.

Page 3-272, Table 3.11.3-1: The 2004 data used in this table should be updated.

Page 3-273, Lines 31 and 36: Out-of-date data is used here as well.

Page 3-276, Line 37: 2010 Census data should be available for use in Table 3.12-1 rather than 2000 Census data.

Pages 4-8 through 4-11, Page 4-33, Section 4.5.1.2, Page 4-43, Table 4.5.2-1, Page 4-47, Line 27, Page 4-48, Section 4.5.2.2: Water usage estimates are high given today's technologies being pioneered by companies such as Red Leaf Resources, which use very little, if any water. Some data used here [see Page 4-9, Line 11], is from 1973, which is ancient history.

Page 4-10, Lines 34-40, Page 4-69, Section 4.7.1.6: Upgrading may not be as extensive as depicted here under today's technologies being pioneered by companies such as Red Leaf Resources,

Page 4-48, Lines 41-43: The 2010 Western Resource Advocates water report is widely viewed to be a biased, flawed document that perpetuates the myths associated with water use in oil shale and tar sands development. Reference to this flawed report should be deleted from the

document. Instead, the document should be updated to reflect more accurate information from companies working in the industry.

Page 4-13, Section 4.1.5. Workforce/Housing: The BLM should contact companies actively involved in oil shale production (such as Enefit and Red Leaf) for updated estimates.

Page 4-13, 4-14, Section 4.1.6, Page 4-43, Table 4.5.2-1, Electricity needs: This section fails to account for today's technologies being pioneered by companies such as Red Leaf Resources, which use synthetic natural gas to produce the energy needed for the process. New power plants may not be necessary.

Page 4-16, Section 4.1.8: The BLM should contact companies actively involved in oil shale production (such as Enefit and Red Leaf) for updated estimates.

Page 4-21, Section 4.2.1.4, Recreation use: The document should address how much land would actually be taken out of recreation use under the various alternatives.

Page 4-57, Section 4.6.1.1.2, GHG Emissions: This section fails to recognize today's technologies being pioneered by companies such as Red Leaf Resources, who claim that GHG emissions are reduced by 2/3rds compared to previous technology.

Page 4-61, Section 4.6.2, Mitigation Measures: The BLM should communicate with companies such as Red Leaf Resources to determine how their new technologies reduce GHG emissions.

Pages 4-143 and 4-144, Figures 4.9.1-1 and 4.9.1-2: Why doesn't the BLM obtain photos from companies that are actually operating or proposing to operate in Colorado and Utah (Enefit, Red Leaf Resources, etc…) instead of photos from Australia?

Page 4-154, Line 39: Please clarify what is meant by "fall-line cuts."

Page 4-159: The four bullet points should be formatted with italics as was done on Page 4-162.

Page 4-180, Lines 14-20: In reality, the important recreational areas are adequately separated from the oil shale and tar sands areas so that both activities can function without adversely impacting the other. Also, while the tourism and recreational sectors of the economy are important, they do not produce the family wage jobs that the energy industry does.

Page 4-191, Section 4.14.1.2 and Page 4-194, Section 4.14.1.4: These sections need to be updated to recognize today's technologies being pioneered by companies such as Red Leaf Resources and Enefit.

Chapter 5, beginning on Page 5-1: This entire section should be updated to incorporate new technologies, such as those used by Temple Mountain Energy
[see www.templemountainenergy.com].

Page 5-34, Section 5.5.2, Water Use: The water usage here is vastly overstated given today's technologies being pioneered by companies such as Temple Mountain Energy, where they re-use 93% of their water.

Page 5-45, Lines 1-2: Did the BLM contact Temple Mountain Energy, operating in the Asphalt Ridge area of Utah, to verify that their technology is not commercially viable?

Page 5-65, Lines 1-7: Temple Mountain Energy claims that their spent tar sands are benign and can be sold as "clean, high-quality sand for applications such as hydraulic fracturing, glass making and other industrial uses." Did the BLM contact this company to verify that not all spent tar sands are a pollutant?

Page 5-109, Figures 5.9.1-1 and 5.9.1-2: Did the BLM attempt to obtain photos of local operations, such as Temple Mountain Energy on Asphalt Ridge, rather than rely on photos from Alberta, Canada?

Page 5-128, Line 24, Page 5-134, Line 16: If companies such as Temple Mountain Energy are able to recycle 93% of their water, the impacts on agriculture and low-moderate income populations here are vastly overstated.

Page 5-139, Lines 12-14: Contrary to this statement, spent tar sands do have value [see www.templemountainenergy.com] and are not necessarily to be treated as solid waste.

Page 6-2, Lines 15-17 and Lines 41-44, Page 6-10, Lines 28-32, Page 6-11, Lines 36-37, Page 6-12, Lines 26-28 and 40-41, Page 6-13, Lines 44-45, Page 6-17, Lines 23-24, Page 6-21, Lines32-33, Page 6-48, Lines 39-41, Page 6-51, Lines 40-41, Page 6-56, Lines 36-37, Page 6-57, Lines 32-33, Page 6-65, Lines 28-29, Page 6-66, Lines 23-24, Page 6-242, Lines 13-22, Page 6-321, Lines 20-22, Page 6-325, Lines 16-17, Page 6-327, Lines 21-22, Page 6-329, Lines 30-31, Page 6-330, Lines 15-16, Page 6-331, Lines 5-6 and 19-20, Page 6-332, Lines 28-30, Page 6-334, Lines 36-37, Page 6-338, Lines 37-39, Page 6-349, Lines 34-35, Page 6-362, Line 14, Page 6-363, Lines 33-34, Page 6-365, Lines 19-20 and Page 6-366, Lines 14-15: If the BLM admits that there is no environmental impact associated with Alternative 1, then it makes absolutely no sense to have gone through this exercise and spent scarce taxpayer funds; except for the desires of the Obama Administration to pander to environmental groups rather than stand up for what is best for this country.

Page 6-7, Table 6.1.1-2: The acreage in the table does not match the acreage under Footnote c.

Page 6-53, Figure 6.1.1-7, Page 6-110, Figure 6.1.2-7, Page 6-160, Figure 6.1.3-6, Page 6-218, Figure 6.1.4-7, Page 6-355, Figure 6.2.1-6, Page 6-356, Figure 6.2.1-7, Page 6-395, Figure 6.2.2-6, Page 6-396, Figure 6.2.2-7 and Page 6-459, Figure 6.2.4-6: These maps are incorrect with respect to the location of designated wild and scenic rivers in the Vernal Field Office. Nine Mile Creek and the Middle Green River were not designated. Neither were the White River, Evacuation Creek and Bitter Creek (See Figure 14a of the Approved RMP). If certain

alternatives would recognize these considered-but-not-designated streams; such should be noted in a footnote to the Figure.

Page 6-67, Section 6.1.2: There is no analysis in the document of the BLM preferred alternative 2(b). This analysis must be provided and re-published for review by the public and cooperating agencies before the process moves forward to a final PEIS.

Page 6-114, Section 6.1.2.11: The loss of jobs, revenue and positive economic impacts associated with Alternative 2 are drastically understated here.

Page 6-171, Section 6.1.4: Alternative 4, which is subject to acreage reductions associated with potential sage grouse core habitat and lands with wilderness character, is inconsistent with local plans and polices, including the Uintah Basin Utah Energy Zone designated by the 2012 Utah Legislature, Uintah County, Duchesne County and Daggett County.

Page 6-173, Line 27: Is the reference to Alternative 1 here really supposed to say Alternative 4?

Page 6-178, Line 20: correct typo "t49" perennial streams.

Page 6-312, Lines 5-9: This paragraph contains a mixture of references to oil shale and tar sands development when the section is supposed to be devoted only to a discussion of oil shale.

Page 7-1, Line 42 and Page J-5, Line 14: Duchesne County, Utah was left out of the list of local government cooperating agencies that submitted comments during the scoping period and before the release of the draft to the public. Why are the scoping comments and BLM's response to such comments not included at the end of Chapter 7?

Page A-9, Table A-1: This table utilizes 1967 data, which should be replaced by newer data from recent USGS estimates of the oil shale resource.

Page A-19, Section A.2.2: This section regarding Utah oil shale activity must be updated to include the activities of companies including Enefit American Oil, Red Leaf Resources and TomCo Energy.

Page A-21 through A-48, Section A.3: This technology overview is out of date as it fails to address new technologies being pioneered by companies including Enefit American Oil, Red Leaf Resources and TomCo Energy.

Pages A-109 through A-115, Sections 6 and 7: The data in these sections is 2005-2007 vintage and should be easy to update with current data.

Page A-118, Lines 24, 37 and 43 and Page A-119, Lines 3-4 and 18-19: The document recognizes that we are experiencing "declines in supply from existing major importers," that "Alaska North Slope production has been in decline," the "world demand for crude oil is

expected to increase by 47% by 2030." Because of these world supply issues, the document recognizes that "further international energy risk could provide additional incentive for utilization of domestic resources." The document also recognizes that "Section 369 of the Energy Policy Act directs the Secretary of Defense to procure fuel derived from coal, shale oil and tar sands." Based on these findings from the document, it makes absolutely no sense and is very short-sighted to select an alternative other than Alternative 1. Our national economy and our national security are at stake. Also, based on these findings, there is less likelihood of the boom and bust cycle occurring given the struggle of supply to keep up with demand.

Page B-4, Line 16: The document states that there are no commercial tar sands operations on public lands in Utah. Please check with the Utah State Institutional Trust Lands Administration to verify that this is correct. There is a company called Temple Mountain Energy that has been in operation on Asphalt Ridge, near Vernal, since 2006. We do not know if those lands are private or public.

Pages B-15 and B-16: Information regarding the Asphalt Ridge STSA is out-of-date. It does not include the operations of Temple Mountain Energy at this location from 2006 to the present.

Page B-17, Lines 5-7: This information from the Utah Division of Oil, Gas and Mining should be updated. This information also demonstrates that tar sands development is commercially viable and that companies are being forced to "move forward without the feds" because of the bureaucratic paralysis the federal government is mired in under the current administration.

Page B-19, Lines 24-34: This 1995 Speight report is outdated given today's tar sands technology. Information from the Temple Mountain Energy web site (2011) debunks many of the myths contained in this 1995 report.

Page B-20, Table B-2: The water use data in this table is too high and is not based on today's technologies. For example, Temple Mountain Energy states that they re-use 93% of their water, which will cut these water use figures dramatically.

Page B-31, Section B-5: This entire section is out of date as it does not take into account technologies being used by companies such as Temple Mountain Energy, at Asphalt Ridge.

Page B-58, Conclusions: These conclusions demonstrate that commercial tar sands development is economically viable; debunking the myths perpetuated by environmental groups.

Pages C-10, C-11, C-13, C-15, Table C-1: The statement under Alternative 4 on these pages that "All lands within the most geologically prospective oil shale area that are not excluded from commercial leasing under Alternative 2 will also be excluded under Alternative 4" does not make sense as Alternative 4 would allow more lands to be leased than Alternative 2.

Page D-9, Table D-5: Duchesne County, Utah has a Drinking Water Source Protection Ordinance in Title 4, Chapter 6 of its County Code.

Page D-10, Table D-6: Duchesne County, Utah regulates hazardous materials in its Nuisance Ordinance, which is located in Title 3, Chapter 1 of the County Code.

Page D-12, Table D-8: Duchesne County, Utah requires a conditional use permit for mining activities only when located on private lands.

Page D-14, Table D-9: The correct reference to the Duchesne County Code for noise regulations is the Nuisance Ordinance, which is in Title 3, Chapter 1, Section 4(G) of the County Code.

Page D-15, Table D-10: The correct reference to the Duchesne County Code for weed regulations is Title 3, Chapter 5 of the County Code.

Page D-16, Table D-11: The correct reference to the Duchesne County Code for solid waste regulations is Title 3, Chapter 4 of the County Code.

Page D-17, Table D-12: The correct reference to the Duchesne County Code for source water protection regulations is Title 4, Chapter 6 of the County Code as well as the Duchesne County Drinking Water Source Protection Ordinance #09-273.

Page D-18, Table D-13: The correct reference to the Duchesne County Code for water bodies and wastewater is Title 3, Chapter 1 of the County Code.

Page F-18, Line 7: Requiring a 300 foot setback from a threatened or endangered plant to any surface disturbance associated with oil shale or tars sands development is far too great of a setback and could place substantial areas of land off-limits for production of these vital natural resources.

Pages G-3 through G-9, Socioeconomic analysis : The data in this entire section is out-of –date and needs to be updated with readily available data from state and federal agencies.

Appendix H: The interviews of community leaders and stakeholders should be updated given the developments that have occurred in the past 5 years since the interviews were done.

Page H-3, Lines 19-21: While the boom and bust cycle has occurred in the past, the facts of increasing demand and supply issues noted in Appendix A are likely to lessen the severity of such cycles.

In summary, this draft PEIS is not the "fresh look" that the BLM intended. It is filled with outdated information that could have been easily updated if the BLM weren't trying to rush this process to a conclusion before the end of the Obama Administration. Rather than fight for the family wage jobs and associated income that so many American citizens desperately need; rather than fight for responsible energy development that contributes to local, state and national economic health and security; the BLM has backed down to litigious environmental groups.

Again, the enclosed Resolution #12-08 summarizes our opposition to this process based on several points of law. The preferred alternative is inconsistent with state and local plans and policies, including the Uintah Basin Utah Energy Zone (see Resolution #12-06 enclosed). There has been no attempt, as required by FLPMA, to make the BLM Oil Shale and Tar Sands leasing effort as consistent with local plans as possible. If the Record of Decision adopts the BLM preferred alternative (2b), there will no doubt be legal ramifications.

Sincerely,

DUCHESNE COUNTY COMMISSIONERS

Michael A. Hyde, AICP
Community Development Director

Enclosures
Resolution #12-06 – Uintah Basin Utah Energy Zone
Resolution #12-08 – Opposition to the BLM's 2012 OSTS DPEIS

pc: Ken Salazar, Secretary, Dept. of the Interior, 1849 C St., N.W., Washington DC 20240
Bob Abbey, Director, BLM, 1849 C Street, N.W., Room 5665, Washington DC 20240
Sherri Thompson, BLM State Office, 2850 Youngfield Street, Lakewood, CO 80215
Juan Palma, BLM State Director, P.O. Box 45155, Salt Lake City, Utah 84145
Mark Ward, Utah Assoc. of Counties, 5397 So. Vine Street, Salt Lake City, UT 84107
Kathleen Clarke, PLPCO, 5110 St. Office Bldg., Box 141107, Salt Lake City, UT 84114
Governor Gary Herbert, State of Utah, PO Box 142220, Salt Lake City, Utah 84114-2220
Congressman Jim Matheson, 2434 Rayburn HOB, Washington, DC 20515
Congressman Rob Bishop, 123 Cannon Building, Washington, DC 20515
Congressman Jason Chaffetz, 1032 Longworth HOB, Washington, DC 20515
Senator Mike Lee, 316 Hart Senate Office Building, Washington, D.C. 20510
Senator Orin Hatch, 104 Hart Office Building, Washington, DC 20510

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mail_ostseisarchives

From: ostseiswebmaster@anl.gov
Sent: Monday, April 30, 2012 4:15 PM
To: mail_ostseisarchives; ostseiswebmaster@anl.gov
Subject: Oil Shale and Tar Sands Comment OSTS2012D50184
Attachments: img-430123521_OSTS2012D50184.pdf

Thank you for your comment, Duchesne County Commissioners.

The comment tracking number that has been assigned to your comment is OSTS2012D50184. Please refer to the comment tracking number in all correspondence relating to this comment.

Comment Date: April 30, 2012 04:14:48PM CDT

Oil Shale and Tar Sands
2012 Draft EIS Comment: OSTS2012D50184

First Name: Duchesne County
Last Name: Commissioners
Organization: Duchesne County, Utah
Address: PO Box 317
Address 2: 734 N Center Street
City: Duchesne
State: UT
Zip: 84021
Country: USA
Email: mhyde@duchesne.utah.gov
Attachment: C:\fakepath\img-430123521.pdf

Comment Submitted:
See attached

Questions about submitting comments over the Web? Contact us at: ostseiswebmaster@anl.gov or call the Oil Shale and Tar Sands Webmaster at (630)252-5705.

RESOLUTION # 12-06

A RESOLUTION AMENDING THE PUBLIC LANDS SECTION OF THE DUCHESNE COUNTY GENERAL PLAN TO INCORPORATE THE UINTAH BASIN UTAH ENERGY ZONE

WHEREAS, Duchesne County has a general plan adopted pursuant to Utah Code containing policies for the appropriate use of private and public land within the county; and

WHEREAS, Duchesne County desires to amend its general plan to incorporate provisions associated with the Uintah Basin Utah Energy Zone (Senate Bill 83) that was established by the Utah Legislature in the 2012 General Session; and

WHEREAS, the Duchesne County Public Land Use Committee has reviewed and recommended approval of these amendments as set forth herein; and

WHEREAS, the Duchesne County Planning Commission has conducted a public hearing to review the proposed plan amendment and concurs with the recommendation of the Public Land Use Committee that this Resolution should be passed;

NOW, THEREFORE, THE DUCHESNE COUNTY GENERAL PLAN IS AMENDED BY INSERTING THE FOLLOWING AT THE END OF THE ENERGY AND MINERAL RESOURCES SUBSECTION OF THE PUBLIC LANDS SECTION OF THE GENERAL PLAN:

SECTION 1. There is established, pursuant to Utah Code, the Uintah Basin Energy Zone in Duchesne County for the purpose of maximizing efficient and responsible development of energy and mineral resources. The land area and boundaries of the Uintah Basin Energy Zone in Duchesne County consist of federal lands within the Townships and Ranges described below and as depicted on the map attached hereto as Exhibit A, which is incorporated herein by reference:

Uintah Special Base and Meridian:
Township 3N, Range 1W; Township 3N, Range 2W; Township 3N, Range 3W; Township 3N, Range 4W; Township 2N, Range 1W; Township 2N, Range 2W; Township 2N, Range 3W; Township 2N, Range 4W; Township 2N, Range 5W; Township 2N, Range 6W; Township 1N, Range 6W; Township 1N, Range 7W; Township 1N, Range 8W; Township 1N, Range 9W, Township 5S, Range 8W, Township 5S, Range 9W; Township 6S, Range 3W; Township 6S, Range 4W; Township 6S, Range 5W; Township 6S, Range 6W; Township 6S, Range 7W; Township 6S, Range 8W; Township 6S, Range 9W; Township 7S, Range 4W; Township 7S, Range 5W; Township 7S, Range 6W; Township 7S, Range 7W; Township 7S, Range 8W; Township 7S, Range 9W.

Salt Lake Meridian:
Township 8S, Range 15E; Township 8S Range 16E; Township 8S, Range 17E; Township 9S, Range 15E; Township 9S, Range 16E; Township 9S, Range 17E; Township 10S, Range 14E, Township 10S, Range 15E; Township 10S, Range 16E; Township 10S, Range 17E; Township 11S, Range 10E; Township 11S, Range 11E; Township 11S, Range 12E; Township 11S, Range 13E; Township 11S, Range 14E; Township 11S, Range 15E; Township 11S, Range 16E; and Township 11S, Range 17E.

SECTION 2. The county finds that the lands comprising the Uintah Basin Energy Zone contain abundant, world-class deposits of energy and mineral resources, including oil, natural gas, oil shale, oil sands, gilsonite, coal, phosphate, gold, uranium, and copper, as well as areas with high wind and solar energy potential.

SECTION 3. The highest management priority for all lands within the Uintah Basin Energy Zone is responsible management and development of existing energy and mineral resources in order to provide long-term domestic energy and supplies for Utah and the United States.

SECTION 4. The county supports:

(a) Efficient and responsible full development of all existing energy and mineral resources located within the Uintah Basin Energy Zone, including oil, oil shale, natural gas, oil sands, gilsonite, phosphate, gold, uranium, copper, solar, and wind resources; and

(b) A cooperative management approach among federal agencies, state, and local governments to achieve broadly supported management plans for the full development of all energy and mineral resources within the Uintah Basin Energy Zone.

SECTION 5. The county calls upon the federal agencies who administer lands within the Uintah Basin Energy Zone to:

(a) Fully cooperate and coordinate with the county to develop, amend, and implement land and resource management plans and to implement management decisions that are consistent with the purposes, goals, and policies described in this section to the maximum extent allowed under federal law;

(b) Expedite the processing, granting, and streamlining of mineral and energy leases and applications to drill, extract, and otherwise develop all existing energy and mineral resources located within the Uintah Basin Energy Zone, including oil, natural gas, oil shale, oil sands, gilsonite, phosphate, gold, uranium, copper, solar, and wind resources;

(c) Allow continued maintenance and increased development of roads, power lines, pipeline infrastructure, and other utilities necessary to achieve the goals, purposes, and policies described in this section;

(d) Refrain from any planning decisions and management actions that will undermine, restrict, or diminish the goals, purposes, and policies for the Uintah Basin Energy Zone as stated in this Resolution; and

(e) Refrain from implementing a policy that is contrary to the goals and purposes described within this Resolution.

SECTION 6. The county calls upon Congress to establish an intergovernmental standing commission among federal, state, and local governments to guide and control planning decisions and management actions in the Uintah Basin Energy Zone in order to achieve and maintain the goals, purposes, and policies described in this Resolution.

NOW, THEREFORE, THE DUCHESNE COUNTY GENERAL PLAN IS AMENDED BY INSERTING THE FOLLOWING POLICY AS SUBSECTION (h) AT THE END OF THE ENERGY AND MINERAL RESOURCES POLICIES IN THE PUBLIC LANDS SECTION OF THE GENERAL PLAN:

(h) For private lands within the County, the County supports the provisions of the Surface Owner Protection Act, which was enacted by the 2012 Utah Legislature to establish surface owner rights and responsibilities when working with energy development companies.

DATED this 16th day of April 2012.

ATTEST:

Diane Freston
County Clerk/Auditor

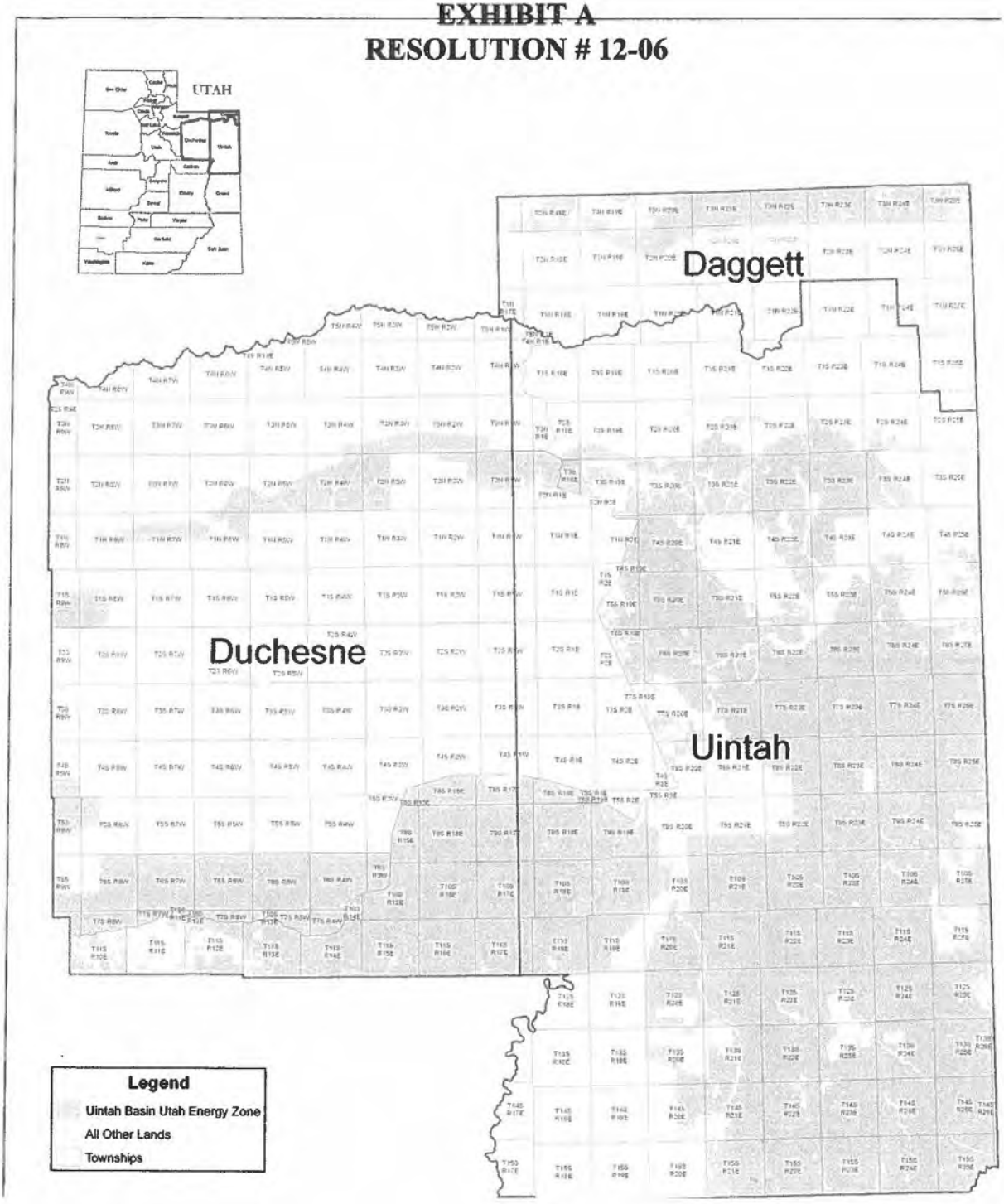
DUCHESNE COUNTY
BOARD OF COMMISSIONERS

Kirk J. Wood, Chairman

ABSENT
Ronald Winterton, Member

Kent R. Peatross, Member

EXHIBIT A
RESOLUTION # 12-06



mail_ostseisarchives

From: ostseiswebmaster@anl.gov
Sent: Monday, April 30, 2012 4:18 PM
To: mail_ostseisarchives; ostseiswebmaster@anl.gov
Subject: Oil Shale and Tar Sands Comment OSTS2012D50186
Attachments: img-430111832_OSTS2012D50186.pdf

Thank you for your comment, Duchesne County Commissioners.

The comment tracking number that has been assigned to your comment is OSTS2012D50186. Please refer to the comment tracking number in all correspondence relating to this comment.

Comment Date: April 30, 2012 04:18:28PM CDT

Oil Shale and Tar Sands
2012 Draft EIS Comment: OSTS2012D50186

First Name: Duchesne County
Last Name: Commissioners
Organization: Duchesne County, Utah
Address: PO Box 317
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City: Duchesne
State: UT
Zip: 84021
Country: USA
Email: mhyde@duchesne.utah.gov
Attachment: C:\fakepath\img-430111832.pdf

Comment Submitted:
See attached

Questions about submitting comments over the Web? Contact us at: ostseiswebmaster@anl.gov or call the Oil Shale and Tar Sands Webmaster at (630)252-5705.

RESOLUTION #12-08
DUCHESNE COUNTY, STATE OF UTAH

A RESOLUTION OPPOSING THE BLM'S 2012 OIL SHALE AND TAR SANDS DRAFT PROGRAMMATIC ENVIRONMENTAL IMPACT STATEMENT, BLM PROJECT # WO-300-1310-PP-OSHL (HEREAFTER 2012 OSTS DPEIS) FOR LANDS ADMINISTERED BY THE BLM IN COLORADO, UTAH AND WYOMING,

This Resolution is adopted in open public meeting after due opportunity for public comment, by the Board of Commissioners of Duchesne County, Utah in order to redress the many violations of law, regulation and policy by the BLM with respect to the BLM's 2012 OSTS DPEIS.

As background to this Resolution, Duchesne County recites the following grievances:

WHEREAS, On April 14, 2011, the BLM caused to be published in the Federal Register, Volume 76, No 72/Thursday, April 14, 2011, pages 21003-21005, a Notice of Intent to prepare the above-referenced 2012 OSTS DPEIS; and

WHEREAS, the preliminary purpose and need statement in the notice of intent, states the PEIS will analyze removing from oil shale and tar sands leasing "All areas that the BLM has identified or may identify as a result of inventories conducted during this planning process, as lands containing wilderness characteristics[.]" *Id.*, at page 21004; and

WHEREAS, the notice of intent further states at page 21004:

> Lands that the BLM identifies as having wilderness characteristics will be considered during this planning initiative, as described above, and consistent with Secretarial Order No. 3310, dated Dec. 22, 2010, and BLM Manuals 6301 and 6302. Future leasing of lands determined by the BLM to have wilderness characteristics, if compatible with the allocation decisions stemming from this initiative, will subsequently be assessed in accordance with BLM Manual 6303, as appropriate (i.e., where the BLM has not determined, consistent with BLM Manual 6302, whether the lands with wilderness characteristics at issue should be receive a wild lands designation, BLM Manual 6303 will apply); and

WHEREAS, this language above documents the BLM's intent to implement, administer and/or enforce Secretarial Order 3310 and one or more of the BLM guidance manuals promulgated under Order 3310; and

WHEREAS, any attempt by the BLM to implement, administer and/or enforce Secretarial Order 3310, including any effort by the BLM to proceed further on the above-referenced Programmatic EIS violates the spending moratorium of Section 1769 of the April 21, 2011 Congressional Continuing Resolution to Fund Fiscal Year 2011 through September 30, 2011, which states:

> For the fiscal year ending September 30, 2011, none of the funds made available by this division or any other Act may be used to implement, administer, or enforce Secretarial Order No. 3310 issued by the Secretary of the Interior on December 22, 2010; and

WHEREAS, this spending moratorium has been carried forward in all subsequent Congressional spending resolutions up to and including the current spending resolution; and

WHEREAS, the 2012 OSTS DPEIS, is an admitted attempt by the BLM to implement, administer and/or enforce Secretarial Order 3310 and its policies and objectives, all in violation of the Spending Moratorium of the 2011 Continuing Resolution; and

WHEREAS, the 2008 Oil Shale and Tar Sands Programmatic EIS (2008 OSTS PEIS) was required under Section 369 (d) (1) of the Energy Policy Act of 2005 and was prepared in cooperation with 14 federal, state, and local governmental organizations; and

WHEREAS THE 2008 OSTS PEIS was 3 years in the making, and it honored the input of a task force of Governors and other stakeholders as per the requirements of the 2005 Energy Policy Act;

WHEREAS, the Record of Decision (ROD) for the 2008 OSTS PEIS amended 10 land use plans in Colorado, Utah, and Wyoming to make approximately 2 million acres of public lands available for potential leasing and development of oil shale and approximately 430,000 acres available for tar sands leasing. Together with the regulations published in 2006 and 2008 for oil shale and tar sands resources, the 2008 OSTS PEIS and subsequent land use amendments constituted a reasonable and rational establishment of an oil shale and tar sands program as mandated by the Energy Policy Act of 2005; and

WHEREAS, the oil shale and tar sands program, to which the 2008 OSTS PEIS and related regulations gave birth, was a reasonable response to the fact that the recoverable oil equivalent from oil shale and tar sands resources in Utah, Colorado and Wyoming exceeds 4 trillion barrels per the latest USGS scientific estimate; and

WHEREAS, the preferred alternative in the draft 2012 OSTS DPEIS drastically shrinks, diminishes and in many areas outright reverses virtually all of the lands made available for Oil Shale and Tar Sands development in 2008, and does so using the same data and science; and

WHEREAS, the OSTS DPEIS fails to analyze BLM's preferred Alternative 2b, and the BLM admits as much on page 2-35 of the DPEIS; and

WHEREAS, such a drastic reversal in lands available for Oil Shale and Tar Sands development between the 2008 PEIS and the 2012 preferred alternative, violates regulatory Task Force requirements of certainty for industry and investors; and

WHEREAS such a drastic reversal of lands available for Oil Shale and Tar Sands development in 2008, constitutes a de facto, piece-meal revision of previous BLM Resource Management Plans, in violation of the Section 202 Planning Process under FLPMA;

WHEREAS, the preferred alternative in the draft 2012 OSTS PEIS entirely ignores the input of the task force, the cooperating agencies, and the other stakeholders which the 2005 Energy Policy Act directed the BLM to honor and follow; and moreover the draft 2012 OSTS DPEIS may well violate various memoranda of understanding (MOUs) with counties, cities and local government coalitions which require the BLM to (1) publish the written input of cooperators who have unresolved disagreements over the substantive elements of the EIS document, and (2) describe the objectives of the cooperators' land use plans and policies; and

WHEREAS the 2012 OSTS DPEIS preferred alternative greatly restricts the already meager acreage allotted in the 2008 PEIS for research and development leasing;

WHEREAS the 2012 OSTS DPEIS preferred alternative threatens to arbitrarily undermine all that was rationally and scientifically supported in the 2008 OSTS PEIS, and essentially dismantle a reasonable and rational oil shale and tar sands program in violation of Section 369 of the 2005 Energy Policy Act; and

WHEREAS, the 2012 OSTS DPEIS preferred alternative is the creature of a friendly lawsuit settlement agreement between the BLM and ideological opponents of oil shale development, and is therefore entirely pre-determined and pre-decisional in violation of NEPA, with no apparent rationale for revising the acreages approved in 2008; and

WHEREAS, the BLM has settled on a preferred alternative in the 2012 OSTS DPEIS admittedly without having first analyzed its impacts; BLM should be required to withdraw the preferred status of the alternative until it has performed this analysis; and

WHEREAS, the acreage approved for Oil Shale and Tar Sands development in the draft 2012 OSTS DPEIS preferred alternative bears no rational relationship to the stated purpose and need;

WHEREAS, the Department of Energy has basically abdicated the responsibility Congress placed upon it to defend and uphold a viable oil shale energy program in America, leaving it instead to the BLM encumbered by a host of anti-oil shale, pro-wilderness groups steering BLM's every move;

WHEREAS, the alternative adopted in the ROD of the 2008 OSTS PEIS is now the No Action Alternative of the draft 2012 OSTS DPEIS; and

WHEREAS, the 2008 OSTS PEIS chosen alternative is consistent with the multiple use, sustained yield mandate of the Federal Land Policy Management Act (FLPMA); and

"WHEREAS, the 2008 OSTS PEIS chosen alternative is consistent with county general plans and policies which call for responsible development of available energy resources, but in stark contrast the 2012 OSTS PDEIS is plainly inconsistent with state and local plans and policies, plainly inconsistent with the Uintah Basin Energy Zone Legislation passed in the 2012 Utah Legislature (Senate Bill 83 – see Utah Code 63J-8-102 & 105.5), and it fails to adequately explain why consistency is not achievable; and

WHEREAS, the development and production of oil from oil shale has been proven beyond a doubt to be technologically and economically feasible when market rates for oil are at least $65.00 per barrel, which is well below current market rates; and

WHEREAS, this same technology to extract oil from the oil shale rock is not only economically feasible at $65.00 per barrel, *but it requires little or no consumption of water,* contrary to the myths which falsely claim that oil shale extraction requires large consumption of water resources; and

WHERAS, the energy captured in the extract of oil from shale (natural gas capture, etc.,) more than makes up for energy consumed in that extraction process, thus dispelling the myth that the oil shale extraction process consumes more energy than it produces;

WHEREAS, the rising price of gasoline, coupled with ever increasing loss of family-wage jobs due to the Obama Administration's policies against energy development on western public lands, result in increasing hardships for families and the local economy, to the point where some fear the window of opportunity is about to close for a civil, lawful and orderly response as citizens feel more and more pressured and desperate financially; and

WHEREAS, the 2012 OSTS DPEIS improperly limits technology testing to strictly in-situ efforts and does not allow for development of other technologies; and

WHEREAS, the BLM has left insufficient time for the public and cooperators to meaningfully comment on the public draft 2012 OSTS DPEIS by the present comment deadline of May 4, 2012, because a highly relevant commercial oil shale BLM regulation is not due to be published until May 15, 2012 and the public should have the right to view that regulation first and then submit comments on the draft 2012 OSTS DPEIS in light of that regulation; and

WHEREAS, the same problems with lack of consistency with local plans and policies and failure to honor the input of cooperators and all stakeholders, also besets many public lands EIS projects, in addition to the 2012 OSTS DPEIS; and

WHEREAS, while the 2012 OSTS PDEIS repeatedly asserted the supposed need to take a "fresh look," the BLM arbitrarily failed to do so by refusing to update the document with fresh, new oil shale technological data made available since 2008 and fresh new oil shale technology that has emerged since 2008, which failures constitute a violation by the BLM of the Federal Data Quality Act;

NOW THEREFORE, BE IT RESOLVED BY DUCHESNE COUNTY, UTAH AS FOLLOWS:

Resolution #12-08
Duchesne County, Utah
April 16, 2012
Page **4** of **4**

1. Duchesne County declares the BLM's continuing to administer and carry out the 2012 OSTS DPEIS to be an open contempt and flaunting of the Congressional Spending Moratorium first imposed in the 2011 Continuing Resolution and carried forward in all subsequent Congressional spending resolutions up to and including the present;

2. Duchesne County calls upon the BLM to cease all further activities with respect to administering and carrying out the 2012 OSTS DPEIS, because doing so constitutes an open contempt and violation of the Congressional Spending Moratorium against implementing, administering and/or enforcing Secretarial Order 3310, which Spending Moratorium was first imposed in the 2011 Continuing Resolution and carried forward in all subsequent Congressional spending resolutions up to and including the present;

3. Duchesne County calls upon the BLM to immediately cease and desist all activities related to the above-referenced 2012 OSTS DPEIS and immediately publish a revised notice in the Federal Register signifying its cessation of all work on the Programmatic EIS in obedience to the above-quoted Spending Moratorium. Otherwise, the BLM would be in contempt of Congress;

4. Duchesne County finds that the only way the BLM could go forward with the 2012 OSTS DPEIS in light of the Congressional Spending Moratorium, would be if the BLM adopted the No-Action Alternative, which is identical to the Alternative chosen in the ROD of the 2008 OSTS PEIS;

5. Duchesne County requests that the BLM should extend the May 4, 2012 deadline for public comment on the draft 2012 OSTS DPEIS at least 30 days after publication of the expected oil shale regulation due to be published on or about May 15, 2012.

6. Duchesne County requests that the BLM honor the input of cooperators, particularly if they are local governments, as required by Section 202(c)(9) of FLPMA and the relevant terms of BLM-Cooperator MOUs, in all matters, not just with respect to the 2012 OSTS PEIS.

DATED this 16th day of April 2012.

ATTEST:

Diane Freston
County Clerk/Auditor

DUCHESNE COUNTY
BOARD OF COMMISSIONERS

Kirk J. Wood, Chairman

ABSENT
Ronald Winterton, Member

Kent R. Peatross, Member

United States Department of the Interior

FISH AND WILDLIFE SERVICE
Mountain-Prairie Region

IN REPLY REFER TO:
FWS/R6
ES

MAILING ADDRESS:
P.O. BOX 25486, DFC
Denver, Colorado 80225-0486

STREET LOCATION:
134 Union Boulevard
Lakewood, Colorado 80228-1807

MAY 10 2012

Memorandum

To: Assistant Director, Minerals and Realty Management, Bureau of Land Management, Washington, D.C.

From: Deputy Regional Director, Region 6
Denver, Colorado

Subject: Comments on the Draft Oil Shale and Tar Sands Resource Management Plan Amendments to address Land Use Allocation in Colorado, Utah, and Wyoming Programmatic Environmental Impact Statement

The U.S. Fish and Wildlife Service (Service) has reviewed the subject draft Programmatic Environmental Impact Statement (PEIS). These comments are submitted pursuant to our authorities under the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321 et seq.); Fish and Wildlife Coordination Act (16 U.S.C. §661 et seq.); Endangered Species Act of 1973, as amended (16 U.S.C. §§1531 to 1543 et seq.); Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. §703 et seq.); Executive Order 13186 for the Conservation of Migratory Birds; and, the Bald and Golden Eagle Protection Act, as amended (16 U.S.C. §668 et seq.).

We appreciate the considerable task before the Bureau of Land Management (BLM) in achieving the requirements of Section 369 of the 2005 Energy Policy Act while also meeting the requirements of the NEPA. The subject draft PEIS analyzes the effects of amending 10 land use plans in Colorado, Utah, and Wyoming to describe those areas that will be open and those that will be closed to application for commercial leasing, exploration, and development of oil shale and tar sands resources.

The draft PEIS analyzes four alternatives in detail for allocation of oil shale leases (two of these include subalternatives) and four analogous alternatives for allocation of tar sands. The BLM has selected Alternative 2(b) as the Preferred Alternative for oil shale and Alternative 2 as the Preferred Alternative for tar sands. The Preferred Alternative would make something less than 830,000 acres available for future leasing applications for commercial oil shale, but only for research, development, and demonstration (RD&D) purposes. The BLM would issue a commercial lease only when a lessee satisfies the conditions of its RD&D lease and the regulations at 43 CFR Subpart 3926 for conversion to a commercial lease. The preference right

acreage, if any, which would be included in the converted lease, would be specified in the RD&D lease. The Preferred Alternative also would make something less than 229,000 acres available for application for commercial tar sands leasing.

Our primary concern with the draft PEIS is the lack of information about the potential mining technologies to be employed, to the extent that identifying and mitigating cumulative impacts is extremely difficult. The BLM identified this problem in the draft PEIS "Because commercial oil shale development technologies are still largely in a research and development phase, many details regarding the specific technologies that would be used in the future to produce oil from oil shale are unknown" (p. 2-16). To remedy this concern, it is our understanding that once viable technologies are determined through the RD&D program, the BLM will conduct additional NEPA analyses to evaluate the large-scale cumulative effects of a leasing program, including specific areas to be leased and the conditions and stipulations under which leases will be sold. At the future leasing stage we believe there may be a need to consider additional programmatic NEPA review.

The Service supports BLM's selection of Alternative 2(b)/Alternative 2 as the Preferred Alternative. However, we believe more detailed information regarding direct, indirect, and cumulative impacts to water use and water quality in the Colorado River basin are needed to evaluate potentially substantial impacts on fish and wildlife resources. In addition, more details are needed about the type of heavy equipment, processing facilities, pipelines, storage tanks, industrial equipment, roads, and other infrastructure for fuel extraction and processing in order to adequately address the potential environmental implications.

We have provided General Comments in Attachment 1 and Specific Comments in Attachment 2 to assist the BLM in preparing the final PEIS. We appreciate the opportunity to provide comments. Please contact Michael Thabault, Assistant Regional Director – Ecological Services, at (303) 236-4210 if you have any questions or need further information.

Attachments

ATTACHMENT 1

General Comments on the BLM's Resource Management Plan Amendments and Draft PEIS for the Allocation of Oil Shale and Tar Sands Resources on Lands Administered by the BLM in Colorado, Utah, and Wyoming (issued February 2012)

After reevaluating the earlier (2008) PEIS, the BLM proposes to amend 10 land use plans to designate lands available for commercial leasing of oil shale and tar sands. The BLM's preferred alternative for oil shale allocation is 2(b). This alternative would allow commercial oil shale development on available lease parcels only after the applicant satisfies the requirements under the Research, Development and Demonstration (RD&D) Program. The BLM's preferred alternative for tar sands land allocation is alternative 2. Under alternative 2, commercial tar sands development can occur without the RD&D program requirement. The areas excluded for leasing both minerals are:

- All areas that the BLM has identified or may identify as a result of inventories conducted during this planning process, as lands having wilderness characteristics;
- The whole of the Adobe Town "Very Rare or Uncommon" area, as designated by the Wyoming Environment Quality Council on April 10, 2008;
- Core or priority sage-grouse habitat, as defined by such guidance as the BLM or the DOI may issue;
- All Areas of Critical Environmental Concern (ACECs) located within the areas analyzed in the 2008 PEIS (76,666 acres in existing ACECs in the 2008 PEIS plus additional ACEC acreages as a result of Utah and Wyoming planning efforts recently completed); and
- All areas identified as excluded from commercial oil shale and tar sands leasing in Alternative C of the September 2008 PEIS.

USFWS understands that Section 369 requires the Department of the Interior to evaluate the effects of commercial leasing of BLM-administered lands in Colorado, Utah, and Wyoming, and we appreciate the stepwise fashion in which BLM has approached the development of a commercial leasing program. It is our understanding that once viable technologies are identified through the RD&D program, BLM will conduct additional NEPA analyses to evaluate the large-scale impacts of a leasing program, including specific areas offered for lease and the conditions and stipulations under which leases will be sold.

The draft PEIS strives to assess the broad implications of designating lands that could be made available for commercial leasing; however, that task is particularly difficult without knowing the viable mining technologies to be employed. More detail about the type of heavy equipment, processing facilities, pipelines, storage tanks, industrial equipment, roads, and other needed to extract these resources is necessary to appropriately evaluate impacts on wildlife resources.

Although the draft PEIS states that additional NEPA analysis will be required prior to commercial leasing, it is unclear at what level additional analysis will take place. USFWS believes further NEPA analysis at the programmatic level will be needed to address the cumulative effects of a defined leasing program. We are concerned that without a programmatic level of analysis once technologies are determined and better understood, large-scale leasing may

have significant impacts to certain listed and non-listed fish and wildlife resources. Cumulative effects resulting from incremental impacts on water quality, water quantity, air quality, traffic volume and other disturbance are some of the stressors that could affect populations of widely ranging species in the action area.

Sage Grouse

The preferred alternative (2b) in the oil shale/tar sands draft PEIS states that core or priority sage-grouse habitat would be excluded from leasing (Section 2.3.3.1; p. 2-34). However, the map of Colorado lands (Figure 2.3.3-4) that would be made available for oil shale lease applications under the preferred alternative appears to overlap areas that BLM has mapped[1] as sage-grouse priority habitat. We recommend that all priority sage-grouse habitat be excluded from application for oil shale and tar sands leasing and that apparent inconsistencies in maps be resolved.

Bald and Golden Eagle

Information concerning eagles in Chapter 3, Affected Environment, should be revised and updated to reflect the USFWS' new regulations for take of bald and golden eagles and their nests under 50 CFR §§ 22.26 and 2.27, as summarized below.

Activities that take eagles or eagle nests may violate the Bald and Golden Eagle Protection Act (BGEPA). That Act defines the "take" of an eagle to include a broad range of actions, including to: "pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, or molest or disturb." In 2009, USFWS issued regulations (50CFR 22.3) that define "disturb" as:

> *to agitate or bother a bald or golden eagle to a degree that causes, or is likely to cause, based on the best scientific information available, (1) injury to an eagle, (2) a decrease in its productivity, by substantially interfering with normal breeding, feeding, or sheltering behavior, or (3) nest abandonment, by substantially interfering with normal breeding, feeding, or sheltering behavior.*

Many of the field activities associated with oil shale and tar sands mining and processing have the potential to impact eagles, and protective measures necessary to comply with BGEPA will need to be considered.

On a limited basis, USFWS has the ability to authorize the take of eagles when: thresholds for take in the eagle population have not yet been reached and take is compatible with stable or increasing breeding population; comprehensive measures to avoid and reduce take are developed in coordination with USFWS, and; any subsequent take is unavoidable. Permits will authorize limited, non-purposeful take of bald and golden eagles; authorizing individuals, companies, government agencies (including Tribal governments), and other organizations to disturb or otherwise take eagles in the course of conducting otherwise lawful activities. Removal of eagle nests would usually only be allowed when it is necessary to protect human safety or the safety of the eagles. Permits issued by USFWS may require pre- or post-project surveys, and may require that conservation measures be implemented to offset unavoidable take.

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[1] http://www.blm.gov/co/st/en/BLM_Programs/wildlife/sage-grouse.print.html

ESA Interagency Consultation

USFWS commends BLM for including a discussion within the draft PEIS of threatened and endangered species and critical habitat that are likely to be encountered by future oil shale and tar sands development projects. We also recognize the efforts of BLM to coordinate with USFWS in the development of measures to support the conservation of federally listed threatened and endangered species presented in Appendix F. However, USFWS remains concerned about the lack of information available on mining technologies and the potential for cumulative impacts to federally listed species.

With particular regard to the potential need for water and the impacts on water quality, the unknown effects of area-wide oil shale and tar sands development could threaten listed species within the Colorado River Basin. We encourage BLM to further develop and incorporate conservation measures for listed species in the final PEIS and into future NEPA documents associated with specific leasing and development actions. NEPA analyses should include specific conservation guidelines for special-status species that will be applied to site-specific NEPA, consultation, and implementation documents of all future proposed projects. We recommend that you contact our Field Offices for assistance in developing those guidelines. Including guidelines at this level of NEPA review would set standards to direct the future planning and implementation of oil shale projects and ensure that special-status species are considered in future site-specific projects within the PEIS study area.

BLM is proposing to conduct Section 7 consultations when developing supplemental Environmental Assessments associated with future lease sales and projects. We have concerns that a fragmented consultation process will preclude the ability to conduct a cumulative effects analysis, not only for oil shale and tar sands development but also for other land development in the action area. Therefore, we recommend that a landscape level evaluation be used once viable technologies and program details are identified. Species that should have landscape level plans based on land use and future oil shale tar sand development include the four endangered fish of the Colorado River and tributaries, black-footed ferret, white-tailed prairie dog, and the greater sage-grouse. Early consultation considering a landscape-scale view can identify concerns early in the planning process and help identify strategies to assist in recovery of listed species.

ATTACHMENT 2
Specific Comments on the BLM's Draft Resource Management Plan Amendments and Draft PEIS for the Allocation of Oil Shale and Tar Sands Resources on Lands Administered by the BLM in Colorado, Utah, and Wyoming (issued February 2012)

Comment #	EIS Section	Page/Line	Comment/Suggested Revision
1	Table 2.6.1	2-98	For Alternative 2 the PEIS states "no critical habitat will be impacted under this alternative." We do not agree with this statement because water depletions from the upper Colorado River Basin, as well as adverse changes to stream water quality, would have an adverse impact to critical habitat for the four endangered Colorado River Basin fish species. We recommend this statement of impacts be changed to indicate possible downstream impacts on critical habitat for listed fish.
2	Table 2.6.1	2-123	It appears that information in the Table for Alternative 2 is incorrect. We recommend the BLM delete the reference to 471 acres designated as critical to the Mexican spotted owl from consideration for commercial tar sands leases under Alternative 2.
3	3.7.3 and elsewhere		We do not believe wild horse and burros should be included as "wildlife" in the PEIS. BLM manages these animals under separate legislation and programs from their wildlife management program. For purposes of the PEIS, feral horse and burro information, discussions, and analyses should be separate from that of "wildlife." This would apply to Chapters 3, 4, 5 and 6.
4	Chapter 3, Section 3.7.3	3-158, 1	It is unclear whether the statement here refers to BLM's wildlife management objectives. If so, please qualify the statement by explaining that in general the goals and objectives of wildlife management are broader than those stated here.
5	Chapter 3, Section 3.7.3	3-158, 7-9	If the text is supposed to be a statement about the U.S. Fish and Wildlife Service's (USFWS) roles and responsibilities relative to wildlife management then the statement is inaccurate and fails to fully describe this for USFWS. However, if the statement is supposed to reflect USFWS' role in wildlife management relative to BLM lands then the statement should be revised to properly qualify it.
6	Chapter 3, Section 3.7.3.2	3-160, 14-15	"The following discussion describes important groups of birds…" This statement and the accompanying text infer an undefined 'value' on bird groups. Although some groups of migratory birds have greater value to humans than others, the BLM has a responsibility to comply with the Migratory Bird Treaty Act (MBTA) (and BLM's MOU pursuant to E.O. 13186) to conserve migratory birds regardless of whether these species are "valued" by humans.
7	Chapter 3, Section 3.7.3.2	3-159-3-162	Headers used for Section 3.7.3.2 Birds: The headers that are used do not address many bird species present in the PEIS study area. We suggest an alternate approach--to discuss each bird order that occurs in the PEIS area under a separate subheader.

Comment #	EIS Section	Page/Line	Comment/Suggested Revision
8	Chapter 3, Section 3.7.3.2	3-161-3-162	The PEIS subsection for Neotropical Migrants is inaccurate since all of the birds listed on lines 41-46 on page 3-161 and lines 1-2 on page 3-162 are passerines, whereas the term 'neotropical migrant' refers to about 386 bird species from 18 bird orders (see http://www.fws.gov/birdhabitat/Grants/NMBCA/BirdList.shtm) not just passerine species.
9	Table 3.7.3-2 Figure 3.7.3-2	3-167, 168	The organizational format, with a table and figure for wild horses within the "Threatened, Endangered, and Sensitive species" subsection, is inappropriate. We recommend that Table and Figure be moved.
10	Chapter 3, Section 3.7.4.5	3-201, 19-33	We recommend the discussion on the bald eagle also include language describing the prohibition of take under the Bald and Golden eagle Protection Act (BGEPA) and USFWS regulations.
11	4.1.2, 4.5.1.3 Waste Water	4-9, 4-37	The PEIS states that retorts produce 2 to 10 gallons of wastewater per ton of processed shale, which contains various organic and inorganic components that may need treatment depending on final use. Please quantify how much wastewater is likely to be produced overall, and how that water will be stored, treated and/or disposed.
12	4.5.1 Water Resources	4-31 to 4-37	USFWS shares all the concerns of water quality impacts identified on pages 4-31 and 4-32 in Section 4.5. USFWS has particular concern for designated critical habitat for the Colorado pikeminnow, razorback sucker, bonytail, and humpback chub in the White and Green Rivers, plus their associated tributaries (e.g., Piceance and Yellow Creeks). The PEIS should clarify that water depletions would decrease the assimilative capacity of the receiving streams for any discharges associated with oil shale and tar sands development, and incorporating the following information: Many kinds of contaminants enter into the upper basin rivers – e.g., mercury from airborne power plant emissions, selenium entering the river via groundwater irrigation return, hydrocarbons running off of oil and gas development sites, pesticides from agricultural areas. In addition, this section should include more discussion on the possible contaminants that may come off of runoff from oil shale and tar sands operations, including selenium, which is of particular concern for endangered fishes. Water depletions and replacement with lower quality waters are of particular concern in feeder streams and backwater areas with limited flushing (Woodward et al. 1985). In sum, water depletions alone can lead to increased concentrations of existing contaminants; that is, water quality is tied to water quantity. If there is less water to dilute these contaminant loads in western rivers, the effect on all aquatic organisms, endangered fish included, is magnified.

Comment #	EIS Section	Page/Line	Comment/Suggested Revision
13	4.5.1.3 Contaminants	4-37 to 4-39	Oil shale and tar sands development may cause significant effects to threatened and endangered species, migratory birds and other wildlife species, as well as, ground and surface waters (Bartis et al. 2005). Uncontrolled development associated with the oil shale industry in northeastern Estonia has resulted in significant ecological damage (Tuvikene et al. 1999). Runoff from oil shale mines, oil shale ash piles, and associated power plants have resulted in oil shale leachate polluting rivers and lakes (Truu 2004, Tuvikene et al. 1999). Pollution resulting from the leaching of oil shale deposits has also been documented in the United States (Amy et al. 1980, Strollenwerk and Runnells 1981). There are interrelated and interdependent effects from infrastructure associated with oil shale and tar sands development including new roads, new reservoirs, new powerplants, pipelines, and powerlines. In future correspondence and ESA interagency consultation, the USFWS will request a more detailed analysis of all effects of the proposed action on federally-listed threatened and endangered species, migratory birds, and wetlands. We recommend the BLM require ground and surface water quality data for each future project be measured and made available online. Waste water and leachate concentrations should be compared to established NPDES standards. For contaminants where no NPDES levels have yet been set, we recommend that a Biological Technical Advisory Group (BTAG) be organized with EPA, BLM, and the USFWS to identify which contaminants should be monitored and what concentration levels would trigger enhanced mitigation to protect fish, wildlife, and plants.

Comment #	EIS Section	Page/Line	Comment/Suggested Revision
14	4.5.2 Water Budget	4-41	All of the alternatives would require extensive water resources. The upper Colorado River basin is a heavily-developed, desert river system. If any future project (or series of projects) that requires large quantities of water from the upper basin rivers is authorized, meeting stream flow needs of endangered fishes will be difficult. Critical habitat has been designated for endangered fish species along segments of various large rivers in the upper Colorado River Basin, including the Green and White Rivers. Most of these rivers have established flow recommendations for endangered fish. (Flow recommendations for the White River are currently under development.) However, even when flow recommendations exist, this does not guarantee the flow recommendation will be met. As an example, in the San Juan River there is only one major dam being regulated by one agency and base flows are supposedly being protected by an established set of flow recommendations. Despite this, there have been years when the prescribed base flows were not met. This was the case in 2002, when the recommended minimum base flows of 500 CFS were not being met in the river channel downstream of Farmington, NM. In fact, flows were less than 250 CFS for long periods of time in almost 150 miles of river. This had highly detrimental effects on the native fish community, concentrating both contaminants and nonnative fish into the same small pool habitats with the native fish. While most larger sub-adult and adult native fish were able to weather that low-flow summer, almost an entire year-class of newly-spawned native fishes (e.g., razorback sucker, Colorado pikeminnow, flannelmouth sucker, and bluehead sucker) were lost to predation by birds and nonnative fishes, high water temperatures (leading to temperature-related stress and "ich" {*Ichthyophthirius multifiliis*} infections), and other associated stressors. The cumulative effect of large water depletion projects on flows for endangered fish and critical habitat should be thoroughly considered and disclosed to the public and other agencies in your analysis.

Comment #	EIS Section	Page/Line	Comment/Suggested Revision
15	Secs 4.5.2.1 and 4.5.2.2 Water Budget for Colorado and Utah	4-46-48	Upwards of 8,000 acre-feet of water could be required per project (less for underground projects). Therefore, each project could be approaching 4.5 percent of the "available" water by 2050. We recommend that an analysis of how this might affect endangered fishes be included in the PEIS, and we provide the following information for your consideration: The White River, in particular, is at risk from oil shale related water depletions and potential contamination. Flow recommendations are currently being developed by the Upper Colorado River Endangered Fishes Recovery Program (Schmidt and Orchard 2002, Irving et al. 2002). Once the flow recommendations are finalized, a Programmatic Biological Opinion will be developed for the White River. We recommend that BLM review the draft flow recommendations and determine the effects of oil shale development on flows in the White River. The White River has a relatively intact and healthy native fish community. Both the Utah Division of Wildlife Resources (UDWR) and the USFWS have documented that both endangered Colorado pikeminnow and the native three species (flannelmouth sucker, bluehead sucker, and roundtail chub) of fishes are present in promising numbers in the White River. During the recent period, the number of the endangered razorback sucker in the White River has increased, almost certainly due to augmentation of hatchery-raised fish. In 2011, razorback sucker larvae were collected in the White River for the first time, indicating that natural spawning likely occurred. The White River has relatively low numbers of nonnative fish species, which compete with native endangered fish. Low, steady river flows that occur year-round and which lack high spring flow runoff tend to favor survival and proliferation of introduced, nonnative fishes over native fish species. Thus, any water development individually or cumulatively in the White River basin (or any upper basin river), has the potential to modify the flow regime to favor introduced, nonnative fishes.
16	4.8 Impacts to Ecological Resources	Tables 4.8.1	The PEIS provides no real cumulative quantification or rigorous landscape level analyses of change given the overall developable acreage. Terms for impacts that are used in the PEIS such as "Large"/"Small" give no indication of how the impact was analyzed or the scale or scope of those impacts. It appears throughout the document that this was a judgment call. We recommend the PEIS provide more detail regarding the science, qualification, and scale of these impacts.

Comment #	EIS Section	Page/Line	Comment/Suggested Revision
17	4.8.1.3 Wildlife and Migratory Birds	4-85	Please modify the wording because migratory birds do not always "fly over" mine sites. Whereas, water in contaminated leachate pools often attract them to mine sites, especially during migration. The PEIS does not adequately address the potential use of wastewater impoundments or evaporation ponds for wastewater disposal or identify measures to prevent migratory bird mortality in these facilities. Large tailings ponds are used in the tar sands development sites of Alberta. Those extensive impoundments have resulted in the loss of large numbers of birds.
18	Chapter 4, Section 4.8.13.4	4-91, 30-33	The PEIS states no raptors would be electrocuted because the spacing of the infrastructure would exceed that of the largest raptors in the study area. Without further definition of what the spacing would be this statement may be inaccurate. If the standard BLM intends to apply to any electric power lines constructed in conjunction with oil shale/tar sands development are those of the APLIC 2006 Suggested Practices manual then please be aware these standards will not eliminate raptor electrocutions. The current APLIC standards are based on "dry feather" conditions. That is the spacing recommendations from APLIC would prevent electrocutions only if the bird feathers are dry. If they are wet then the spacing requirements to fully prevent bird electrocutions would be greater. The APLIC 2006 Suggested Practices manual discusses this point directly.
19	4.8.2 (and 1.4.6) Greater sage-grouse Mitigation Measures	4-124 to 4-126	We recommend that that the PEIS incorporate information related to the new effort by BLM to protect the greater sage-grouse through range-wide resource management plan amendments, including the relatively new delineation of priority and general habitat for sage-grouse (at least in Colorado). We also recommend incorporating the noise restrictions as set forth in the relatively new Disturbance Density Calculation Tool that is used for projects located in core or priority habitat areas.
20	4.8.2.3 Wildlife and Migratory Birds	4-129	We recommend a more detailed discussion be provided outlining the potential for migratory birds to be attracted to watery, yet contaminated, pits created for a project. Fencing and netting to prevent bird use may reduce potential impacts. Radar, noise makers, and regular effectiveness monitoring is also encouraged.
21	Chapter 5, Section 5.8.1.3.9	5-84, 45-46	We disagree with the statement in this section regarding raptor response to fire (burned habitat). Rangeland systems with repeated fire (i.e. cheat grass fire cycles) are over time converted to annual grasslands with negative consequences for raptor populations. Ongoing work in Utah (with involvement from UDWR and the USFWS) is demonstrating this quantitatively for golden eagle populations. This is likely true for many other raptors that inhabit rangeland systems but corresponding investigations to demonstrate this have not yet been undertaken.
22	Table 6.1.1-8 Table 6.1.2-2	6-38 6-97	Correction needed: The western yellow-billed cuckoo could be found in appropriate habitats in Colorado in Rio Blanco and Garfield Counties.

Comment #	EIS Section	Page/Line	Comment/Suggested Revision
23	Table 6.1.1-8	6-47	Correction needed: The Mexican spotted owl could be found in appropriate habitats in Colorado in Rio Blanco and Garfield Counties.
24	6.1.2.7.4 Fig. 6.1.2-5 Greater sage-grouse Habitat	6-80 6-108	"Under this alternative [2], oil shale development would be excluded from core or priority habitats for the greater sage-grouse…" This statement and section, and associated maps, should be updated with the new Colorado Parks and Wildlife greater sage-grouse priority habitat map that was issued March 13, 2012 (http://www.blm.gov/co/st/en/BLM_Programs/wildlife/sage-grouse.html). This may result in some areas being removed from the preferred alternative that occur within priority habitat (e.g., scattered parcels in the southern portion of the potential lease area in Colorado).
25	Figure 6.1.2-3	6-81	It seems inappropriate to have the figure for wild herd management included here.
26	Table 6.1.2-3 Figure 6.1.2-4 Figure 6.1.2-5	6-104 to 108	The location of this table and figure seems misplaced; they should be relocated to the section that refers to them. (This table and figure should be located where Figure 6.1.2.3 is.)
27	Sec. 6.2.6.1.1 Assumptions	6-481	The assumptions presented here are based on data that are fairly old. We recommend that the information be updated. Most companies in the region are developing surface locations with multi-well pads (UDOGM, 2012). Many existing 40-acre surface locations in Utah have multiple wells; in Colorado, most well pads have multiple wells. This is good since it restricts the amount of 20-acre surface developments; however, pad sizes have increased. Reclamation has not occurred at the levels anticipated with the continued expansion to add more wells to existing facilities.
29	6.2.6.2.4 Major Activities in Tar Sands Areas	Table 6.2.6-4	Please clarify that phosphate and other mineral mining have the potential to become cumulative contaminant point sources for leachate contaminants (i.e., selenium and arsenic) along with Tar Sands development. In a large landscape such as the Colorado River basin, or the Diamond Mine area, each of these cumulative contaminant inputs have the potential to become highly significant over time and space with impacts to aquatic resources, Colorado River Basin fishes, and migratory birds.
30	F.1		The PEIS states that all post-lease activities will be required to comply with ESA, BGEPA, and MBTA. However, compliance with the MBTA is challenging. Oil shale and tar sands resources development is likely to result in the take of MBTA species and there is currently no mechanism for USFWS to permit the unintentional (incidental) take of migratory birds associated with these actions. The PDEIS should encourage the applicants to communicate with the USFWS to address and minimize the potential for unintentional take of migratory birds.

Comment #	EIS Section	Page/Line	Comment/Suggested Revision
31	F.1		Text of the opening paragraph on page F-3 refers only to listed species. The text should be corrected to indicate that the appendix addresses conservation measures for eagles covered under the BGEPA, and birds covered under the MBTA, in addition to threatened and endangered species. We suggest that the intent of the introductory paragraph of Appendix F is to provide measures to address each statute. If so, we suggest the use of separate headers for ESA, BGEPA, and MBTA species and discuss conservation measures for each group of species covered under each of these Federal wildlife statutes.
32		F-8	For item 6 on page F-8, the APLIC manual for avoiding bird collisions with power lines should also be cited -- *Avian Power Line Interaction Committee (APLIC). 1994. Mitigating bird collisions with power lines: the state of the art in 1994. Washington, DC: Edison Electric Institute; 78 p* -- along with a recommendation to follow all measures in the manual that apply. (A revised version of the APLIC manual is due to be issued in 2012.)
33	F.2.8	F-17	We recommend surveys for the Dudley Bluffs bladderpod and twinpod extend up to 600 meters (roughly 2,000 feet) from project activities within suitable habitat.
34	F.3.1	F-19	Please incorporate greater sage-grouse as a priority and include general habitat maps for sage-grouse. We also suggest changing the wording of #3 to state "When possible, avoid siting energy developments in priority habitats," rather than simply breeding habitats.
35.	F.3.2	F-20	To our knowledge, the yellow-billed cuckoo has not been documented within the oil shale lease area in Colorado. However, this could be due to lack of survey effort as cuckoos may occur in this area. The cuckoo conservation measures should be applied to suitable habitat in Colorado as well as in Utah.
36.	F.4	F-21	The text provides three items that BLM recommends for migratory bird conservation. In addition to these three items, the USFWS recommends that project planning include surveys for migratory birds and nests that would be undertaken prior to construction activities, as well as the identification of measures that will be taken to conserve active nests when located.

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United States Department of the Interior
NATIONAL PARK SERVICE
Intermountain Region
12795 West Alameda Parkway
Lakewood, CO 80228

In Reply Refer to:
N16 (IMDE-NR)

MAY 0 3 2012

VIA ELECTRONIC COPY ONLY – NO HARD COPY TO FOLLOW

Memorandum

To: Colorado State Director, Bureau of Land Management
Attn: Sherri Thompson, Programmatic EIS Manager

From: Regional Director, Intermountain Region

Subject: National Park Service comments on Draft Programmatic Environmental Impact Statement and Possible Land Use Plan Amendments for Allocation of Oil Shale and Tar Sands Resources on Lands Administered by the Bureau of Land Management in Colorado, Utah, and Wyoming.

The National Park Service (NPS) thanks you for the opportunity to comment on the Bureau of Land Management's (BLM) subject Draft Programmatic Environmental Impact Statement (PEIS). These comments were developed jointly by the NPS's Natural Resource Stewardship and Science Directorate and Intermountain Region staff reviewers.

NPS Selection of Preferred Alternative

We understand the scope of decision making under the PEIS is essentially an administrative action designating public lands administered by the BLM as either available or unavailable (allocation) for applications for commercial leasing, exploration, and development for oil shale and tar sands resources. NPS also recognizes that the allocation is programmatic in nature and based only upon available and known potential impacts on resources from BLM's oil shale and tar sands decision making.

Numerous NPS units, including: Arches, Black Canyon of the Gunnison, Canyonlands, Capitol Reef, and Rocky Mountain National Parks; Colorado and Dinosaur National Monuments; Glen Canyon National Recreation Area; National Historic Trails; and National Natural Landmarks could be potentially impacted by the decision making on this PEIS. Resources potentially affected are: air quality and climate, natural sound, ecological resources (aquatic, wildlife, plants, threatened and endangered species), visual, cultural (cultural landscapes, historic structures and setting, archeological sites), and night sky.

Lacking successful demonstration of technologies necessary for commercial development of oil shale and tar sands, we believe it would be impractical to conduct site-specific National Environmental Policy Act (NEPA) or Section 106 of the National Historic Preservation Act (NHPA) analyses on any application for

leasing oil shale or tar sand acreage at this time. We understand that BLM considers the most appropriate time to raise and consider leasing issues to be "if and when" commercial viability for oil shale and tar sands is demonstrated and leasing applications occur. Information gained from the BLM's oil shale and tar sands research, development, and demonstration program is critical and necessary to leasing considerations. Therefore, the NPS supports Alternative 3 – The Research Focus Alternative as the PEIS's Preferred Alternative by chronological necessity.

In addition to our comments herein, we incorporate by reference our previous subject correspondence: 1) April 18, 2008 comment memo on the 2008 PEIS, 2) May 16, 2011 scoping comment memo for the current PEIS in support of our selection of Alternative 3 as the preferred alternative and for future use, and 3) November 11, 2011 comment memo on the Administrative Draft PEIS.

National Historic Trails

The NPS conveyed preliminary comments from the National Trails Intermountain Region (NTIR) office via a November 7, 2011 email to meet a comment deadline for Chapters 1 and 2.

The NPS supports the PEIS having a justified and current approach to management of National Historic Trails. The NPS administers the California, Oregon, Mormon Pioneer, and Pony Express National Historic Trails, which all cross the Green River Basin of Wyoming. The PEIS states that the national historic trail corridor will consist of the trail and a corridor of "at least 0.25 mile" on either side of the trail. However, recent revisions to BLM Resource Management Plans across the western states are revising the past definition of a quarter-mile "trail corridor" and defining much broader corridors (up to five miles or more on either side of the trail tread, depending on the nature of terrain that is visible from contributing segments of the trail). In addition, new BLM guidance for the management of national historic trails corridors, currently in national-level internal review, may adopt a similarly generous definition of "trail corridor."

The NPS reiterates its belief that enough information exists at this time to devise a process for defining appropriate adequate protective corridors for the National Trails. Without conducting site-specific analysis, the PEIS could recommend a sufficient average protective corridor when calculating acreage available or not available for application for commercial leasing. Instead of the specific acreage offered in PEIS alternatives, the PEIS could use a range based on a defined process for corridor determination. The NPS recommends this broader consideration of resource protection to National Historic Trails within this PEIS.

Recommendation

While the NPS understands that additional analyses of specific proposals and technologies for the development and production of oil shale or tar sands are committed to in this particular PEIS, NPS believes that only Alternative 3 – the Research, Development, and Demonstration (RD&D) action alternative provides a phased process for resource protective decision-making. The NPS continues to prefer Alternative 3 as the action alternative.

NPS Contacts

The NPS appreciates the opportunity to provide comments on the PEIS. If you have questions, or if we can be of any further assistance, please do not hesitate to contact either of the NPS Cooperating Agency representatives: 1) Geologic Resources Division – Pat O'Dell at 303-969-2013, or 2) Intermountain Region – John Reber at 303-969-2418.

for John Wessels

cc:

Tammy Whittington, Associate Regional Director, Resource Stewardship and Science, Intermountain Region (IMR)
Patrick Malone, Assistant Regional Director for Natural Resources, IMR
John Reber, Regional Energy Coordinator, Natural Resources, IMR
Chris Turk, Environmental Quality Program, IMR
John Keck, Wyoming State Coordinator, IMR
Denis Davis, Utah State Coordinator, IMR
James Doyle, Chief of Communications and Legislation, IMR
Cheryl Eckhardt, NEPA/106 Specialist, IMR
Crystal Salas, Environmental Protection Assistant, IMR
Nida Shaheen, Environmental Resource Specialist, IMR
Paul Chattey, Program Manager; Cultural Resources, IMR
Aaron Mahr, Superintendent, National Historic Trails, IMR
Michael Elliott, Cultural Resource Specialist, National Historic Trails, IMR
Mary Risser, Superintendent, Dinosaur National Monument (NM)
A. Wayne Prokopetz, Chief, Research and Resource Management, Dinosaur NM
Kate Cannon, Superintendent, Canyonlands National Park (NP)
Mark Miller, Chief, Resource Stewardship and Science, Canyonlands NP
Todd Brindle, Superintendent, Glen Canyon National Recreation Area
Al Hendricks, Superintendent, Capitol Reef NP
Connie Rudd, Superintendent, Black Canyon of the Gunnison NP
Chris Eckert, Superintendent, Colorado NM
Vaughn Baker, Superintendent, Rocky Mountain NP
Heather Germaine, National Natural Landmarks Program, IMR
Dave Steensen, Chief, NPS-NRSS Geologic Resources Division (GRD)
Gary Rosenlieb, Acting Chief, NPS-NRSS Water Resources Division
Carol McCoy, Chief, NPS-NRSS Air Resources Division
Pat O'Dell, Petroleum Engineer;NPS Co-Lead for OSTS DEIS, NPS-NRSS GRD
Sarah Quinn, Renewable Energy Coordinator, NPS-NRSS GRD
Ray Sauvajot, Chief, Natural Resources Program, NPS-Pacific West Region

MATTHEW H. MEAD
GOVERNOR

THE STATE OF WYOMING

STATE CAPITOL
CHEYENNE, WY 82002

Office of the Governor

May 4, 2012

Sherri Thompson, Project Manager
Bureau of Land Management
Colorado State Office
9700 S. Cass Ave.
Argonne, IL 60439

RE: Comments on the Draft Resource Management Plan Amendments and Draft Programmatic Environmental Impact Statement for the Allocation of Oil Shale and Tar Sands Resources on Lands Administered by the Bureau of Land Management in Colorado, Utah, and Wyoming

Dear Ms. Thompson,

Thank you for allowing me to comment on the Draft Resource Management Plan (RMP) Amendments and Draft Programmatic Environmental Impact Statement (DPEIS) for the Allocation of Oil Shale and Tar Sands (OSTS) Resources. My comments are specific to Wyoming oil shale resources administered by the Bureau of Land Management (BLM). Wyoming state agencies will provide separate comment based on the particular charge of individual offices.

Oil shale development technologies have not been proven on a commercial scale. Further research, development, and demonstration (RD&D) is warranted. I am optimistic that sensible RD&D will result in recovery methods consistent with Section 369 of the Energy Policy Act of 2005. I support leasing land for RD&D, but not in the manner identified in any of the alternatives.

I believe lease areas that are least susceptible to adverse impacts from oil shale pilot projects and easiest to reclaim are best suited to RD&D objectives. The exclusions identified in Alternatives 2, 3 and 4 undermine a local, participatory approach to land determinations made via the RMP process in cooperation with state and local interests..

The BLM is required to consider precluding oil shale development in these areas; however it is not required to make changes to management decisions.

PHONE: (307) 777-7434 FAX: (307) 632-3909

Sage Grouse Core Areas

The 2012 OSTS DPEIS requires the BLM to analyze and consider excluding oil shale development in the Greater Sage-Grouse core area. This decision is not consistent with Wyoming's Greater Sage-Grouse Core Area Protection strategy. Wyoming's Executive Order 2011-5 is recognized by the U.S. Fish & Wildlife Service as an adequate regulatory mechanism for the conservation of Greater Sage-Grouse. Executive Order 2011-5 does not preclude mineral development. It establishes conditions designed to maintain and enhance Greater Sage-Grouse habitat. The BLM should modify its management objective as it applies to Wyoming to maintain consistency with Wyoming's Greater Sage-Grouse Core Area Protection strategy.

Lands with Wilderness Characteristics

The preferred alternative of the 2012 OSTS DPEIS proposes to exclude oil shale development in all areas the BLM has identified or may identify during the planning process, as having wilderness characteristics. Section 201 of the Federal Land Policy and Management Act requires the BLM to maintain an inventory of all public lands and their resources. There is no requirement to manage lands with wilderness characteristics. The Rock Springs Field Office is in the process of combining the Green River and Jack Morrow Hills RMPs to a single Rock Springs RMP. If the BLM precludes development in lands with wilderness characteristics, the BLM will unduly constrain the Rock Springs RMP range of alternatives. These decisions should be left to the RMP revision process.

Areas of Critical Environmental Concern

In the 2012 OSTS DPEIS preferred alternative, the BLM proposes to preclude oil shale development in all Areas of Critical Environmental Concern (ACEC), regardless of allowances for mineral development. This blanket decision should not be made. In Volume 1, (p. 2-10), the BLM states, "The BLM designates ACECs through land use plans that outline management objectives and prescriptions for each ACEC." Prior land use plans have determined that some ACECs are open for mineral development. Management objectives for ACECs should be left to the RMP revision process. I request that the BLM make no additional determinations for management of ACECs in this OSTS DPEIS.

At various points in the Draft RMP Amendments and DPEIS for the Allocation of OSTS Resources, as they relate to Alternative 2, the BLM precludes oil shale and tar sands leasing from "... all ACECs, ***but also areas that had been under consideration for designation as ACECs in the applicable plans undergoing revision or amendment at the time, but which were eventually not designated.***" [*Emphasis added.*] This has the potential to exclude oil shale development from a majority of lands throughout the planning area. The BLM should remove this management decision from further consideration.

Adobe Town Very Rare and Uncommon Area

The BLM proposed decision to close the Adobe Town Very Rare and Uncommon Area to oil shale development is not consistent with the Wyoming Environmental Quality Council's decision allowing in-situ processes or underground mining.

Thank you for the opportunity to comment. Please do not hesitate to contact me or my staff if you have questions or would like clarification.

Sincerely,

Matthew H. Mead
Governor

MHM:md

cc: The Honorable Mike Enzi, U.S. Senate
The Honorable John Barrasso, U.S. Senate
The Honorable Cynthia Lummis, U.S. House of Representatives
The Honorable John Hickenlooper, Governor, Colorado
The Honorable Gary Herbert, Governor, Utah
State BLM Director Don Simpson

Recorded April 4, 2012 at 2:45 p. M
In Book 4 Page 79 Kammerer, WY
No. 2012-07 Jeanne Wagner, Clerk

THE BOARD OF COUNTY COMMISSIONERS
LINCOLN COUNTY, WYOMING

RESOLUTION # 2012-07

OPPOSING THE BLM'S 2012 OIL SHALE AND TAR SANDS PROGRAMMATIC ENVIRONMENTAL IMPACT STATEMENT, BLM PROJECT # WO-300-1310-PP-OSHL (HEREAFTER 2011 OSTS PEIS) FOR LANDS ADMINISTERED BY THE BLM IN COLORADO, UTAH AND WYOMING

This Resolution is adopted in open meeting after due opportunity for public comment, by the Board of Commissioners of Lincoln County, in order to redress the many violations of law, regulation, and policy by the BLM with respect to the BLM's 2012 OSTS PEIS.

BACKGROUND

As background to this Resolution, Lincoln County recites the following grievances:

WHEREAS, On April 14, 2011, the BLM caused to be published in the Federal Register, Volume 76, No 72/Thursday, April 14, 2011, pages 21003-21005, a notice of intent to prepare the above-referenced 2012 OSTS PEIS; and

WHEREAS, the preliminary purpose and need statement in the notice of intent, states the PEIS will analyze removing from oil shale and tar sands leasing "All areas that the BLM has identified or may identify as a result of inventories conducted during this planning process, as lands containing wilderness characteristics[.]" *Id.*, at page 21004; and

WHEREAS, the notice of intent further states at page 21004:

> Lands that the BLM identifies as having wilderness characteristics will be considered during this planning initiative, as described above, and consistent with Secretarial Order No. 3310, dated Dec. 22, 2010, and BLM Manuals 6301 and 6302. Future leasing of lands determined by the BLM to have wilderness characteristics, if compatible with the allocation decisions stemming from this initiative, will subsequently be assessed in accordance with BLM Manual 6303, as appropriate (i.e., where the BLM has not determined, consistent with BLM Manual 6302, whether the lands with wilderness characteristics at issue should be receive a wild lands designation, BLM Manual 6303 will apply); and

WHEREAS, this language documents the BLM's intent to implement, administer and/or enforce Secretarial Order 3310 and one or more of the BLM guidance manuals promulgated under Order 3310; and

WHEREAS, any attempt by the BLM to implement, administer and/or enforce Secretarial Order 3310, including any effort by the BLM to proceed further on the above-referenced Programmatic EIS, violates the spending moratorium of Section 1769 of the April 21, 2011 Congressional Continuing Resolution to Fund Fiscal Year 2011 through September 30, 2011, which states:

> For the fiscal year ending September 30, 2011, none of the funds made available by this division or any other Act may be used to implement, administer, or enforce Secretarial Order No. 3310 issued by the Secretary of the Interior on December 22, 2010; and

WHEREAS, this spending moratorium has been carried forward in all subsequent Congressional spending resolutions up to and including the current spending resolution; and
WHEREAS, the 2012 OSTS PEIS, is an admitted attempt by the BLM to implement, administer and/or enforce Secretarial Order 3310 and its policies and objectives, all in violation of the Spending Moratorium of the 2011 Continuing Resolution; and

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WHEREAS, the 2008 Oil Shale and Tar Sands Programmatic EIS (2008 OSTS PEIS) was required under Section 369 (d) (1) of the Energy Policy Act of 2005 and was prepared in cooperation with 14 federal, state, and local governmental organizations; and

WHEREAS THE 2008 OSTS PEIS was 3 years in the making, and it honored the input of a task force of Governors and other stakeholders as per requirement of the 2005 Energy Policy Act;

WHEREAS, the Record of Decision (ROD) for the 2008 OSTS PEIS amended 10 land use plans in Colorado, Utah, and Wyoming to make approximately 2 million acres of public lands available for potential leasing and development of oil shale and approximately 430,000 acres available for tar sands leasing. Together with the regulations published in 2006 and 2008 for oil shale and tar sands resources, the 2008 OSTS PEIS and subsequent land use amendments constituted a reasonable and rational establishment of an oil shale and tar sands program as mandated in the Energy Policy Act of 2005; and

WHEREAS, the oil shale and tar sands program to which the 2008 OSTS PEIS and related regulations gave birth, was a reasonable response to the fact that oil shale and tar sands resources in the Green River Formation located in northeastern Utah, northwestern Colorado and southwestern Wyoming may reach 8 trillion barrels of oil; and

WHEREAS, the preferred alternative in the draft 2012 OSTS PEIS drastically shrinks, diminishes and in many areas outright reverses virtually all of the lands made available for Oil Shale and Tar Sands development in 2008, and does so using the same data and science; and

WHEREAS, such a drastic reversal in lands available for Oil Shale and Tar Sands development between the 2008 PEIS and the 2012 preferred alternative, violates regulatory ran Task Force requirements of certainty for industry and investors; and

WHEREAS such a drastic reversal of lands available for Oil Shale and Tar Sands development in 2008, constitutes a de facto, piece-meal revision of previous BLM Resource Management Plans, in violation of the Section 202 Planning Process under FLPMA;

WHEREAS, the preferred alternative in the draft 2012 OSTS PEIS entirely ignores the input of the task force and stakeholders which the 2005 Energy Policy Act directed the BLM to honor and follow; and moreover the draft 2012 OSTS PEIS may well violate various memoranda of understanding (MOUs) with counties which require the BLM to publish the written input of cooperators who disagree with the preferred alternative;

WHEREAS the draft 2012 OSTS PEIS preferred alternative significantly restricts the acreage allotted in the 2008 PEIS for research and development leasing;

WHEREAS the draft 2012 OSTS PEIS preferred alternative threatens to arbitrarily undermine the process and the work utilized in creation of the 2008 OSTS PEIS, and essentially dismantle a reasonable and rational oil shale and tar sands program in violation of Section 369 of the 2005 Energy Policy Act; and

WHEREAS, the 2012 OSTS PEIS preferred alternative is the creature of a friendly lawsuit settlement agreement between the BLM and ideological opponents to oil shale development, and is therefore entirely pre-determined and pre-decisional in violation of NEPA, with no apparent rationale for revising the acreages approved in 2008; and

WHEREAS, the BLM has settled on a preferred alternative in the 2012 OSTS PEIS admittedly without having first analyzed its impacts; BLM should be required to withdraw the preferred status of the alternative until it has performed this analysis; and

WHEREAS, the acreage approved for Oil Shale and Tar Sands development in the draft 2012 OSTS PEIS preferred alternative bears no rational relationship to the stated purpose and need;

WHEREAS, the Department of Energy has basically abdicated the responsibility Congress placed upon it to defend and uphold a viable oil shale energy program in America, leaving it instead to the BLM encumbered by a host of anti-oil shale pro-wilderness groups steering BLM's every move;

WHEREAS, the alternative adopted in the ROD of the 2008 OSTS PEIS is now the No Action Alternative of the draft 2012 OSTS PEIS; and 81

WHEREAS, the 2008 OSTS PEIS chosen alternative is consistent with the multiple use, sustained yield of the Federal Land Policy Management Act (FLPMA); and

WHEREAS, the 2008 OSTS PEIS chosen alternative is consistent with county general plans and policies which call for responsible development of available energy resources; and

WHEREAS, the development and production of oil from oil shale has been proven beyond a doubt to be technologically and economically feasible; and

WHEREAS, this same technology to extract oil from the oil shale rock is not only economically feasible, *but it requires little to no consumption of water*, contrary to the myths which falsely claim that oil shale extraction requires large consumption of water resources; and

WHERAS, the energy captured in the extract of oil from shale (natural gas capture, etc.,) more than makes up for energy consumed in that extraction process, thus dispelling the myth that the oil shale extraction process consumes more energy than it produces;

WHEREAS, the rising price of gasoline, coupled with ever increasing loss of good paying jobs due to the Administration's policies against energy development on western public lands, result in increasing hardships for families and the local economy, to the point where some fear the window of opportunity is about to close for a civil, lawful and orderly response as citizens feel more and more pressured and desperate financially; and

WHEREAS, the 2012 OSTS PEIS improperly limits technology testing to strictly in situ efforts and does not allow for development of other technologies; and

WHEREAS, the BLM has left insufficient time for the public and cooperators to meaningfully comment on the public draft 2012 OSTS PEIS by the present comment deadline of May 4, 2012, because a highly relevant commercial oil shale BLM regulation is not due to be published until May 15, 2012 and the public should have the right to view that regulation first and then submit comments on the draft 2012 OSTS PEIS in light of that regulation; and

WHEREAS, the same problems with lack of consistency with local plans and policies and failure to honor the input of cooperators and all stakeholders, also besets many public lands EIS projects, in addition to the 2012 OSTS PEIS. The cooperators from Utah and Wyoming have already unanimously requested for the No-Action alternative in the draft 2012 OSTS PEIS become the preferred alternative.

RESOLUTION

NOW THEREFORE, BE IT RESOLVED BY LINCOLN COUNTY, STATE OF WYOMING AS FOLLOWS:

1. Lincoln County declares the BLM's continuing to administer and carry out the 2012 OSTS PEIS to be an open contempt and flaunting of the Congressional Spending Moratorium first imposed in the 2011 Continuing Resolution and carried forward in all subsequent Congressional spending resolutions up to and including the present;

2. Lincoln County calls upon the BLM to cease all further activities with respect to administering and carrying out the 2012 OSTS PEIS, because doing so constitutes an open contempt and violation of the Congressional Spending Moratorium against implementing, administering and/or enforcing Secretarial Order 3310, which Spending Moratorium was first imposed in the 2011 Continuing Resolution and carried forward in all subsequent Congressional spending resolutions up to and including the present;

3. Lincoln calls upon the BLM to immediately cease and desist all activities related to the above-referenced 2012 OSTS PEIS and immediately publish a revised notice in the Federal

Register signifying its cessation of all work on the Programmatic EIS in obedience to the above-quoted Spending Moratorium. Otherwise, the BLM would be in contempt of Congress; 82

4. Should BLM continue to go forward with the 2012 OSTS PEIS regardless of these grievances, the only legally, viable alternative would be if the BLM adopted the No-Action Alternative, which is identical to the Alternative chosen in the ROD of the 2008 OSTS PEIS;

5. The BLM should extend the May 4, 2012 deadline for public comment on the draft 2012 OSTS PEIS at least 30 days after publication of the expected oil shale regulation due to be published on or around May 15, 2012.

6. The BLM should honor the input of cooperators, particularly if they are local governments, as required by Section 202(c)(9) of FLPMA, in all matters, not just with respect to the 2012 OSTS PEIS.

Adopted at the regularly scheduled meeting of the Board of County Commissioners of Lincoln County, held on the 4th day of April, 2012.

BOARD OF COUNTY COMMISSIONERS

Kent Connelly, Chairman

Paul C. Jenkins

T. Deb Wolfley

ATTESTED TO:

Jeanne Wagner, County Clerk
Lincoln County, Wyoming

STATE OF COLORADO)
)ss.
COUNTY OF GARFIELD)

At a regular meeting of the Board of County Commissioners for Garfield County, Colorado, held at the County Administration Building in Glenwood Springs on _____, the ____ day of _____, 20___, there were present:

Tom Jankovsky _____, Commissioner
Mike Samson _____, Commissioner
John Martin _____, Commissioner Chairman
Jean Alberico _____, Clerk to the Board

when the following proceedings, among others were had and done, to-wit:

RESOLUTION NO. 12-____

RESOLUTION OPPOSING THE BLM'S OIL SHALE AND TAR SANDS PROGRAMMATIC ENVIRONMENTAL IMPACT STATEMENT, BLM PROJECT # WO-300-1310-PP-OSHL (HEREAFTER 2011 OSTS PEIS) FOR LANDS ADMINISTERED BY THE BLM IN COLORADO, UTAH AND WYOMING

WHEREAS, the Board of County Commissioners of Garfield County, State of Colorado ("BOCC") is a legal and political subdivision of the State of Colorado for which the BOCC is authorized to act; and

WHEREAS, this Resolution is adopted in open meeting after due opportunity for public comment, by the Board of Commissioners of Garfield County, in order to redress the many violations of law, regulation, and policy by the BLM with respect to the BLM's 2012 OSTS PEIS; and

BACKGROUND

As background to this Resolution, the BOCC recites the following grievances:

WHEREAS, on April 14, 2011, the BLM caused to be published in the Federal Register, Volume 76, No 72/Thursday, April 14, 2011, pages 21003-21005, a notice of intent to prepare the above-referenced 2012 OSTS PEIS; and

WHEREAS, the preliminary purpose and need statement in the notice of intent, states the PEIS will analyze removing from oil shale and tar sands leasing "All areas that the BLM has identified or may identify as a result of inventories conducted during this planning process, as lands containing wilderness characteristics[.]" *Id.*, at page 21004; and

WHEREAS, the notice of intent further states at page 21004:

> Lands that the BLM identifies as having wilderness characteristics will be considered during this planning initiative, as described above, and consistent with Secretarial Order No. 3310, dated Dec. 22, 2010, and BLM Manuals 6301 and 6302. Future leasing of lands determined by the BLM to have wilderness characteristics, if compatible with the allocation decisions stemming from this initiative, will subsequently be assessed in accordance with BLM Manual 6303, as appropriate (i.e., where the BLM has not determined, consistent with BLM Manual 6302, whether the lands with wilderness characteristics at issue should receive a wild lands designation, BLM Manual 6303 will apply); and

WHEREAS, this language documents the BLM's intent to implement, administer and/or enforce Secretarial Order 3310 and one or more of the BLM guidance manuals promulgated under Order 3310; and

WHEREAS, any attempt by the BLM to implement, administer and/or enforce Secretarial Order 3310, including any effort by the BLM to proceed further on the above-referenced Programmatic EIS, violates the spending moratorium of Section 1769 of the April 21, 2011 Congressional Continuing Resolution to Fund Fiscal Year 2011 through September 30, 2011, which states:

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WHEREAS, this spending moratorium has been carried forward in all subsequent Congressional spending resolutions up to and including the current spending resolution; and

WHEREAS, the 2012 OSTS PEIS, is an admitted attempt by the BLM to implement, administer and/or enforce Secretarial Order 3310 and its policies and objectives, all in violation of the Spending Moratorium of the 2011 Continuing Resolution; and

WHEREAS, the 2008 Oil Shale and Tar Sands Programmatic EIS (2008 OSTS PEIS) was required under Section 369 (d) (1) of the Energy Policy Act of 2005 and was prepared in cooperation with 14 federal, state, and local governmental organizations; and

WHEREAS, the 2008 OSTS PEIS was 3 years in the making, and it honored the input of a task force of Governors and other stakeholders as per requirement of the 2005 Energy Policy Act; and

WHEREAS, the Record of Decision (ROD) for the 2008 OSTS PEIS amended 10 land use plans in Colorado, Utah, and Wyoming to make approximately 2 million acres of public lands available for potential leasing and development of oil shale and approximately 430,000

acres available for tar sands leasing. Together with the regulations published in 2006 and 2008 for oil shale and tar sands resources, the 2008 OSTS PEIS and subsequent land use amendments constituted a reasonable and rational establishment of an oil shale and tar sands program as mandated in the Energy Policy Act of 2005; and

WHEREAS, the oil shale and tar sands program to which the 2008 OSTS PEIS and related regulations gave birth was a reasonable response to the fact that oil shale and tar sands resources in the Green River Formation located in northeastern Utah, northwestern Colorado and southwestern Wyoming may reach 8 trillion[1] barrels of oil; and

WHEREAS, the preferred alternative in the draft 2012 OSTS PEIS drastically shrinks, diminishes and in many areas outright reverses virtually all of the lands made available for Oil Shale and Tar Sands development in 2008, and does so using the same data and science; and

WHEREAS, such a drastic reversal in lands available for Oil Shale and Tar Sands development between the 2008 PEIS and the 2012 preferred alternative, violates regulatory ran Task Force requirements of certainty for industry and investors; and

WHEREAS such a drastic reversal of lands available for Oil Shale and Tar Sands development in 2008, constitutes a de facto, piece-meal revision of previous BLM Resource Management Plans, in violation of the Section 202 Planning Process under FLPMA; and

WHEREAS, the preferred alternative in the draft 2012 OSTS PEIS entirely ignores the input of the task force and stakeholders which the 2005 Energy Policy Act directed the BLM to honor and follow; and moreover the draft 2012 OSTS PEIS may well violate various memoranda of understanding (MOUs) with counties which require the BLM to publish the written input of cooperators who disagree with the preferred alternative; and

WHEREAS the draft 2012 OSTS PEIS preferred alternative significantly restricts the acreage allotted in the 2008 PEIS for research and development leasing; and

WHEREAS the draft 2012 OSTS PEIS preferred alternative threatens to arbitrarily undermine the process and the work utilized in creation of the 2008 OSTS PEIS, and essentially dismantle a reasonable and rational oil shale and tar sands program in violation of Section 369 of the 2005 Energy Policy Act; and

WHEREAS, the 2012 OSTS PEIS preferred alternative is the creature of a friendly lawsuit settlement agreement between the BLM and ideological opponents to oil shale development, and is therefore entirely pre-determined and pre-decisional in violation of NEPA, with no apparent rationale for revising the acreages approved in 2008; and

[1] On information and belief, Garfield County believes 4 trillion barrels to be a more accurate estimate.

WHEREAS, the BLM has settled on a preferred alternative in the 2012 OSTS PEIS admittedly without having first analyzed its impacts; BLM should be required to withdraw the preferred status of the alternative until it has performed this analysis; and

WHEREAS, the acreage approved for Oil Shale and Tar Sands development in the draft 2012 OSTS PEIS preferred alternative bears no rational relationship to the stated purpose and need; and

WHEREAS, the Department of Energy has basically abdicated the responsibility Congress placed upon it to defend and uphold a viable oil shale energy program in America, leaving it instead to the BLM encumbered by a host of anti-oil shale pro-wilderness groups steering BLM's every move; and

WHEREAS, the alternative adopted in the ROD of the 2008 OSTS PEIS is now the No Action Alternative of the draft 2012 OSTS PEIS; and

WHEREAS, the 2008 OSTS PEIS chosen alternative is consistent with the multiple use, sustained yield of the Federal Land Policy Management Act (FLPMA); and

WHEREAS, the 2008 OSTS PEIS chosen alternative is consistent with county general plans and policies which call for responsible development of available energy resources; and

WHEREAS, the development and production of oil from oil shale has been proven beyond a doubt to be technologically and economically feasible[2]; and

WHEREAS, this same technology to extract oil from the oil shale rock is not only economically feasible, but it requires little to no consumption of water, contrary to the myths which falsely claim that oil shale extraction requires large consumption of water resources[3]; and

WHEREAS, the energy captured in the extract of oil from shale (natural gas capture, etc.,) more than makes up for energy consumed in that extraction process, thus dispelling the myth that the oil shale extraction process consumes more energy than it produces; and

WHEREAS, the rising price of gasoline, coupled with ever increasing loss of good paying jobs due to the Administration's policies against energy development on western public lands, result in increasing hardships for families and the local economy, to the point where some fear the window of opportunity is about to close for a civil, lawful and orderly response as citizens feel more and more pressured and desperate financially; and

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[2] Garfield County states this recital as: "WHEREAS the development and production of oil from oil shale in some processes has been proven to be technologically feasible; and"

[3] Garfield County states this recital as: "WHEREAS, this same technology to extract oil from the oil shale rock requires little to no consumption of water; and"

WHEREAS, the 2012 OSTS PEIS improperly limits technology testing to strictly in situ efforts and does not allow for development of other technologies; and

WHEREAS, the BLM has left insufficient time for the public and cooperators to meaningfully comment on the public draft 2012 OSTS PEIS by the present comment deadline of May 4, 2012, because a highly relevant commercial oil shale BLM regulation is not due to be published until May 15, 2012 and the public should have the right to view that regulation first and then submit comments on the draft 2012 OSTS PEIS in light of that regulation; and

WHEREAS, the same problems with lack of consistency with local plans and policies and failure to honor the input of cooperators and all stakeholders, also besets many public lands EIS projects, in addition to the 2012 OSTS PEIS. The cooperators from Utah and Wyoming have already unanimously requested for the No-Action alternative in the draft 2012 OSTS PEIS become the preferred alternative.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF GARFIELD COUNTY, STATE OF COLORADO AS FOLLOWS:

1. Garfield County declares the BLM's continuing to administer and carry out the 2012 OSTS PEIS to be an open contempt and flaunting of the Congressional Spending Moratorium first imposed in the 2011 Continuing Resolution and carried forward in all subsequent Congressional spending resolutions up to and including the present.

2. Garfield County calls upon the BLM to cease all further activities with respect to administering and carrying out the 2012 OSTS PEIS, because doing so constitutes an open Contempt and violation of the Congressional Spending Moratorium against implementing, administering and/or enforcing Secretarial Order 3310, which Spending Moratorium was first imposed in the 2011 Continuing Resolution and carried forward in all subsequent Congressional spending resolutions up to and including the present.

3. Garfield County calls upon the BLM to immediately cease and desist all activities related to the above-referenced 2012 OSTS PEIS and immediately publish a revised notice in the Federal Register signifying its cessation of all work on the Programmatic EIS in obedience to the above- quoted Spending Moratorium. Otherwise, the BLM would be in contempt of Congress.

4. Should BLM continue to go forward with the 2012 OSTS PEIS regardless of these grievances, the only legally, viable alternative would be if the BLM adopted the No-Action Alternative, which is identical to the Alternative chosen in the ROD of the 2008 OSTS PEIS.

5. The BLM should extend the May 4, 2012 deadline for public comment on the draft 2012 OSTS PEIS at least 30 days after publication of the expected oil shale regulation due to be published on or around May 15, 2012.

6. The BLM should honor the input of cooperators, particularly if they are local governments, as required by Section 202(c)(9) of FLPMA, in all matters, not just with respect to the 2012 OSTS PEIS.

DATED this ____ day of _____, 20___.

ATTEST:

BOARD OF COUNTY COMMISSIONERS OF GARFIELD COUNTY, STATE OF COLORADO

_____
Clerk to the Board

By: _____
Chairperson

Upon motion duly made and seconded the foregoing Resolution was adopted by the following vote:

Tom Jankovsky Aye
Mike Samson Aye
John Martin Aye
Commissioners

STATE OF COLORADO)
) ss.
COUNTY OF GARFIELD)

I, Jean Alberico, County Clerk and ex-officio Clerk of the Board of County Commissioners in and for the County and State aforesaid do hereby certify that the annexed and foregoing Resolution is truly copied from the Records of the Proceedings of the Board of County Commissioners for said Garfield County, now in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said County, at Glenwood Springs, this ___ day of _____, A.D. 20__.

County Clerk and ex-officio Clerk of
the Board of County Commissioners

_____

CARBON COUNTY PUBLIC LANDS DEPARTMENT
Rex Sacco, Director
120 East Main Street Price, Utah. 84501
Phone 435-636-3712 Fax 435-636-3264
rex.sacco@carbon.utah.gov

May 1, 2012

Oil Shale and Tar Sands Resources Draft Programmatic EIS
Argonne National Laboratory
9700 South Cass Avenue—EVS/240
Argonne, IL 60439.
Sent Via Email Transmission:
http://ostseis.anl.gov.
cc. Sherri Thompson
sthompso@blm.gov

Dear Ms. Thompson,

Please accept this correspondence as the Board of Commissioners of Carbon County, Utah's request for at least a 30-day extension to the comment period on the on the Draft Programmatic Environmental Impact Statement (PEIS) and Possible Land Use Amendments for Allocation of Oil Shale and Tar Sands Resources on Lands Administered by the BLM in Colorado, Utah and Wyoming.

As we understand it, the reason that this action has taken place is to quell a legal challenge. The DOI has since agreed to a settlement. Since the terms of that settlement agreement has not been shared with us; we as cooperators have not been given the full ability to make substantive comments. In all likelihood the additional information would probably rate additional comments from us pertaining the planning and implementation of this action. Without knowing the need of or terms for the settlement, we in fact are not being allowed to comment on the scope of or purpose for this important action. Until such time as the settlement information is brought forth and we are given a reasonable amount of time to comment we doubt that BLM has legally adhered to the dictates of federal land management planning through the processes of coordination (as described in FLPMA 43 U.S.C. 1712 and 43 CFR 1610 (BLM)) and cooperating agency status (as described in Section 1501.6 of NEPA and 40 CFR 1508.5 (CEQ)

Real cooperation will not happen until all information needed to initiate a true NEPA planning process is met. Until then it is not appropriate to expect us to think our comments are really given due diligence or consideration.

We will await your reply.
Thank you for your consideration on this request.
rls

BOARD OF COUNTY COMMISSIONERS

SWEETWATER COUNTY

WALLY J. JOHNSON, CHAIRMAN
JOHN K. KOLB, COMMISSIONER
GARY BAILIFF, COMMISSIONER
REID O. WEST, COMMISSIONER
DON VAN MATRE, COMMISSIONER

80 WEST FLAMING GORGE WAY, SUITE 109
GREEN RIVER, WY 82935
PHONE: (307) 872-3890
FAX: (307) 872-3992

Thursday, April 19, 2012

Ms. Sherri Thompson - Project Manager
Oil Shale/Tar Sands Draft PEIS
BLM Colorado State Office
2830 Youngfield Street
Lakewood, Colorado 80215

RE: Sweetwater County Resolution 12-04-CC-02 - Opposing the Bureau of Land Management's (BLM) 2012 Oil Shale and Tars Sands Programmatic Environmental Impact Statement, Project #WO-300-1310-PP-OSHL (OSTS PEIS).

Dear Ms. Thompson:

Sweetwater County hereby formally submits to the Bureau of Land Management Sweetwater County Resolution 12-04-CC-02. By this Resolution, Sweetwater County joins other counties in Wyoming, Utah and Colorado in opposing the BLM's OSTS PEIS for lands administered by the BLM in Colorado, Utah and Wyoming.

Sweetwater County opposes the OSTS PEIS for the purposes of preserving the mineral based economy of the economy of the tri-state region, and for ensuring that the BLM's OSTS PEIS National Environmental Policy Act (NEPA) review process is fair, allows enough for review and is in compliance with all applicable laws.

If you have any questions concerning Sweetwater County's attached Resolution, please contact me at 307-872-3897.

Sincerely,

Wally J. Johnson, Chairman
Sweetwater County Board of County Commissioners

Enclosure: Sweetwater County Resolution 12-04-CC-02

cc Governor Matt Mead
Jerimiah Rieman, Governor's Natural Resource Policy Advisor
Wyoming's Congressional Delegation
John Ruhs, BLM High Desert District Manager
Lance Porter, BLM Rock Springs Field Office Manager
Sweetwater County Board of County Commissioners
Temple Stoellinger, WCCA Natural Resource Attorney
Kent Connelly, President - Coalition of Local Governments
Mary Thoman, President - Sweetwater County Conservation District
Eric Bingham, Sweetwater County Land Use Director

RESOLUTION 12-04-CC-02
SWEETWATER COUNTY, STATE OF WYOMING

OPPOSING THE BLM'S 2012 OIL SHALE AND TAR SANDS PROGRAMMATIC ENVIRONMENTAL IMPACT STATEMENT, BLM PROJECT # WO-300-1310-PP-OSHL
(HEREAFTER 2011 OSTS PEIS)
FOR LANDS ADMINISTERED BY THE BLM IN COLORADO, UTAH AND WYOMING,

This Resolution is adopted in open meeting after due opportunity for public comment, by the Board of Commissioners of Sweetwater County, in order to redress the many violations of law, regulation, and policy by the BLM with respect to the BLM's 2012 OSTS PEIS.

BACKGROUND

As background to this Resolution, Sweetwater County recites the following grievances:

WHEREAS, On April 14, 2011, the BLM caused to be published in the Federal Register, Volume 76, No 72/Thursday, April 14, 2011, pages 21003-21005, a notice of intent to prepare the above-referenced 2012 OSTS PEIS; and

WHEREAS, the preliminary purpose and need statement in the notice of intent, states the PEIS will analyze removing from oil shale and tar sands leasing "All areas that the BLM has identified or may identify as a result of inventories conducted during this planning process, as lands containing wilderness characteristics[.]" Id., at page 21004; and

WHEREAS, the notice of intent further states at page 21004:

> Lands that the BLM identifies as having wilderness characteristics will be considered during this planning initiative, as described above, and consistent with Secretarial Order No. 3310, dated Dec. 22, 2010, and BLM Manuals 6301 and 6302. Future leasing of lands determined by the BLM to have wilderness characteristics, if compatible with the allocation decisions stemming from this initiative, will subsequently be assessed in accordance with BLM Manual 6303, as appropriate (i.e., where the BLM has not determined, consistent with BLM Manual 6302, whether the lands with wilderness characteristics at issue should be receive a wild lands designation, BLM Manual 6303 will apply); and

WHEREAS, this language documents the BLM's intent to implement, administer and/or enforce Secretarial Order 3310 and one or more of the BLM guidance manuals promulgated under Order 3310; and

WHEREAS, any attempt by the BLM to implement, administer and/or enforce Secretarial Order 3310, including any effort by the BLM to proceed further on the above-referenced Programmatic EIS, violates the spending moratorium of Section 1769 of the April 21, 2011 Congressional Continuing Resolution to Fund Fiscal Year 2011 through September 30, 2011, which states:

> For the fiscal year ending September 30, 2011, none of the funds made available by this division or any other Act may be used to implement, administer, or enforce Secretarial Order No. 3310 issued by the Secretary of the Interior on December 22, 2010; and

WHEREAS, this spending moratorium has been carried forward in all subsequent Congressional spending resolutions up to and including the current spending resolution; and
WHEREAS, the 2012 OSTS PEIS, is an admitted attempt by the BLM to implement, administer and/or enforce Secretarial Order 3310 and its policies and objectives, all in violation of the Spending Moratorium of the 2011 Continuing Resolution; and

WHEREAS, the 2008 Oil Shale and Tar Sands Programmatic EIS (2008 OSTS PEIS) was required under Section 369 (d) (1) of the Energy Policy Act of 2005 and was prepared in cooperation with 14 federal, state, and local governmental organizations; and

WHEREAS THE 2008 OSTS PEIS was 3 years in the making, and it honored the input of a task force of Governors and other stakeholders as per requirement of the 2005 Energy Policy Act;

WHEREAS, the Record of Decision (ROD) for the 2008 OSTS PEIS amended 10 land use plans in Colorado, Utah, and Wyoming to make approximately 2 million acres of public lands available for potential leasing and development of oil shale and approximately 430,000 acres available for tar sands leasing. Together with the regulations published in 2006 and 2008 for oil shale and tar sands resources, the 2008 OSTS PEIS and subsequent land use amendments constituted a reasonable and rational establishment of an oil shale and tar sands program as mandated in the Energy Policy Act of 2005; and

WHEREAS, the oil shale and tar sands program to which the 2008 OSTS PEIS and related regulations gave birth, was a reasonable response to the fact that oil shale and tar sands resources in the Green River Formation located in northeastern Utah, northwestern Colorado and southwestern Wyoming may reach 8 trillion barrels of oil; and

WHEREAS, the preferred alternative in the draft 2012 OSTS PEIS drastically shrinks, diminishes and in many areas outright reverses virtually all of the lands made available for Oil Shale and Tar Sands development in 2008, and does so using the same data and science; and

WHEREAS, such a drastic reversal in lands available for Oil Shale and Tar Sands development between the 2008 PEIS and the 2012 preferred alternative, violates regulatory ran Task Force requirements of certainty for industry and investors; and

WHEREAS such a drastic reversal of lands available for Oil Shale and Tar Sands development in 2008, constitutes a de facto, piece-meal revision of previous BLM Resource Management Plans, in violation of the Section 202 Planning Process under FLPMA;

WHEREAS, the preferred alternative in the draft 2012 OSTS PEIS entirely ignores the input of the task force and stakeholders which the 2005 Energy Policy Act directed the BLM to honor and follow; and moreover the draft 2012 OSTS PEIS may well violate various memoranda of understanding (MOUs) with counties which require the BLM to publish the written input of cooperators who disagree with the preferred alternative;

WHEREAS the draft 2012 OSTS PEIS preferred alternative significantly restricts the acreage allotted in the 2008 PEIS for research and development leasing;

WHEREAS the draft 2012 OSTS PEIS preferred alternative threatens to arbitrarily undermine the process and the work utilized in creation of the 2008 OSTS PEIS, and essentially dismantle a reasonable and rational oil shale and tar sands program in violation of Section 369 of the 2005 Energy Policy Act; and

WHEREAS, the 2012 OSTS PEIS preferred alternative is the creature of a friendly lawsuit settlement agreement between the BLM and ideological opponents to oil shale development, and is therefore entirely pre-determined and pre-decisional in violation of NEPA, with no apparent rationale for revising the acreages approved in 2008; and

WHEREAS, the BLM has settled on a preferred alternative in the 2012 OSTS PEIS admittedly without having first analyzed its impacts; BLM should be required to withdraw the preferred status of the alternative until it has performed this analysis; and

WHEREAS, the acreage approved for Oil Shale and Tar Sands development in the draft 2012 OSTS PEIS preferred alternative bears no rational relationship to the stated purpose and need;

WHEREAS, the Department of Energy has basically abdicated the responsibility Congress placed upon it to defend and uphold a viable oil shale energy program in America, leaving it instead to the BLM encumbered by a host of anti-oil shale pro-wilderness groups steering BLM's every move;

WHEREAS, the alternative adopted in the ROD of the 2008 OSTS PEIS is now the No Action Alternative of the draft 2012 OSTS PEIS; and

WHEREAS, the 2008 OSTS PEIS chosen alternative is consistent with the multiple use, sustained yield of the Federal Land Policy Management Act (FLPMA); and

WHEREAS, the 2008 OSTS PEIS chosen alternative is consistent with county general plans and policies which call for responsible development of available energy resources; and

WHEREAS, the development and production of oil from oil shale has been proven beyond a doubt to be technologically and economically feasible; and

WHEREAS, this same technology to extract oil from the oil shale rock is not only economically feasible, but it requires little to no consumption of water, contrary to the myths which falsely claim that oil shale extraction requires large consumption of water resources; and

WHERAS, the energy captured in the extract of oil from shale (natural gas capture, etc.,) more than makes up for energy consumed in that extraction process, thus dispelling the myth that the oil shale extraction process consumes more energy than it produces;

WHEREAS, the rising price of gasoline, coupled with ever increasing loss of good paying jobs due to the Administration's policies against energy development on western public lands, result in increasing hardships for families and the local economy, to the point where some fear the window of opportunity is about to close for a civil, lawful and orderly response as citizens feel more and more pressured and desperate financially; and

WHEREAS, the 2012 OSTS PEIS improperly limits technology testing to strictly in situ efforts and does not allow for development of other technologies; and

WHEREAS, the BLM has left insufficient time for the public and cooperators to meaningfully comment on the public draft 2012 OSTS PEIS by the present comment deadline of May 4, 2012, because a highly relevant commercial oil shale BLM regulation is not due to be published until May 15, 2012 and the public should have the right to view that regulation first and then submit comments on the draft 2012 OSTS PEIS in light of that regulation; and

WHEREAS, the same problems with lack of consistency with local plans and policies and failure to honor the input of cooperators and all stakeholders, also besets many public lands EIS projects, in addition to the 2012 OSTS PEIS. The cooperators from Utah and Wyoming have already unanimously requested for the No-Action alternative in the draft 2012 OSTS PEIS become the preferred alternative.

RESOLUTION

NOW THEREFORE, BE IT RESOLVED BY SWEETWATER COUNTY, STATE OF WYOMING AS FOLLOWS:

1. Sweetwater County declares the BLM's continuing to administer and carry out the 2012 OSTS PEIS to be an open contempt and flaunting of the Congressional Spending Moratorium first imposed in the 2011 Continuing Resolution and carried forward in all subsequent Congressional spending resolutions up to and including the present;

2. Sweetwater County calls upon the BLM to cease all further activities with respect to administering and carrying out the 2012 OSTS PEIS, because doing so constitutes an open contempt and violation of the Congressional Spending Moratorium against implementing, administering and/or enforcing Secretarial Order 3310, which Spending Moratorium was first

imposed in the 2011 Continuing Resolution and carried forward in all subsequent Congressional spending resolutions up to and including the present;

3. Sweetwater Count calls upon the BLM to immediately cease and desist all activities related to the above-referenced 2012 OSTS PEIS and immediately publish a revised notice in the Federal Register signifying its cessation of all work on the Programmatic EIS in obedience to the above-quoted Spending Moratorium. Otherwise, the BLM would be in contempt of Congress;

4. Should BLM continue to go forward with the 2012 OSTS PEIS regardless of these grievances, the only legally, viable alternative would be if the BLM adopted the No-Action Alternative, which is identical to the Alternative chosen in the ROD of the 2008 OSTS PEIS;

5. The BLM should extend the May 4, 2012 deadline for public comment on the draft 2012 OSTS PEIS at least 30 days after publication of the expected oil shale regulation due to be published on or around May 15, 2012.

6. The BLM should honor the input of cooperators, particularly if they are local governments, as required by Section 202(c)(9) of FLPMA, in all matters, not just with respect to the 2012 OSTS PEIS.

Adopted at the regularly scheduled meeting of the Sweetwater County Board of County Commissioners, held on the 17th day of April 2012.

BOARD OF COUNTY COMMISSIONERS

Wally J. Johnson, Chairman

Gary Bailiff, Commissioner

John K. Kolb, Commissioner

Don Van Matre, Commissioner

Reid West, Commissioner

ATTESTED TO:

Steven Dale Davis, County Clerk
Sweetwater County, Wyoming

State of Utah

GARY R. HERBERT
Governor

GREG BELL
Lieutenant Governor

Office of the Governor
PUBLIC LANDS POLICY COORDINATION OFFICE

KATHLEEN CLARKE
Director

May 4, 2012

Bob Abbey
Director
Bureau of Land Management
1849 C Street NW, Rm. 5665
Washington, D.C., 20240

Re: Draft Programmatic Environmental Impact Statement
Possible Land Use Plan Amendments for Oil Shale and Tar Sands
77 FR 5833

Dear Director Abbey:

Oil shale and tar sands are vital to the future economic and energy balance for the State of Utah and the nation as a whole. Governor Herbert's Ten Year Energy Plan outlines strategies and objectives to facilitate balanced, responsible development of Utah's energy resources, [including oil shale and tar sands][1].The United States Geological Survey estimates that oil shale lands in Utah contain 1.32 trillion barrels of recoverable oil equivalent [2]. A viable, commercial scale and privately funded oil shale and tar sands industry is underway in Utah today, so it is with extreme disappointment and displeasure that the state sees the BLM in full retreat regarding the establishment of a complete commercial leasing program for oil shale and tar sands. This retreat is represented by the Preferred Alternative proposed for adoption in the Draft Programmatic Environmental Impact Statement. The Preferred Alternative proposes to reduce the lands available for leasing and to pull back to a Research Development and Demonstration (RD&D) program that does not meet the ultimate requirements of the law. In addition, the issuance in May of proposed rules to eliminate the existing royalty rate for the commercial leasing of oil shale will further erode implementation of a full leasing program as required under the Energy Policy Act of 2005. . These proposed changes to the 2008 allocation decision for the availability of land and the commercial leasing program are in direct opposition to the laws,

[1] http://www.utah.gov/governor/docs/10year-stragegic-energy.pdf,
[2] Assessment of In-Place Oil Shale Resources of the Green River Formation, WY, CO and UT, USGS June 2011

plans and policies of state and local governments. The state will vigorously oppose these proposed changes to the current oil shale and tar sands program.

The state participated fully in BLM's 2008 NEPA analysis regarding the availability of lands for the leasing of oil shale and tar sands and the structure of a potential leasing program, as required by the Energy Policy Act of 2005. This process concluded with a Record of Decision in 2008 allocating certain lands through the BLM's Resource Management Plans as available for leasing The BLM also established the basic framework for a leasing program through adoption of leasing regulations, now found at 43 C.F.R Part 3900. (See 73 FR 69414, November 18, 2008) The state concluded its review of this earlier effort with the conclusion that the proposed RMP amendments were consistent with state law, policy and programs, as required under provisions of the Federal Land Policy and Management Act, and expressed full support for the establishment of a commercial leasing program.

Despite the adequacy and sufficiency of the previous Record of Decision and supporting documentation prepared under the provisions of the National Environmental Policy Act, the BLM has reversed the sound decisions it made in the2008 ROD. The decision to significantly reduce lands available for leasing appears to be predicated on the terms of a Settlement Agreement ("Agreement")drafted in response to litigation[3] brought by parties antagonistic to the development of adequate and sufficient domestic sources of energy. The BLM declares that this revisit of its previous decision is based on the need to take a "fresh look" at the land allocations made in the 2008 NEPA analysis in light of "new information which has emerged since the 2008 OSTS PEIS was prepared."[4] The Settlement Agreement states that BLM must publish a Notice of Intent to consider amending each of the land use planning decisions made by the 2008 OSTS ROD, including alternatives that met the plaintiff's goals. These goals, in general, require that BLM have the option to reject a commercial lease based upon "environmental or other resource considerations," and have the option to decline to offer a commercial lease unless it can be shown that "operations can occur without unacceptable environmental risk."[5]

Nowhere in the terms of the Settlement Agreement is there a requirement that the BLM select an alternative that furthers the goals of the plaintiffs. The BLM has misconstrued the intent of the Agreement and abrogated its decision- making responsibilities in favor of an alternative that it was only required to consider, not select.

In furtherance of the Settlement Agreement, the BLM proposes to eliminate the current provisions of the commercial leasing program in favor of a Research and Development program, reduce the amount of acreage available for leasing, and, shortly after the current period to comment on the DPEIS is closed, offer another rulemaking which will propose to "remove the royalty rate for oil shale production."6 The eleven day period between the closing of the comment period for the DPEIS and the potential publication of royalty rate provisions affecting oil shale and tar sands does not allow cooperating agencies the chance to include royalty rate and

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[3] *Colorado Environmental Coalition, et. al. v. Salazar*, Civil Action No. 09-cv-00091-JLK, Colorado.

[4] See Executive Summary page 1-1, 1-4

[5] Defendants' and Plaintiffs' Joint Motion to Administratively Close the Case, *Colo Env. Coalition v. Salazar*, page 3.

[6] *Id.*

commercial leasing aspects into their comments, thereby impermissibly segmenting the proposed rulemaking as envisioned by Congress. For this reason, the state requested an extension of the comment period, and advises the BLM that it expects the comments upon any proposed royalty rate adjustment be incorporated into the analysis of the issues within the DPEIS.

Summary of the DPEIS Review

The state has reviewed the Draft Programmatic Environmental Impact Statement accompanying BLM's current proposal. The state finds that the information contained within the DPEIS is procedurally deficient and cannot support the proposed Resource Plan Amendments Specifically, the state finds that the BLM has not been diligent in locating and considering information generated since the 2008 Record of Decision. This is unacceptable, particularly given the ease with which this information may be obtained. The State of Utah finds that the DPEIS is incomplete, biased and does not meet the required "hard look" purpose of the National Environmental Policy Act. Any final EIS based upon the provisions contained in this Draft cannot support a decision by the BLM which would alter the provisions in the 2008 ROD concerning the availability of lands for oil shale and tar sands leasing. Decisions based on analyses in the DPEIS will be arbitrary and capricious as a matter of law, and will not be consistent with state law, policy or procedures if the Preferred Alternative, as identified in the DPEIS, is chosen as the final decision.

As a general point of discussion, documents currently prepared under the provisions of the National Environmental Policy Act have evolved in recent years into a format which is staggering in its ability to obfuscate information. These documents are so convoluted that the reader is unable to discern the validity and adequacy of the NEPA analysis on which the agency bases its conclusions, especially in the short time frame provided. Nonetheless, the state has been able to discern the following salient facts and identify a singular bias by BLM against information supporting the viability of the oil shale and tar sands industries, and local and state economies, instead favoring a particularly antagonistic position towards oil shale and tar sands development.

Focus of the Current Proposal

The Executive Summary for the DPEIS states BLM has decided to take a "fresh look" at the land allocations made in the 2008 review based upon the Settlement Agreement and upon "new information which has emerged since the 2008 OSTS PEIS was prepared." (ES-1) BLM further refines this fresh look to include a reconsideration of the 2008 allocations and determine whether it is "appropriate for approximately 2,000,000 acres to remain available for potential development of oil shale," with an equivalent decision for tar sands.7 The BLM states that the reason for this reconsideration is specifically 1) the need to review new inventories for lands having wilderness characteristics, 2) the March 2010 decision of the Fish and Wildlife Service concerning sage grouse, and 3) the completion of studies related to Areas of Critical Environmental Concern (ACECs).

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[7] Executive Summary, p. ES-1,

In a related action required under the Settlement Agreement, the BLM will propose amendments to the oil shale final rule to remove the royalty rate codified in BLM regulation (43 CFR 3903.52) and perhaps propose alternative adjustments to the royalty rate. These proposed royalty rate adjustments are not scheduled to be made public until mid-May 2012, after the comment period for the DPEIS has concluded.

As discussed further below, the state finds that there is no new information concerning lands with wilderness characteristics in Utah beyond that considered for the 2008 Oil Shale EIS or the 2008 Resource Management Plans. Management for Sage grouse and its habitat is being addressed through a massive effort by the affected states, the BLM, the Forest Service, and the U.S. Fish and Wildlife Service, with these efforts determining the needs of the species and the means to balance species protections with provisions for human needs. Any proposed discussion of sage grouse needs in the current DPEIS is not ripe for analysis, and any proposed restrictions due to sage grouse are premature. Any decision to amend currently operative RMPs, based on an issue currently undergoing such a massive review, would constitute an arbitrary and capricious decision.

The state finds that the BLM has not only based its decision on new information where none exists, but also has, to compound this egregious error, inexplicably ignored new information which supported the conclusions of the 2008 decision, and failed to analyze significant new information that would satisfy NEPA 's required hard look.

Congressional Mandate

The Energy Policy Act of 2005 (EPACT 2005), Section 369, is the driving force behind the BLM's original Oil Shale and Tar Sands (OSTS) Programmatic Environmental Impact Statement and the resource allocation decisions it supported. Section 369 of EPACT 2005 specifically states "not later than 18 months after the date of enactment of this Act… the Secretary (of Interior) shall complete a programmatic environmental impact statement for a commercial leasing program for oil shale and tar sands resources on public lands, with emphasis on the most geologically prospective lands within each of the States of Colorado, Utah, and Wyoming."

BLM advanced the purposes of EPACT 2005 through its conclusions in the 2008 OSTS Record of Decision and the accompanying decisions within 2008 Records of Decision for the Vernal, Price and Richfield Field Offices, along with adoption of the oil shale leasing regulations codified at 43 CFR Part 3900. These decisions successfully laid out the availability of land containing the resources and the framework of the regulatory structure for acquiring leases on BLM land for the development of these resources. The state believes that BLM did an adequate and thorough job in reaching the decision contained in the 2008 ROD. The state also applauds the agency's efforts in 2008 to conform with state and local laws as well as engage in significant cooperative exchanges with countless agencies and stakeholders.

The current proposal, and the supporting documentation found in the DPEIS, takes a huge step in the wrong direction. Congress did not ask BLM to determine if commercial leasing was appropriate or not, or to wait on a commercial leasing process in favor of some other

proposal. As noted on page 1-3, EPACT 2005 requires the BLM to complete a programmatic EIS, establish a leasing program, consult with the Governors, conduct lease sales and consider land exchanges. The current proposal does not meet those requirements and directly ignores both the mandate and timeline given to it by Congress under Section 369 of EPACT 2005.

In addition, the Preferred Alternative will push commercial leasing farther into the future by requiring more unnecessary planning and research and development before commercial leasing can be established. Therefore, the Preferred Alternative is at direct odds with and contravenes the directions given by Congress in the EPACT 2005 to establish an oil shale and tar sands commercial leasing program.

Precedential Value of the Settlement Agreement

BLM has clearly stated that this entire effort is the result of the settlement of litigation brought by various environmental groups. Litigation, by its very nature, excludes many stakeholders interested in the issue litigated. Because full public involvement is required by NEPA and other laws, the Settlement Agreement requires only that the BLM propose various adjustments to the existing regulatory and planning provisions. The provisions of NEPA require that other alternatives be considered as well, including the option of doing nothing, which in this case would keep the 2008 land allocation decision intact.

The Settlement Agreement itself is not determinative of the final decisions made in response to the current DPEIS. This means that the No Action Alternative is as viable as the alternatives identified in the Agreement. Yet the Agreement, which was made without the involvement of many of the relevant stakeholders, including the state, is apparently being used to drive a hasty decision. The BLM informed the state and other stakeholders that the calendar is tight, and there is no room for additional analysis and review. This rush to complete the DPEIS by an artificial deadline is arbitrary in light of the vast amount of information the BLM must analyze to adequately meet the requirements of NEPA.

Request of the State

As shown below, this rush to complete has produced numerous major and minor errors which combine to produce a flawed product. The state urgently requests the BLM:

- slow down the analysis;
- carefully analyze the information offered below concerning the maturity of the oil shale and oil sands industry in Utah;
- recognize the clear delineation of jurisdiction between the states and the BLM;
- review the impacts to the social and economic structure of the state and local governments;
- examine the needs of the industry within larger venture capital markets; and produce a complete analysis of impacts.

If necessary, the state requests the BLM and its attorneys petition the court for additional time, based upon the reality of completing the tasks and further analysis outlined below.

Consultation with the Governors

The provisions of EPACT 2005 require that the BLM consult with the Governors of the states involved in the creation of commercial leasing program. Specifically, Section 369 requires the BLM to

> Consult with the Governors of States with significant oil shale and tar sands resources on public lands, representatives of local governments in such states…to determine the level of support and interest in the States in the development of tar sands and oil shale resources.

During the preparation of the 2008 Record of Decision, the BLM met on several occasions with the representatives of the Governors of the three states involved, and as a result were advised of the necessary "level of interest." Utah advised the BLM that the level of interest in Utah was high, and that if necessary, the BLM should proceed with a commercial leasing program in Utah even if the other states were not interested. In stark contrast, no such meetings have taken place with the Governor of Utah or his representatives during the current PEIS effort.

Request of the State:

The State of Utah urgently requests meetings with the BLM which meet the letter and the spirit of the requirement of EPACT 2005 to consult with the Governors, and local government, to determine the level of support for a commercial program for the leasing of oil shale and tar sands. Only then will the BLM be able to fully analyze the social and economic impacts to the state as well as work with the state on decisions affecting a critical component of the state's economy. These meetings must include thorough discussion of all information and issues pertaining to a commercial leasing program, including royalty rates, the structure of the leasing program, and the availability of lands for leasing.

State Authority

The DPEIS reflects a lack of respect for state authority and capabilities. The BLM repeatedly asserts that it wishes to hold off on implementing a commercial leasing program until more information is available on the impacts of oil shale and tar sands operations.". BLM explicitly asserts on many occasions in the DPEIS that oil shale extraction processes are unknown and that it must delay allocations of lands for leasing pending further study In contrast, the state asserts that oil shale processes are fundamentally composed of discrete extractive operations that have existed for decades, all of which are covered by state authority and regulatory programs. For example, the BLM states that it requires more information on the impacts on water quantity and quality[8] from oil shale and tar sands operations. Yet information concerning a permitted commercial operation pertaining to water quantity and quality are readily available on the Division of Oil, Gas and Mining's website. The BLM, in cooperation with its state and local regulatory partners, can readily engage in the discussion of impacts to the natural, social and economic environments from these well-understood processes.

[8] ES.7, found on ES-9.

The extraction of kerogen from oil shale, as proposed in Utah, is nothing more than a mining operation followed by a retort operation. Mining operations have existed in Utah for over a hundred years and the state has implemented the necessary regulatory controls to mine in an environmentally sensitive manner, using the latest in technology and management practices. Retorts have been used since ancient days to reduce ore and produce useful products. Oil shale and tar sand operations involve well-defined, basic extraction, processing, and upgrading techniques that have been in use in Australia, Brazil, Canada, China, Estonia, Ireland (commercially in Canada and Estonia), and tested for over 50 years in the U.S. Oil shale and tar sand development activities have existed on Utah State lands for many years with adequate protection of the environment under state regulatory programs sanctioned by the Office of Surface Mining and the Environmental Protection Agency.

Water is owned by the state in trust for its citizens and is subject to the state water appropriation system managed by the Utah State Water Engineer. The federal government must participate in the state's allocation system should it desire to quantify any water rights it may claim.[9] Water rights appropriations are for specific diversion or use proposals. A general water right for general use by the public lands is not allowable under state law. As discussed further below, the state believes and asserts that water is available for oil shale and oil sands development, both through existing water rights and through the general market system. The state's allocation system examines issues related to availability, prioritization, interference with other rights, and related factors. BLM's decision to defer analysis until it obtains further information on water availability imposes BLM vague desires onto the decision-making process of the state. The state will make decisions regarding the availability of water, not the BLM. The state will, consistent with the authority of the state water engineer, process applications to approve or transfer water rights for oil shale or any other use.

The same is true for air quality and water quality. The state has primacy for enforcement of the Clean Air and Clean Water Acts within the state and works closely with the EPA to insure the protection of these resources. The Utah Department of Environmental Quality, along with federal, state, and industry partners is currently studying issues related to air quality in areas containing the most geologically prospective oil shale resources, and will work to jointly find solutions to air quality issues in these regions.. An inventory of emission sources is underway in conjunction with studies of the factors surrounding the formation of ozone during the winter months in the Uintah Basin. Protection of water quality from underground or surface mining operations is well within the regulatory authority and expertise of the state. Although issues related to the particular soil chemistry and topography must be addressed, the state is perfectly capable of the project specific analysis and decision making necessary to address any environmental concerns. See the Addendum below for further information concerning the permitting process.

Request of the State for Further Analysis:

Surface and underground mining as well as retorting generates no major unknowns for BLM beyond those presented by other mining and refining operations. The State of Utah strongly requests that the BLM make use of the information readily available to it from its

[9] 43 U.S.C .Section 666.

regulatory partners and conduct the required environmental analysis of the impacts of well-known processes rather than continue to insist that the production of a refinable liquid product from oil shale is shrouded in mystery. The BLM must defer to the expertise and authority of the state in these matters, use available information about standard mining and retort processes for its environmental analyses, and stop insisting that it cannot make resource allocations at this time based on upon vague, ill-defined assertions that more information is necessary.

Lands with Wilderness Characteristics

BLM conducted inventories of lands for the presence of wilderness characteristics prior to the Record of Decisions made for the 2008 oil shale allocation decisions and all other management issues covered in the final 2008 RMPs. No inventories for wilderness characteristics have been conducted since that time. As part of the 2008 RMP decision process, the state commented on management prescriptions for the lands identified, in whatever manner, as possessing the characteristics of wilderness. At the time, the state informed BLM as follows:

The State of Utah has reviewed BLM's inventory of and proposed management for lands identified as possessing wilderness characteristics. The state does not believe that BLM has the authority to create a category of management based solely on the characteristics of wilderness. The characteristics of wilderness, or their constituent elements, were first recognized by the Wilderness Act of 1964 and passed to the BLM within the provisions of Section 603 of the Federal Land Policy and Management Act of 1976. The authority within Section 603 has now expired by its own terms. The state recognizes that recent court decisions have affirmed BLM's authority to inventory for wilderness characteristics, and have required the BLM to consider new information about these characteristics in its documents prepared under the National Environmental Policy Act. These decisions do not, however, consider or affect the BLM's statutory authority for management policies on the BLM lands. The state cautions BLM against an overly broad reading of these decisions. Management authority must be derived solely from the specific provisions of the Federal Land Policy and Management Act, (e.g. Areas of Critical Environmental Concern) or other specific federal legislation, and it is incumbent upon the BLM to carefully define its detailed legal rationale and reasoning for its proposed management policies, provisions and categories.

The DPEIS does not contain any such analysis of its authority to manage for wilderness characteristics. In addition, the DPEIS does not contain any new information on inventories for lands contained within inventories for wilderness characteristics. All inventories in the areas of concern in the DPEIS were completed prior to 2008. Because the BLM presents no new information regarding new inventories that would indicate the reasons for an increase, decrease or adjustment, related to the management of lands with wilderness characteristics, the BLM must carry forward the decisions made in the 2008 oil shale EIS and the 2008 RMPs for lands managed for wilderness characteristics. A decision containing new management prescriptions for lands with wilderness characteristics would be contrary to the decisions in the 2008 Records of Decision and would therefore be arbitrary and capricious, as it would not be supported by any significant new information.

Since 2008, the State of Utah has passed several laws which have bearing on this decision regarding the protection of lands with wilderness characteristics. First, Utah Code Section 63J-8-103(4) provides that the public lands should not be "segregated into separate geographical areas for management that resembles the management of wilderness, wilderness study areas, wildlands" and the like. Instead, state law indicates the need for BLM to simply adhere to the normal standard of preventing unnecessary and undue degradation to the land.

In addition, Senate Bill 83, passed in the 2012 General Session of the Utah Legislature, provides that certain areas of Uintah, Duchesne and Daggett Counties are designated as an Energy Zone, and managed for the primary purpose of the production of energy. Senate Bill 83 provides in part, as follows:

> *The lands comprising the Uintah Basin Energy Zone contain abundant, world-class deposits of energy and mineral resources, including oil, natural gas, oil shale, oil sands, gilsonite, coal, phosphate, gold, uranium, and copper, as well as areas with high wind and solar energy potential; and the highest management priority for all lands within the Uintah Basin Energy Zone is responsible management and development of existing energy and mineral resources in order to provide long-term domestic energy and supplies for Utah and the United States.*
>
> *The state supports a cooperative management approach among federal agencies, state, and local governments to achieve broadly supported management plans for the full development of all energy and mineral resources within the Uintah Basin Energy Zone.*
>
> *The state calls upon the federal agencies who administer lands within the Uintah Basin Energy Zone to fully cooperate and coordinate with the state and with Daggett, Uintah, and Duchesne Counties to develop, amend, and implement land and resource management plans and to implement management decisions that are consistent with the purposes, goals, and policies described in this section to the maximum extent allowed under federal law, ...[and to] refrain from any planning decisions and management actions that will undermine restrict, or diminish the goals, purposes, and policies for the Uintah Basin Energy Zone...and refrain from implementing a policy that is contrary to the goals and purposes [of the Energy Zone].*

BLM must give the provisions of this law full consideration based upon respect for the authority of the state to provide for the general welfare of the citizens of the state and must review and analyze the purpose and effect of the law in the DPEIS. Additionally the law is an expression of state planning for the resources of the area, and is entitled to consideration as part of the consistency review discussed below.

Because the BLM does not possess any new information about lands with wilderness characteristics from that available in 2008, a change in any type of management for the lands, from that finalized in the 2008 RMPs and the 2008 Oil Shale EIS, as is proposed by various alternatives within the DPEIS, would constitute an improper use of Secretarial Order 3310, issued December 23, 2010. Secretarial Order 3310 was defunded by Congressional action, which required that no funds may be used to implement or enforce the Order. In this case, the

BLM is proposing to restrict the availability of these lands for the commercial leasing of oil shale and tar sands based solely upon the existing, older inventory for the presence of wilderness characteristics. This clear expression of intent to manage for wilderness is the functional equivalent of the creation of wild lands as proposed within the Secretarial Order. Because the Congressional action clearly stated that the BLM may not implement or enforce Secretarial Order 3310, the DPEIS must be rewritten to reflect this fact.

Request of the State for Further Analysis:

The State of Utah requests the BLM revisit its analysis of the proposed management prescriptions concerning the existing inventories of lands with wilderness characteristics, and

- Recognize that no new information is available since the 2008 Records of Decision;
- Recognize the soundness of the decisions made in the 2008 for the Resource Management Plans Records of Decision and the Oil Shale Record of Decision;
- Adopt the intent of state law and policy upon the subject of wilderness and wilderness-like management;
- Adopt the intent of state law and policy concerning the Energy Zone; and
- Adhere to the Congressional moratorium requiring BLM not enforce in any manner Secretarial Order 3310.

The state specifically requests that the BLM adhere to the decisions made in the 2008 Records of Decision concerning lands with wilderness characteristics, and support BLM's previous sound decisions by adopting the currently proposed No-action alternative.

Sage Grouse

Eleven of the western states, including Utah, are engaged in a cooperative effort to review the status of the Greater Sage grouse within its existing range, and to determine the elements of plans, conditions or stipulations, along with other mechanisms, to preserve the sage grouse while allowing economic development and growth to occur. The state of Utah has been sponsoring programs to protect the sage grouse for years, but the latest coordinated effort is occasioned by the March 2010 decision of the U.S. Fish and Wildlife Service concerning the potential listing of the sage grouse under the provisions of the Endangered Species Act. The Fish and Wildlife Service determined that a listing was warranted but precluded by higher priorities. This decision is now set for review by the end of 2015.

As a result of the listing decision, BLM and the Forest Service have initiated, through a Notice of Intent to Prepare an Environmental Impact Statement, a massive effort to determine if amendments to various Resource Management Plans (BLM) and Land Use Plans (Forest Service) are required in order to address the issues raised in the FWS decision. This effort is scheduled to be completed in 2014.

The State of Utah provided comments to the BLM planning process, and stated as follows:

The Notice of Intent states very specifically that the reason for the entire effort is to respond to the decision by the U.S. Fish and Wildlife Service that the listing of the Greater Sage Grouse is "warranted, but precluded" by higher listing priorities, and that the FWS asserts that BLM and Forest Service lands are the key to sage grouse survival. To the contrary, the state firmly believes that sage-grouse populations in Utah are in good condition, are receiving significant management attention and, therefore, do not warrant listing under the Endangered Species Act. The state will challenge a proposed listing whenever and wherever necessary. The state requests that the BLM and Forest Service receive, review and fully analyze all evidence offered by the state and others in support of its position that a listing is not warranted as part of the analysis of the impacts of the EIS provisions and alternatives. The state specifically requests that the BLM fully analyze and explain the ability of the BLM and Forest Service to protect the species without the cooperation of other landowners, as discussed further below.

In fact, the state strongly asserts that a decision to list sage-grouse range-wide, but especially in Utah, would be a major setback to current conservation management activities. Sage grouse in Utah, while challenged, are biologically stable. Utah conservation efforts are being conducted at a scale that will likely be hard to match anywhere else across the species' range. Finally, organizational and funding mechanisms unique to Utah have fostered cooperation and focus for continued and long-term conservation into the future. The state is concerned that unnecessary restrictions imposed by the BLM and Forest Service will upset the successful efforts underway in Utah, to the detriment of the species.

To further the state's commitment to conservation of the sage grouse and economic health of the state, the Governor recently convened a Sage Grouse Working Group. This Working Group is comprised of representatives of the Governor's Office, BLM, Forest Service, Fish and Wildlife Service, National Resource Conservation Service, Utah's Office of Energy Development, School and Institutional Trust Lands Administration, Department of Agriculture and Food, Division of Wildlife Resources, and representatives of the oil and gas industry, transmission line industry, oil shale industry, ranching community, county commissioners, The Nature Conservancy, and Utah State University. The Governor's charge directed the group to provide recommendations for the protection of sage grouse, while continuing to provide for a healthy economy and protecting private property rights. The Working Group was recently briefed on issues related to the life cycle of the sage grouse and previous and ongoing efforts to protect the species, and expects to provide recommendations within a few months. These recommendations are expected to lead to a state sage grouse plan soon thereafter. The state will expect the BLM and Forest Service to adhere to the provisions of this plan, both as a matter of respect for state authority, and in compliance with BLM's Instructional Memorandum 2012-039, which requires the BLM to make use of state data related to wildlife.

The State of Utah, in response to these factors, is currently, through the Working Group, engaged in an effort to review habitat needs of the sage grouse and make determinations about the relative importance of the habitat against the presence of other human and wildlife needs. The state is doing this in addition to weighing other options concerning the need to list the

species. This process is expected to result in the designation of areas of greater and lesser importance. A similar process in the state of Wyoming resulted in the designation of areas as "core" and "non-core," which is a possible outcome of the Utah process as well. The state assumes the Wyoming results, approved by the FWS, are the origin of the term core within the DPEIS. The BLM also recently issued an Instructional Memorandum concerning management of the sage grouse, covering the interim period until the massive planning effort concludes. In it, the term priority habitat is employed, along with general habitat, which is presumably the source of those terms within the DPEIS.

The state is very disappointed, therefore, to see "core" or "priority" discussed within the DPEIS for the State of Utah, and maps prepared with "core" or "priority" habitat displayed. The state, which is the entity with management authority over the sage grouse, has not yet reached a conclusion about any habitat designations, and does not expect to do so until the Working Group process is completed. The legend for Figure 2.3.3-2,[10] entitled "Lands Excluded from Application for Oil Shale Leasing Under Alternative 2 in Utah," clearly shows lands defined as Core or Priority. The state has not yet made any such determination, and strongly objects to BLM making such a determination. The information contained in the DPEIS about core or priority sage grouse habitat in Utah, as evidenced by this map, and any analysis based upon the information, is wholly inaccurate, and must be altered to reflect the true situation.

Request of the State for Further Analysis:

Because the data concerning sage grouse habitat is inaccurate, BLM must remove all reference to it in the DPEIS, and replace it with the habitat types which result from the efforts of the state's decision after the Working Group's work is completed. The BLM and the FWS are both represented on the Working Group, and will have every opportunity to influence the final product. Proceeding with the current data does not advance a completely and correctly informed analysis, but only perpetuates the continued use of erroneous data and misinformed opinion.

NEPA Requirements – Social and Economic Studies

BLM has not presented a serious study of the social and economic impacts of the proposal as required by the provisions of the National Environmental Policy Act. The DPEIS contains discussion about the generic social effects of a boom and bust economic cycle, but does not contain a countervailing discussion of the social effects of limited and reasonable economic growth. The DPEIS discusses the history of oil shale development twenty years ago, but includes no discussion concerning current energy needs, the current pricing structure for oil and gas, and the corresponding ability of oil shale and tar sand operations to continue to contribute a larger share of a healthy economy in the eastern part of Utah, and for the state as a whole. The discussions in the DPEIS generically concerning boom and bust economic cycles, without any discussion of reasonable economic growth alternatives demonstrates the agency's bias against development of oil shale and tar sands.

The DPEIS must to include a discussion of the entire market process for creation of a viable oil shale and tar sands industry, including its role in the regulatory certainty needed to

[10] See page 2-38, DPEIS.

attract venture capital. The State of Utah expects the BLM to be an active partner in the marketing of opportunities to diversify the domestic production of the nation's energy needs, not hang its institutional head claiming ignorance of real world market realities.

BLM needs to revisit the analysis of socioeconomic impacts in the DPEIS and present additional analysis of the opportunities to encourage a viable oil shale and tar sands market. BLM has the resources and the expertise to evaluate the reasonable effects of simple mining and retort operations. BLM should immediately communicate with industry to determine the needs for certainty and about reasonable development opportunities. The state knows that if BLM delineates reasonable requirements for resource development, industry will participate. There is clear evidence that industry is engaging in oil shale and tar sands development in Utah. Based on past experience with oil shale and tar sands development on state and private lands in Utah, growth will be measured and moderate, which is a viable alternative to the boom and bust scenarios presented in the DPEIS.

The State of Utah understands the value of a balanced economy, and values the contributions of tourism to the state's economy. However, BLM must not assume that tourism is the only possible contributor to a stable economy in the Uintah Basin and elsewhere in Utah. BLM must recognize and analyze studies which demonstrate the value of oil and gas to the Uintah Basin, and examine the benefits the oil shale and tar sands industry could bring to providing a stable and robust economy in the area. BLM must examine the contributions of tourism, oil and gas, government and other existing industries in the area, then analyze the value that a moderate growth oil shale and tar sands industry might add to that by bringing additional diversity to the area's economy.

BLM must also not falsely assume that a viable tourism industry is put at risk by oil shale production in the Uintah Basin. This is not to say that BLM should not discuss tourism and outdoor recreation as part of a significant economic evaluation – it should. But BLM must also evaluate wages from the tourism industry against those of the energy industry and evaluate the prospects for employment, revenue and community stability based on those figures.

Other Economic Studies - Examples:

The state contracted with Utah State University and the University of Utah to complete a number of economic and social-attitude studies regarding the use of and values attributed to public land resources by Utah residents. These studies assess: general attitudes of the citizens toward the public lands, off-highway vehicle use on public lands, grazing on public lands, and economic impacts of oil and gas exploration and production. Below are short summaries of a number of these studies, which are available on the state's website.

A statewide survey of the residents of Utah, the *Utah Public Lands Study*, was conducted in the summer of 2007 by Utah State University. One focus of the survey involved assessing various ways in which residents engage in economic activities that are linked to public lands and resources. Other major purposes involved assessing attitudes toward public lands as part of the residents' quality of life and sense of community, and assessing attitudes and preferences regarding public land management.

Preliminary results from the *Utah Recreational Off-Highway Vehicle Use Study* conducted by Utah State University show OHV use becoming increasingly popular, but the number of trips taken per year declining. Recreational activities that OHV users participate in are diverse, including both passive (sightseeing and photography) and active (camping and hiking). Rider motivation includes stress relief and nature appreciation, along with achievement, stimulation, independence and socialization with others. The study also shows economic impacts broken out by direct and total impact to Duchesne, Uintah and Daggett counties as well as by regional gross output, employment, household income, and value-added income. A "Random Utility Model" will be used to measure change in the allocation of trips across counties, measure change in the total number of trips taken by Utah OHV users, measure change in economic value accruing to OHV users and generate trip-distribution information for use in economic impact modeling. Full results will be made available upon completion of the study.

The Utah State University study, *Trend Information for the Vernal RMP: Livestock Industry Issues* indicates that the trend in livestock grazing preference and authorized use in the Vernal Field Office Planning Area is downward. The permitted AUM level proposed in the Draft RMP Preferred Alternative is a reduction of 8,323 AUMs, a 5.7 percent reduction in preference from the current level. This reflects a reduction of 15,376 AUMs, (10 percent) from the level 16 years ago.

The Bureau of Economic and Business Research at the University of Utah has completed an economic impact study of the oil and gas exploration and production industry in the Uinta Basin titled *The Structure and Economic Impact of Utah's Oil and Gas Exploration and Production Industry: Phase I - the Uinta Basin*. The Phase I study shows that rapidly rising energy prices and the corresponding rise in oil and gas activity are causing an economic boom in the Uinta Basin. During 2006, the oil and gas exploration and production industry was directly responsible for 19.9 percent of employment and 34.8 percent of total wages in the Uinta Basin, while those figures rose to 49.1 percent of the employment and 60 percent of the wages in the Basin when the indirect (multiplier) effects were considered. The industry also has a sizeable fiscal impact on local governments in the Uinta Basin. Property taxes paid on producing oil and gas wells were $18.2 million in 2006 and accounted for 38.7 percent of all property taxes paid in the two counties.

Required Further Analysis Requested by the State:

These studies, and other similar work, should be discussed as part of the examination of the social and economic structure of the area influenced by the upcoming oil shale and tar sands mining activities. Only after such consideration can the BLM make reasoned analysis of the economic impacts of the required leasing program. BLM must not make decisions which may influence the structure and robust nature of local and state economies without an examination of the ability and desire of the local economy to face the challenges raised by the proposal. The DPEIS focuses almost entirely on the perceived perils of a boom and bust cycle. This is pejorative and misleading, and does not reflect a serious attempt to analyze the potential contributions, both positive and negative, from the proposed leasing program. BLM must step back, and redo the social and economic analysis with these factors in mind. Failure to do so

violates the provisions of NEPA requiring analysis of the social and economic impacts of a proposal to the same degree as the environmental analysis.

Support for the Mission of SITLA

Utah's School and Institutional Trust Lands Administration (SITLA) is an independent state agency responsible by law for management of lands granted to the State of Utah pursuant to the Utah Enabling Act, (Act of July 17, 1894, 28 Stat. 109), for the financial support of Utah's public schools and other state institutions. The United States Supreme Court has referred to this Enabling Act land grant as a "solemn compact" between the United States and the State of Utah that obligates the United States to take into consideration the purposes of the grant when managing federal lands.

The State of Utah is obligated by both the Utah Enabling Act and the Utah Constitution to act as a trustee in managing school trust lands. Among the fiduciary duties imposed by this trust on SITLA is the duty to manage trust lands in the most prudent and profitable manner possible, and not for any purpose inconsistent with the best interest of the trust beneficiaries. Revenues from school trust lands are deposited in the Permanent School Fund, a permanent endowment for public education. Interest and dividends from the Permanent School Fund are distributed to individual public schools statewide annually to supplement critical academic needs.

SITLA manages lands within the boundaries of the BLM Field Offices under discussion in the DPEIS. Most of these state trust lands are comprised of numbered sections 2, 16, 32 and 36 in each township, representing the grant of in-place school sections made by the Utah Enabling Act; however it also includes lands acquired from the federal government in a land exchanges. The significance of the checkerboard pattern of land ownership is that because most trust lands are surrounded by BLM lands, planning decisions made by BLM with respect to rights-of-way, withdrawals from mineral leasing, special designations (e.g. ACECs, management for wilderness characteristics, etc.) and other determinations inherently impact the state trust lands, making them an island within the surrounding BLM lands. BLM's decisions on how to manage its lands directly affect the ability of the State of Utah to manage state trust lands for the purposes for which they were granted by Congress, which was to provide revenue for public schools and other beneficiary institutions. BLM management is an issue of significant impact to Utah's school trust. For example, lands within the Vernal Field Office make up approximately 13 percent of Utah's total surface trust land portfolio.

Conversely, management by SITLA of state trust lands within BLM areas of special designations can directly affect the ability of BLM to achieve management objectives. SITLA is not obligated by law, for example, to manage its lands within BLM areas managed for wilderness characteristics or ACECs for environmental protection. SITLA development of inholdings consistent with SITLA's governing mandate may substantially defeat the purpose of the special designation.

Request of the State for Further Study

BLM has an obligation to include in its planning an effective and timely means of addressing the impact of federal land actions on in-held state trust lands. BLM must engage in a serious study of its need to support the purposes of the grant of lands to the state for the support of the common schools. Specifically, the BLM needs to rework the DPEIS to include effects of the lack of a leasing program upon the ability of the state, through SITLA, to expect a robust leasing program for oil shale and tar sands and the related expectation of revenue.

In addition, the DPEIS addresses the requirements of Section 369(n) of the Energy Policy Act of 2005(EPACT), Public Law 109-58, only in a cursory manner. Section 369(n) provides in relevant part:

> (n) LAND EXCHANGES.
> (1) IN GENERAL. To facilitate the recovery of oil shale and tar sands, especially in areas where Federal, State, and private lands are intermingled, the Secretary shall consider the use of land exchanges where appropriate and feasible to consolidate land ownership and mineral interests into manageable areas.
> (2) IDENTIFICATION AND PRIORITY OF PUBLIC LANDS. The Secretary shall identify public lands containing deposits of oil shale or tar sands within the …Uintah…basin…, and shall give priority to implementing land exchanges within those basins…..

At page 1-6, lines 32-34, the PEIS states that the decision in the 2008 ROD that "the specific decision that the BLM will consider and give priority to the use of land exchanges to facilitate commercial oil shale development pursuant to Section 369(n) of the Energy Policy Act of 2005" will be carried forward through this planning process. This statement should be clarified to confirm that, pursuant to the EPACT 369(n) directive, BLM lands that are not made available for commercial leasing will nonetheless be available for state exchange, subject to other applicable laws applicable to federal-state land exchanges.

Consistency with State Law, Plans and Policies

The State of Utah is extremely supportive of the consistency review requirement, as provided in federal law (43 U.S.C. § 1712(c)(9)) and regulation (43 C.F.R. § 1610.3-2). Pursuant to this regulation, RMPs shall be

> *consistent with officially approved or adopted resource-related plans, and the policies and procedures contained therein, of ... State and local governments, ... so long as the ... [RMPs] are also consistent with the purposes, policies and programs of Federal laws and regulations applicable to public lands.*

BLM correctly notes this requirement, but then qualifies the requirement to be that of consistency with state and local plans, where possible.[11] The DPEIS also discusses the plans of the City of Rifle for economic development, and mentions that the final Record of Decision should consider consistency with the City's plans.[12] The state certainly believes that BLM

[11] Section 1.4.5, Page 1-21.
[12] Id.

should consider the views of the City of Rifle, but more accurately consider consistency with state and local plans, policies and programs as demonstrated to BLM through the Governor's consistency review.

As an explanation for the idea that BLM need only be consistent with state and local laws, plans, policies and programs, the BLM previously provided an interpretation of the consistency requirement.[13] BLM stated that the "RMP … [must] be … consistent … to the maximum extent possible by law and [that] inconsistencies between Federal and non-Federal Government plans be resolved to the extent practical."[14] The BLM thereafter defined an inconsistency as anything that "cannot be resolved or reconciled where state and local plans conflict with federal law." The state strongly asserts that this interpretation does not fully recognize nuances of the consistency requirement, especially involving discretionary planning decisions of the BLM.

The state recognizes that federal law requires certain decisions and establishes parameters within which those decisions can be made. However, the BLM retains considerable discretion within these legal sideboards. State and local governments cannot demand that BLM act outside these sideboards, but when state and local governments' policies pertain to areas within BLM's lawful discretionary decision space, BLM is obligated to make its plans consistent with state and local policies to the maximum extent possible. Thus, it is inappropriate to dismiss state recommendations that fall within BLM's legally prescribed discretion simply because BLM disagrees with the balance struck by the state. To assume that BLM's discretionary choices constitute federal law has the immediate effect of determining that state plans, programs and policies which strike a different balance yet accomplish the same purpose as the BLM's choice are, a priori, in conflict with federal law. Instead, the state asserts that if its recommendations strike a slightly different balance between competing resource demands and this balance is within BLM's lawful discretionary decision space, the BLM must endeavor to make its final decision consistent with state and local government policies.

Request of the State:

The State of Utah provided a consistency review just prior to the 2008 oil shale and tar sands Record of Decision. The state indicated the decision was generally consistent with state law, policy, plans and procedures. Within the decision space laid out by the alternatives within the DPEIS, the no-action alternative, i.e. the status quo, would remain consistent with state and local plans. Other alternatives may not be. Fundamentally, the decision space allowed BLM in this matter is limited. EPACT 2005 requires the creation of a commercial leasing program for oil shale and tar sands within 18 months of enactment. The State of Utah supports this, and found the efforts of BLM in 2008 to be consistent with its laws, plans, policies and procedures. The state is not asking the BLM to step outside the law in retaining the status quo, and BLM has not demonstrated any information which would require a decision different from that made by BLM in 2008. Therefore, the BLM can easily accommodate the state's request that the Record

[13] See generally the 2008 RMP efforts.
[14] Vernal RMP EIS, p. 5-17

of Decision in the current analysis reflect consistency with the state's position. BLM should simply adopt the no action alternative at this time.

The BLM Relies on Outdated Information on Oil Shale and Tar Sands Resources in Utah

Although the BLM cites the U.S. Geological Survey reassessment of oil shale resources in Colorado, Utah, and Wyoming as one important reason for reevaluating the allocation decisions in the 2008 PEIS, the BLM did not use this new information in its analysis of the most geologically prospective resources. The DPEIS simply carries forward the data used for the 2008 PEIS. The 2012 PEIS would greatly benefit from the incorporation of new USGS resource assessments and new oil shale data resource data published by the Utah Geological Survey in 2008.

This omission of new data is extremely troubling and calls into question both the validity of BLM's allocation decisions and whether the BLM took the requisite hard look for purposes of NEPA. Despite its insistence that updated geological assessments were important for improved allocation decisions in the 2012 PEIS, the BLM instead demonstrates an almost total disregard for this new information. For example, the BLM relied on digital data provided by the BLM Utah State Office rather than data from USGS or UGS.[15] Oil shale data for the 25 foot thick, 25 gallon per ton resource standard used in the 2008 PEIS came primarily from older reports focusing on the southeastern part of the Uinta Basin. Newer USGS and UGS studies include complete data sets spanning the entire Uinta Basin.[16]

The DPEIS states that "(t)he BLM considered this new (USGS) information and has determined that while the new data should inform and update the 2012 PEIS effort, particularly with respect to information pertaining to the 2008 study area, the boundaries defining the in-place assessment do not represent the most geologically prospective areas of the Green River Formation located in the…Uinta…Basin…(T)he PEIS will not employ the USGS boundary to define the study area."[17] The BLM discusses at some length why it did not consider the increases found for estimated total in-place oil in the Piceance Basin USGS Oil Shale assessment,[18] but fails to justify why similar assessments for the Uinta and Green River Basins were not incorporated.

The BLM does not include reference citations in the text, map, or table identifying the geologically most prospective areas in Utah for oil shale;[19] however, UGS is certain the data described comes from preliminary information provided by the agency for the 2008 PEIS and does not reflect updated information developed by either UGS or the USGS. The DPEIS references Tabet (2007) as the source of oil shale and tar sand resource data for oil shale lands in

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[15] Draft PEIS, Chapter 1, 1.2, pg. 1-10, footnote 4.

[16] Vanden Berg, 2008; UGS Special Study 128; USGS 2010b, *Oil Shale Resources of the Uinta Basin, Utah and Colorado*, National Oil and Gas Assessment Project, Digital Data Series DDS-69-BB.

[17] Draft PEIS, Chapter 2, 2.5.1, pg. 2-77.

[18] The BLM quoted the assessment as saying "much of this previously unassessed resource is of low grade and unlikely to be developed." *Id.*

[19] Draft PEIS, Chapter 2, 2.3, pp. 2-13 to 2-16.

Utah.[20] These references to information provided by a UGS senior geologist in 2007 confirms that the resource data used for the 2012 DPEIS came from information provided by the agency for the 2008 PEIS. This information, as even the BLM acknowledges, is out-of-date and been replaced by information from more recent UGS and USGS resource assessments.

It is disturbing that the BLM employed few people with geological and mining engineering backgrounds in the analysis of the most geologically prospective areas for the 2012 DPEIS.[21] It appears that the BLM chose to update the resource picture without the assistance of suitably trained personnel. The only geologist employed in the current effort evaluated paleontological resources, not OSTS resources. This demonstrates a biased reevaluation by BLM of the issues and impacts from OSTS leasing. It also violates the NEPA requirement that insures "environmental information is available to public officials and citizens before decisions are made and before actions are taken. The information must be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA." (emphasis added) [22]

The Draft PEIS Fails to Adequately Analyze Oil Shale Technologies

The DPEIS relies heavily on outdated information regarding oil shale and tar sands development technologies and in doing so, fails to provide the kind of comprehensive information required by NEPA for proper decision making.

CEQ regulations are quite clear about the standards required under NEPA for EISs. According to Sec.1500.1 (b)

"…information must be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA."

Because an EIS is used to plan actions and make decisions and must be supported by evidence that the agency has made the necessary environmental analyses,[23] it must contain the most accurate, up-to-date information available. Based on our extensive discussions with oil shale and tar sands industries, the DPEIS is clearly deficient and shows little to no coordination with industry. This may be a product of the backgrounds of the DPEIS contributors, where there is no evidence of industry or development background.

The BLM admits that "some of the information on the environmental consequences of oil shale development…is based on past oil shale developments. For purpose of this analysis, in the absence of more specific information of the oil shale technologies to be implemented in the future and the environmental consequences of implementing those technologies, information derived from other types of development… was used."[24] (emphasis added).

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[20] *Id.*, 2.3.1, pg. 2-20, footnote 4: Appendix A references.
[21] Draft PEIS, Chapter 8.
[22] 40 CFR 1500.1.
[23] 40 CFR §1502.1.
[24] Draft PEIS, Chapter 4, pg. 4-1.

Consultation and coordination with industry by the BLM is critical to the effective and unbiased analysis of the environmental consequences as well the economic benefits of oil shale and tar sands development. Based upon the previous decisions of the BLM, companies have invested hundreds of millions of private capital in technology, permitting, construction, and processing of oil shale and tar sands. The willingness of the state and private landowners to encourage this development in Utah has produced a highly sophisticated, successful, privately funded and well-capitalized oil shale and tar-sands industry in the state.

The BLM qualifies its analysis of oil shale and tar sands technologies by stating that the information on these technologies is presented for the purposes of general understanding and doesn't define the range of possible technologies that might emerge in the coming years.[25] This reflects a lack of due diligence on the part of the BLM. There is information available on newer, cutting-edge technologies that have moved from the RD&D phase into commercial scale development. BLM's reliance on outdated or general descriptions of the technology and its environmental impacts when there is ample information available on the newest developments in the industry contravenes NEPA's implementation requirements for EISs.[26] Appendix A references six oil shale projects in Utah from the late 1960s-the mid 1980s and cites these projects as a "wealth of resource, engineering, and baseline environmental data that will be useful in future efforts to develop oil shale resources."[27] While past experience may be useful for the analysis of the impacts of oil shale technologies, it is also important to include analysis of the innovative technologies currently in use that seek to resolve some of the environmental concerns raised by these earlier projects. Relying on technological examples in any industry (e.g. computing for example) from years back simply does not meet the requirement of NEPA to consider the best information available.. This is true especially in the oil shale and tar sands industries present in Utah.

An examination of Chapters 4 and 5 of the PEIS, along with the accompanying references, shows that the BLM did little research on newer technologies and did not make personal contact or mention any coordination witha single representative from industry. This is troubling to the state, since the Preferred Alternative relies on proven success through RD&D projects before allocating additional lease lands. A willingness to communicate and work effectively with industry will be critical under any of the alternatives, but especially under an RD&D driven alternative.

For example, BLM's analysis of the EcoShale™ In-Capsule Technology developed by Red Leaf Resources was based solely on information derived from Red Leaf's website.[28] Employing a team of researchers devoted to addressing reasons to exclude lands from commercial development while limiting technology and industry research to an effective 'google search' demonstrates BLM's fundamental incapability to work with industry.

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[25] *Ibid.*

[26] 40 CFR §1502.2 (g) *"Environmental Impact Statements shall serve as the means of assessing the environmental impact of proposed agency actions, rather than justifying decisions already made."*

[27] DPEIS Appendix A, pg. A-21.

[28] *Ibid.*, A.5.3.7, pg. A-87.

A second example is the information regarding the development of Enefit's RD&D lease at the White River Mine. This DPEIS relies heavily on findings from a 2007 EA for OSEC's proposed development activities at the same site. The only update BLM provides for the purpose of its analysis is that Enefit will employ its own version of the proposed underground mining and aboveground retort technologies based on its Enefit280 plant under construction in Estonia.[29] BLM provided no comparative analysis between the Enefit280 process and the ATP retort process the agency evaluated for the purposes of the 2007 EA. It also fails to mention that the Enefit280 plant is possible only due to the commercial success of Enefit's parent company producing energy from oil shale since before 1950. Framing Enefit's successes and technology as "Enefit280 plant under construction" further shows BLM's bias and active efforts to portray the industry as nascent while in fact it has been functioning successfully and economically outside of the country. This demonstrates that the leading reason that oil shale and tar sands have not been proven commercially is due to the efforts and bias of BLM; not the lack of technology as BLM asserts.

The Utah Division of Oil, Gas and Mining (DOGM) recently granted Red Leaf a permit to begin commercial scale oil shale production in the Uintah Basin. Following a successful pilot test of its EcoShale technology, the company will commence oil shale operations on 1,500 acres in the Uintah Basin on state owned school trust lands. Enefit American Oil, a subsidiary of an Estonian energy company with 50 years of experience commercially producing energy from oil shale, acquired the Utah-based Oil Shale Exploration Company (OSEC) in March of 2011. Eesti Energia, the parent company of Enefit, recently announced it will conduct a commercial study of the application of its Enefit retort process to operations at the White River Mine.

These companies report that their new technology uses less water and result in fewer environmental impacts than the process technologies of the 1980s. For example, the EcoShale technology utilizes low temperatures for heating and does not require process water. The Enefit140 retort process, currently in use in its Estonian facilities and the predecessor to the Enefit280, uses no water, runs on organic waste, and emits significantly lower CO2 emissions.[30] While the BLM acknowledges that these two companies are planning commercial production in the Uintah Basin in the near future, BLM fails to examine these technologies in any detail or evaluate their assertions of reduced environmental impacts. The agency instead relies on assumptions based on old data.[31]

This omission is serious. According to regulations for the implementation of NEPA:

> *"If a draft statement is so inadequate as to preclude meaningful analysis, the agency shall prepare and circulate a revised draft of the appropriate portion."*[32]

BLM's failure to include any kind of meaningful consideration of current oil shale and tar sand technologies and their environmental impacts is a serious breach of its responsibility to provide thorough, unbiased analyses in its EISs. CEQ regulations are very clear that EISs shall

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[29] *Ibid*, A.5.3.34, pg. A-75.
[30] https://www.energia.ee/en/oil/oilandgas/enefit140
[31] *Ibid*, Chapter 4, 4.1, pg. 4-2.
[32] 40 CFR 1502.9(a).

serve as the means for assessing the environmental impact of proposed agency actions, rather than justifying decisions already made.

The state strongly supports the development of oil shale and tar sands resources and recognizes the significant contribution this development will provide Utah's economy. Utah contains some of the richest oil shale reserves in the world. Unconventional fuels such as oil shale and tar sands are an important component of Governor Gary Herbert's 10-year Strategic Energy Plan for the state.[33] Energy development attracts new jobs, capital investment, and economic development opportunities for the state.

Information gathered by the Utah Office of Energy Development (OED) bears this out. Enefit has invested over $100 million dollars to bring its commercially proven technology to Utah[34] and has indicated it will invest more if given the opportunity to develop resources on public lands. Questerre Energy Corporation recently signed a letter of intent to invest $40 million in Red Leaf and their EcoShale In-Capsule technology, citing the success of the Utah pilot project.[35] As recent as April 2012, the major French Oil Company Total entered into a $200 million Joint Venture with RedLeaf to further commercial scale operations.[36] In March of 2012, the Uintah Transportation Special Service District awarded a $9 million asphalt paving contract to surface the first 17 miles of a road to the Uintah-Grand County line with Plant Mixed Oil Sand Asphalt (PMOSA), a heated blend of Uintah county aggregate and tar sands. Additional paving contracts using PMOSA demonstrate a growing commercial demand for tar sands.

OED also performed an informal survey of companies who had either previously invested in oil shale and tar sands development or had indicated a strong interest in doing so in the future. Survey results showed that 99.7% of the investment dollars represented in the survey believed that the primary impediment to developing oil shale and tar sands was uncertainty surrounding access to BLM lands, ranking overwhelmingly higher than lack of technology, capital, or access to state or private lands. With over $190 million of recent (< 5 year) investment and over $930,000,000 of planned (5< year) investment represented in the survey, OED calculates that implementing the Preferred Alternative, with its RD&D emphasis and limited acreage available for leasing, would prevent approximately $3.26 billion dollars in investment in the state for oil shale and tar sands development.

Availability of Water
Supposition vs. Fact

The characterization of water resource use in the DPEIS study area lacks the clarity necessary to satisfy the requirements of NEPA, which stipulates that "statements shall be concise, clear, and to the point."[37] Broad statements and the confusing application of water use

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[33] Energy Initiatives and Imperatives: *Utah's 10-Year Stratgic Energy Plan*, pg. 14.

[34] https://www.energia.ee/-/doc/10187/pdf/concern/Interim_report_2011_Q3_eng.pdf

[35] "Red Leaf Resources Get Green Light for Oil Shale Project in Utah", April 5, 2012, http://www.centerwest.org/publications/oilshale/7new/?p=450

[36] http://www.marketwatch.com/story/red-leaf-resources-inc-total-ep-usa-oil-shale-llc-announce-a-joint-venture-for-oil-shale-production-project-2012-04-18, *Red Leaf Resources, Inc & Total E&P USA Oil Shale, LLC announce a joint venture for oil shale production project,* Marketwatch website accessed 5/1/2012.

[37] 40 CFR § 1502.1.

terms cloud and complicate the analysis. The state asserts BLM's data lacks the necessary confidence to properly evaluate the impact of oil shale and tar sands on water allocations under the Upper Colorado River Basin Compact, given the lack of clarity contained in the agency's descriptions of water availability and usage.

The BLM describes water use in the Colorado River Basin as "highly developed, allocated, and regulated."[38] This sentence is misleading. Although the statement is true for the lower-basin states, it misrepresents conditions along the main stem of the Green and Colorado Rivers in Utah. None of the Upper Basin States have developed all of their Colorado River Compact water, with the possible exception of New Mexico. Utah has yet to deplete or consume roughly 300,000 acre-feet of its approximately 1.37 million acre-feet of water under the Colorado River Compact, as evidenced by BLM's own table included in the DPEIS.[39]

The BLM should make it clear in its discussion of water allocation under the Compact that the 6 million acre feet of water available both physically and under the provisions of the Compact is the quantity of water the Upper Basin States may deplete or consume. [40]

While the BLM defines the terms "diversion" and "consumptive use" in the DPEIS, it does not define the term "demand." It appears the BLM uses the term synonymously with diversion, which is not correct. Since the BLM does not provide a definition of "demand," the use projections on two of the tables are misleading[41] and conclusions regarding supply and demand are faulty.[42]

The Utah Water Demand Table (3.4.1-3) shows the projected 2020 and 2050 demand will be greater than the 23% allocation of 6 million acre-feet available for the Upper Colorado River Basin under the compact.[43] Without a definition of supply or demand, this comparison is meaningless. The 6 million acre feet of water available for the upper basin states is not a limitation on diversion or demand, but rather a limitation on the allowable depletion or consumption. Statements regarding water use [44] make it appear that there is no water available to develop in the Upper Basin states. Utah has not fully used its allocation of the Colorado River Compact and, as the BLM indicates in its 2030 projections, even if consumptive uses are on the high end, Utah will still have a 268,425 acre-foot surplus for consumptive use.[45]

The BLM Uses Outdated Assumptions Regarding Water Usage for Oil Shale and Tar Sands Development

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[38] Draft PEIS Chapter 3, 3.4, pg. 3-61.
[39] *Ibid.* Table 3.4.1-3, pg. 3-67.
[40] *Ibid.* 3.4.1.1, pg. 3-61.
[41] *Ibid.*, Tables 3.4-1-2 and 3.4.1-3, pp. 3-67-3.72.
[42] *Ibid.* pp. 3-73, 3-74, 3-75.
[43] *Footnote "j", Ibid.*, pg. 3-70.
[44] *Ibid.* pg. 3-73.
[45] *Ibid.*, Table 3.4.1-2, pg. 3-67.

The BLM states that 'although a certain amount of water is calculated to be available in…Utah…, this does not imply that the water is readily or physically available for development."[46] Supporting statements include:

- Oil shale basins and STSAs are situated in areas much smaller than the Upper Colorado
- Hydrologic basin on which water availability was calculated
- Storage and capture infrastructure may not be available in oil shale basins and STSAs
- Developers would have to acquire water rights either through transfer or purchase, since most of the water has been claimed
- Water use would be regulated under a number of state and federal regulations, as well as instream flow requirements to protect endangered fish[47]

These broad statements would apply to most water use in the Upper Colorado Basin and should not be used as justification for wholesale dismissal of water availability for oil shale and tar sands development.

In its discussion of water use for oil shale development, the BLM bases its assumptions on outdated information.[48] Its assessment assumes 2.6 to 4.0 bbl of water per barrel of oil for surface mining with a surface retort and underground mines with surface retorts and 1 to 3 bbl of water for in situ projects. Current technology utilizes 1 to 1.5 barrels of water per barrel of oil. New technologies do not use water for the actual extraction of the oil from the shale but primarily for dust control.

Recently permitted oil shale operations in Utah use considerably less water than the BLM assumes for purposes of the PEIS. According to Red Leaf's permit "most water will be consumed for construction of the process capsules and for dust control. The EcoShale InCapsule process itself is a net producer of water."[49] Red Leaf's petroleum removal process extracts water from the oil shale. Removed as water vapor, condensed, recovered and then put to use in mining operations, this process water will supply approximately one third of the total project water demand. All water captured, recovered, or withdrawn for use on the project is to be used on site.[50] The DPEIS assumption of 1-3bbl water/bbl oil produced for a 30,000-50,000bbl/day in situ plant does not take into account the different water requirements for Red Leaf's mining technology.[51]

Enefit's retorting process itself does not require water, although water is needed for cooling, upgrading, power production, and dust control.[52] In considering the impacts to water resources from Enefit's White River Mine, the BLM references its 2007 EA for OSEC's proposed mining operations at the mine site.[53] Water requirements for the OSEC operations,

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[46] *Ibid.*, pp. 3-74 and 3-75.
[47] *Ibid.*, pg. 3-75
[48] Draft PEIS, Chapter 4, 4.5.1.2, pg. 4-33.
[49] Utah Division of Oil, Gas, and Mining. Red Leaf Large Mining Operation Application, Appendix K. Approved March 14, 2012.
[50] *Ibid.*
[51] Draft DPEIS, Chapter 4, Table 4.5.2-1, pg. 4-43.
[52] https://www.enefit.com/en/oil/projects/usa
[53] Draft PEIS, Appendix A, A.5.3.4.3, pg. A-79.

based on the use of an ATP retort, are likely not comparable to those proposed by Enefit and again shows that BLM has failed to cooperate and discuss these vital issues with industry. The state strongly suggests that BLM cooperates with industry and again asserts that the DPEIS is deficient without these efforts.

The anticipated decline in available Colorado River water is based in part on the development of water for oil shale and tar sands development.[54] This decline appears to be based on the water requirements of older technologies and should be revised accordingly.

The BLM appears to believe that water is only available through retiring agriculture water rights.[55] In Utah currently, there are approved water right applications totaling well in excess of 10,000 acre-feet of water for the express purpose of developing oil shale and tar sands.

The assumptions regarding likely water sources for tar sands development on Asphalt Ridge are flawed.[56] Water in the Green River, which flows past the southern tip of Asphalt Ridge, is available for use. Until recently, there was an approved application to divert water from the Green River for tars sands development at Asphalt Ridge. The application is held by the Uintah Water Conservancy District, which plans tar sands development as a future use for the application.

The DPEIS Does Not Fulfill the Requirements of a Commercial Leasing Program as Required by the Energy Policy Act of 2005

Section 369 of the Energy Policy Act of 2005 (EPACT) states "not later than 18 months after the date of enactment of this Act… the Secretary (of Interior) shall complete a programmatic environmental impact statement for a commercial leasing program for oil shale and tar sands resources on public lands, with emphasis on the most geologically prospective lands within each of the States of Colorado, Utah, and Wyoming."[57] Like the 2008 PEIS before it, the 2012 Oil Shale Tar Sands PEIS seeks to simply identify lands "available for application for leasing" rather than completing an analysis that would make lands available for commercial leasing. The DPEIS, contrary to the intent of Congress in EPACT, does not actually designate lands available for commercial leasing or establish the necessary guidelines or regulations for a commercial oil shale and tar sands leasing program by the BLM. The Preferred Alternative, in fact, takes a step backwards, constraining commercial leasing by:

- excluding large swaths of geologically prospective lands from application for leasing;
- demanding unnecessary, burdensome NEPA analyses that go beyond those required for conventional oil and gas and surface mining leasing programs; and
- predicating commercial leasing on the successful application of oil shale technology through an RD&D leasing program.

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[54] Draft PEIS, Chapter 4, 4.5.2.2, pg. 4-48.
[55] Draft PEIS, Chapter 4, pg 4-34-4.35; Chapter 5, 5.5.1.2, pg 5-27..
[56] Draft PEIS, Chapter 5, 5.5.2.2.1, pg 5-37.
[57] Public Law 109-58, "Oil Shale, Tar Sands, and Other Strategic and Unconventional Fuels Act of 2005," Section 369 (d)

Geologically Prospective Lands Excluded From Application For Leasing

The Preferred Alternative removes geologically prospective lands due to perceived conflicts with sage grouse core or priority habitat and lands with wilderness characteristics (LWCs). While the Settlement Agreement ("Agreement") [58] between the BLM and environmental plaintiffs that resulted in the revision of the 2008 PEIS ROD required the BLM to analyze the environmental effects of an alternative that excluded these lands from oil shale and tar sands leasing, the Agreement did NOT require the BLM to select this alternative. As discussed above, BLM's analysis of these two factors is replete with errors in fact and policy. In fact, in light of the requirements of EPACT, the Preferred Alternative nullifies the intent of Congress to establish a commercial leasing program.

Unnecessary, Burdensome NEPA Analyses That Go Beyond Those Required For Conventional Oil And Gas And Surface Mining Leasing Programs

The BLM treats oil shale and tar sands leasing differently than oil and gas leasing and coal leasing by requiring additional levels of analysis before commencing commercial leasing. The agency states "it anticipates, to the best of its knowledge, that the surface disturbing activities involved with other types of mineral development are comparable to those that may result from oil shale and tar sands development."[59] It also says that it anticipates that oil shale development will proceed in a three-step decision-making process similar to that used for federal on shore oil and gas.[60] Then it turns around and says that due to the experimental nature of oil shale and tar sands technologies, the BLM believes the stages of NEPA compliance will be different from oil and gas. It goes on to explain that "(i)f and when applications to lease are received and accepted, the BLM will conduct additional required analyses, including consideration of direct, indirect, and cumulative effects, reasonable alternatives, and possible mitigation measures, as well as assessment of level of development that may be anticipated. (Based on this analysis of future lease applications), the BLM will establish general lease stipulations and best management practices" for oil shale and tar sands leasing and development.[61]

These extra levels of environmental analyses are unnecessary and place an undue burden on companies wishing to develop oil shale and tar sands resources. The proposed process is so cumbersome and fraught with uncertainty that few companies could afford to secure investment and dedicate capital resources to development efforts, especially given the added possibility of additional delays due to protests or legal challenges. This lengthy process defeats the intent of EPACT to construct a commercial leasing program, a program originally scheduled to be in place by 2011.

There are adequate federal and state regulations to deal with the impacts of oil shale and tar sands operation that protect water quality, air quality, and other resource values. Oil shale and tar sand developments involve well-defined, basic extraction, processing, and upgrading

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[58] Civil Action No. 09-cv-00085-JLK, February 15, 2011.
[59] Draft PEIS, Chapter 4, pg. 4-1.
[60] . Draft PEIS, Executive Summary, pg. ES-5.
[61] *Id.*

techniques that have been in use in Australia, Brazil, Canada, China, Estonia, and Ireland. Oil shale and tar sands enjoy commercial success in Canada and Estonia and have been produced there successfully for many years. Similar extraction and production technologies have undergone RD&D testing in the United States since the 1960s. The impacts from developing these resources should not require further BLM analysis or research to understand the environmental impacts of oil shale and tar sands before leasing can take place.

Oil shale and tar sand leasing and associated development activities have occurred on Utah state lands for many years. These operations have proceeded in a manner that provides adequate protection of the environment under state regulatory programs sanctioned by the Office of Surface Mining (OSM) and the Environmental Protection Agency (EPA). The BLM gives no reason why similar activities, safeguarded by the same level of environmental protection, could not be carried out on federal lands absent further NEPA or BLM analysis. The BLM correctly states that it would have ample opportunities to assess the impacts of OSTS development plans with further "NEPA analysis and other appropriate review" "before approval of a lease and subsequent plan of development on a lease."[62] More RD&D and NEPA analysis is not needed now or before BLM proceeds to a commercial OSTS leasing program.

Commercial Leasing Predicated On the Successful Application Of Oil Shale Technology Through An RD&D Leasing Program

The BLM declares in the Preferred Alternative that the agency "would like to maintain focus on RD&D projects."[63] This is not the mandate of EPACT, which was to proceed to commercial leasing. Congress did not ask the BLM to determine whether it wished to have commercial leasing or not. As was stated before, a number of companies have initiated pilot projects on state and private lands in Utah for years. One company, Red Leaf, is confident that its technology will lead to oil shale production on a commercial scale. It requested and received a permit from the Utah Division of Oil, Gas, and Mining (UDOGM) to proceed with commercial operations. The justification for seeking more RD& D data is not valid in the case of oil shale companies who might seek federal leases in Utah.

BLM's RD&D Leasing Program

The BLM declares in the Preferred Alternative that the agency "would like to maintain focus on RD&D projects."[64] The state finds this unacceptable, as the previous RD&D Leasing Program was not only excessively burdensome, but not economically attractive and, as a result, effectively killed interest in development of oil shale and oil sands on BLM land. As an example, the first round of RD&D leases offered more than 5,000 acres for commercial development if a technology was deemed 'worthy' by BLM. The second round decreased the amount 'awarded' to RD&D lease applicants to less than 700 acres, as well as increased the administrative oversight and bureaucratic burden. Quite simply, 700 acres is not enough area for a successful commercial

[62] Draft PEIS, Chapter1, pg. 1-1.
[63] Draft PEIS, Executive Summary, pg. ES-9.
[64] Draft PEIS, Executive Summary, pg. ES-9.

project, as evidenced by the examples throughout these comment. In addition, BLM placed approximately 50% of Enefit's preferential lease area as 'off-limits' to development despite having identified this as an area which should be awarded to the RD&D lease holder.

This is a clear example of the disregard for the realities faced by industry and shows that BLM is not truly interested in understanding the requirements of a successful oil shale industry. A simple coordination with industry during the DPEIS process would have borne this out, but BLM showed no effort in this regard. The result is massive regulatory uncertainty that shadows the industry and prevents successful economic development. It is further evidence that the reason that there is less commercial success in the United States is not due to lack of technology, as asserted in the DPEIS; instead it is due to the regulatory uncertainty created by efforts like this DPEIS.

BLM's Deal With Plaintiffs In The Settlement Agreement Is At Variance With The Requirements Of EPACT

The BLM in many ways abrogated its responsibilities under EPACT when it signed the Settlement Agreement. The Agreement prohibited the BLM from issuing a call for expression of leasing interest for oil shale or offer lands for competitive tar sands leasing or expressions of interest in tar sands leasing prior to January 15, 2013,[65] well after the December 2012 deadline for issuance of an ROD. This defeated the stated purpose behind the original 2008 PEIS for establishing a commercial leasing program. The Agreement effectively precluded consideration of areas of interest to industry for the purposes of the 2012 PEIS while at the same time giving disproportionate weight to "nominations" of areas precluded from oil shale and tar sands leasing by environmental interests. This turns the intent of EPACT on its head.

The labyrinthine process created in this DPEIS makes it nearly impossible for companies to develop oil shale resources on public lands. How can interested parties make applications for commercial leasing of oil shale in the absence of a commercial leasing program? If BLM delays further oil shale leasing analyses until companies nominate lands for leasing and BLM has no mechanism to allow companies to nominate lands for leasing, it is difficult to see how there can be commercial level oil shale leasing.

This is troubling for a number of reasons. NEPA requires agencies to assess the direct and indirect effects of a proposed action.[66] It also requires analysis of the cumulative impacts of a proposed action.[67] The BLM proposes to complete the analyses for areas nominated for commercial OSTS leasing after the ROD. Since this information is critical to an informed decision on the allocation of lands available for leasing and should be considered in the DPEIS, the BLM effectively signed away its statutory responsibility to properly analyze a major federal action that required an EIS under NEPA when it entered into the Settlement Agreement.[68]

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[65] Civil Action No. 09-cv-00085-JLK, 12, February 15, 2011.
[66] 40 CFR 1508.8.
[67] 40 CFR 1508.7
[68] See 40 CFR 1508.18 (b) (3) as it applies to adoption of a program to implement a specific statutory program, specifically EPACT.

In contrast, the BLM incorporates information related to lands with wilderness characteristics inventoried over five years ago. It proposes to include priority areas for sage grouse in its lands for exclusion from leasing with no supporting evidence for the selection of these core areas. Yet it fails to consider current evidence of interest in lease areas; in fact, it prevents the consideration of this interest. The level of interest in oil shale and tar sands lease areas has a direct and indirect effect on oil shale development. Denial of consideration of industry interest has cumulative impacts both on the development oil shale and tar sands technologies as well as the implementation of a commercial oil shale tar sands leasing program.

The Agreement did not require the BLM to predicate its leasing program on nominations of lands for leasing, nor did it prevent the BLM from establishing a commercial leasing program subsequent to the January 2013 date. Its selection of the Preferred Alternative indicates that the BLM did not seriously consider other options.

By entering into an Agreement that effectively foreclosed the opportunity for industry to express an interest in prospective areas or nominate appropriate areas for leasing prior to a ROD on the FPEIS and creating a situation in which the agency claimed it could not even consider such areas for the purposes of analysis in the DPEIS, the BLM :

- Violates the express provisions of EPACT to establish a commercial leasing program for oil shale and tar sands; and
- Violates NEPA by segmenting issues to a degree that it is impossible for the agency to take the requisite hard look at the environmental impacts of a commercial leasing program.

Segmentation of Issues Violates NEPA and Contravenes Intent of EPACT

The BLM cannot properly analyze the impacts from oil shale and tar sands leasing because the agency has failed to:

- consider expressions of interest in oil shale and tar sands areas
- establish royalties, fees, rentals, bonus, and other payments for leases
- consider the support and interest in Utah for the development of oil shale and tar sands resources
- establish a program to facilitate land exchanges to consolidate land ownership and mineral interests into manageable areas.[69]

These actions are not only required by EPACT, they are necessary elements of a commercial leasing program. The 2008 PEIS provided the environmental analysis required by EPACT for a commercial leasing program, with the assumption that within a carefully prescribed time period the other critical components of the program would be in place. Four years later, these critical pieces remain in a state of flux.

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[69] Public Law 109-58, "Oil Shale, Tar Sands, and Other Strategic and Unconventional Fuels Act of 2005," Section 369 (e), (n), (o).

Consider expressions of interest in oil shale and tar sands areas

This was discussed at length earlier.

Establish royalties, fees, rentals, bonus, and other payments for leases

A recent oil shale rulemaking agreement[70] allows the BLM to change royalty rates for oil shale and tar sands leases, with the notice of proposed rulemaking (NPR) due out after the DPEIS comment period closes. The BLM states that "determining commercial royalty rates"[71] is outside the scope of the congressional requirements of EPACT for the BLM's programmatic analysis for a commercial OSTS leasing program. By removing and replacing the current royalty rate and creating even greater uncertainty for industry, the BLM, as it did with the Settlement Agreement, chose to further erode the formation of a commercial oil shale and gas leasing program,

Consider the support and interest in Utah for the development of oil shale and tar sands resources

The BLM acknowledges that state interest in leasing is relevant, stating "it has been suggested by one of the cooperating agencies, and seconded by others, that BLM develop an alternative that would allow for larger scale leasing and development in Utah and Wyoming where the majority of the cooperators support a program that makes more federal oil shale and tar sands resources available for application for future leasing, while limiting development in Colorado, where the majority of cooperators favor a more cautious approach to leasing and development."[72] Governor Herbert has made it quite clear that Utah favors this approach.[73] However, The BLM dramatically reduced the acreage of lands allocated as available for leasing in Utah in the Preferred Alternative in apparent conflict with the high interest demonstrated by the state for increasing oil shale and tar sands development.

Establish a program to facilitate land exchanges to consolidate land ownership and mineral interests into manageable areas

The BLM admits it has no plans in place for land exchanges. The DPEIS contains no discussion of the ways BLM might facilitate such exchanges, either through requests for nominations for lands to exchange, determination of which federal lands are available for exchange, extra staff and budgets to identify and expedite proposed exchange opportunities, or streamlined NEPA and land resource appraisals to foster quicker exchanges. The DPEIS simply avoids the subject by claiming that "the possible locations for such future exchanges are unknown at this time."[74] Deferring or avoiding the identification of lands available for future exchange does nothing to move the BLM forward in facilitating or giving priority to land exchanges as required by EPACT.

The 2012 DPEIS was an ideal opportunity to remedy the lack of coordinated consideration of the cumulative impacts of these components on a commercial leasing program. Instead, the DPEIS segments these elements, removing them from even initial consideration, and

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[70] Civil Action No.-09-cv-00091-JLK
[71] Draft PEIS, Chapter 1, pg. 1-13.
[72] Draft PEIS, 2.4.4, pg. 2-76.
[73] Utah Energy Initiative: A 10 Year Strategic Energy Plan, Pg. 7.
[74] Draft PEIS, Chapter 1, pg. 1-12.

cites the agency's self-imposed inability to weigh these essential factors as justification for scaling back the lands available for leasing even further than it did in the 2008 PEIS. By excluding these significant aspects of a commercial leasing program from analysis in the DPEIS, the BLM fails to properly examine the full range of impacts from oil shale and tar sands leasing as required by NEPA, and has improperly segmented the analysis of the proposal.

BLM Overstates the Amount of Land Truly Available for Leasing

BLM overstates the availability oil shale lands by failing to discuss the potential for conflicting known uses. Much of the land proposed for availability for oil shale leasing is already leased for oil and gas, and projects are planned to develop those resources. It is nearly impossible for both developments to occur on the same piece of land. The discussion in the DPEIS does not adequately reflect the true status of lands available for oil shale development because of existing proposals The BLM uses out-of-date (pre-2005) information and grossly underestimates levels of oil and gas drilling in the Book Cliffs area.[75] The DPEIS must be rewritten to discuss the conflict with oil and gas operations, discuss the minimal amount of lands available as a result for oil shale leasing in Utah in the next 20 years.

The DPEIS also needs to discuss making a suitable amount of lands available for oil shale and tar sands leasing in the face of the oil and gas development. As discussed above, the oil shale industry is ready to proceed, and the BLM must provide enough resource to allow this industry to flourish. Allowing this will reduce our reliance on foreign oil, create jobs and bring significant economic development to every state involved. The state suggests modifying the definition of the most geologically prospective oil shale lands in Utah to include resources to a depth of 3000 feet.

Conclusion

The State of Utah appreciates the opportunity to work with the BLM on the development of active oil shale and tar sands industries in Utah, and stands ready to rework the DPEIS in order to do so. Specifically, we request that the BLM prepare the analyses requested by the state and local governments in Utah, and issue a Supplemental Environmental Impact Statement which discloses these new analyses to public scrutiny under the provisions of NEPA. The state also urgently requests the BLM to immediately request further time to complete these analyses from the Court, for the reason that the tight time frame originally set out has proven too narrow to meet the provision of substantive federal law. The state offers to support the BLM in this request.

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[75] Utah Division of Oil, Gas, and Mining drilling statistics by county for Duchesne and Uintah Counties for the years 2008 through 2011 give an average annual rate of 264 oil wells in Duchesne County (Diamond Mountain area) and 88 oil wells and 410 gas wells in Uintah County (Book Cliffs area). Using these updated average annual drilling rate figures for 20 years, rather than the incorrect 15 year planning level presented in Table 6.1.6-5, provides estimates of 5280 oil wells in Duchesne County (versus BLM's 76 oil wells) and 1760 oil and 8200 gas wells in Uintah County (versus BLM's 62 oil and 143 gas wells) as the expected amount over a 20-year planning horizon. Attachment A1, Section 6, Current Crude Source, pg A-109, needs to be revised to reflect current information on oil production levels, which have increased significantly in the last few years. For example, Utah is currently producing at least 57 to 58,000 barrels per day compared to the 43,000 barrels per day depicted in Figure 8. The discussion of PADD 4 does not reflect the new pipeline connecting Salt Lake City, Utah to the Las Vegas, Nevada market.

The State of Utah also respectfully formally informs BLM, pursuant to the terms of EPACT 2005, that it will not be bound by the artificial timeline set out in the Settlement Agreement providing that the amendments to the existing oil shale regulations will be offered for public comment on or about May 15, 2012, after the comment period on the DPEIS has closed. The BLM is required by EPACT 2005 to consider the views of the Governors of the states involved, and is required to consider the effects of the land allocation decisions and the regulatory structure simultaneously as part of those consultations. The land allocation decisions and the leasing and royalty structure are part and parcel of the total leasing program envisioned by EPACT 2005. The state will not allow the law which created these consultation requirements to be artificially segmented by actions of the BLM and non-governmental parties, no matter the forum employed by BLM to create this improper segmentation. The state will be offering the BLM substantive comment about the connection between the land allocation information in the DPEIS and the soon-to-be-announced new regulatory structure. The state will require the BLM to consider any such comments as part of the record in the final decision concerning the Record of Decision based upon the current DPEIS.

The State of Utah strongly supports the work done by the BLM which culminated in the 2008 Records of Decision, and will actively and vigorously oppose any amendments or other changes to those decisions. The state specifically requests the BLM to consider the other alternatives within the DPEIS in light of the rush to poor analysis occasioned by the ill-conceived timeline set out in the Settlement Agreement, and determine that more time is necessary for BLM to obtain sufficient information to make a reasoned decision. In light of the need for further information and analysis, and the need for a Supplemental EIS to provide this information to the public for review. Fundamentally, the state requests that BLM simply choose the No-action alternative, and affirm the earlier work.

Thank you for the opportunity to work with you to improve the land in Utah, and to provide for a healthy economy. Additional comment is attached as an Addendum and Technical Comments. Please feel free to contact myself for any further information that you may need.

Sincerely,

Kathleen Clarke
Director

Addendum To State of Utah Comments

Environmental Permit Requirements

Air Quality

The state is heavily engaged in studies designed to identify potential adverse impacts on regional haze and winter ozone levels in the Uintah Basin. The state objects to the conclusory statements drawn from generalized information. The DPEIS indicates that PM2.5 and ozone could rise above acceptable levels in the Uintah Basin if oil shale and tar sands development begins on a commercial scale.

The DPEIS, however, contains some pro forma references to state and federal regulatory means for addressing air quality issues, particularly in the Uintah Basin, that lack the specificity required for informed decision-making. Annual emission inventory for criteria pollutants and VOCs for counties is ten years old76. UDAQ recommends updating the emissions to most current available inventory.

Utah Division of Air Quality urges the BLM to identify best management practices (BMPs) for the reduction of PM, NOx, and VOC emissions from oil shale and tar sands operations. The Division also requests that BLM consider the cooperative efforts currently underway statewide and regionally to tackle the challenges presented by wintertime ozone. The results of these studies and cooperative partnerships are important for BLM's decision-making process on the allocation of areas available for oil shale tar sands leasing and should be part of the DPEIS analysis.

Regulatory Mechanisms

A Memorandum of Understanding (MOU) signed by the Department of Agriculture, Department of the Interior, and the Environmental Protection Agency on June 23, 2011, committed the signatory agencies to a clearly defined, efficient approach to compliance with NEPA regarding air quality and air quality values (AQRVs) in connection with oil and gas development on federal lands. 77 The MOU established procedures for assessing impacts related to NAAQs and AQRVs. The DPEIS referenced the MOU for GHG emissions78 but failed to do the same for other criteria pollutants.

According to Section V.D. of the MOU79,

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[76] Draft PEIS, Chapter 3, 3.52, pp. 3-105-107.

[77] *Memorandum Of Understanding Among The U.S. Department Of Agriculture, U.S. Department Of The Interior, And U.S. Environmental Protection Agency, Regarding Air Quality Analyses And Mitigation For Federal Oil And Gas Decisions Through The National Environmental Policy Act Process.*

[78] Draft PEIS, Chapter 4, 4-6.1.1.1, pg. 4-57.

[79] *Memorandum of Understanding, pg. 9.*

> *"...the Lead Agency (BLM) will complete and document supporting air quality and AQRVs analyses prior to (f)ederal oil and gas planning, leasing, or field development decisions." (emphasis added)*

These air quality and AQRVs analyses should incorporate the most current data. The county annual emissions inventory data cited in the DPEIS is ten years old. The Utah 2008 Statewide Emission Inventory contains the latest data and is available on the UDAQ web site at: http://www.airquality.utah.gov/Planning/Emission-Inventory/2008_State/08_State_List.htm.

The state summary, last updated in November 2010, categorizes emissions for the six criteria pollutants by area source, non-road mobile, on-road mobile, point source, biogenics and wildfires: (http://www.deq.utah.gov/search_results.htm?cx=003215417047777185873%3Asg4mqgvgk-m&q=2008+emissions+inventory+county&cof=FORID%3A9.

The inventory includes detailed annual emissions from point sources in each county (http://www.airquality.utah.gov/Planning/Emission-Inventory/2008_State/2008_FormB_CountyDetails112210.pdf) as well as from area sources (http://www.airquality.utah.gov/Planning/Emission-Inventory/2008_State/2008_Area_revised113010.pdf).

UDAQ has pointed out this omission in previous comments. According to the MOU80, early in the NEPA process the lead agency will discuss with the agencies:

- information about the affected environment to include in the baseline assessment;
- methodology, assumptions, and scale of the analyses; and
- monitoring protocols and mitigation

The BLM has yet to include this important information in its air quality impact analysis. UDAQ requests the BLM update its data and utilize the 2008 emission inventory in its analysis for the DPEIS.

Monitored concentrations representative of the study area81 reference concentration levels for PM10, PM2.5, and SO_2 from monitors in surrounding states, specifically the Grand Junction CO Powell Station and Rock Springs, WY station. Data from these monitors, located at some distance from oil shale/tar sands resources in Utah, do not provide the necessary specificity for an accurate accounting of emission levels in the Uintah Basin. UDAQ, through its 2012 Winter Ozone Study, is collecting air quality data from 20 fixed, distributed monitoring stations in the Basin and two air quality "super sites" in Roosevelt and Horsepool. Three permanent monitors in Fruitland, Roosevelt, and Vernal supply regional air quality information. Data from these sites should be considered in any analysis of air quality in the study area.

About 75% of all PM2.5 found on UDAQ's monitoring filters is created by secondary particulate formation, which occurs when precursor emissions, usually NOx, SOx, and VOC,

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[80] *Ibid.*

[81] Draft PEIS, Chapter 3, Table 3.5.3-2, pp. 3-112-113.

react in the atmosphere to form PM2.5. Oil and gas operations emit precursor gases that contribute to the formation of PM2.5 and oil shale development would likely do the same.

UDAQ recommends the BLM utilize the data from the aforementioned monitoring stations located in the Basin, incorporate this data into the FPEIS, and consider it in its Record of Decision. Any impact assessment for air quality from oil shale and tar sands development should contain the available emissions data from the Uintah Basin 2012 Ozone Study (see below). The preliminary results from this study, scheduled for release in July, will provide a more comprehensive picture of air quality conditions in the Basin. Given the challenges facing the Basin with ozone and PM2.5, the BLM should utilize the most up-to-date air quality information to make informed decisions on oil shale lease allocation decisions.

In addition, UDAQ requests the BLM reference the MOU Appendix "Modeling Approaches to Evaluate Air Quality for NEPA Decisions Regarding Federal Oil and Gas" in support of the requirements of Section V.D. The Reusable Modeling Framework (RMF) contained in the Appendix recommends that

> *"(f)or future emissions, projections should be made from the base year to 10-15 years forward to examine the potential for maximum growth in the planning area."*

Emissions projections will apprise the BLM of potential air quality issues associated with commercial scale oil shale development and should be part of the air quality analyses for lease allocation decision-making.

Best Management Practices

Normally, the state uses the New Source Review (NSR) program to regulate oil and gas emissions, with sources subject to Best Available Control Technology (BACT) review, modeling, and public comment before receiving a permit. To qualify for NSR, sources must meet a minimum threshold of emissions—5 tons per year of any criteria pollutant, less than 500 pounds per year of any single hazardous air pollutant, or less than 2,000 pounds per year of combined hazardous air pollutants. If the source emits less than the threshold they fall outside of NSR regulations (de minimis emissions).

In the Basin, many of the oil and gas emission sources, including wellheads and tanks, do not meet the NSR threshold and are not regulated.82 RD&D oil shale projects will probably also not meet this NSR threshold. UDAQ and its partners in the Basin are working with stakeholders to determine the feasibility of other regulatory measures for sources that fall outside of NSR to establish better pollution controls for smaller sources.

Emissions that fall within this de minimis exemption could include fugitive dust from mine operations, products of combustion including SOx, NOx, CO, CO2, and VOC from oil processing and handling equipment.

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[82] UAC R307-413-2.

Proposed National Environmental Standards for Hazardous Air Pollutants or NESHAPS regulations on oil and gas sources83 could significantly lower emissions, particularly from VOC sources. These VOC reduction methods include the use of low bleed pneumatic controllers, wet seals on centrifugal compressors, rod packing replacement for reciprocating compressors, and the use of vapor recovery units on storage tanks. Use of these controls could prove crucial to protecting Basin air quality while allowing for resource development.

We have included suggested oil shale development BMPs for fugitive dust, VOCs, and combustion engines These BMPs include management practices for emissions from current oil shale development projects. The BMPs cited do not represent the full complement available for emissions reduction.

Fugitive Dust

Blasting

- Stabilize surface soils where drills, support equipment, and vehicles will operate
- Pre-water and maintain surface soils in a stabilized condition
- Apply and maintain a chemical stabilizer on surface soils
- Stabilize soil during blast preparation activities
- Limit the blast footprint to no larger than what can be practically stabilized immediately following the blast
- Maintain surface rock and vegetation where possible to reduce exposure of disturbed soil to wind
- Stabilize soil after blasting
- Water disturbed soils to form crust immediately following blast and safety clearance

Clearing

- Stabilize surface soils where support equipment and vehicles will operate
- Pre-water and maintain surface soils in a stabilized condition or,
- Apply and maintain a chemical stabilizer on surface soils
- Stabilize disturbed soil immediately after clearing and grubbing activities
- Water disturbed soils to form crust, or
- Apply and maintain a chemical stabilizer on disturbed soils to form crust.
- Stabilize slopes at completion of activity
- Stabilize sloping surfaces using soil binders until vegetation or groundcover can effectively stabilize the slope
- Apply water and maintain sloping surfaces/wind breaks in crusted conditions

Additional Ongoing Measures

- Water unpaved roads periodically or apply chemical stabilizers
- Remove dust-forming debris from roads promptly and scrape and compact unpaved roads frequently to stabilize the road surface
- Restrict the speed of vehicles in and around the mining operation
- Revegetate, mulch, or otherwise stabilize the surface of all areas adjoining roads that are a source of fugitive dust

[83] 76 FR 52738, Tuesday August 23, 2011.

- Restrict the travel of vehicles on other than established roads
- Enclose, cover, water, or otherwise treat loaded haul trucks to minimize loss of material to wind and spillage
- Substitute conveyor systems for haul trucks and cover conveyor systems when conveyed loads are subject to wind erosion
- Minimize the area of disturbed land
- Revegetate lands promptly
- Plant special windbreak vegetation at critical points in the permit area
- Control dust using water sprays, hoods, dust collectors or other controls
- Reduce the period of time between initially disturbing the soil and revegetating or other surface stabilization
- Restrict fugitive dust at spoil transfer and loading points
- Control dust from shale storage piles through use of enclosures, covers, or stabilization

Combustion Engines

Require the following emission standards for stationary internal combustion engines:

- 2 g/bhp-hr of NOx for engines less than 300 horsepower
- 1 g/bhp-hr of NOx for engines over 300 horsepower.

Control emissions from engines utilizing Best Available Control Technology (BACT) such as lean-burn technology, catalysts, air/fuel ratio controllers or other technologies

Schedule proper maintenance and upkeep of vehicles to ensure optimal functioning of engines

Volatile Organic Compounds

- Use vapor control systems on tank breathing vents, with vapors routed to condensers and/or combustion for tanks larger than a certain capacity84 is if the material has a true vapor pressure greater than 5.2 kPa. This is equal to 5.2 bar, 0.05 atmospheres, or 0.76 psig.
- Conduct regular leak detection using a VOC detection device and repair all process connections in VOC service
- Ensure regular maintenance of tanks, roof seals, hatch seals, and tank loading process connections
- Replace safety relief valves less than 48 hours after use
- Operate thief hatches in the locked position at all times when the tank itself is not being actively maintained
- Discourage the use of surface evaporation impoundments to receive produced wastewater
- Use pneumatic controllers with a no bleed or low bleed design

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[84] 40 CFR 60 Subpart Kb

Studies and Partnerships

UDAQ is currently involved in several studies to address the problem of wintertime ozone in the Uintah Basin. Stakeholders from the oil and gas industry, federal land management agencies (including the BLM), several western states, and the EPA have joined forces to identify the causes of winter ozone and formulate mitigation strategies.

In 2009 and 2010, monitors showed that concentrations of both PM2.5 and ozone were at or near the current state and national standards. The EPA and the Ute indian Tribe have four monitoring stations in the Uintah Basin: Myton, White Rocks, Ouray, and Red Wash. In the winter of 2010, ozone levels reached a high 8-hour value of 139 ppm during inversion conditions, nearly twice the national health standard. UDAQ wintering monitoring studies for 2007, 2008, and 2009 have shown that , under inversion conditions, PM2.5 concentrations are at or above the standard and can be as high as those seen along the Wasatch Front. Due to low snow cover this winter, in 2012 ozone levels did not exceed these standards. However, UDAQ anticipates that under normal snow cover conditions in the Basin, ozone levels will rise above this standard during wintertime inversions.

The Uintah Basin 2012 Winter Ozone Study was a comprehensive study of the atmospheric chemistry and precursor gases that form wintertime ozone in the Basin. The study was by far the largest and most complex air quality study ever conducted in Utah. The nearly $3 million effort was funded by a number of agencies, including the Uintah Basin Impact Mitigation Special Service District, Western Energy Alliance, BLM's Utah Office, and EPA Region 8. Cooperative research work was undertaken by atmospheric research partners from USU, NOAA's Chemical Sciences and Global Monitoring Divisions, University of Colorado's Institute of Arctic and Alpine Research, DAQ, EPA, BLM, and local oil and gas producing members of the Western Energy Alliance.

Study components included:

- Basin-wide ozone and precursor measurements to determine spatial extent of the problem.
- Long-term monitoring of ozone and key precursors at two "super sites"—Roosevelt and Horse Pool—to provide baseline trend information against which energy production increases and mitigation work can be evaluated.
- Intensive atmospheric chemistry studies to understand the chemical pathways and determine limiting formation precursors.
- Development of a complete, detailed inventory of emissions sources in the Basin, including information on location, operation, and pollutants emitted.

Preliminary results and conclusions are scheduled for release in July 2012. The goal of the study is to develop a conceptual model of wintertime ozone formation in the basin and identify appropriate and effective air pollution mitigation strategies. While the lack of snow this winter hindered efforts to analyze the photochemical reaction of sunlight on snow that seems to leads to ozone production, the emissions inventory component of the study was still important. The emissions inventory identified source emitters, emission rates, and emissions characteristics.

Source specific measurements located areas of high concentrations for precursor gases. This data will not only aid in identifying the location, level, and spatial representation of ozone and its precursors in the Basin, but will also assist in the development of mitigation measures and strategies for emissions reductions in areas where high levels of ozone have been detected.

Utah, Colorado, and Wyoming, the EPA, the BLM, and the U.S. Forest Service are participants in a pilot project called the Three-State Study. The project will provide a regional assessment of air quality conditions by focusing on the impacts from oil and gas development. Leasing allocation decisions in the DPEIS for oil shale and tar sands will be located in these three states and the findings from this project on air quality issues in the Uintah Basin will have bearing on oil shale development in the area.

Specifically, the pilot project focuses on the flowing activities:

- Expanding air quality monitoring to establish baseline conditions, track trends, and evaluate model performance;
- Creating a data warehouse to store, manage, and share data among state and federal agencies, industry, and their contractors to support modeling of air pollutants; and
- Performing regional scale air quality modeling of current and projected conditions.

UDAQ has also established an Oil and Gas Air Quality Partnership to evaluate the impacts of oil and gas development on air quality and determine the best approaches for managing the Uintah Basin air shed. UDAQ will include oil shale development in this effort. Representatives from the following agencies are involved in the partnership:

Anadarko Petroleum
Bill Barrett Corporation
Bureau of Land Management
Duchesne County Commission
ECO Resources
Energy Dynamics Lab
Environmental Protection Agency
GASCO
McVehil Associates
Newfield Exploration
QEP
Questar
Red Leaf Resources
Rocky Mountain Power
SITLA
Tri-County Health Department
Uintah County Commission
Uintah Impact Mitigation SSD
Utah Cooperatives
Utah Department of Environmental Quality
Utah Division of Air Quality
Utah Governor's Office
Utah Petroleum Association
Ute Energy
Western Energy Alliance

These collaborative efforts demonstrate the willingness of parties involved in resource development in the Basin to work cooperatively in search of solutions. These partnerships and the resulting development of air quality mitigation strategies will have a direct bearing on the resource use decisions contained in the DPEIS and should be given thorough consideration.

Water Quality

Surface Water Quality

In Utah, oil shale reserves are located primarily in the Green River Formation within the Colorado River drainage. Surface waters in the Uintah Basin are known for high salinity. Several rivers located in the area are listed on Utah's 303(d) list of impaired water bodies for high salinity (total dissolved solids, or TDS) at levels that do not protect for agricultural uses.

When pollutants impair the use of water a study is required to determine how to reduce them and restore water quality. This study is known as a Total Maximum Daily Load (TMDL). A TMDL establishes the maximum amount of a pollutant allowed in the water while maintaining all of its designated beneficial uses. Several water quality studies have been conducted in the Colorado drainage that address the reduction of pollutants like salinity and the restoration of water quality. A full list of approved TMDL's for this area of Utah is located online at or by request from the Division of Water Quality.

The development of oil shale and tar sands as described in the DPEIS will have impacts on the Bitter Creek and Willow Creek watersheds, which will have to be addressed. Willow Creek is on the 2010 Utah 303(d) list of Impaired Waters for biological degradation based upon macro invertebrate data. Bitter Creek frequently exceeds numeric water quality standards for both TDS (>1,200 mg/l) and boron (>750 ug/l). Currently, the main source of TDS and boron in the Uintah Basin is from the erosion of weathered rock. The BLM should consider and, wherever possible, control for actions that could potentially increase either TDS or boron concentrations in the surrounding surface waters.

Oil shale development can potentially cause impacts to surface water quality through:

- Erosion;
- Withdrawal of water for operations; and
- Discharge of water used in operations

Ground disturbance activities (erosion) can degrade surface water through drainage from prepared sites, which can contribute sediment, salts, and possibly chemicals and oil shale products into receiving streams. Typically, DWQ minimizes the degradation to surface water from ground disturbance activities through stormwater permits. However, mining activities are exempt from this requirement unless the water comes into direct contact with tailings. The BLM should evaluate the potential for water-tailings contact. In the event a permit is not required for oil shale projects, DWQ recommends the development of a detailed plan that minimizes stormwater influence on surface waters and a monitoring program that measures the effectiveness of mitigation measures. A voluntary mitigation plan would demonstrate a commitment by project developers to sustainable development and would provide necessary data for future expansions.

Withdrawal of groundwater during mining operations can potentially affect surface water quality. Significant decreases in groundwater aquifers can result in a corresponding decrease in

inputs to streams or lakes. Such decreases would likely increase stream temperature and Dissolved Oxygen (DO), which could have damaging effects on fish and other wildlife.

It is frequently difficult or impossible to contain all of the groundwater withdrawn for mining operations, which necessitates a Utah Point Source Discharge Elimination System (UPDES) permit.

Groundwater Permits

Groundwater conditions in the southern Uintah Basin are poorly known because the area has not been exploited for groundwater historically and the predominance of fine-grained sedimentary rocks in the area is not favorable to containing groundwater in aquifers. Aquifers controlled by the stratigraphy are present, mainly in the subsurface. The Douglas Creek and Bird's Nest aquifers are good examples of these types of aquifers.

These aquifers will become increasingly important as the area is developed for oil shale and tar sands operations. Isolated aquifers and zones of saturation such as PR Spring may be locally important sources of water. Oil shale and tar sands operators should, as part of their mine development activities, prepare an inventory of springs and seeps near their proposed operation and note occurrences of groundwater in exploratory drill holes and water wells. Operators should take samples from these sources to determine background groundwater quality and class.

When ongoing monitoring or other reporting is necessary to ensure groundwater protection, the permittee and DWQ will develop and mutually agree upon permit conditions. A draft version of the permit will be made available to the public for a 30-day comment period, and after resolution of concerns raised during this comment permit, a final permit will be issued.

Groundwater Discharge Permits

The Utah Ground Water Quality Protection Rules (UAC R317-6) allow DWQ to protect Utah's groundwater resources by issuing ground water discharge permits. The rules require facilities that have the potential to cause a discharge of pollutants to groundwater to apply for a ground water discharge permit. These facilities include mining and milling operations with waste management units such as tailings impoundments and waste storage piles. This requirement ensures that oil shale and tar sands facilities that have the potential to impact groundwater resources are regulated by the state to minimize or prevent degradation of groundwater quality.

Groundwater discharge permits require site-specific characterization of the proposed facility including depth to ground water, hydraulic gradient, ground water flow direction, and pre-operational background ground water quality.

The two primary components of a groundwater discharge permit are best available technology and groundwater monitoring. Best available technology minimizes the discharge of contaminants from the waste source by applying control and containment technologies such as liners, leak detection systems, leak collection systems, and pump-back systems. Groundwater

quality monitoring in compliance wells measures the actual effect of the facility operations on groundwater quality. The rules utilize federal drinking water maximum contaminant levels as groundwater quality standards. Permit-specific protection levels are percentages of the standards based on the site- or well-specific Groundwater Class (i.e., the better the ground water quality, the more stringent the protection level). If practical, based on depth to groundwater, compliance monitoring wells are used to provide an early warning of contamination. This allows time to implement corrective actions well before beneficial uses are adversely affected. Permit conditions can also address the discharge of subsurface water affected by a permitted facility that may become a nonpoint source of pollutants to surface water.

In some cases, after review of the material submitted in a groundwater discharge permit application, DWQ may conclude that the project qualifies for permit-by-rule status, if it has *de minimus* effect on water quality or if other regulatory programs insure protection of water resources.

Technical Comments

Preamble, Page xxiii, line 15:

Insert "SITLA" as an acronym for "School and Institutional Trust Lands Administration (Utah)"

ES. 6.3, page ES-6, lines 28-29:

Core or priority sage grouse habitat, as defined by such guidance as the BLM or DOI may issue" has not been determined. DOI and BLM have committed to defer to state-level determinations of what constitutes such habitat. These processes are ongoing. As more fully set forth in the body of these comments: (1) the State and its constituent agencies cannot adequately comment on the proposed alternatives until the extent of such habitat is determined; and (2) the PEIS appears to be based on maps of such habitat that have not been themselves released for public comment or reviewed under NEPA.

Chapter 1, Page 1-13, lines 32-37:

It is erroneous to exclude oil shale regulations and national policy from the scope of the PEIS. BLM is obligated to follow the law in its analysis. EPACT 2005 explicitly makes development of oil shale resources a national policy priority. The PEIS needs to include a detailed analysis of the relationship between each alternative and national policy as expressed in EPACT. Similarly, determination of commercial royalty rates should not be excluded from the scope of the PEIS. Depending on the level at which such rates are set, the range of foreseeable development of oil shale resources will vary greatly. The analysis of each alternative should include analysis of development scenarios under various royalty rates, or else be delayed until royalty rates are determined, and then analyzed.

Chapter 1, page 1-20, ll. 20-23:

The PEIS states that BLM has not received any new information since the 2008 OST PEIS and ROD concerning the environmental consequences of commercial oil shale development. There is a wealth of public information that is available and should be considered. These include multiple reports prepared on behalf of the U.S. Department of Energy by the University of Utah's Institute for Clean and Secure Energy on environmental, resource and socioeconomic consequences of unconventional fuel development in the subject area, prepared in response to Section 369 of EPACT. Significant information is also available with respect to development of oil shale and tar sands on state trust lands in Utah, notably in the form of public files for mine permitting on file with the Utah Division of Oil, Gas and Mining and the Utah Division of Water Quality. The DPEIS must be revised to take into account each of these sources of information.

Chapter 2, Page 2-13, ll. 10-24.:

As noted in the body of the state's letter, the PEIS should confirm that just because BLM lands are withheld from competitive leasing does not disqualify the lands from conveyance to the State by land exchange in accordance with Section 369(n) of EPACT, other exchange authority, or state indemnity selection.

This section of the PEIS should also be reworded to discuss how BLM will follow Congress' mandatory directive in Section 369(n) of EPACT that it will give priority to land exchanges. As currently draft, the PEIS notes the directive, and then devotes most discussion to why BLM will have problems with doing so. The PEIS should reflect that by law such exchanges are to be a priority. The PEIS should also note the environmental benefits of land exchanges, including protection of natural values and other resources on state trust lands through conveyance to the United States.

This section of the PEIS also needs to be supplemented to reflect legal alternatives to an appraisal process in concluding land exchanges. Existing BLM land exchange regulations state:

> *In the absence of current market information reliably supporting value, the authorized officer may use other acceptable and commonly recognized methods to determine market value: 43 C.F.R. 2201.3-2(c).*

This language has been used as the basis for multiple oil shale land exchanges between BLM and Utah on the basis of ton-for-ton conveyance of oil shale, adjusted for energy content, without necessity of appraisal. Similarly, the Utah Recreation Land Exchange Act of 2009, Pub. L. 111-53, contains language for transfer of federal oil shale land to the State without appraisal, based on BLM reserving an interest in future oil shale production from the lands equal to 50% of bonuses and rentals, and BLM's royalty share, less preexisting mineral revenue sharing obligations to the State. See H. Rep. 111-79 at 6-7 (analysis of section 3(f)). Proposed

legislation now pending in Congress as H.R. 4027 contains similar language with respect to mineral valuation. The PEIS should recognize these authorities.

Chapter 4: Effects of Oil Shale Technologies
Table 4.1.1-1 Assumptions Associated with a Surface Mine with Surface Retort, page 4-3.

This table needs further explanation of the data presented to improve clarity. For example, the "(f)ootprint of development area (acres)" for Wyoming and Utah should give a number based on a time frame (per/yr) as is done with "water use," rather than the vague footnote explanation that it is the disturbance at any given time. The factor listed for "surface disturbance" is a larger number of acres than one could assume is the cumulative life of mine disturbance and it would be helpful to have the number in the table labeled as cumulative rather than having the reader refer to the footnote for extra clarification. The "wastewater" factor is provided on a gal/ton basis, but the table does not contain any data on the annual or cumulative number of tons produced. Such data would make this number meaningful in relation to the other factors provided. The wastewater factor should be in gallons per year, or ac-ft /yr, or gallons per barrel of oil produced in order to be meaningful. The "total employment" factor is not the sum of the direct and indirect employment factors and there is no explanation of how the BLM derived total employment from direct and indirect sources.

Table 4.1.2-1 Assumptions Associated with an Underground Mine with Surface Retort, page 4-8.

This table suffers from the same lack of clarity in data presented as mentioned for Table 4.1.1-1.

Table 4.1.3-1 Assumptions Associated with an In Situ Retort Project, page 4-11

This table suffers from the same lack of clarity in the data presented as mention for Table 4.1.1-1.

4.1.6 Expansion of Electricity-Generating Capacity, page 4-13

This section mainly refers to the high electricity need for in situ projects proposed for Colorado, and does not differentiate that from the lower power need for the mine and retort technologies proposed in Utah. Specifically, this section does not reflect that ENEFIT and Red Leaf assertion that their operation will supply nearly all their own project energy needs from the retorting process. In addition, the first paragraph incorrectly states that definitive information about the power requirements of commercial oil shale development is not available. This is not the case with the ENEFIT technology. BLM's analysis is faulty because it does not include specific information about ENEFIT and Red Leaf technologies, which are both poised for commercial development in Utah.

4.2.1.2 Acquisition, Conversion, or Transfer of Water Rights, page 4-19

This section only discusses water rights in Colorado, not in Utah or Wyoming. The ENEFIT project acquisition included water rights. The DPEIS needs a more complete and balanced discussion about water rights for all three states.

4.5 Water Resources, starting page 4-31

The discussion in this section and various subsections tends to use relative terms like "large" and "small" without defining what is meant quantitatively by such terms. For example, on page 4-33 under Water Use, on line 41, the PEIS states that "A large amount of water is required during the operations phase." Subsequent sentences give actual numerical ranges of water use, but nowhere is the term "large" actually defined. Likewise, on page 4-39, the last sentence EIS states that "(a) relatively large water-quality impact is expected in areas where population growth is large and the receiving water is small." The PEIS should define such relative terms in quantitative terms.

4.9.1.4.2 Power Generation Facilities, page 4-152

This section relies on outdated information that anticipates new power generation coming from coal-fired power plants. Pending carbon management legislation and a surge of new domestic natural gas supplies means new power plants in Utah would likely be gas-fired. This assumption of coal-fired power generation and any associated analysis incorporating this assumption is out-of-date for the present market situations. BLM needs to revise the DPEIS to reflect the current market situation for new power generation plants.

4.15 Health and Safety, page 4-199, Table 4.15.2

At the beginning of Chapter 4, the BLM revised the size of mining and surface retort and in situ oil shale projects downward, but this table utilizes the 2008 scenario of a 1,000,000 bbl/day oil shale industry. This table needs to have the size of the industry's health effects reduced to match the reduced size of the oil shale operations as provided earlier in Chapter 4. This would probably drop the overall industry to 14 facilities, with a production level below 500,000 bbl/day. The accompanying text and footnote also appear to be inconsistent and provide an overestimation of the number of oil shale workers compared to the total employee numbers given in Table 4.1.1-1, 4.1.2-1, and 4.1.3-1

Table 6.1.6-5, Projected Levels of Major Activities for Seven Planning Areas

This table presents faulty analysis of the level of OSTS developments on nonfederal lands in Utah by simply using the phrase "potential unknown" to gloss over known development activities, particularly those in the Book Cliffs area that are mentioned in Appendix B of the PEIS.

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BOARD OF COUNTY COMMISSIONERS

- WALLY J. JOHNSON, CHAIRMAN
- JOHN K. KOLB, COMMISSIONER
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- REID O. WEST, COMMISSIONER
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SWEETWATER COUNTY

80 WEST FLAMING GORGE WAY, SUITE 109
GREEN RIVER, WY 82935
PHONE: (307) 872-3890
FAX:(307) 872-3992

Thursday, May 3, 2012

Sherri Thompson, Project Manager
Bureau of Land Management – Colorado State Office
2850 Youngfield Street
Denver, CO 80215

RE: Sweetwater County's comments regarding the Draft Programmatic Environmental Impact Statement and Possible Land Use Plan Amendments for Allocation of Oil Shale and Tar Sands Resources on Lands Administered by the Bureau of Land Management in Colorado, Utah and Wyoming.

Dear Ms. Thompson:

Sweetwater County would like to thank you for the opportunity to comment on the Draft Programmatic EIS for Allocation of Oil Shale and Tar Sands Resources on lands administered by the Bureau of Land Management (BLM) in Colorado, Utah and Wyoming (2012 OSTS DPEIS).

After attending the BLM's open house held in Rock Springs, Wyoming, on Thursday, March 15, 2012, and after reviewing the 2012 OSTS DPEIS, Sweetwater County recommends that the BLM adopt either of the following courses of action in regards to the 2012 OSTS DPEIS:

1. The BLM complies with established laws and ceases all further activities related to the 2012 OSTS DPEIS and maintains its decision made in the 2008 OSTS PEIS; or
2. The BLM selects in its ROD the 2012 OSTS DPEIS "No Action Alternative" that maintains 1,000,453 acres of lands within Wyoming open to consideration for oil shale leasing.

Sweetwater County recommends these options for the following reasons:

1. Sweetwater County's rationale for recommendation one is based on its approval of Sweetwater County Resolution 12-04-CC-02 (see attached). Sweetwater County, Wyoming has joined several other counties within Wyoming, Colorado and Utah in opposing the 2012 OSTS DPEIS. The reasons of this opposition are outlined below:
   a. The creation of the 2012 OSTS DPEIS was completed in open contempt and in violation of the spending moratorium of Section 1769 of the April 21, 2011 Congressional Continuing Resolution to Fund Fiscal Year 2011 through September 30, 2011.

b. The 2012 OSTS DPEIS preferred alternative is the creation of a friendly lawsuit settlement agreement between the BLM and ideological opponents to oil shale development and, therefore, this preferred alternative is entirely pre-determined and pre-decisional in violation of NEPA.

c. The creation of the 2012 OSTS DPEIS preferred alternative entirely ignores the input into the 2008 OSTS PEIS provided multiple cooperators including a Task Force of Governors, state and county governments and other stakeholders, which was required by the Energy Policy Act of 2005.

d. If the 2012 OSTS DPEIS preferred alternative is adopted in the Record of Decision the vast oil shale and tar resources of Wyoming, Colorado and Utah will be off limits to development, which would result in a loss of 8 trillion barrels of oil from our nation's economy.

2. Sweetwater County's rationale for recommendation two is based on the following:

a. Mineral development provides seventy percent of Sweetwater County's ad valorem tax revenues and provides the economic base that supports the majority of the industries, businesses, jobs and housing within the County. Any reduction in mineral value or supply creates a major economic hardship for Sweetwater County and the State of Wyoming.

To prevent this economic hardship, it is essential that the County and the State strive to maintain the highest market value for its mineral resources and to continue to explore and research the development of new minerals such as oil shale. If current research on developing effective oil shale extraction technologies is successful, it is likely that the production of oil from oil shale will play a major role supporting our local, state and national economies. To take advantage of the promising economic benefits of this research, it is imperative that Sweetwater County and the State of Wyoming support the "No Action Alternative" which will preserve the potential for over one million acres within Wyoming to be available for oil shale leasing. Without the availability of these acres for potential oil shale development, we will miss an important opportunity to enhance our future economic base.

b. The United States is currently in a growing economic crisis partially caused by an export / import cycle in which our Country exports its wealth to the Middle East and other regions of the world in exchange for oil imports to meet our Country's energy needs. This export / import cycle not only transfers the wealth of our nation to other countries, it transfers opportunities for business growth, job creation and quality of life for the citizens within our own borders.

To break this export / import cycle and to keep our nation's wealth within its borders, our Country must develop its own mineral energy resources including oil, gas, coal, uranium and oil shale. By developing these resources, our nation will be creating wealth and jobs for its own citizens rather than for the citizens of foreign countries. Through the use of proper environmental review and proven technologies, our nation's energy resources can

be developed in a manner that not only sustains our nation's economy, but also protects our nation's environment.

If we continue down the path of developing other nation's energy resource before we develop the energy resources within United States, we will only deepen our Nation's economic crisis. This is not the path that Sweetwater County believes our nation should follow, and therefore, Sweetwater County supports developing our nation's vast oil shale reserves, which are being considered in this Draft PEIS.

In summary and based on the above comments, in regards to Sweetwater County's recommendations on the 2012 OSTS DPEIS, the County recommends either of the following two options:

1. The BLM complies with existing laws and cease all further activities related to the 2012 OSTS DPEIS and maintain the Record of Decision it made in the 2008 OSTS PEIS, or

2. The BLM selects the "No Action Alternative" in the 2012 OSTS DPEIS, which maintains 1,000,453 acres of lands within Wyoming open to consideration for oil shale leasing.

If you have any questions concerning Sweetwater County's above comments, please contact me a 307-872-3897.

Sincerely,

Wally J. Johnson, Chairman
Sweetwater County Board of County Commissioners

Enclosure: Sweetwater County Resolution 12-04-CC-02

cc Governor Matt Mead
Jerimiah Rieman, Governor's Natural Resource Policy Advisor
Wyoming's Congressional Delegation
John Ruhs, BLM High Desert District Manager
Lance Porter, BLM Rock Springs Field Office Manager
Sweetwater County Board of County Commissioners
Temple Stoellinger, WCCA Natural Resource Attorney
Kent Connelly, President - Coalition of Local Governments
Mary Thoman, President - Sweetwater County Conservation District
Eric Bingham, Sweetwater County Land Use Director

RESOLUTION 12-04-CC-02
SWEETWATER COUNTY, STATE OF WYOMING

OPPOSING THE BLM'S 2012 OIL SHALE AND TAR SANDS PROGRAMMATIC ENVIRONMENTAL IMPACT STATEMENT, BLM PROJECT # WO-300-1310-PP-OSHL
(HEREAFTER 2011 OSTS PEIS)
FOR LANDS ADMINISTERED BY THE BLM IN COLORADO, UTAH AND WYOMING,

This Resolution is adopted in open meeting after due opportunity for public comment, by the Board of Commissioners of Sweetwater County, in order to redress the many violations of law, regulation, and policy by the BLM with respect to the BLM's 2012 OSTS PEIS.

BACKGROUND

As background to this Resolution, Sweetwater County recites the following grievances:

WHEREAS, On April 14, 2011, the BLM caused to be published in the Federal Register, Volume 76, No 72/Thursday, April 14, 2011, pages 21003-21005, a notice of intent to prepare the above-referenced 2012 OSTS PEIS; and

WHEREAS, the preliminary purpose and need statement in the notice of intent, states the PEIS will analyze removing from oil shale and tar sands leasing "All areas that the BLM has identified or may identify as a result of inventories conducted during this planning process, as lands containing wilderness characteristics[.]" Id., at page 21004; and

WHEREAS, the notice of intent further states at page 21004:

> Lands that the BLM identifies as having wilderness characteristics will be considered during this planning initiative, as described above, and consistent with Secretarial Order No. 3310, dated Dec. 22, 2010, and BLM Manuals 6301 and 6302. Future leasing of lands determined by the BLM to have wilderness characteristics, if compatible with the allocation decisions stemming from this initiative, will subsequently be assessed in accordance with BLM Manual 6303, as appropriate (i.e., where the BLM has not determined, consistent with BLM Manual 6302, whether the lands with wilderness characteristics at issue should be receive a wild lands designation, BLM Manual 6303 will apply); and

WHEREAS, this language documents the BLM's intent to implement, administer and/or enforce Secretarial Order 3310 and one or more of the BLM guidance manuals promulgated under Order 3310; and

WHEREAS, any attempt by the BLM to implement, administer and/or enforce Secretarial Order 3310, including any effort by the BLM to proceed further on the above-referenced Programmatic EIS, violates the spending moratorium of Section 1769 of the April 21, 2011 Congressional Continuing Resolution to Fund Fiscal Year 2011 through September 30, 2011, which states:

> For the fiscal year ending September 30, 2011, none of the funds made available by this division or any other Act may be used to implement, administer, or enforce Secretarial Order No. 3310 issued by the Secretary of the Interior on December 22, 2010; and

WHEREAS, this spending moratorium has been carried forward in all subsequent Congressional spending resolutions up to and including the current spending resolution; and
WHEREAS, the 2012 OSTS PEIS, is an admitted attempt by the BLM to implement, administer and/or enforce Secretarial Order 3310 and its policies and objectives, all in violation of the Spending Moratorium of the 2011 Continuing Resolution; and

WHEREAS, the 2008 Oil Shale and Tar Sands Programmatic EIS (2008 OSTS PEIS) was required under Section 369 (d) (1) of the Energy Policy Act of 2005 and was prepared in cooperation with 14 federal, state, and local governmental organizations; and

WHEREAS THE 2008 OSTS PEIS was 3 years in the making, and it honored the input of a task force of Governors and other stakeholders as per requirement of the 2005 Energy Policy Act;

WHEREAS, the Record of Decision (ROD) for the 2008 OSTS PEIS amended 10 land use plans in Colorado, Utah, and Wyoming to make approximately 2 million acres of public lands available for potential leasing and development of oil shale and approximately 430,000 acres available for tar sands leasing. Together with the regulations published in 2006 and 2008 for oil shale and tar sands resources, the 2008 OSTS PEIS and subsequent land use amendments constituted a reasonable and rational establishment of an oil shale and tar sands program as mandated in the Energy Policy Act of 2005; and

WHEREAS, the oil shale and tar sands program to which the 2008 OSTS PEIS and related regulations gave birth, was a reasonable response to the fact that oil shale and tar sands resources in the Green River Formation located in northeastern Utah, northwestern Colorado and southwestern Wyoming may reach 8 trillion barrels of oil; and

WHEREAS, the preferred alternative in the draft 2012 OSTS PEIS drastically shrinks, diminishes and in many areas outright reverses virtually all of the lands made available for Oil Shale and Tar Sands development in 2008, and does so using the same data and science; and

WHEREAS, such a drastic reversal in lands available for Oil Shale and Tar Sands development between the 2008 PEIS and the 2012 preferred alternative, violates regulatory ran Task Force requirements of certainty for industry and investors; and

WHEREAS such a drastic reversal of lands available for Oil Shale and Tar Sands development in 2008, constitutes a de facto, piece-meal revision of previous BLM Resource Management Plans, in violation of the Section 202 Planning Process under FLPMA;

WHEREAS, the preferred alternative in the draft 2012 OSTS PEIS entirely ignores the input of the task force and stakeholders which the 2005 Energy Policy Act directed the BLM to honor and follow; and moreover the draft 2012 OSTS PEIS may well violate various memoranda of understanding (MOUs) with counties which require the BLM to publish the written input of cooperators who disagree with the preferred alternative;

WHEREAS the draft 2012 OSTS PEIS preferred alternative significantly restricts the acreage allotted in the 2008 PEIS for research and development leasing;

WHEREAS the draft 2012 OSTS PEIS preferred alternative threatens to arbitrarily undermine the process and the work utilized in creation of the 2008 OSTS PEIS, and essentially dismantle a reasonable and rational oil shale and tar sands program in violation of Section 369 of the 2005 Energy Policy Act; and

WHEREAS, the 2012 OSTS PEIS preferred alternative is the creature of a friendly lawsuit settlement agreement between the BLM and ideological opponents to oil shale development, and is therefore entirely pre-determined and pre-decisional in violation of NEPA, with no apparent rationale for revising the acreages approved in 2008; and

WHEREAS, the BLM has settled on a preferred alternative in the 2012 OSTS PEIS admittedly without having first analyzed its impacts; BLM should be required to withdraw the preferred status of the alternative until it has performed this analysis; and

WHEREAS, the acreage approved for Oil Shale and Tar Sands development in the draft 2012 OSTS PEIS preferred alternative bears no rational relationship to the stated purpose and need;

WHEREAS, the Department of Energy has basically abdicated the responsibility Congress placed upon it to defend and uphold a viable oil shale energy program in America, leaving it instead to the BLM encumbered by a host of anti-oil shale pro-wilderness groups steering BLM's every move;

WHEREAS, the alternative adopted in the ROD of the 2008 OSTS PEIS is now the No Action Alternative of the draft 2012 OSTS PEIS; and

WHEREAS, the 2008 OSTS PEIS chosen alternative is consistent with the multiple use, sustained yield of the Federal Land Policy Management Act (FLPMA); and

WHEREAS, the 2008 OSTS PEIS chosen alternative is consistent with county general plans and policies which call for responsible development of available energy resources; and

WHEREAS, the development and production of oil from oil shale has been proven beyond a doubt to be technologically and economically feasible; and

WHEREAS, this same technology to extract oil from the oil shale rock is not only economically feasible, but it requires little to no consumption of water, contrary to the myths which falsely claim that oil shale extraction requires large consumption of water resources; and

WHERAS, the energy captured in the extract of oil from shale (natural gas capture, etc.,) more than makes up for energy consumed in that extraction process, thus dispelling the myth that the oil shale extraction process consumes more energy than it produces;

WHEREAS, the rising price of gasoline, coupled with ever increasing loss of good paying jobs due to the Administration's policies against energy development on western public lands, result in increasing hardships for families and the local economy, to the point where some fear the window of opportunity is about to close for a civil, lawful and orderly response as citizens feel more and more pressured and desperate financially; and

WHEREAS, the 2012 OSTS PEIS improperly limits technology testing to strictly in situ efforts and does not allow for development of other technologies; and

WHEREAS, the BLM has left insufficient time for the public and cooperators to meaningfully comment on the public draft 2012 OSTS PEIS by the present comment deadline of May 4, 2012, because a highly relevant commercial oil shale BLM regulation is not due to be published until May 15, 2012 and the public should have the right to view that regulation first and then submit comments on the draft 2012 OSTS PEIS in light of that regulation; and

WHEREAS, the same problems with lack of consistency with local plans and policies and failure to honor the input of cooperators and all stakeholders, also besets many public lands EIS projects, in addition to the 2012 OSTS PEIS. The cooperators from Utah and Wyoming have already unanimously requested for the No-Action alternative in the draft 2012 OSTS PEIS become the preferred alternative.

RESOLUTION

NOW THEREFORE, BE IT RESOLVED BY SWEETWATER COUNTY, STATE OF WYOMING AS FOLLOWS:

1. Sweetwater County declares the BLM's continuing to administer and carry out the 2012 OSTS PEIS to be an open contempt and flaunting of the Congressional Spending Moratorium first imposed in the 2011 Continuing Resolution and carried forward in all subsequent Congressional spending resolutions up to and including the present;

2. Sweetwater County calls upon the BLM to cease all further activities with respect to administering and carrying out the 2012 OSTS PEIS, because doing so constitutes an open contempt and violation of the Congressional Spending Moratorium against implementing, administering and/or enforcing Secretarial Order 3310, which Spending Moratorium was first

imposed in the 2011 Continuing Resolution and carried forward in all subsequent Congressional spending resolutions up to and including the present;

3. Sweetwater Count calls upon the BLM to immediately cease and desist all activities related to the above-referenced 2012 OSTS PEIS and immediately publish a revised notice in the Federal Register signifying its cessation of all work on the Programmatic EIS in obedience to the above-quoted Spending Moratorium. Otherwise, the BLM would be in contempt of Congress;

4. Should BLM continue to go forward with the 2012 OSTS PEIS regardless of these grievances, the only legally, viable alternative would be if the BLM adopted the No-Action Alternative, which is identical to the Alternative chosen in the ROD of the 2008 OSTS PEIS;

5. The BLM should extend the May 4, 2012 deadline for public comment on the draft 2012 OSTS PEIS at least 30 days after publication of the expected oil shale regulation due to be published on or around May 15, 2012.

6. The BLM should honor the input of cooperators, particularly if they are local governments, as required by Section 202(c)(9) of FLPMA, in all matters, not just with respect to the 2012 OSTS PEIS.

Adopted at the regularly scheduled meeting of the Sweetwater County Board of County Commissioners, held on the 17th day of April 2012.

BOARD OF COUNTY COMMISSIONERS

Wally J. Johnson, Chairman

Gary Bailiff, Commissioner

John K. Kolb, Commissioner

Don Van Matre, Commissioner

Reid West, Commissioner

ATTESTED TO:

Steven Dale Davis, County Clerk
Sweetwater County, Wyoming

UINTAH COUNTY

STATE OF UTAH

Our past is the nation's future

COMMISSIONERS:
Darlene R. Burns
Michael J. McKee
Mark D. Raymond
ASSESSOR - Rolene Rasmussen
ATTORNEY - G. Mark Thomas
CLERK-AUDITOR - Michael W. Wilkins
RECORDER - Randy J. Simmons
TREASURER - Wendi Long
SHERIFF - Jeff Merrill
SURVEYOR - John Slaugh

May 4, 2012

BLM Oil Shale & Tar Sands PEIS
Argonne National Laboratory
EVS Division, Building 240
9700 South Cass Avenue
Argonne, IL 60439

Ken Salazar, Secretary
U.S. Department of the Interior
1849 C Street, N.W.
Washington DC 20240

Bob Abbey, Director
Bureau of Land Management
1849 C Street, N.W., Room 5665

RE: Comments on Draft Bureau of Land Management (BLM) Oil Shale & Tar Sands PEIS

Dear Secretary Salazar, Director Abbey, et all:

On its face the BLM's 2012 Oil Shale and Tar Sands Draft Programmatic Environmental Impact Statement, BLM Project #WO-300-1310-PP-OSHL for Lands Administered by the BLM in Colorado, Utah and Wyoming (Hereafter 2012 OSTS DPEIS) is nothing more than part of a negotiated settlement from a friendly lawsuit brought by an environmental coalition.[1] During this process, which began early 2011, it has been unfortunate that Uintah County must continue to educate the federal government on the realities of oil shale and oil sands development. The Administration's death grip on old stereotypes related to oil shale and oil sands development does not make them true.

On May 5, 2011, Uintah County sent a letter to the Bureau of Land Management respectfully requesting the BLM to cease and desist further activity on the Programmatic EIS for Allocation

[1] In a letter, stamped May 3, 2012, Director Robert Abbey denied a request to extend the comment period by Representative Jason Chaffetz, citing the Settlement Agreement as prohibitive in the agreed timeline. However, Uintah County understands that these new draft regulations are expected to be provided to the State of Utah within the next 10-15 days. Extending the comment period for a few weeks after publication would not disrupt the BLM's sacred timeline. Director Abbey may not want to connect this PEIS to the new draft regulations, but they are in fact just two sides of the same coin. What good does it do to talk about the size and location of a water pipe if the reservoir is drained? Director Abbey also pointed to the 90 day review period as providing sufficient time to review and comment. However, just three months ago the BLM granted requests for additional time to provide comments related to the sage-grouse EIS for an additional 45 days.

of Oil Shale and Tar Sands Resources on Lands Administered by the BLM. *See* attached letter. Apparently, the BLM has decided to ignore the cordial request from a cooperating entity. In addition to this request, Uintah County along with many of its neighboring counties has requested an extension to the comment period. This request was denied on May 3, 2012. Thus, Uintah County is left with no other alternative but to build and preserve the record and wait for the inevitable to be decided.[2]

So here we go again.

2005 Energy Policy Act Mandate for Oil Shale and Tar Sands Program

Section 369 of the Energy Policy Act, adopted on August 8, 2005, declared it to be the United States' policy that "oil shale, tar sands, and other unconventional fuels are strategically important domestic resources that should be developed to reduce the growing dependence of the United States on politically and economically unstable sources of foreign oil imports." 42 U.S.C. §15927(b)(1). This policy statement is an unambiguous mandate from Congress. Further, Congress also directed that it be United States' policy that commercial development of oil shale "be conducted in an environmentally sound manner, using practices that minimize impacts." 42 U.S.C. §15927(b)(2). Apparently Congressional Policy is not even a blip on the BLM's screen for the the Draft OSTS PEIS states on page 1-13, lines 39-45:

> "Issues determined to fall outside the scope of the PEIS because they were not pertinent to the purpose and need for the proposed land use planning decision as described in the NOI included issues relating to...foreign oil as a national security issue."

Section 369 further required that the Interior Secretary promptly follow the completion of the programmatic EIS with regulations establishing an oil shale leasing program. *See* 42 U.S.C. §15927(d)(2). The BLM simply must not be concerned with Congressional mandates for the Preferred Alternative simply emasculates the program by cutting off the most geologically prospective public lands that are otherwise suitable and available for mineral leasing.[3]

Wilderness Characteristics

Our May 5, 2011 letter stated:

> "According to the preliminary purpose and need statement in the notice of intent, the Programmatic EIS will analyze removing from oil shale and tar sands leasing 'All areas

[2] Why "inevitable"? In an email, attached to these comments, Sherri Thompson, Project Manager for this PEIS, stated: "As there are no economically viable ways yet known to extract and process oil shale for commercial purposes, and tar sands is not at present a proven commercially-viable energy source, the BLM, through its planning process, is taking a hard look at whether it is appropriate for approximately 2,000,000 acres to remain available for potential development of oil shale, and approximately 431,000 acres of public land to remain available for potential development of tar sands. This new planning initiative will provide the BLM an opportunity to consider the 2008 allocation decisions in light of the still nascent character of the technology necessary to economically develop oil shale resources, as well as certain information not available in 2008." Sadly, the outcome of this PEIS process was predetermined.

[3] The USGS has estimated the total in-place oil shale resources to be: Eocene Green River Formation to be 1.44 trillion barrels; Piceance Basin of Colorado to be 1.52 trillion barrels; and the Uinta Basin to be 1.32 trillion barrels.

that the BLM has identified or may identify as a result of inventories conducted during this planning process, as lands containing wilderness characteristics[.]' Further, the notice of intent states:

> Lands that the BLM identifies as having wilderness characteristics will be considered during this planning initiative, as described above, and consistent with Secretarial Order No. 3310, dated Dec. 22, 2010, and BLM Manuals 6301 and 6302. Future leasing of lands determined by the BLM to have wilderness characteristics, if compatible with the allocation decisions stemming from this initiative, will subsequently be assessed in accordance with BLM Manual 6303, as appropriate (i.e. where the BLM has not determined, consistent with BLM Manual 6302, whether the lands with wilderness characteristics at issue should be receive a wild lands designation, BLM Manual 6303 will apply).'
>
> This language documents the BLM's intent to implement, administer and/or enforce Secretarial Order 3310 and one or more of the BLM guidance manuals promulgated under Order 3310. However, any attempt by the BLM [to do so] is a patent violation of Section 1769 of the April 21, 2011 Congressional Continuing Resolution to Fund Fiscal Year 2011 through September 30, 2011."

Uintah County followed up with a comment letter, dated November 14, 2011 (attached hereto and incorporated by reference). BLM knows it was all too happy to resolve a friendly-lawsuit and take the opportunity, under the guise of complying with a settlement agreement, to ram through the Administration's environmental agenda. The facts are all too obvious.

From our November 14, 2011 letter:

> "While Interior Secretary Salazar issued S.O. 3310 on December 23, 2010, Congress prohibited the expenditure of any federal funds for FY 2011 as of April 7, 2011. BLM Director's admission in a congressional hearing that the Federal Land Policy and Management Act (FLPMA) did not authorize the designation of Wild Lands or "lands with wilderness character" no doubt persuaded many members of Congress to halt this ill-conceived program."

In summary, in late 2010, Secretary Salazar initiated this portion of the Administration's environmental agenda. Then the opportunity came, shortly thereafter, to finalize a complex and nuanced Settlement Agreement, and a Joint Motion to Administratively Close the Case, with a coalition of environmental groups. This façade of a legal action gave the administration the cover it needed to pursue its wilderness characteristics policy. This chain of events screams of collusion!

Finally as it pertains to lands with wilderness characteristics, BLM lacks authority to manage lands as if they were wilderness unless such lands were designated as wilderness study areas (WSAs) within the 15-year review and study period, 43 U.S.C. §1782, or such lands have been designated by Congress. While BLM can inventory any resource on public lands and this may include wilderness character, it cannot use the inventory to change management. To the extent that any of the proposed Alternatives propose to manage the lands deemed having wilderness

character, closing them to oil shale and tar sands development is clearly in violation of the Congressional prohibition.

Cooperators Unanimous Opposition

Uintah County greatly appreciates the support from its neighboring counties in providing a strong unified opposition to the reckless course the BLM is pursuing.

On April 9, 2012, the Uintah County Board of County Commissioners passed Resolution #04-09-2012, A Resolution Opposing the BLM's 2012 Oil Shale and Tar Sands Draft Programmatic Environmental Impact Statement, BLM Project #WO-300-1310-PP-OSHL (Hereafter 2012 OSTS DPEIS) for Lands Administered by the BLM in Colorado, Utah and Wyoming. This Resolution outlines direct and pointed comments relating to the 2012 OSTS DPEIS and are attached hereto and incorporated by reference. We have also included copies of resolutions passed by fellow cooperators voicing similar objections to the 2012 OSTS DPEIS.

Local Plan

In very recognizable fashion FLPMA created a system of public land management honoring the American philosophy of "laboratories of democracy." In 1932, U.S. Supreme Court Justice Louis Brandeis stated "It is one of the happy incidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country." New State Ice Co. v. Liebmann, 285 U.S. 262 (1932) (dissenting opinion). Uintah County, a political subdivision of the State of Utah, is exercising its duty under our system of Federalism to try sound novel approaches to manage public lands within its boundaries. Again, it is incumbent on federal agencies to the maximum extent possible be consistent with State and local plans (including the State of Utah and Uintah County). Anything short of this constitutes a violation of federal law and is subject to judicial review.

Uintah County has adopted into its general plan, in conjunction with the State of Utah, the Uintah Basin Energy Zone and a Plan for Managing and Developing Oil Shale and Oil Sands Resources within the Borders of Uintah County. A copy of said general plan provisions and relevant Utah Code sections are attached hereto and incorporated by reference. The BLM must be consistent with our local plan to the maximum extent possible.

General Objection To DPEIS

In addition to the comments above and those provided in the attached table, Uintah County provides a general objection to the 2012 OSTS DPEIS. As clearly stated in the attached Resolution, Uintah County has shown that this process is unsupportable, arbitrary and a blatant show of conformity to a friendly-lawsuit settlement agreement, which falls out of the public process mandated by Congress. Should BLM continue to go forward with the 2012 OSTS DPEIS regardless of the grievances outlined in the attached Resolution, the only legally viable alternative would be for the BLM to adopt the No-Action Alternative.

Comment Form

Uintah County, Utah, a cooperating agency in this environmental review process, has summarized other more specific comments in the attached comment form. These comments are provided in this format to help the reader follow our comments related to this voluminous document. Said comments are provided to log more specific concerns but should not be construed as limiting the impact or legal effect of Uintah County's general objection to the entirety of this process.[4] Uintah County reserves the right, under this general objection, to legally challenge the entire 2012 OSTS DPEIS as soon as BLM completes its charade and reaches its apparent inevitable conclusion.

Section 4(C)(1) of the MOU Between the Department of the Interior, Bureau of Land Management and Uintah County, Utah As a Cooperating Agency (hereinafter "MOU") states: "The Parties agree to participate in this planning process in good faith and make all reasonable efforts to resolve disagreements." So far Uintah County has been flat out ignored in this process.

In addition, Section 5(E) of the MOU states: "Where the BLM and one or more Cooperators disagree on substantive elements of the RMP/EIS (such as designation of the Alternatives to be analyzed or analysis of effects), and these disagreements cannot be resolved, the BLM will include a summary of the Cooperator's views in the Draft RMPA/Draft PEIS and the Proposed RMPA/Final PEIS. The BLM will also describe substantial inconsistencies between its proposed action(s) and the objectives of state, local, or tribal land use plans and policies." BLM has failed to conform to its own simple obligations with its MOU.

If you have any questions regarding our comments, please contact Jonathan Stearmer, jonathan@uintahcountyattorney.org by email or at 435-781-5432.

Sincerely,

UINTAH COUNTY COMMISSION

Darlene R. Burns

Darlene R. Burns, Chair

Michael McKee

Michael J. McKee

Mark D. Raymond

Mark D. Raymond

[4] Uintah County chooses to exercise restraint by not just logging a general comment borrowed from General Anthony Clement McAuliffe: "Nuts!"

cc: Tom Vilsack, Secretary of Agriculture, 1400 Independence Ave., S.W., Washington DC 20250
Tom Tidwell, Chief US Forest Service, 1400 Independence Ave., S.W., Washington DC 20250
Harv Forsgren, Regional Forester US Forest Service, 324 25th Street, Ogden, Utah 84401
Juan Palma, BLM State Director, P.O. Box 45155, Salt Lake City, Utah 84145
Mark Ward, Utah Assoc. of Counties, 5397 So. Vine Street, Salt Lake City, UT 84107
Kathleen Clarke, PLPCO, 5110 St. Office Bldg, Box 141107, Salt Lake City, UT 84114

United States Department of the Interior
BUREAU OF LAND MANAGEMENT
Washington, D.C. 20240
http://www.blm.gov

MAY 3 2012

The Honorable Jason Chaffetz
House of Representatives
Washington, DC 20515

Dear Representative Chaffetz:

Thank you for your April 18, 2012, letter requesting an extension of the timeframe to submit comments on the Draft Oil Shale and Tar Sands Programmatic Environmental Impact Statement (PEIS). Comments are currently due May 4, 2012. Your request is to extend the comment period for a minimum of 60 days.

Regrettably, the Bureau of Land Management (BLM) is unable to grant your request for an extension. On January 16, 2009, a lawsuit was filed by several organizations challenging the 2008 PEIS Record of Decision (ROD). This suit was settled, and as a condition of that settlement, the BLM has agreed to engage in a new planning initiative that takes a fresh look at the allocation decisions made in the 2008 ROD. Under the February 2011 settlement agreement filed with the District Court in Colorado, the BLM agreed to use its best efforts to complete its decision-making and approve a ROD for this new planning process by December 31, 2012.

The BLM anticipates issuing amendments to the existing oil shale regulations by May 15, 2012. The changes in the regulations will not have an impact on the allocation decisions made in the PEIS. The regulations will guide approval of and apply to leasing and development operations once a decision has been made to move forward with a commercial oil shale project. The PEIS reassesses the appropriate mix of allowable uses with respect to opening lands for future oil shale and tar sands leasing and potential development.

Our goal is to achieve the terms of the agreement with maximum public participation. We are working diligently to comply with the settlement agreement while providing many opportunities for public participation. In March 2012, the BLM held four open houses in several cities in Colorado, Utah, and Wyoming to encourage public participation in the review process.

Furthermore, the public is provided 90 days to review and comment on the Draft PEIS, as required by the BLM land use planning regulations (43 CFR 1610.2(e)). We believe this provides the public with sufficient opportunity to review and provide substantive comments on the draft document.

As this document supports only decision-making regarding land use allocation and not lease issuance or approval of development activities, there will be further opportunity to participate in future NEPA processes relating to potential oil shale development in Colorado, Utah, and Wyoming. I appreciate your interest in this important matter.

Sincerely,

Robert V. Abbey
Director

bc: LLM:WO620:LS:401
LLM:WO320
LLM:WO300

TYPED:LLM:WO600:MIB5070:CRichardson:5/3/12:ESO-37799:3021

UINTAH COUNTY

STATE OF UTAH

Our past is the nation's future

COMMISSIONERS:
Michael J. McKee
Darlene R. Burns
Mark D. Raymond
ASSESSOR - Rolenne Rasmuessen
ATTORNEY - JoAnn B. Stringham
CLERK-AUDITOR - Michael W. Wilkins
RECORDER - Randy J. Simmons
TREASURER - Wendi Long
SHERIFF - Jeff Merrill
SURVEYOR - John Slaugh

April 26, 2012

BLM Oil Shale & Tar Sands PEIS
Argonne National Laboratory
EVS Division, Building 240
9700 South Cass Avenue
Argonne, IL 60439

Ken Salazar, Secretary
U.S. Department of the Interior
1849 C Street, N.W.
Washington DC 20240

Bob Abbey, Director
Bureau of Land Management
1849 C Street, N.W., Room 5665

RE: Request for Extension to Comment Period on Draft BLM Oil Shale & Tar Sands PEIS

Sent via First Class Mail and email: Secretary Ken Salazar exsec@ios.doi.gov;
Robert Abbey Director@blm.gov

Dear Secretary Salazar, Director Abbey, et all:

On April 9, 2012, Uintah County, Utah passed a resolution opposing the BLM's 2012 Oil Shale and Tar Sands Draft Programmatic Environmental Impact Statement (attached hereto with other resolutions from counties in the Tri-State area). As a cooperating agency in this environmental review we respectfully request an extension to the comment period, currently set to expire May 4, 2012. It is our understanding that this request for an extension has also been made, by resolution, by eight other counties, also acting under their cooperator status. Three distinct justifications necessitate this extension.

First, under the friendly-lawsuit settlement agreement the BLM agreed to develop new oil shale regulations. We understand the draft regulations are due to be published on or around May 15, 2012. As a cooperator it is impossible for us to make clear concise comments on the PDEIS until we have the opportunity to understand at least in some detail the scope of these new regulations. Indeed, cooperators run a substantial risk in proffering inconsistent and confusing responses to the DPEIS and any draft regulations; thus, undermining the integrity of NEPA process. Consequently an extension should be granted to at least 30 days after publication of this new oil shale regulation.

Second, the sheer volume of the DPEIS necessitates a time consuming review. As a cooperator, Uintah County requests additional time to vet and analyze the DPEIS. This need becomes even more prominent based on the anticipation of new draft regulations pending publication, for it is extremely difficult to adequately comment on a four volume DPEIS if we do not have all relevant information.

Third, as detailed in the attached Resolution, Uintah County has raised numerous legal challenges to the very process of the BLM taking a "fresh look" at lands available for oil shale and oil sands. Granting an extension will allow the BLM to thoughtfully consider the consequences of continuing down this tenuous political road and give time for the BLM to make the correct decision to cease and desist all actions related to the DPEIS.

We look forward to seeing the requested extension granted. If you have any questions regarding our comments, please contact Jonathan Stearmer, jonathan@uintahcountyattorney.org by email or at 435-781-5432.

Sincerely,

Darlene R. Burns, Uintah County Commission Chair

Michael McKee

Mark D. Raymond

UINTAH COUNTY COMMISSION

cc: Tom Vilsack, Secretary of Agriculture, 1400 Independence Ave., S.W., Washington DC 20250
Tomas Tidwell, Chief US Forest Service, 1400 Independence Ave., S.W., Washington DC 20250
Harv Forsgren, Regional Forester US Forest Service, 324 25th Street, Ogden, Utah 84401
Juan Palma, BLM State Director, P.O. Box 45155, Salt Lake City, Utah 84145
Mark Ward, Utah Assoc. of Counties, 5397 So. Vine Street, Salt Lake City, UT 84107
Kathleen Clarke, PLPCO, 5110 St. Office Bldg. Box 141107, Salt Lake City, UT 84114

Sally Shoemaker

From: Thompson, Sherri J [sthompso@blm.gov]
Sent: Monday, October 17, 2011 9:32 AM
To: Clayton, Creed; Modde, Tim; Carlson, Dave E; John Harja; Jonathan Teichert; Kirk Wood; Melinda Brimhall; Mike Braaten; Rex Sacco; Tom Jankovsky; Sally Shoemaker
Subject: 2012 Oil Shale/Tar Sands PEIS Draft Review
Attachments: OSTS_Chapter_1[1].docx

The BLM is in the process of taking a fresh look at the decisions made in the 2008 Oil Shale and Tar Sands Programmatic Environmental Impact Statement (OSTS PEIS). As background, the Notice of Intent (NOI) to Prepare a Programmatic Environmental Impact Statement (PEIS) and Possible Land Use Plan Amendments for Allocation of Oil Shale and Tar Sands Resources on Lands Administered by the Bureau of Land Management in Colorado, Utah, and Wyoming was published on April 14, 2011. As there are no economically viable ways yet known to extract and process oil shale for commercial purposes, and tar sands is not at present a proven commercially-viable energy source, the BLM, through its planning process, is taking a hard look at whether it is appropriate for approximately 2,000,000 acres to remain available for potential development of oil shale, and approximately 431,000 acres of public land to remain available for potential development of tar sands. This new planning initiative will provide the BLM an opportunity to consider the 2008 allocation decisions in light of the still nascent character of the technology necessary to economically develop oil shale resources, as well as certain information not available in 2008. In 2009, a consortium of plaintiffs filed two lawsuits in the federal District of Colorado, each now captioned *CEC v. Salazar*, against the BLM and the Department of Interior. The second suit challenged the BLM's 2008 resource management plan amendments and record of decision (ROD) for Oil Shale and Tar Sands Resources. This suit was settled. Under the settlement agreement filed with the District Court in Colorado, the BLM agreed to use best efforts to complete its decision-making, and approve a Record of Decision for this new planning process by December 31, 2012.

As such, we are working with some extremely tight timeframes. The internal Draft of the 2012 OSTS PEIS will be available on October 17th for a three week review period, ending November 4, 2011. Argonne National Laboratory, the contractor for this PEIS, will provide the document to a Sharepoint site, where it can be downloaded. I am giving your names, phone numbers and email addresses to Argonne National Laboratory today so that you can access the file transfer site. This will take a day or two, so in the meantime, I have attached Chapter 1 to this email in case anyone has time to get started today.

Chapters 1-5 will be available Monday morning, October 17th. Chapter 6 will be available on Friday, October 21st. Comments should be made using Track Changes. Staff can send comments directly to Kurt Picel, the Argonne National Laboratory Project Manager at kpicel@anl.gov

I know you and your staffs' are very busy with other work. We appreciate your help and involvement in this process. If you have any questions regarding the review, please contact Sherri Thompson, Project Manager, at 303.239.3758. Thank-you!

UINTAH COUNTY

STATE OF UTAH

Our past is the nation's future

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SHERIFF - Jeff Merrill
SURVEYOR - John Slaugh

May 5, 2011

BY U.S. MAIL TO:

Robert Abbey, Director
Bureau of Land Management 1849 C Street NW, Rm. 5665
Washington DC 20240

Juan Palma
Utah State Director
Bureau of Land Management 440 West 200 South, Suite 500
Salt Lake City, Utah 84101

BLM Oil Shale and Tar Sands Resources Leasing Programmatic EIS Scoping
Argonne National Laboratory
EVS, 240
9700 S. Cass Avenue,
Argonne, Illinois 60439

Sherri Thompson, Project Manager
Bureau of Land Management
Colorado State Office
2850 Youngfield Street
Lakewood, Colorado 80215

AND BY ELECTRONIC SUBMISSION AT THE FOLLOWING INTERNET WEBSITE:

http://blm.gov/st5c

Subject: Request to Cease and Desist Further Activity on Programmatic EIS for Allocation of Oil Shale and Tar Sands Resources on Lands Administered by the BLM in Colorado, Utah and Wyoming, WO-300-1310-PP-OSHL

Dear Sir or Madame:

On April 14, 2011, the BLM caused to be published in the Federal Register, Volume 76, No 72/Thursday, April 14, 2011, pages 21003-21005, a notice of intent to prepare the above-referenced Programmatic EIS. According to the notice of intent, the BLM "intends to take a

hard look at whether it is appropriate for approximately 2,000,000 acres [approved in prior BLM RMPs for oil shale leasing and development] to remain available for potential development of oil shale, and approximately 431,224 acres of public land [approved in prior BLM RMPs for tar sands leasing and development]to remain available for potential development of tar sands." *Id.*, at page 21003. The Programmatic EIS will consider amending several RMPs accordingly, including the Vernal, Price, Richfield and Monticello RMPs in Utah. *Id.*

According to the preliminary purpose and need statement in the notice of intent, the Programmatic EIS will analyze removing from oil shale and tar sands leasing "All areas that the BLM has identified or may identify as a result of inventories conducted during this planning process, as lands containing wilderness characteristics[.]" *Id.*, at page 21004. Further, the notice of intent states:

> Lands that the BLM identifies as having wilderness characteristics will be considered during this planning initiative, as described above, and consistent with Secretarial Order No. 3310, dated Dec. 22, 2010, and BLM Manuals 6301 and 6302. Future leasing of lands determined by the BLM to have wilderness characteristics, if compatible with the allocation decisions stemming from this initiative, will subsequently be assessed in accordance with BLM Manual 6303, as appropriate (i.e., where the BLM has not determined, consistent with BLM Manual 6302, whether the lands with wilderness characteristics at issue should be receive a wild lands designation, BLM Manual 6303 will apply).

Id.

This language documents the BLM's intent to implement, administer and/or enforce Secretarial Order 3310 and one or more of the BLM guidance manuals promulgated under Order 3310. However, any attempt by the BLM to implement, administer and/or enforce Secretarial Order 3310, including any effort by the BLM to proceed further on the above-referenced Programmatic EIS, is a patent violation of Section 1769 of the April 21, 2011 Congressional Continuing Resolution to Fund Fiscal Year 2011 through September 30, 2011, which states:

> For the fiscal year ending September 30, 2011, none of the funds made available by this division or any other Act may be used to implement, administer, or enforce Secretarial Order No. 3310 issued by the Secretary of the Interior on December 22, 2010.

The BLM should immediately cease and desist all activities related to the above-referenced Programmatic EIS and immediately publish a revised notice in the Federal Register signifying its cessation of all work on the Programmatic EIS in compliance with the above-quoted provision in the 2011 CR. Otherwise, the BLM would be in contempt of Congress. We are prepared to seek a court order to this effect if necessary.

hard look at whether it is appropriate for approximately 2,000,000 acres [approved in prior BLM RMPs for oil shale leasing and development] to remain available for potential development of oil shale, and approximately 431,224 acres of public land [approved in prior BLM RMPs for tar sands leasing and development]to remain available for potential development of tar sands." *Id.*, at page 21003. The Programmatic EIS will consider amending several RMPs accordingly, including the Vernal, Price, Richfield and Monticello RMPs in Utah. *Id.*

According to the preliminary purpose and need statement in the notice of intent, the Programmatic EIS will analyze removing from oil shale and tar sands leasing "All areas that the BLM has identified or may identify as a result of inventories conducted during this planning process, as lands containing wilderness characteristics[.]" *Id.*, at page 21004. Further, the notice of intent states:

> Lands that the BLM identifies as having wilderness characteristics will be considered during this planning initiative, as described above, and consistent with Secretarial Order No. 3310, dated Dec. 22, 2010, and BLM Manuals 6301 and 6302. Future leasing of lands determined by the BLM to have wilderness characteristics, if compatible with the allocation decisions stemming from this initiative, will subsequently be assessed in accordance with BLM Manual 6303, as appropriate (i.e., where the BLM has not determined, consistent with BLM Manual 6302, whether the lands with wilderness characteristics at issue should be receive a wild lands designation, BLM Manual 6303 will apply).

Id.

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> For the fiscal year ending September 30, 2011, none of the funds made available by this division or any other Act may be used to implement, administer, or enforce Secretarial Order No. 3310 issued by the Secretary of the Interior on December 22, 2010.

The BLM should immediately cease and desist all activities related to the above-referenced Programmatic EIS and immediately publish a revised notice in the Federal Register signifying its cessation of all work on the Programmatic EIS in compliance with the above-quoted provision in the 2011 CR. Otherwise, the BLM would be in contempt of Congress. We are prepared to seek a court order to this effect if necessary.

Please advise what course of action you will take as soon as possible. Thank you.

UINTAH COUNTY BOARD OF COMMISSIONERS

Darlene R. Burns

Darlene R. Burns, Chair

Michael J. McKee

Michael J. McKee

Mark D. Raymond

Mark D. Raymond

UINTAH COUNTY

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SURVEYOR - John Slaugh

November 14, 2011

BLM Oil Shale and Tar Sands Programmatic EIS
Argonne National Laboratory
9700 South Cass Avenue
Argonne, IL. 60439

Sherri Thompson
Bureau of Land Management
2850 Youngfield Street
Lakewood, CO 80215

Re: Uintah County, Utah's Comments on 2011 the Preferred Alternative of the Draft Oil Shale and Tar Sands Programmatic Environmental Impact Statement (PEIS)

To Whom It May Concern:

Uintah County writes to reiterate its view that Alternative 1, the no-action alternative of the above-referenced PEIS, should be chosen by the BLM as the preferred alternative for this PEIS. The primary reasons making Alternative 1, the no-action alternative, the preferred alternative herein, were already explained at pages 6-8 of Uintah County's November 7, 2011 written comments submitted in this matter. Uintah County incorporates herein by this reference, pages 6-8 of its November 7, 2011 written comments, as primary reasons why the no-action alternative should become the preferred alternative herein.

Additional reasons for making the no-action alternative the preferred alternative are as follows:

Alternative 1, the no-action alternative, clearly conforms to the mandate by Congress in the 2005 Energy Policy Act, (2) conforms to the authority that the Bureau of Land Management (BLM) can exercise, (3) also is consistent with the local government plans, programs, and policies; (4) Choosing an alternative that cuts back on domestic energy production capability is ill advised given the dire condition of the world's present energy-related politics.

1. 2005 Energy Policy Act Mandate for Oil Shale and Tar Sands Program

Section 369 of the Energy Policy Act, adopted on August 8, 2005, declared it to be the United States' policy that "oil shale, tar sands, and other unconventional fuels are strategically important domestic resources that should be developed to reduce the growing dependence of the United States on politically and economically unstable sources of foreign oil imports." 42 U.S.C. §15927(b)(1). Congress also directed that it be United States policy that commercial development of oil shale "be conducted in an environmentally sound manner, using practices that minimize impacts." 42 U.S.C. §15927(b)(2).

Section 369 further required that the Interior Secretary promptly follow the completion of the programmatic EIS with regulations establishing an oil shale leasing program. See 42 U.S.C. §15927(d)(2) ("Not later than 6 months after the completion of the [PEIS] under this subsection, the Secretary [of the Interior] shall publish a final regulation establishing such [commercial oil shale and tar sands leasing] program."). The Interior Department did not issue final rules until November 2008. Thus, any programmatic EIS must commit to a robust program. Alternatives 2 and 3 do not conform to the Energy Policy Act direction which still limits BLM's discretion to simply emasculate the program by eliminating public lands that are otherwise suitable and available for mineral leasing.

2. Lands With Wilderness Character

On February 15, 2011, BLM settled a challenge of the adequacy of the Final PEIS with a coalition of environmental groups. BLM agreed to revise the oil shale and tar sands regulations and to revise the EIS to consider an alternative that would exclude all lands with wilderness character from future oil shale and tar sands leasing. *CEC v. Salazar*, Civ. Nos. 09-85; 09-90.

Uintah County, in its November 8, 2011 written comment and elsewhere, has provided BLM with detailed comments regarding its lack of authority to manage lands as if they were wilderness unless such lands were designated as wilderness study areas (WSAs) within the 15-year review and study period, 43 U.S.C. §1782, or such lands have been designated by Congress.

While Interior Secretary Salazar issued S.O. 3310 on December 23, 2010, Congress prohibited the expenditure of any federal funds for FY 2011 as of April 7, 2011. BLM Director's admission in a congressional hearing that the Federal Land Policy and Management Act (FLPMA) did not authorize the designation of Wild Lands or "lands with wilderness character" no doubt persuaded many members of Congress to halt this ill-conceived program.

While an agency can consider an alternative for which it needs statutory authority, it must disclose this salient fact. The Alternative 2 of the 2011 PEIS fails to disclose or discuss the need for additional legal authority. Moreover, while BLM can inventory any resource on public lands and this would consider wilderness character, it cannot use the inventory to change management.

43 U.S.C. §1711(a). To the extent that Alternatives 2, 3 and 4 propose to manage the lands with wilderness character to close them to oil shale and tar sands, BLM is clearly in violation of that prohibition.

It appears that the BLM has inventoried "lands with wilderness character" in three states in preparation of the PEIS yet it did so without consideration of the above and with no analysis or disclosure of the need or impacts of such designations. In the Vernal Field Office Resource Management Plan, lands with WC were analyzed in detail and those that were determined to possess WC were designated as such in the RMP. The attempt to make additional WC lands designations is simply another attempt to circumvent the resource planning process, plan decisions, analysis, disclosure and public participation.

3. Only Alternative 1, the No Action Alternative Is Consistent With State and Local Government Plans and Policies

FLPMA requires that any BLM land use plan to conform to state and local government plans to the extent it is consistent with federal law. 43 U.S.C. §1712(c)(9) ("Land use plans of the Secretary under this section shall be consistent with State and local plans to the maximum extent he finds consistent with Federal law and the purposes of this Act."). Alternatives 2, 3 and 4 all fail to meet this standard and thus only Alternative 1 conforms to the consistency mandate.

4. Any Alternative Which Cuts Back on Domestic Energy Production Capability Is Ill Advised Given the Current International Energy Related Political Climate.

The Interior Department's current policies to delay or shut down energy development is incomprehensible when viewed in the context of current world events as well as the economic recession that has gripped the country for more than four years. The Department's continued efforts to stymie domestic energy production threaten national security in a profound way. Oil and gas imports from the Middle East continue to be vulnerable due to increased Islamic militancy in even countries that were previously considered allies. The changes in government and leadership leave the U.S. relationship with countries like Egypt, Libya, and Yemen fragile. The oil fields in Mexico are declining and Venezuela production was nationalized by its charismatic but erratic president, who is not a U.S. ally. The Interior Department's continued efforts to limit domestic energy production cannot be justified in this context.

Chapters 3-6

Uintah County chooses not to provide additional comments on Chapters 3-6 of the PEIS. For the reasons stated in its November 7, 2011 written comments, Uintah County views this entire 2011 PEIS effort as an illegal attempt at an end run around the Congressional Moratorium against the Order 3310 Wildlands Policy and all that resembles it. This PEIS effort is plainly an effort to push the Order 3310 Wildlands Agenda. For these reasons, Uintah County will not grace or

dignify this illegal 2011 PEIS effort with additional comments on Chapters 3-6 at this time.

The County reserves the right to comment in detail on the public draft with full expectation that our comments will be fully considered at that time. We have downloaded three different versions of the draft and did not have adequate time to do a comprehensive review. A determination was made that it was more cost effective to wait for the final draft when we should have a more reviewer friendly text and adequate time to conduct a more comprehensive review. This in no way affects our selection of the preferred alternative, which is supported by our comments here.

Sincerely,

UINTAH COUNTY COMMISSION

Darlene R. Burns

Darlene R. Burns, Chair

Michael J. McKee

Michael J. McKee

Mark D. Raymond

Mark D. Raymond

UINTAH COUNTY COMMISSION
RESOLUTION NO. #04-09-2012

A RESOLUTION OPPOSING THE BLM'S 2012 OIL SHALE AND TAR SANDS DRAFT PROGRAMMATIC ENVIRONMENTAL IMPACT STATEMENT, BLM PROJECT #WO-300-1310-PP-OSHL (HEREAFTER 2012 OSTS DPEIS) FOR LANDS ADMINISTERED BY THE BLM IN COLORADO, UTAH AND WYOMING

This Resolution is adopted in open meeting after due opportunity for public comment, by the Board of Commissioners of Uintah County, in order to redress the many violations of law, regulation, and policy by the BLM with respect to the BLM's 2012 OSTS DPEIS.

BACKGROUND

As background to this Resolution, Uintah County recites the following grievances:

WHEREAS, On April 14, 2011, the BLM caused to be published in the Federal Register, Volume 76, No 72/Thursday, April 14, 2011, pages 21003-21005, a notice of intent to prepare the 2012 OSTS DPEIS; and

WHEREAS, the preliminary purpose and need statement in the notice of intent, states the PEIS will analyze removing from oil shale and tar sands leasing "All areas that the BLM has identified or may identify as a result of inventories conducted during this planning process, as lands containing wilderness characteristics[.]" Id., at page 21004; and

WHEREAS, the notice of intent further states at page 21004:

> Lands that the BLM identifies as having wilderness characteristics will be considered during this planning initiative, as described above, and consistent with Secretarial Order No. 3310, dated Dec. 22, 2010, and BLM Manuals 6301 and 6302. Future leasing of lands determined by the BLM to have wilderness characteristics, if compatible with the allocation decisions stemming from this initiative, will subsequently be assessed in accordance with BLM Manual 6303, as appropriate (i.e., where the BLM has not determined, consistent with BLM Manual 6302, whether the lands with wilderness characteristics at issue should be receive a wild lands designation, BLM Manual 6303 will apply); and

WHEREAS, the Purpose and Need portion of the 2012 OSTS DPEIS states at page 1-5, lines 14-18:

> "In addition, the BLM has recently completed updating its inventory of lands having wilderness characteristics (LWC) in each of the three states for the planning area, and the

> status of several areas originally proposed to be Areas of Critical Environmental Concern (ACECs) in Utah has changed since the preparation of the 2008 OSTS PEIS."

WHEREAS, this language documents the BLM's intent to implement, administer and/or enforce Secretarial Order 3310 and one or more of the BLM guidance manuals promulgated under Order 3310; and

WHEREAS, any attempt by the BLM to implement, administer and/or enforce Secretarial Order 3310, including any effort by the BLM to proceed further on the 2012 OSTS DPEIS, violates the spending moratorium of Section 1769 of the April 21, 2011 Congressional Continuing Resolution to Fund Fiscal Year 2011 through September 30, 2011, which states:

> For the fiscal year ending September 30, 2011, none of the funds made available by this division or any other Act may be used to implement, administer, or enforce Secretarial Order No. 3310 issued by the Secretary of the Interior on December 22, 2010; and

WHEREAS, this spending moratorium has been carried forward in all subsequent Congressional spending resolutions up to and including the current spending resolution; and

WHEREAS, the 2012 OSTS DPEIS, is an admitted attempt by the BLM to implement, administer and/or enforce Secretarial Order 3310 and its policies and objectives, all in violation of the Spending Moratorium of the 2011 Continuing Resolution; and

WHEREAS, the 2008 Oil Shale and Tar Sands Programmatic EIS (2008 OSTS PEIS) was required under Section 369 (d) (1) of the Energy Policy Act of 2005 and was prepared in cooperation with 14 federal, state, and local governmental organizations; and

WHEREAS, the 2008 OSTS PEIS was 3 years in the making, and it honored the input of a task force of Governors and other stakeholders as per requirement of the 2005 Energy Policy Act;

WHEREAS, the Record of Decision (ROD) for the 2008 OSTS PEIS amended 10 land use plans in Colorado, Utah, and Wyoming to make approximately 2 million acres of public lands available for potential leasing and development of oil shale and approximately 430,000 acres available for tar sands leasing. Together with the regulations published in 2006 and 2008 for oil shale and tar sands resources, the 2008 OSTS PEIS and subsequent land use amendments constituted a reasonable and rational establishment of an oil shale and tar sands program as mandated in the Energy Policy Act of 2005; and

WHEREAS, the oil shale and tar sands program to which the 2008 OSTS PEIS and related regulations gave birth, was a reasonable response to the fact that oil shale and tar sands resources in the Green River Formation located in northeastern Utah, northwestern Colorado and southwestern Wyoming may reach 9 trillion barrels of oil; and

WHEREAS, the U.S. Geological Survey Oil Shale Assessment Team reports the estimated total in-place oil shale resource for the Uinta Basin of Utah to be 1.32 trillion barrels; and

WHEREAS, the preferred alternative in the 2012 OSTS DPEIS drastically shrinks, diminishes and in many areas outright reverses virtually all of the lands made available for Oil Shale and Tar Sands development in 2008, and does so using the same data and science; and

WHEREAS, the 2012 OSTS DPEIS fails to analyze alternative 2b, and the BLM admits as much on pages 2-35 of the 2012 OSTS DPEIS; and

WHEREAS, such a drastic reversal in lands available for Oil Shale and Tar Sands development between the 2008 PEIS and the 2012 preferred alternative, violates regulatory Task Force requirements of certainty for industry and investors; and

WHEREAS, such a drastic reversal of lands available for Oil Shale and Tar Sands development in 2008, constitutes a de facto, piece-meal revision of previous BLM Resource Management Plan, in violation of the Section 202 Planning Process under FLPMA;

WHEREAS, the preferred alternative in the 2012 OSTS DPEIS entirely ignores the input of the task force, the cooperating agencies, and the other stakeholders which the 2005 Energy Policy Act directed the BLM to honor and follow; and moreover the 2012 OSTS DPEIS may well violate various memoranda of understanding (MOUs) with counties, cities and local government coalitions which require the BLM to (1) publish the written input of cooperators who have unresolved disagreements over the substantive elements of the 2012 OSTS DPEIS, and (2) describe the objectives of the cooperators' land use plans and policies; and

WHEREAS, the 2012 OSTS DPEIS restricts the acreage allotted in the 2008 PWID for research and development leasing;

WHEREAS, the 2012 OSTS DPEIS threatens to arbitrarily undermine the process and the work utilized in creation of the 2008 OSTS PEIS, and essentially dismantle a reasonable and rational oil shale and tar sands program in violation of Section 369 of the 2005 Energy Policy Act; and

WHEREAS, the 2012 OSTS DPEIS is the creature of a friendly lawsuit settlement agreement between the BLM and ideological opponents to oil shale development, and is therefore entirely pre-determined and pre-decisional in violation of NEPA, with no apparent rationale for revising the acreages approved in 2008; and

WHEREAS, the BLM has settled on a preferred alternative in the 2012 OSTS DPEIS admittedly without having first analyzed its impacts; BLM should be required to withdraw the preferred status of the alternative until it has performed this analysis; and

WHEREAS, the acreage approved for Oil Shale and Tar Sands development in the 2012 OSTS DPEIS preferred alternative bears no rational relationship to the stated purpose and need;

WHEREAS, the Department of Energy has basically abdicated the responsibility Congress placed upon it to defend and uphold a viable oil shale energy program in America, leaving it instead to the BLM encumbered by a host of anti-oil shale pre-wilderness groups steering BLM's every move;

WHERAS, the alternative adopted in the ROD of the 2008 OSTS PEIS is now the No Action Alternative of the 2012 OSTS DPEIS; and

WHEREAS, the 2008 OSTS PEIS chosen alternative is consistent with the multiple use, sustained yield mandate of the Federal Land Policy and Management Act (FLPMA) ; and

WHEREAS, the 2008 OSTS PEIS chosen alternative is consistent with county general plans and policies which call for responsible development of available energy resources, but in stark contrast the 2012 OSTS DPEIS is plainly inconsistent with State and Local plans and policies, including the Uintah Basin Energy Zone legislation passed in the 2012 Utah Legislature (Senate Bill 83 - SEE UTAH CODE 63J-8-102 & 105.5) and passed by the Uintah County Commission (amendment 8.16 of the Uintah County General Plan), and should the BLM continue with the 2012 OSTS DPEIS it will need to adequately explain why consistency is not achievable; and

WHEREAS, Uintah County has adopted the following into its general plan:

> "Further, additional lands in Uintah County should also be approved for full oil shale and/or oil sands leasing and development if they either have a minimum resource thickness of 15 feet, or are estimated to produce a minimum yield of 15/gal of oil per ton of ore. Lands with these minimum resource thicknesses and gallonage yield estimates were approved for oil shale and/or oil sands development in Wyoming within the Green River Formation. Similarly situated resources should be subjected to the same approval process."

Should the BLM continue with the 2012 OSTS DPEIS it will need to be to the maximum extent possible consistent with this general plan or adequately explain why consistency is not achievable; and

WHEREAS, even prior to 2008, the development and production of oil from oil shale has been proven beyond a doubt to be technologically and economically feasible; and

WHEREAS, even prior to 2008, this same technology to extract oil from the oil shale rock is not only economically feasible, but it requires little to no consumption of water, contrary to the myths which falsely claim that oil shale extraction requires large consumption of water resources; and

WHEREAS, the energy captured in the extract of oil from shale (natural gas capture, etc.,) more than makes up for energy consumed in that extraction process, thus dispelling the myth that the oil shale extraction process consumes more energy than it produces;

WHEREAS, the rising price of gasoline, coupled with ever increasing loss of good paying jobs due to the Administration's policies against energy development on western public lands, result in increasing hardships for families and the local economy, to the point where some fear the window of opportunity is about to close for a civil, lawful and orderly response as citizens feel more and more pressured and desperate financially; and

WHEREAS, the 2012 OSTS DPEIS improperly limits technology testing to strictly in situ efforts and does not allow for development of other technologies; and

WHEREAS, the BLM has left insufficient time for the public and cooperators to meaningfully comment on the public 2012 OSTS DPEIS by the present comment deadline of May 4, 2012, because a highly relevant commercial oil shale BLM regulation is not due to be published until May 15, 2012 and the public should have the right to view that regulation first and then submit comments on the 2012 OSTS DPEIS in light of the regulation; and

WHEREAS, the same problems with lack of consistency with local plans and policies and failure to honor the input of cooperators and all stakeholders, also besets many public lands EIS projects, in addition to the 2012 OSTS DPEIS. The cooperators from Utah and Wyoming have already unanimously requested for the No-Action alternative in the 2012 OSTS DPEIS become the preferred alternative.

RESOLUTION

NOW THEREFORE, BE IT RESOLVED BY UINTAH COUNTY, STATE OF UTAH AS FOLLOWS:

1. Uintah County declares the BLM's continuing to administer and carry out the 2012 OSTS DPEIS, and updating any inventory of lands having wilderness characteristics, to be an open contempt and flaunting of the Congressional Spending Moratorium first imposed in the 2011 Continuing Resolution and carried forward in all subsequent Congressional spending resolutions up to and including the present;

2. Uintah County calls upon the BLM to cease all further activities with respect to administering and carrying out the 2012 OSTS DPEIS, because doing so constitutes an open contempt and violation of the Congressional Spending Moratorium against implementing, administering and/or enforcing Secretarial Order 3310, which Spending Moratorium was first imposed in the 2011 Continuing Resolution and carried forward in all subsequent Congressional spending resolutions up to and including the present;

3. Uintah County calls upon the BLM to immediately cease and desist all activities related to the 2012 OSTS DPEIS and immediately publish a revised notice in the Federal Register signifying its cessation of all work on the Programmatic EIS in obedience to the above-quoted Spending Moratorium. Otherwise, the BLM would be in contempt of Congress;

4. Should BLM continue to go forward with the 2012 OSTS DPEIS regardless of these grievances, the only legally, viable alternative would be if the BLM adopted the NO-Action Alternative, which is identical to the Alternative chosen in the ROD of the 2008 OSTS PEIS;

5. Should BLM decide to flagrantly defy Congress and proceed with the 2012 OSTS DPEIS, it is still obligated under FLPMA to be consistent with State and Local plans to the maximum extent possible;

6. The BLM must cease and desist all activities related to the 2012 OSTS DPEIS because even within its own document the Purpose and Need is unsupportable, arbitrary and a blatant show of conformity to a friendly-lawsuit settlement agreement, which falls out of the public process followed in developing the 2008 OSTS PEIS, and the 2012 OSTS DPEIS omits full and proper analysis of economically viable and technologically advanced extraction methods;

7. Should BLM decide to ignore all of the above and proceed, the BLM should extend the May 4, 2012 deadline for public comment on the 2012 OSTS DPEIS at least 30 days after publication of the expected oil shale regulation due to be published on or around May 15, 2012.

8. The BLM should honor the input of cooperators, particularly if they are local governments, as required by Section 202(c)(9) of FLPMA and the relevant terms of the BLM-Cooperator MOUs, in all matters, not just with respect to the 2012 OSTS DPEIS.

APPROVED AND ADOPTED by a duly constituted quorum of the Board of County Commissioners of Uintah County Commissioners of Uintah County this 9th day of April, 2012.

BOARD OF COUNTY COMMISSIONERS
UINTAH COUNTY, UTAH

Darlene R. Burns

Darlene Burns, Chair

ATTEST:

Michael W. Wilkins, Clerk/Auditor

UINTAH COUNTY, UTAH
Uintah County
CLERK-AUDITOR

8.16 Uintah County hereby creates an Energy Zone with the county for the purpose of maximizing efficient and responsible development of energy and mineral resources. The land area and boundaries of the Uintah County Energy Zone are described as follows:

Township 2S Range 18E, Township 2S Range 19E, Township 2S Range 20E, Township 2S Range 21E, Township 2S Range 22E, Township 2S Range 23E, Township 2S Range 24E, Township 2N Range 1W, Township 2N Range 1E, Township 2N Range 2E, Township 3S Range 18E, Township 3S Range 19E, Township 3S Range 20E, Township 3S Range 21E, Township 3S Range 22E, Township 3S Range 23E, Township 3S Range 24E, Township 4S Range 19E, Township 4S Range 20E, Township 4S Range 21E, Township 4S Range 22E, Township 4S Range 23E, Township 4S Range 24E, Township 4S Range 25E, Township 5S Range 19E, Township 5S Range 20E, Township 5S Range 21E, Township 5S Range 22E, Township 5S Range 23E, Township 5S Range 24E, Township 5S Range 25E, Township 6S Range 19E, Township 6S Range 20E, Township 6S Range 21E, Township 6S Range 22E, Township 6S Range 23E, Township 6S Range 24E, Township 6S Range 25E, Township 7S Range 19E, Township 7S Range 20E, Township 7S Range 21E, Township 7S Range 22E, Township 7S Range 23E, Township 7S Range 24E, Township 7S Range 25E, Township 8S Range 17E, Township 8S Range 18E, Township 8S Range 19E, Township 8S Range 20E, Township 8S Range 21E, Township 8S Range 22E, Township 8S Range 23E, Township 8S Range 24E, Township 8S Range 25E, Township 9S Range 17E, Township 9S Range 18E, Township 9S Range 19E, Township 9S Range 20E, Township 9S Range 21E, Township 9S Range 22E, Township 9S Range 23E, Township 9S Range 24E, Township 9S Range 25E, Township 10S Range 17E, Township 10S Range 18E, Township 10S Range 19E, Township 10S Range 20E, Township 10S Range 21E, Township 10S Range 22E, Township 10S Range 23E, Township 10S Range 24E, Township 10S Range 25E, Township 11S Range 17E, Township 11S Range 18E, Township 11S Range 19E, Township 11S Range 20E, Township 11S Range 21E, Township 11S Range 22E, Township 11S Range 23E, Township 11S Range 24E, Township 11S Range 25E, Township 12S Range 20E, Township 12S Range 21E, Township 12S Range 22E, Township 12S Range 23E, Township 12S Range 24E, Township 12S Range 25E, Township 13S Range 20E, Township 13S Range 21E, Township 13S Range 22E, Township 13S Range 23E, Township 13S Range 24E, Township 13S Range 25E, Township 13S Range 26 E, Township 14S Range 21E, Township 14S Range 22E, Township 14S Range 23E, Township 14S Range 24E, Township 14S Range 25E, and Township 14S Range 26 E.

These lands contain abundant, world-class deposits of energy and mineral resources, including oil, natural gas, oil shale, oil sands, gilsonite, coal, phosphate, gold, uranium, and copper, as well as areas with high wind and solar energy potential; and the highest management priority for all lands within the Uintah Basin Energy Zone is responsible management and development of

existing energy and mineral resources in order to provide long-term domestic energy and supplies for Utah and the United States of America.

8.17 Uintah County's Plan for Managing and Developing Oil Shale and Oil Sands Resources within the Borders of Uintah County:

1. Representatives from Uintah County have observed economically viable technologies for extracting and processing oil shale and oil sands and know that they exist and are applied every day. Similar applicable technologies should immediately be applied today to oil shale and oil sands resources within Uintah County.

2. All lands approved for oil shale and oil sands leasing and development in the 2008 BLM Oil Shale and Tar Sands Programmatic Environmental Impact Statement (2008 OSTS PEIS) should be fully leased and developed for those resources.

3. Further, additional lands in Uintah County should also be approved for full oil shale and/or oil sands leasing and development if they either have a minimum resource thickness of 15 feet, or are estimated to produce a minimum yield of 15/gal of oil per ton of ore. Lands with these minimum resource thicknesses and gallonage yield estimates were approved for oil shale and/or oil sands development in Wyoming within the Green River Formation. Similarly situated resources should be subjected to the same approval process

4. Uintah County requires all applicable Federal agencies to fully comply with The Federal Land Policy and Management Act of 1976, as amended (hereinafter "FLPMA"), by being consistent with State and local plans to the maximum extent possible in managing public lands within Uintah County. Uintah County is committed to insure management of public lands is subject to consistent objective policy and not the political vagaries of the day.[1] Sound

[1] Secretarial Order 3310, dated Dec. 22, 2010 and the 2011 Oil Shale and Tar Sands Programmatic Environmental Impact Statement are perfect examples of an attempted end-run by the Executive around Legislative mandates and a new administration's attempt to undue years of objective sound policy making to satisfy campaign promises. However, any attempt by the BLM to implement, administer and/or enforce Secretarial Order 3310, including any effort by the BLM to proceed further on the 2011 OSTS PEIS, is a patent violation of the funding moratorium against such activities, as found in Section 1769 of the April 21, 2011 Congressional Resolution to Fund Fiscal year 2011 through September 30, 2011, and subsequent Congressional funding measures which perpetuate this moratorium, which states:

For the fiscal year ending September 30, 2011 [and subsequent fiscal years as applicable], none of the funds made available by this division or any other Act may be used to implement, administer, or enforce Secretarial Order 3310 issued by the Secretary of the Interior on December 22, 2010.

The BLM should immediately cease and desist all activities related to the 2011 OSTS PEIS and immediately publish a revised notice in the Federal Register signifying its cessation of all work on the Programmatic EIS or it will continue to be in contempt of Congress.

consistent management will increase the energy independence of the United States of America and provide local economic stability. Any attempts by a federal agency to not adhere to the plain language of FLPMA requiring consistency with State and local plans will be challenged and if necessary legal action will ensue.

In very recognizable fashion FLPMA created a system of public land management honoring the American philosophy of "laboratories of democracy." In 1932, U.S. Supreme Court Justice Louis Brandeis stated "It is one of the happy incidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country." *New State Ice Co. v. Liebmann*, 285 U.S. 262 (1932) (dissenting opinion). Uintah County, a political subdivision of the State of Utah, is exercising its duty under our system of Federalism to try sound novel approaches to manage public lands within its boundaries. Again, it is incumbent on federal agencies to the maximum extent possible be consistent with this plan. Anything short of this constitutes a violation of federal law and is subject to judicial review.

5. Consistent with this Chapter, Uintah County will utilize best available technology to develop a map showing all lands that should be leased and fully developed for oil shale and oil sands in Uintah County. This map will supersede the current State of Utah map showing lands estimated to produce a minimum yield of 25/gal of oil per ton of ore and a copy thereof shall be available for public inspection in the office of the Uintah County Commission.

Enrolled Copy **S.B. 83**

UINTAH BASIN ENERGY ZONES

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kevin T. Van Tassell

House Sponsor: John G. Mathis

LONG TITLE

General Description:

This bill modifies Title 63J, Chapter 8, State of Utah Resource Management Plan for Federal Lands, by creating the Uintah Basin Energy Zone.

Highlighted Provisions:

This bill:

- defines the term "Uintah Basin Energy Zone";
- creates the Uintah Basin Energy Zone;
- adopts an energy exploration, access, and development policy for the Uintah Basin Energy Zone, including:
  - promoting full, responsible development of energy and mineral resources within the Uintah Basin Energy Zone; and
  - achieving and maintaining sustainable levels of energy, hard rock, and natural resources in the Uintah Basin Energy Zone;
- promotes local, state, and federal collaboration to develop energy and mineral resources in the Uintah Basin Energy Zone; and
- makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides an immediate effective date.

Utah Code Sections Affected:

AMENDS:

63J-4-401, as last amended by Laws of Utah 2009, Chapter 121

63J-8-102, as enacted by Laws of Utah 2011, Chapter 49

63J-8-105, as enacted by Laws of Utah 2011, Chapter 49

ENACTS:

63J-8-105.5, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **63J-4-401** is amended to read:

63J-4-401. Planning duties of the planning coordinator and office.

(1) The state planning coordinator shall:

(a) act as the governor's adviser on state, regional, metropolitan, and local governmental planning matters relating to public improvements and land use;

(b) counsel with the authorized representatives of the Department of Transportation, the State Building Board, the Department of Health, the Department of Workforce Services, the Labor Commission, the Department of Natural Resources, the School and Institutional Trust Lands Administration, and other proper persons concerning all state planning matters;

(c) when designated to do so by the governor, receive funds made available to Utah by the federal government;

(d) receive and review plans of the various state agencies and political subdivisions relating to public improvements and programs;

(e) when conflicts occur between the plans and proposals of state agencies, prepare specific recommendations for the resolution of the conflicts and submit the recommendations to the governor for a decision resolving the conflict;

(f) when conflicts occur between the plans and proposals of a state agency and a political subdivision or between two or more political subdivisions, advise these entities of the conflict and make specific recommendations for the resolution of the conflict;

(g) act as the governor's planning agent in planning public improvements and land use and, in this capacity, undertake special studies and investigations;

(h) provide information and cooperate with the Legislature or any of its committees in conducting planning studies;

(i) cooperate and exchange information with federal agencies and local, metropolitan, or regional agencies as necessary to assist with federal, state, regional, metropolitan, and local programs;

(j) make recommendations to the governor that the planning coordinator considers advisable for the proper development and coordination of plans for state government and political subdivisions; and

(k) oversee and supervise the activities and duties of the public lands policy coordinator.

(2) The state planning coordinator may:

(a) perform regional and state planning and assist state government planning agencies in performing state planning;

(b) provide planning assistance to Indian tribes regarding planning for Indian reservations; and

(c) assist city, county, metropolitan, and regional planning agencies in performing local, metropolitan, and regional planning, provided that the state planning coordinator and the state planning coordinator's agents and designees recognize and promote the plans, policies, programs, processes, and desired outcomes of each planning agency whenever possible.

(3) When preparing or assisting in the preparation of plans, policies, programs, or processes related to the management or use of federal lands or natural resources on federal lands in Utah, the state planning coordinator shall:

(a) incorporate the plans, policies, programs, processes, and desired outcomes of the counties where the federal lands or natural resources are located, to the maximum extent consistent with state and federal law, provided that this requirement shall not be interpreted to infringe upon the authority of the governor;

(b) identify inconsistencies or conflicts between the plans, policies, programs, processes, and desired outcomes prepared under Subsection (3)(a) and the plans, programs,

processes, and desired outcomes of local government as early in the preparation process as possible, and seek resolution of the inconsistencies through meetings or other conflict resolution mechanisms involving the necessary and immediate parties to the inconsistency or conflict;

(c) present to the governor the nature and scope of any inconsistency or other conflict that is not resolved under the procedures in Subsection (3)(b) for the governor's decision about the position of the state concerning the inconsistency or conflict;

(d) develop, research, and use factual information, legal analysis, and statements of desired future condition for the state, or subregion of the state, as necessary to support the plans, policies, programs, processes, and desired outcomes of the state and the counties where the federal lands or natural resources are located;

(e) establish and coordinate agreements between the state and federal land management agencies, federal natural resource management agencies, and federal natural resource regulatory agencies to facilitate state and local participation in the development, revision, and implementation of land use plans, guidelines, regulations, other instructional memoranda, or similar documents proposed or promulgated for lands and natural resources administered by federal agencies; and

(f) work in conjunction with political subdivisions to establish agreements with federal land management agencies, federal natural resource management agencies, and federal natural resource regulatory agencies to provide a process for state and local participation in the preparation of, or coordinated state and local response to, environmental impact analysis documents and similar documents prepared pursuant to law by state or federal agencies.

(4) The state planning coordinator shall comply with the requirements of Subsection 63C-4-102(8) before submitting any comments on a draft environmental impact statement or on an environmental assessment for a proposed land management plan, if the governor would be subject to Subsection 63C-4-102(8) if the governor were submitting the material.

(5) The state planning coordinator shall cooperate with and work in conjunction with appropriate state agencies and political subdivisions to develop policies, plans, programs,

processes, and desired outcomes authorized by this section by coordinating the development of positions:

(a) through the Resource Development Coordinating Committee;

(b) in conjunction with local government officials concerning general local government plans;

(c) by soliciting public comment through the Resource Development Coordinating Committee; and

(d) by working with the Public Lands Policy Coordinating Office.

(6) The state planning coordinator shall recognize and promote the following principles when preparing any policies, plans, programs, processes, or desired outcomes relating to federal lands and natural resources on federal lands pursuant to this section:

(a) (i) the citizens of the state are best served by applying multiple-use and sustained-yield principles in public land use planning and management; and

(ii) multiple-use and sustained-yield management means that federal agencies should develop and implement management plans and make other resource-use decisions that:

(A) achieve and maintain in perpetuity a high-level annual or regular periodic output of mineral and various renewable resources from public lands;

(B) support valid existing transportation, mineral, and grazing privileges at the highest reasonably sustainable levels;

(C) support the specific plans, programs, processes, and policies of state agencies and local governments;

(D) are designed to produce and provide the desired vegetation for the watersheds, timber, food, fiber, livestock forage, and wildlife forage, and minerals that are necessary to meet present needs and future economic growth and community expansion without permanent impairment of the productivity of the land;

(E) meet the recreational needs and the personal and business-related transportation needs of the citizens of the state by providing access throughout the state;

(F) meet the recreational needs of the citizens of the state;

(G) meet the needs of wildlife;

(H) provide for the preservation of cultural resources, both historical and archaeological;

(I) meet the needs of economic development;

(J) meet the needs of community development; and

(K) provide for the protection of water rights;

(b) managing public lands for "wilderness characteristics" circumvents the statutory wilderness process and is inconsistent with the multiple-use and sustained-yield management standard that applies to all Bureau of Land Management and U.S. Forest Service lands that are not wilderness areas or wilderness study areas;

(c) all waters of the state are:

(i) owned exclusively by the state in trust for its citizens;

(ii) are subject to appropriation for beneficial use; and

(iii) are essential to the future prosperity of the state and the quality of life within the state;

(d) the state has the right to develop and use its entitlement to interstate rivers;

(e) all water rights desired by the federal government must be obtained through the state water appropriation system;

(f) land management and resource-use decisions which affect federal lands should give priority to and support the purposes of the compact between the state and the United States related to school and institutional trust lands;

(g) development of the solid, fluid, and gaseous mineral resources of the state is an important part of the economy of the state, and of local regions within the state;

(h) the state should foster and support industries that take advantage of the state's outstanding opportunities for outdoor recreation;

(i) wildlife constitutes an important resource and provides recreational and economic opportunities for the state's citizens;

(j) proper stewardship of the land and natural resources is necessary to ensure the

health of the watersheds, timber, forage, and wildlife resources to provide for a continuous supply of resources for the people of the state and the people of the local communities who depend on these resources for a sustainable economy;

(k) forests, rangelands, timber, and other vegetative resources:

(i) provide forage for livestock;

(ii) provide forage and habitat for wildlife;

(iii) provide resources for the state's timber and logging industries;

(iv) contribute to the state's economic stability and growth; and

(v) are important for a wide variety of recreational pursuits;

(l) management programs and initiatives that improve watersheds, forests, and increase forage for the mutual benefit of wildlife species and livestock, logging, and other agricultural industries by utilizing proven techniques and tools are vital to the state's economy and the quality of life in Utah; and

(m) (i) land management plans, programs, and initiatives should provide that the amount of domestic livestock forage, expressed in animal unit months, for permitted, active use as well as the wildlife forage included in that amount, be no less than the maximum number of animal unit months sustainable by range conditions in grazing allotments and districts, based on an on-the-ground and scientific analysis;

(ii) the state opposes the relinquishment or retirement of grazing animal unit months in favor of conservation, wildlife, and other uses;

(iii) (A) the state favors the best management practices that are jointly sponsored by cattlemen's, sportsmen's, and wildlife management groups such as chaining, logging, seeding, burning, and other direct soil and vegetation prescriptions that are demonstrated to restore forest and rangeland health, increase forage, and improve watersheds in grazing districts and allotments for the mutual benefit of domestic livestock and wildlife;

(B) when practices described in Subsection (6)(m)(iii)(A) increase a grazing allotment's forage beyond the total permitted forage use that was allocated to that allotment in the last federal land use plan or allotment management plan still in existence as of January 1,

2005, a reasonable and fair portion of the increase in forage beyond the previously allocated total permitted use should be allocated to wildlife as recommended by a joint, evenly balanced committee of livestock and wildlife representatives that is appointed and constituted by the governor for that purpose;

(C) the state favors quickly and effectively adjusting wildlife population goals and population census numbers in response to variations in the amount of available forage caused by drought or other climatic adjustments, and state agencies responsible for managing wildlife population goals and population census numbers will give due regard to both the needs of the livestock industry and the need to prevent the decline of species to a point where listing under the terms of the Endangered Species Act when making such adjustments;

(iv) the state opposes the transfer of grazing animal unit months to wildlife for supposed reasons of rangeland health;

(v) reductions in domestic livestock animal unit months must be temporary and scientifically based upon rangeland conditions;

(vi) policies, plans, programs, initiatives, resource management plans, and forest plans may not allow the placement of grazing animal unit months in a suspended use category unless there is a rational and scientific determination that the condition of the rangeland allotment or district in question will not sustain the animal unit months sought to be placed in suspended use;

(vii) any grazing animal unit months that are placed in a suspended use category should be returned to active use when range conditions improve;

(viii) policies, plans, programs, and initiatives related to vegetation management should recognize and uphold the preference for domestic grazing over alternate forage uses in established grazing districts while upholding management practices that optimize and expand forage for grazing and wildlife in conjunction with state wildlife management plans and programs in order to provide maximum available forage for all uses; and

(ix) in established grazing districts, animal unit months that have been reduced due to rangeland health concerns should be restored to livestock when rangeland conditions improve,

and should not be converted to wildlife use.

(7) The state planning coordinator shall recognize and promote the following findings in the preparation of any policies, plans, programs, processes, or desired outcomes relating to federal lands and natural resources on federal lands under this section:

(a) as a coholder of R.S. 2477 rights-of-way with the counties, the state supports its recognition by the federal government and the public use of R.S. 2477 rights-of-way and urges the federal government to fully recognize the rights-of-way and their use by the public as expeditiously as possible;

(b) it is the policy of the state to use reasonable administrative and legal measures to protect and preserve valid existing rights-of-way granted by Congress under R.S. 2477, and to support and work in conjunction with counties to redress cases where R.S. 2477 rights-of-way are not recognized or are impaired; and

(c) transportation and access routes to and across federal lands, including all rights-of-way vested under R.S. 2477, are vital to the state's economy and to the quality of life in the state, and must provide, at a minimum, a network of roads throughout the resource planning area that provides for:

(i) movement of people, goods, and services across public lands;

(ii) reasonable access to a broad range of resources and opportunities throughout the resource planning area, including:

(A) livestock operations and improvements;

(B) solid, fluid, and gaseous mineral operations;

(C) recreational opportunities and operations, including motorized and nonmotorized recreation;

(D) search and rescue needs;

(E) public safety needs; and

(F) access for transportation of wood products to market;

(iii) access to federal lands for people with disabilities and the elderly; and

(iv) access to state lands and school and institutional trust lands to accomplish the

purposes of those lands.

(8) The state planning coordinator shall recognize and promote the following findings in the preparation of any plans, policies, programs, processes, or desired outcomes relating to federal lands and natural resources on federal lands pursuant to this section:

(a) the state's support for the addition of a river segment to the National Wild and Scenic Rivers System, 16 U.S.C. Sec. 1271 et seq., will be withheld until:

(i) it is clearly demonstrated that water is present and flowing at all times;

(ii) it is clearly demonstrated that the required water-related value is considered outstandingly remarkable within a region of comparison consisting of one of the three physiographic provinces in the state, and that the rationale and justification for the conclusions are disclosed;

(iii) it is clearly demonstrated that the inclusion of each river segment is consistent with the plans and policies of the state and the county or counties where the river segment is located as those plans and policies are developed according to Subsection (3);

(iv) the effects of the addition upon the local and state economies, agricultural and industrial operations and interests, outdoor recreation, water rights, water quality, water resource planning, and access to and across river corridors in both upstream and downstream directions from the proposed river segment have been evaluated in detail by the relevant federal agency;

(v) it is clearly demonstrated that the provisions and terms of the process for review of potential additions have been applied in a consistent manner by all federal agencies;

(vi) the rationale and justification for the proposed addition, including a comparison with protections offered by other management tools, is clearly analyzed within the multiple-use mandate, and the results disclosed;

(vii) it is clearly demonstrated that the federal agency with management authority over the river segment, and which is proposing the segment for inclusion in the National Wild and Scenic River System will not use the actual or proposed designation as a basis to impose management standards outside of the federal land management plan;

(viii) it is clearly demonstrated that the terms and conditions of the federal land and resource management plan containing a recommendation for inclusion in the National Wild and Scenic River System:

(A) evaluates all eligible river segments in the resource planning area completely and fully for suitability for inclusion in the National Wild and Scenic River System;

(B) does not suspend or terminate any studies for inclusion in the National Wild and Scenic River System at the eligibility phase;

(C) fully disclaims any interest in water rights for the recommended segment as a result of the adoption of the plan; and

(D) fully disclaims the use of the recommendation for inclusion in the National Wild and Scenic River System as a reason or rationale for an evaluation of impacts by proposals for projects upstream, downstream, or within the recommended segment;

(ix) it is clearly demonstrated that the agency with management authority over the river segment commits not to use an actual or proposed designation as a basis to impose Visual Resource Management Class I or II management prescriptions that do not comply with the provisions of Subsection (8)(t); and

(x) it is clearly demonstrated that including the river segment and the terms and conditions for managing the river segment as part of the National Wild and Scenic River System will not prevent, reduce, impair, or otherwise interfere with:

(A) the state and its citizens' enjoyment of complete and exclusive water rights in and to the rivers of the state as determined by the laws of the state; or

(B) local, state, regional, or interstate water compacts to which the state or any county is a party;

(b) the conclusions of all studies related to potential additions to the National Wild and Scenic River System, 16 U.S.C. Sec. 1271 et seq., are submitted to the state for review and action by the Legislature and governor, and the results, in support of or in opposition to, are included in any planning documents or other proposals for addition and are forwarded to the United States Congress;

(c) the state's support for designation of an Area of Critical Environmental Concern (ACEC), as defined in 43 U.S.C. Sec. 1702, within federal land management plans will be withheld until:

(i) it is clearly demonstrated that the proposed area satisfies all the definitional requirements of the Federal Land Policy and Management Act of 1976, 43 U.S.C. Sec. 1702(a);

(ii) it is clearly demonstrated that the area proposed for designation as an ACEC is limited in geographic size and that the proposed management prescriptions are limited in scope to the minimum necessary to specifically protect and prevent irreparable damage to the relevant and important values identified, or limited in geographic size and management prescriptions to the minimum required to specifically protect human life or safety from natural hazards;

(iii) it is clearly demonstrated that the proposed area is limited only to areas that are already developed or used or to areas where no development is required;

(iv) it is clearly demonstrated that the proposed area contains relevant and important historic, cultural or scenic values, fish or wildlife resources, or natural processes which are unique or substantially significant on a regional basis, or contain natural hazards which significantly threaten human life or safety;

(v) the federal agency has analyzed regional values, resources, processes, or hazards for irreparable damage and its potential causes resulting from potential actions which are consistent with the multiple-use, sustained-yield principles, and the analysis describes the rationale for any special management attention required to protect, or prevent irreparable damage to the values, resources, processes, or hazards;

(vi) it is clearly demonstrated that the proposed designation is consistent with the plans and policies of the state and of the county where the proposed designation is located as those plans and policies are developed according to Subsection (3);

(vii) it is clearly demonstrated that the proposed ACEC designation will not be applied redundantly over existing protections provided by other state and federal laws for federal lands or resources on federal lands, and that the federal statutory requirement for special management

attention for a proposed ACEC will discuss and justify any management requirements needed in addition to those specified by the other state and federal laws;

(viii) the difference between special management attention required for an ACEC and normal multiple-use management has been identified and justified, and that any determination of irreparable damage has been analyzed and justified for short and long-term horizons;

(ix) it is clearly demonstrated that the proposed designation:

(A) is not a substitute for a wilderness suitability recommendation;

(B) is not a substitute for managing areas inventoried for wilderness characteristics after 1993 under the BLM interim management plan for valid wilderness study areas; and

(C) it is not an excuse or justification to apply de facto wilderness management standards; and

(x) the conclusions of all studies are submitted to the state, as a cooperating agency, for review, and the results, in support of or in opposition to, are included in all planning documents;

(d) sufficient federal lands are made available for government-to-government exchanges of school and institutional trust lands and federal lands without regard for a resource-to-resource correspondence between the surface or mineral characteristics of the offered trust lands and the offered federal lands;

(e) federal agencies should support government-to-government exchanges of land with the state based on a fair process of valuation which meets the fiduciary obligations of both the state and federal governments toward trust lands management, and which assures that revenue authorized by federal statute to the state from mineral or timber production, present or future, is not diminished in any manner during valuation, negotiation, or implementation processes;

(f) agricultural and grazing lands should continue to produce the food and fiber needed by the citizens of the state and the nation, and the rural character and open landscape of rural Utah should be preserved through a healthy and active agricultural and grazing industry, consistent with private property rights and state fiduciary duties;

(g) the resources of the forests and rangelands of the state should be integrated as part

of viable, robust, and sustainable state and local economies, and available forage should be evaluated for the full complement of herbivores the rangelands can support in a sustainable manner, and forests should contain a diversity of timber species, and disease or insect infestations in forests should be controlled using logging or other best management practices;

(h) the state opposes any additional evaluation of national forest service lands as "roadless" or "unroaded" beyond the forest service's second roadless area review evaluation and opposes efforts by agencies to specially manage those areas in a way that:

(i) closes or declassifies existing roads unless multiple side by side roads exist running to the same destination and state and local governments consent to close or declassify the extra roads;

(ii) permanently bars travel on existing roads;

(iii) excludes or diminishes traditional multiple-use activities, including grazing and proper forest harvesting;

(iv) interferes with the enjoyment and use of valid, existing rights, including water rights, local transportation plan rights, R.S. 2477 rights, grazing allotment rights, and mineral leasing rights; or

(v) prohibits development of additional roads reasonably necessary to pursue traditional multiple-use activities;

(i) the state's support for any forest plan revision or amendment will be withheld until the appropriate plan revision or plan amendment clearly demonstrates that:

(i) established roads are not referred to as unclassified roads or a similar classification;

(ii) lands in the vicinity of established roads are managed under the multiple-use, sustained-yield management standard; and

(iii) no roadless or unroaded evaluations or inventories are recognized or upheld beyond those that were recognized or upheld in the forest service's second roadless area review evaluation;

(j) the state's support for any recommendations made under the statutory requirement to examine the wilderness option during the revision of land and resource management plans by

the U.S. Forest Service will be withheld until it is clearly demonstrated that:

(i) the duly adopted transportation plans of the state and county or counties within the planning area are fully and completely incorporated into the baseline inventory of information from which plan provisions are derived;

(ii) valid state or local roads and rights-of-way are recognized and not impaired in any way by the recommendations;

(iii) the development of mineral resources by underground mining is not affected by the recommendations;

(iv) the need for additional administrative or public roads necessary for the full use of the various multiple-uses, including recreation, mineral exploration and development, forest health activities, and grazing operations is not unduly affected by the recommendations;

(v) analysis and full disclosure is made concerning the balance of multiple-use management in the proposed areas, and that the analysis compares the full benefit of multiple-use management to the recreational, forest health, and economic needs of the state and the counties to the benefits of the requirements of wilderness management; and

(vi) the conclusions of all studies related to the requirement to examine the wilderness option are submitted to the state for review and action by the Legislature and governor, and the results, in support of or in opposition to, are included in any planning documents or other proposals that are forwarded to the United States Congress;

(k) the invasion of noxious weeds and undesirable invasive plant species into the state should be reversed, their presence eliminated, and their return prevented;

(l) management and resource-use decisions by federal land management and regulatory agencies concerning the vegetative resources within the state should reflect serious consideration of the proper optimization of the yield of water within the watersheds of the state;

(m) (i) it is the policy of the state that:

(A) mineral and energy production and environmental protection are not mutually exclusive;

(B) it is technically feasible to permit appropriate access to mineral and energy resources while preserving nonmineral and nonenergy resources;

(C) resource management planning should seriously consider all available mineral and energy resources;

(D) the development of the solid, fluid, and gaseous mineral resources of the state and the renewable resources of the state should be encouraged;

(E) the waste of fluid and gaseous minerals within developed areas should be prohibited; and

(F) requirements to mitigate or reclaim mineral development projects should be based on credible evidence of significant impacts to natural or cultural resources;

(ii) the state's support for mineral development provisions within federal land management plans will be withheld until the appropriate land management plan environmental impact statement clearly demonstrates:

(A) that the authorized planning agency has:

(I) considered and evaluated the mineral and energy potential in all areas of the planning area as if the areas were open to mineral development under standard lease agreements; and

(II) evaluated any management plan prescription for its impact on the area's baseline mineral and energy potential;

(B) that the development provisions do not unduly restrict access to public lands for energy exploration and development;

(C) that the authorized planning agency has supported any closure of additional areas to mineral leasing and development or any increase of acres subject to no surface occupancy restrictions by adhering to:

(I) the relevant provisions of the Federal Land Policy and Management Act of 1976, 43 U.S.C. Sec. 1701 et seq.;

(II) other controlling mineral development laws; and

(III) the controlling withdrawal and reporting procedures set forth in the Federal Land

Policy and Management Act of 1976, 43 U.S.C. Sec. 1701 et seq.;

(D) that the authorized planning agency evaluated whether to repeal any moratorium that may exist on the issuance of additional mining patents and oil and gas leases;

(E) that the authorized planning agency analyzed all proposed mineral lease stipulations and considered adopting the least restrictive necessary to protect against damage to other significant resource values;

(F) that the authorized planning agency evaluated mineral lease restrictions to determine whether to waive, modify, or make exceptions to the restrictions on the basis that they are no longer necessary or effective;

(G) that the authorized federal agency analyzed all areas proposed for no surface occupancy restrictions, and that the analysis evaluated:

(I) whether directional drilling is economically feasible and ecologically necessary for each proposed no surface occupancy area;

(II) whether the directional drilling feasibility analysis, or analysis of other management prescriptions, demonstrates that the proposed no surface occupancy prescription, in effect, sterilizes the mineral and energy resources beneath the area; and

(III) whether, if the minerals are effectively sterilized, the area must be reported as withdrawn under the provisions of the Federal Land Policy and Management Act; and

(H) that the authorized planning agency has evaluated all directional drilling requirements in no surface occupancy areas to determine whether directional drilling is feasible from an economic, ecological, and engineering standpoint;

(n) motorized, human, and animal-powered outdoor recreation should be integrated into a fair and balanced allocation of resources within the historical and cultural framework of multiple-uses in rural Utah, and outdoor recreation should be supported as part of a balanced plan of state and local economic support and growth;

(o) off-highway vehicles should be used responsibly, the management of off-highway vehicles should be uniform across all jurisdictions, and laws related to the use of off-highway vehicles should be uniformly applied across all jurisdictions;

(p) (i) rights-of-way granted and vested under the provisions of R.S. 2477 should be preserved and acknowledged;

(ii) land use management plans, programs, and initiatives should be consistent with both state and county transportation plans developed according to Subsection (3) in order to provide a network of roads throughout the planning area that provides for:

(A) movement of people, goods, and services across public lands;

(B) reasonable access to a broad range of resources and opportunities throughout the planning area, including access to livestock, water, and minerals;

(C) economic and business needs;

(D) public safety;

(E) search and rescue;

(F) access for people with disabilities and the elderly;

(G) access to state lands; and

(H) recreational opportunities;

(q) transportation and access provisions for all other existing routes, roads, and trails across federal, state, and school trust lands within the state should be determined and identified, and agreements should be executed and implemented, as necessary to fully authorize and determine responsibility for maintenance of all routes, roads, and trails;

(r) the reasonable development of new routes and trails for motorized, human, and animal-powered recreation should be implemented;

(s) (i) forests, rangelands, and watersheds, in a healthy condition, are necessary and beneficial for wildlife, livestock grazing, and other multiple-uses;

(ii) management programs and initiatives that are implemented to increase forage for the mutual benefit of the agricultural industry, livestock operations, and wildlife species should utilize all proven techniques and tools;

(iii) the continued viability of livestock operations and the livestock industry should be supported on the federal lands within the state by management of the lands and forage resources, by the proper optimization of animal unit months for livestock, in accordance with

the multiple-use provisions of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1701 et seq., the provisions of the Taylor Grazing Act of 1934, 43 U.S.C. 315 et seq., and the provisions of the Public Rangelands Improvement Act of 1978, 43 U.S.C. 1901 et seq.;

(iv) provisions for predator control initiatives or programs under the direction of state and local authorities should be implemented; and

(v) resource-use and management decisions by federal land management and regulatory agencies should support state-sponsored initiatives or programs designed to stabilize wildlife populations that may be experiencing a scientifically demonstrated decline in those populations; and

(t) management and resource use decisions by federal land management and regulatory agencies concerning the scenic resources of the state must balance the protection of scenery with the full management requirements of the other authorized uses of the land under multiple-use management, and should carefully consider using Visual Resource Management Class I protection only for areas of inventoried Class A scenery or equivalent.

(9) Notwithstanding any provision of Section 63J-8-105.5, the state is committed to establishing and administering an effective statewide conservation strategy for greater sage grouse.

[~~(9)~~] (10) Nothing contained in this section may be construed to restrict or supersede the planning powers conferred upon state departments, agencies, instrumentalities, or advisory councils of the state or the planning powers conferred upon political subdivisions by any other existing law.

[~~(10)~~] (11) Nothing in this section may be construed to affect any lands withdrawn from the public domain for military purposes, which are administered by the United States Army, Air Force, or Navy.

Section 2. Section **63J-8-102** is amended to read:

63J-8-102. Definitions.

As used in this chapter:

(1) "ACEC" means an area of critical environmental concern

(2) "AUM" means animal unit months, a unit of grazing forage.

(3) "BLM" means the United States Bureau of Land Management.

(4) "FLPMA" means the Federal Land Policy Management Act of 1976, 43 U.S.C. Sec. 1701 et seq.

(5) "Forest service" means the United States Forest Service within the United States Department of Agriculture.

(6) "Multiple use" means proper stewardship of the subject lands pursuant to Section 1031(C) of FLPMA, 43 U.S.C. Sec. 170(C).

(7) "OHV" means off-highway vehicle as defined in Section 41-22-2.

(8) "Settlement Agreement" means the written agreement between the state and the Department of the Interior in 2003 (revised in 2005) that resolved the case of State of Utah v. Gale Norton, Secretary of Interior (United States District Court, D. Utah, Case No. 2:96cv0870).

(9) "SITLA" means the School and Institutional Trust Lands Administration as created in Section 53C-1-201.

(10) (a) "Subject lands" means the following non-WSA BLM lands:

(i) in Beaver County:

(A) Mountain Home Range South, Jackson Wash, The Toad, North Wah Wah Mountains, Central Wah Wah Mountains, and San Francisco Mountains according to the region map entitled "Great Basin Central" linked in the webpage entitled "Citizen's Proposal for Wilderness in Utah" at http://www.protectwildutah.org/proposal/index.html as the webpage existed on February 17, 2011; and

(B) White Rock Range, South Wah Wah Mountains, and Granite Peak according to the region map entitled "Great Basin South" linked in the webpage entitled "Citizen's Proposal for Wilderness in Utah" at http://www.protectwildutah.org/proposal/index.html as the webpage existed on February 17, 2011;

(ii) in Box Elder County: Little Goose Creek, Grouse Creek Mountains North, Grouse Creek Mountains South, Bald Eagle Mountain, Central Pilot Range, Pilot Peak, Crater Island

West, Crater Island East, Newfoundland Mountains, and Grassy Mountains North according to the region map entitled "Great Basin North" linked in the webpage entitled "Citizen's Proposal for Wilderness in Utah" at http://www.protectwildutah.org/proposal/index.html as the webpage existed on February 17, 2011;

(iii) in Carbon County: Desbrough Canyon and Turtle Canyon according to the region map entitled "Book Cliffs" linked in the webpage entitled "Citizen's Proposal for Wilderness in Utah" at http://www.protectwildutah.org/proposal/index.html as the webpage existed on February 17, 2011;

(iv) in Daggett County: Goslin Mountain, Home Mountain, Red Creek Badlands, O-wi-yu-kuts, Lower Flaming Gorge, Crouse Canyon, and Diamond Breaks according to the region map entitled "Dinosaur" linked in the webpage entitled "Citizen's Proposal for Wilderness in Utah" at http://www.protectwildutah.org/proposal/index.html as the webpage existed on February 17, 2011;

(v) in Duchesne County: Desbrough Canyon according to the region map entitled "Book Cliffs" linked in the webpage entitled "Citizen's Proposal for Wilderness in Utah" at http://www.protectwildutah.org/proposal/index.html as the webpage existed on February 17, 2011;

(vi) in Emery County:

(A) San Rafael River and Sweetwater Reef, according to the region map entitled "Canyonlands Basin" linked in the webpage entitled "Citizen's Proposal for Wilderness in Utah" at http://www.protectwildutah.org/proposal/index.html as the webpage existed on February 17, 2011;

(B) Flat Tops according to the region map entitled "Glen Canyon," which is available by clicking the link entitled "Dirty Devil" at the webpage entitled "Citizen's Proposal for Wilderness in Utah" at http://www.protectwildutah.org/proposal/index.html as the webpage existed on February 17, 2011; and

(C) Price River, Lost Spring Wash, Eagle Canyon, Upper Muddy Creek, Molen Reef, Rock Canyon, Mussentuchit Badland, and Muddy Creek, according to the region map entitled

"San Rafael Swell" linked at the webpage entitled "Citizen's Proposal for Wilderness in Utah" at http://www.protectwildutah.org/proposal/index.html as the webpage existed on February 17, 2011;

(vii) in Garfield County:

(A) Pole Canyon, according to the region map entitled "Great Basin South" linked in the webpage entitled "Citizen's Proposal for Wilderness in Utah" at http://www.protectwildutah.org/proposal/index.html as the webpage existed on February 17, 2011;

(B) Dirty Devil, Fiddler Butte, Little Rockies, Cane Spring Desert, and Cane Spring Desert Adjacents, according to the region map entitled "Glen Canyon," which is available by clicking the link entitled "Dirty Devil" at the webpage entitled "Citizen's Proposal for Wilderness in Utah" at http://www.protectwildutah.org/proposal/index.html as the webpage existed on February 17, 2011;

(C) Lampstand, Wide Hollow, Steep Creek, Brinkerhof Flats, Little Valley Canyon, Death Hollow, Studhorse Peaks, Box Canyon, Heaps Canyon, North Escalante Canyon, Colt Mesa, East of Bryce, Slopes of Canaan Peak, Horse Spring Canyon, Muley Twist Flank, Pioneer Mesa, Slopes of Bryce, Blue Hills, Mud Springs Canyon, Carcass Canyon, Willis Creek North, Kodachrome Basin, and Kodachrome Headlands, according to the region map entitled "Grand Staircase Escalante" linked at the webpage entitled "Citizen's Proposal for Wilderness in Utah" at http://www.protectwildutah.org/proposal/index.html as the webpage existed on February 17, 2011; and

(D) Notom Bench, Mount Ellen, Bull Mountain, Dogwater Creek, Ragged Mountain, Mount Pennell, Mount Hillers, Bullfrog Creek, and Long Canyon, according to the region map entitled "Henry Mountains" linked at the webpage entitled "Citizen's Proposal for Wilderness in Utah" at http://www.protectwildutah.org/proposal/index.html as the webpage existed on February 17, 2011;

(viii) in Iron County: Needle Mountains, Steamboat Mountain, Broken Ridge, Paradise Mountains, Crook Canyon, Hamlin, North Peaks, Mount Escalante, and Antelope Ridge,

according to the region map entitled "Great Basin South" linked in the webpage entitled "Citizen's Proposal for Wilderness in Utah" at http://www.protectwildutah.org/proposal/index.html as the webpage existed on February 17, 2011;

(ix) in Juab County: Deep Creek Mountains, Essex Canyon, Kern Mountains, Wild Horse Pass, Disappointment Hills, Granite Mountain, Middle Mountains, Tule Valley, Fish Springs Ridge, Thomas Range, Drum Mountains, Dugway Mountains, Keg Mountains West, Keg Mountains East, Lion Peak, and Rockwell Little Sahara, according to the region map entitled "Great Basin Central" linked in the webpage entitled "Citizen's Proposal for Wilderness in Utah" at http://www.protectwildutah.org/proposal/index.html as the webpage existed on February 17, 2011;

(x) in Kane County:

(A) Willis Creek North, Willis Creek, Kodachrome Badlands, Mud Springs Canyon, Carcass Canyon, Scorpion, Bryce Boot, Paria-Hackberry Canyons, Fiftymile Canyon, Hurricane Wash, Upper Kanab Creek, Timber Mountain, Nephi Point, Paradise Canyon, Wahweap Burning Hills, Fiftymile Bench, Forty Mile Gulch, Sooner Bench 1, 2, & 3, Rock Cove, Warm Bench, Andalex Not, Vermillion Cliffs, Ladder Canyon, The Cockscomb, Nipple Bench, Moquith Mountain, Bunting Point, Glass Eye Canyon, and Pine Hollow, according to the region map entitled "Grand Staircase Escalante" linked at the webpage entitled "Citizen's Proposal for Wilderness in Utah" at http://www.protectwildutah.org/proposal/index.html as the webpage existed on February 17, 2011; and

(B) Orderville Canyon, Jolley Gulch, and Parunuweap Canyon, according to the region map entitled "Zion/Mohave" linked at the webpage entitled "Citizen's Proposal for Wilderness in Utah" at http://www.protectwildutah.org/proposal/index.html as the webpage existed on February 17, 2011;

(xi) in Millard County: Kern Mountains, Wild Horse Pass, Disappointment Hills, Granite Mountain, Middle Mountains, Tule Valley, Swasey Mountain, Little Drum Mountains North, Little Drum Mountains South, Drum Mountains, Snake Valley, Coyote Knoll, Howell

Peak, Tule Valley South, Ledger Canyon, Chalk Knolls, Orr Ridge, Notch View, Bullgrass Knoll, Notch Peak, Barn Hills, Cricket Mountains, Burbank Pass, Middle Burbank Hills, King Top, Barn Hills, Red Tops, Middle Burbank Hills, Juniper, Painted Rock Mountain, Black Hills, Tunnel Springs, Red Canyon, Sand Ridge, Little Sage Valley, Cat Canyon, Headlight Mountain, Black Hills, Mountain Range Home North, Tweedy Wash, North Wah Wah Mountains, Jackson Wash, and San Francisco Mountains, according to the region map entitled "Great Basin Central" linked in the webpage entitled "Citizen's Proposal for Wilderness in Utah" at http://www.protectwildutah.org/proposal/index.html as the webpage existed on February 17, 2011;

(xii) in Piute County: Kingston Ridge, Rocky Ford, and Phonolite Hill, according to the region map entitled "Great Basin South" linked in the webpage entitled "Citizen's Proposal for Wilderness in Utah" at http://www.protectwildutah.org/proposal/index.html as the webpage existed on February 17, 2011;

(xiii) in San Juan County:

(A) Horseshoe Point, Deadhorse Cliffs, Gooseneck, Demon's Playground, Hatch Canyon, Lockhart Basin, Indian Creek, Hart's Point, Butler Wash, Bridger Jack Mesa, and Shay Mountain, according to the region map entitled "Canyonlands Basin" linked in the webpage entitled "Citizen's Proposal for Wilderness in Utah" at http://www.protectwildutah.org/proposal/index.html as the webpage existed on February 17, 2011;

(B) Dark Canyon, Copper Point, Fortknocker Canyon, White Canyon, The Needle, Red Rock Plateau, Upper Red Canyon, and Tuwa Canyon, according to the region map entitled "Glen Canyon," which is available by clicking the link entitled "Dirty Devil" at the webpage entitled "Citizen's Proposal for Wilderness in Utah" at http://www.protectwildutah.org/proposal/index.html as the webpage existed on February 17, 2011;

(C) Hunters Canyon, Behind the Rocks, Mill Creek, and Coyote Wash, according to the region map entitled "Moab/La Sal" linked at the webpage entitled "Citizen's Proposal for

Wilderness in Utah" at http://www.protectwildutah.org/proposal/index.html as the webpage existed on February 17, 2011; and

(D) Hammond Canyon, Allen Canyon, Mancos Jim Butte, Arch Canyon, Monument Canyon, Tin Cup Mesa, Cross Canyon, Nokai Dome, Grand Gulch, Fish and Owl Creek Canyons, Comb Ridge, Road Canyon, The Tabernacle, Lime Creek, San Juan River, and Valley of the Gods, according to the region map entitled "San Juan" linked at the webpage entitled "Citizen's Proposal for Wilderness in Utah" at http://www.protectwildutah.org/proposal/index.html as the webpage existed on February 17, 2011;

(xiv) in Sevier County: Rock Canyon, Mussentuchit Badland, Limestone Cliffs, and Jones' Bench, according to the region map entitled "San Rafael Swell" linked at the webpage entitled "Citizen's Proposal for Wilderness in Utah" at http://www.protectwildutah.org/proposal/index.html as the webpage existed on February 17, 2011;

(xv) in Tooele County:

(A) Silver Island Mountains, Crater Island East, Grassy Mountains North, Grassy Mountains South, Stansbury Island, Cedar Mountains North, Cedar Mountains Central, Cedar Mountains South, North Stansbury Mountains, Oquirrh Mountains, and Big Hollow, according to the region map entitled "Great Basin North" linked in the webpage entitled "Citizen's Proposal for Wilderness in Utah" at http://www.protectwildutah.org/proposal/index.html as the webpage existed on February 17, 2011, excluding the areas that Congress designated as wilderness under the National Defense Authorization Act for Fiscal Year 2006; and

(B) Ochre Mountain, Deep Creek Mountains, Dugway Mountains, Indian Peaks, and Lion Peak, according to the region map entitled "Great Basin Central" linked in the webpage entitled "Citizen's Proposal for Wilderness in Utah" at http://www.protectwildutah.org/proposal/index.html as the webpage existed on February 17, 2011;

(xvi) in Uintah County:

(A) White River, Lower Bitter Creek, Sunday School Canyon, Dragon Canyon, Wolf Point, Winter Ridge, Seep Canyon, Bitter Creek, Hideout Canyon, Sweetwater Canyon, and Hell's Hole, according to the region map entitled "Book Cliffs" linked in the webpage entitled "Citizen's Proposal for Wilderness in Utah" at http://www.protectwildutah.org/proposal/index.html as the webpage existed on February 17, 2011; and

(B) Lower Flaming Gorge, Crouse Canyon Stone Bridge Draw, Diamond Mountain, Wild Mountain, Split Mountain Benches, Vivas Cake Hill, Split Mountain Benches South, Beach Draw, Stuntz Draw, Moonshine Draw, Bourdette Draw, and Bull Canyon, according to the region map entitled "Dinosaur" linked in the webpage entitled "Citizen's Proposal for Wilderness in Utah" at http://www.protectwildutah.org/proposal/index.html as the webpage existed on February 17, 2011;

(xvii) in Washington County: Couger Canyon, Docs Pass, Slaughter Creek, Butcher Knife Canyon, Square Top, Scarecrow Creek, Beaver Dam Wash, Beaver Dam Mountains North, Beaver Dam Mountains South, Joshua Tree, Beaver Dam Wilderness Expansion, Red Mountain, Cottonwood Canyon, Taylor Canyon, LaVerkin Creek, Beartrap Canyon, Deep Creek, Black Ridge, Red Butte, Kolob Creek, Goose Creek, Dry Creek, Zion National Park Adjacents, Crater Hill, The Watchman, and Canaan Mountain, according to the region map entitled "Zion/Mohave" linked at the webpage entitled "Citizen's Proposal for Wilderness in Utah" at http://www.protectwildutah.org/proposal/index.html as the webpage existed on February 17, 2011, excluding the areas that Congress designated as wilderness and conservation areas under the Omnibus Public Lands Management Act of 2009; and

(xviii) in Wayne County:

(A) Sweetwater Reef, Upper Horseshoe Canyon, and Labyrinth Canyon, according to the region map entitled "Canyonlands Basin" linked in the webpage entitled "Citizen's Proposal for Wilderness in Utah" at http://www.protectwildutah.org/proposal/index.html as the webpage existed on February 17, 2011;

(B) Flat Tops and Dirty Devil, according to the region map entitled "Glen Canyon,"

which is available by clicking the link entitled "Dirty Devil" at the webpage entitled "Citizen's Proposal for Wilderness in Utah" at http://www.protectwildutah.org/proposal/index.html as the webpage existed on February 17, 2011;

(C) Fremont Gorge, Pleasant Creek Bench, Notom Bench, Mount Ellen, and Bull Mountain, according to the region map entitled "Henry Mountains" linked at the webpage entitled "Citizen's Proposal for Wilderness in Utah" at http://www.protectwildutah.org/proposal/index.html as the webpage existed on February 17, 2011; and

(D) Capital Reef Adjacents, Muddy Creek, Wild Horse Mesa, North Blue Flats, Red Desert, and Factory Butte, according to the region map entitled "San Rafael Swell" linked at the webpage entitled "Citizen's Proposal for Wilderness in Utah" at http://www.protectwildutah.org/proposal/index.html as the webpage existed on February 17, 2011.

(b) "Subject lands" also includes all BLM and Forest Service lands in the state that are not Wilderness Area or Wilderness Study Areas;

(c) "Subject lands" does not include the following lands that are the subject of consideration for a possible federal lands bill and should be managed according to the 2008 Price BLM Field Office Resource Management Plan until a federal lands bill provides otherwise:

(i) Turtle Canyon and Desolation Canyon according to the region map entitled "Book Cliffs" linked in the webpage entitled "Citizen's Proposal for Wilderness in Utah" at http://protectwildutah.org/proposal/index.html as the webpage existed on February 17, 2011;

(ii) Labyrinth Canyon, Duma Point, and Horseshoe Point, according to the region map entitled "Canyonlands Basin" linked in the webpage entitled "Citizen's Proposal for Wilderness in Utah" at http://protectwildutah.org/proposal/index.html as the webpage existed on February 17, 2011; and

(iii) Devil's Canyon, Sid's Mountain, Mexican Mountain, San Rafael Reef, Hondu Country, Cedar Mountain, and Wild Horse, according to the region map entitled "San Rafael

Swell" linked at the webpage entitled "Citizen's Proposal for Wilderness in Utah" at http://protectwildutah.org/proposal/index.html as the webpage existed on February 17, 2011[~~;~~].

(11) "Uintah Basin Energy Zone" means BLM, Forest Service, and SITLA lands situated in the following townships in Daggett, Duchesne, and Uintah counties, as more fully illustrated in the map prepared by the Uintah County GIS Department in February 2012 entitled "Uintah Basin Utah Energy Zone":

(a) in Daggett County, Township 3N Range 17 E, Township 3N Range 18E, Township 3N Range 19E, Township 3N Range 20E, Township 3N Range 22E, Township 3N Range 23E, Township 3N Range 24E, Township 3N Range 25E, Township 2N Range 17E, Township 2N Range 18E, Township 2N Range 19E, Township 2N Range 20E, Township 2N Range 21E, and Township 2S Range 25E;

(b) in Duchesne County, Township 3N Range 4W, Township 3N Range 3W, Township 3N Range 2W, Township 3N Range 1W, Township 2N Range 6W, Township 2N Range 5W, Township 2N Range 4W, Township 2N Range 3W, Township 2N Range 1W, Township 1N Range 9W, Township 1N Range 8W, Township 1N Range 7W, Township 1N Range 6W, Township 1S Range 9W, Township 1S Range 8W, Township 4S Range 9W, Township 4S Range 3W, Township 4S Range 2W, Township 4S Range 1W, Township 8S Range 15E, Township 8S Range 16E, Township 8S Range 17E, Township 5S Range 9W, Township 5S Range 3W, Township 9S Range 15E, Township 9S Range 16E, Township 9S Range 17E, Township 6S Range 9W, Township 6S Range 8W, Township 6S Range 7W, Township 6S Range 6W, Township 6S Range 5W, Township 6S Range 3W, Township 10S Range 15E, Township 10S Range 16E, Township 10S Range 17E, Township 7S Range 9W, Township 7S Range 8W, Township 7S Range 7W, Township 7S Range 6W, Township 7S Range 5W, Township 7S Range 4W, Township 10S Range 11E, Township 10S Range 12E, Township 10S Range 13E, Township 10S Range 14E, Township 10S Range 15E, Township 10S Range 16E, Township 10S Range 17E, Township 11S Range 10E, Township 11S Range 11E, Township 11S Range 12E, Township 11S Range 13E, Township 11S Range 14E, Township 11S Range 15E, Township 11S Range 16E, and Township 11S Range 17E; and

(c) in Uintah County: Township 2S Range 18E, Township 2S Range 19E, Township 2S Range 20E, Township 2S Range 21E, Township 2S Range 22E, Township 2S Range 23E, Township 2S Range 24E, Township 2N Range 1W, Township 2N Range 1E, Township 2N Range 2E, Township 3S Range 18E, Township 3S Range 19E, Township 3S Range 20E, Township 3S Range 21E, Township 3S Range 22E, Township 3S Range 23E, Township 3S Range 24E, Township 4S Range 19E, Township 4S Range 20E, Township 4S Range 21E, Township 4S Range 22E, Township 4S Range 23E, Township 4S Range 24E, Township 4S Range 25E, Township 5S Range 19E, Township 5S Range 20E, Township 5S Range 21E, Township 5S Range 22E, Township 5S Range 23E, Township 5S Range 24E, Township 5S Range 25E, Township 6S Range 19E, Township 6S Range 20E, Township 6S Range 21E, Township 6S Range 22E, Township 6S Range 23E, Township 6S Range 24E, Township 6S Range 25E, Township 7S Range 19E, Township 7S Range 20E, Township 7S Range 21E, Township 7S Range 22E, Township 7S Range 23E, Township 7S Range 24E, Township 7S Range 25E, Township 8S Range 17E, Township 8S Range 18E, Township 8S Range 19E, Township 8S Range 20E, Township 8S Range 21E, Township 8S Range 22E, Township 8S Range 23E, Township 8S Range 24E, Township 8S Range 25E, Township 9S Range 17E, Township 9S Range 18E, Township 9S Range 19E, Township 9S Range 20E, Township 9S Range 21E, Township 9S Range 22E, Township 9S Range 23E, Township 9S Range 24E, Township 9S Range 25E, Township 10S Range 17E, Township 10S Range 18E, Township 10S Range 19E, Township 10S Range 20E, Township 10S Range 21E, Township 10S Range 22E, Township 10S Range 23E, Township 10S Range 24E, Township 10S Range 25E, Township 11S Range 17E, Township 11S Range 18E, Township 11S Range 19E, Township 11S Range 20E, Township 11S Range 21E, Township 11S Range 22E, Township 11S Range 23E, Township 11S Range 24E, Township 11S Range 25E, Township 12S Range 20E, Township 12S Range 21E, Township 12S Range 22E, Township 12S Range 23E, Township 12S Range 24E, Township 12S Range 25E, Township 13S Range 20E, Township 13S Range 21E, Township 13S Range 22E, Township 13S Range 23E, Township 13S Range 24E, Township 13S Range 25E, Township 13S Range 26 E, Township 14S Range 21E, Township 14S Range

22E, Township 14S Range 23E, Township 14S Range 24E, Township 14S Range 25E, and Township 14S Range 26E.

[~~(11)~~] (12) "Wilderness area" means those BLM and Forest Service lands added to the National Wilderness Preservation System by an act of Congress.

[~~(12)~~] (13) "WSA" and "Wilderness Study Area" mean the BLM lands in Utah that were identified as having the necessary wilderness character and were classified as wilderness study areas during the BLM wilderness review conducted between 1976 and 1993 by authority of Section 603 of FLPMA and labeled as Wilderness Study Areas within the final report of the President of the United States to the United States Congress in 1993.

Section 3. Section **63J-8-105** is amended to read:

63J-8-105. Maps available for public review.

A printed copy of the maps referenced in [~~Subsection~~] Subsections 63J-8-102(10) and (11) shall be available for inspection by the public at the offices of the Utah Association of Counties.

Section 4. Section **63J-8-105.5** is enacted to read:

63J-8-105.5. Uintah Basin Energy Zone established -- Findings -- Management and land use priorities.

(1) There is established the Uintah Basin Energy Zone in Daggett, Uintah, and Duchesne Counties for the purpose of maximizing efficient and responsible development of energy and mineral resources.

(2) The land area and boundaries of the Uintah Basin Energy Zone are described in Subsection 63J-8-102(11) and illustrated on the map described in Section 63J-8-105.

(3) The state finds that:

(a) the lands comprising the Uintah Basin Energy Zone contain abundant, world-class deposits of energy and mineral resources, including oil, natural gas, oil shale, oil sands, gilsonite, coal, phosphate, gold, uranium, and copper, as well as areas with high wind and solar energy potential; and

(b) the highest management priority for all lands within the Uintah Basin Energy Zone

is responsible management and development of existing energy and mineral resources in order to provide long-term domestic energy and supplies for Utah and the United States.

(4) The state supports:

(a) efficient and responsible full development of all existing energy and mineral resources located within the Uintah Basin Energy Zone, including oil, oil shale, natural gas, oil sands, gilsonite, phosphate, gold, uranium, copper, solar, and wind resources; and

(b) a cooperative management approach among federal agencies, state, and local governments to achieve broadly supported management plans for the full development of all energy and mineral resources within the Uintah Basin Energy Zone.

(5) The state calls upon the federal agencies who administer lands within the Uintah Basin Energy Zone to:

(a) fully cooperate and coordinate with the state and with Daggett, Uintah, and Duchesne Counties to develop, amend, and implement land and resource management plans and to implement management decisions that are consistent with the purposes, goals, and policies described in this section to the maximum extent allowed under federal law;

(b) expedite the processing, granting, and streamlining of mineral and energy leases and applications to drill, extract, and otherwise develop all existing energy and mineral resources located within the Uintah Basin Energy Zone, including oil, natural gas, oil shale, oil sands, gilsonite, phosphate, gold, uranium, copper, solar, and wind resources;

(c) allow continued maintenance and increased development of roads, power lines, pipeline infrastructure, and other utilities necessary to achieve the goals, purposes, and policies described in this section;

(d) refrain from any planning decisions and management actions that will undermine, restrict, or diminish the goals, purposes, and policies for the Uintah Basin Energy Zone as stated in this section; and

(e) refrain from implementing a policy that is contrary to the goals and purposes described within this section.

(6) The state calls upon Congress to establish an intergovernmental standing

commission among federal, state, and local governments to guide and control planning decisions and management actions in the Uintah Basin Energy Zone in order to achieve and maintain the goals, purposes, and policies described in this section.

(7) Notwithstanding the provisions of this section, the state's grazing and livestock policies and plans on land within the Uintah Basin Energy Zone shall continue to be governed by Sections 63J-4-401 and 63J-8-104.

Section 5. **Effective date.**

If approved by two-thirds of all the members elected to each house, this bill takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

Draft Programmatic Environmental Impact Statement and Possible Land Use Plan Amendments for Allocation of Oil Shale and Tar Sands Resources on Lands Administered by the Bureau of Land Management in Colorado, Utah, and Wyoming
Volume 1: Chapters 1, 2, & 3
Comment Form
May 4, 2012

Note Figure, Table, and map reference in comment column.

Page	Line	Commenter	Comment	Response
ES-1 (p. 39)	34	Jon Stearmer, Uintah County	The purpose is clear - friendly lawsuit settlement agreement with an environmental coalition. A need has not been shown as no new information is being analyzed. A careful analysis of the previous PEIS and this current draft shows very little change. The Preferred Alternative has little to no analysis at all.	
ES-5 (p. 43)	15	Jon Stearmer, Uintah County	This is not an experimental stage. It is beyond dispute that numerous companies have profitably extracted oil from shale for many years.	
ES-5 (p. 43)	28	Jon Stearmer, Uintah County	If this is indeed a "fresh look", as stated in the purpose and need, then the "fresh look" needs to consider an alternative providing more liberal acreage allocation. By designating the publicly vetted 2008 RMP as a ceiling the results of this PEIS are unjustifiably skewed.	
ES-5 (p. 43)	33	Jon Stearmer, Uintah County	This is the only viable alternative based on comments in Uintah County's Resolution, attached hereto and incorporated by reference. All neighboring counties in Utah, Colorado and Wyoming have voiced these comments. To the extent Uintah County could gather copies of their passed resolutions they are attached hereto and incorporated by reference.	
ES-6 (p.44)	16	Jon Stearmer, Uintah County	The use of the word "may" is synonymous with speculation and conjectures. No new scientific analysis is provided and this merely a statement filled with political sway.	

Draft Programmatic Environmental Impact Statement and Possible Land Use Plan Amendments for Allocation of Oil Shale and Tar Sands Resources on Lands Administered by the Bureau of Land Management in Colorado, Utah, and Wyoming
Volume 1: Chapters 1, 2, & 3
Comment Form
May 4, 2012

			Administration to thump its chest concerning its "green" environmental policies.	
1-14 (p. 62)	24	Jon Stearmer, Uintah County	And this is supported by what data? Refer back to comment on Enefit and Petrobras.	
1-15 (p.63)	41	Jon Stearmer, Uintah County	These roles have not been followed based on comment made in Uintah County's comment letter. BLM has failed to comply with its own cooperator MOU.	
1-21 (p. 69)	39	Jon Stearmer, Uintah County	It is not "where possible", but to the "maximum extent" consistent with federal law and the purposes of FLPMA. BLM has been provided with a copy of Uintah County's Energy Zone and Oil Shale plans. BLM must be consistent with said plans to the maximum extent possible.	

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Memorandum of Understanding
Between
The Department of the Interior, Bureau of Land Management,
And
Uintah County, Utah
As a Cooperating Agency

RECEIVED
NOV 1 5 2011
UINTAH COUNTY
COMMISSION

I. Introduction

This Memorandum of Understanding (MOU) establishes a cooperating agency relationship between the Bureau of Land Management ("BLM") and Uintah County, Utah ("Cooperator") for the purpose of preparing the Oil Shale and Tar Sands Resource Management Plan Amendments to Address Land Use Allocations in Colorado, Utah, and Wyoming and Programmatic Environmental Impact Statement (RMPA/PEIS). The BLM is the lead federal agency for development of the Oil Shale and Tar Sands Resource Management Plan Amendments to Address Land Use Allocations in Colorado, Utah, and Wyoming RMPA/PEIS. The BLM acknowledges that the Cooperator has special expertise applicable to the RMPA/PEIS effort, as defined at 40 CFR 1508.15 and 1508.26. This MOU describes responsibilities and procedures agreed to by Uintah County, Utah as a Cooperating Agency and the BLM ("the Parties").

The cooperating agency relationship established through this MOU shall be governed by all applicable statutes, regulations, and policies, including the Council on Environmental Quality's National Environmental Policy Act (NEPA) regulations (in particular, 40 CFR 1501.6 and 1508.5), the BLM's planning regulations (in particular, 43 CFR 1601.0-5, 1610.3-1, and 1610.4), and the Department of the Interior Manual (516 DM 2.5).

II. Purpose

The purposes of this MOU are:

A. To designate Uintah County, Utah as a Cooperating Agency in the RMPA/PEIS process.
B. To provide a framework for cooperation and coordination between the BLM and the Cooperator that will ensure successful completion of the RMPA/PEIS in a timely, efficient, and thorough manner.
C. To recognize that the BLM is the lead agency with responsibility for the completion of the RMPA/PEIS and the Record of Decision (ROD).
D. To describe the respective responsibilities, jurisdictional authority, and expertise of each of the Parties in the planning process.

III. Authorities for the MOU

A. The authorities of the BLM to enter into and engage in the activities described within this MOU include, but are not limited to:
    1. National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).
    2. Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.).

B. Regulations implementing the above authorities:
1. Council on Environmental Quality regulations (40 CFR 1501 et seq.)
2. Bureau of Land Management planning regulations (43 CFR 1601 et seq.)

C. The authorities of Uintah County, Utah to enter into this MOU include, but are not limited to:

1. Uintah County is a Political Subdivision of the State of Utah.
2. Uintah County has expertise in a full array of public land issues and a professional staff to provide technical information.

IV. Roles and Responsibilities

A. BLM Responsibilities:

1. As lead agency, the BLM retains final responsibility for the content of all planning and NEPA documents, which include the Draft RMPA/Draft PEIS, the Proposed RMPA/Final PEIS, and the ROD. The BLM's responsibilities include determining the purpose of and need for the RMPA/PEIS, selecting alternatives for analysis, identifying effects of the proposed alternatives, selecting the preferred alternative, and determining appropriate mitigation measures. In meeting these responsibilities, the BLM will follow all applicable statutory and regulatory requirements.

2. To the fullest extent consistent with its responsibilities as lead agency, the BLM will consider the comments, recommendations, data, and/or analyses provided by the Cooperator in the RMPA/PEIS planning process, giving particular consideration to those topics on which the Cooperator is acknowledged to possess jurisdiction by law or special expertise.

3. To the fullest extent practicable, after consideration of the effect such releases may have on the BLM's ability to withhold this information from other parties, the BLM will provide the Cooperator with copies of documents underlying the RMPA/PEIS relevant to the Cooperator's responsibilities, including technical reports, data, analyses, comments received, working drafts related to environmental reviews, and draft and final RMPA/PEISs.

B. Cooperating Agency Responsibilities:

1. Uintah County, Utah is a Cooperating Agency in this planning process and is recognized to have special expertise, including, but not limited in the following areas:
   a. Uintah County is recognized to have special expertise concerning the history, institutions, social, and economic conditions of its jurisdiction.
   b. Uintah County's participation will be as a full cooperating agency.

2. The Cooperator will provide information, comments, and technical expertise to the BLM regarding those elements of the RMPA/PEIS, and the data and analyses supporting them, in which it has jurisdiction or special expertise or for which the BLM requests its assistance. In particular, the Cooperator will provide information on the following topics:
   a. Air quality data, County visitor expenditures, transportation studies, land use, travel planning, water issues, and socio-economic studies, etc.

b. Other such information that is relevant to planning issues or data needs.

3. Within the areas of their jurisdiction or special expertise, the Cooperator may participate in any of the activities identified in Attachment A. These activities include, but are not limited to: providing guidance on public involvement strategies, identifying data needs, suggesting management actions to resolve planning issues, providing input to the draft Analysis of the Management Situation, identifying effects of alternatives, suggesting mitigation measures, and providing written comments on working drafts of the RMPA/PEIS and supporting documents. (See also Section C.4.)

4. Uintah County will not be seeking any compensation for its contribution as a cooperator.

C. Responsibilities of the Parties:

1. The Parties agree to participate in this planning process in good faith and make all reasonable efforts to resolve disagreements.

2. The Parties agree to comply with the planning schedule provided as Attachment B, which includes dates for RMPA/PEIS milestones and timeframes for Cooperator's reviews and submissions.

3. Each Party agrees to fund its own expenses associated with the Oil Shale and Tar Sands Resource Management Plan Amendments to Address Land Use Allocations in Colorado, Utah, and Wyoming and RMPA/PEIS process, except that the BLM may contract with a Cooperator for technical studies within its jurisdiction or special expertise, as provided for in Section IV.B.4.

4. The Parties agree to carefully consider whether proposed meetings or other activities would waive the Unfunded Mandates Reform Act exception to the Federal Advisory Committee Act (2 U.S.C. 1534(b) and 5 U.S.C App.).

V. Other Provisions

A. Authorities not altered. Nothing in this MOU alters, limits, or supersedes the authorities and responsibilities of any Party on any matter within their respective jurisdictions. Nothing in this MOU shall require any of the Parties to perform beyond its respective authority.

B. Financial obligations. Nothing in this MOU shall require any of the Parties to assume any obligation or expend any sum in excess of authorization and appropriations available.

C. Immunity and defenses retained. Each Party retains all immunities and defenses provided by law with respect to any action based on or occurring as a result of this MOU.

D. Conflict of interest. The Parties agree not to utilize any individual or organization for purposes of plan development, environmental analysis, or Cooperator representation, including officials, employees, or third party contractors, having a financial interest in the outcome of the Oil Shale and Tar Sands RMPA to Address Land Use Allocations in Colorado, Utah, and Wyoming RMPA/PEIS. Questions regarding potential conflicts of interest should be referred to BLM HQ or Field Ethics Counselors for resolution.

E. Documenting disagreement or inconsistency. Where the BLM and one or more Cooperators disagree on substantive elements of the RMP/EIS (such as designation of the Alternatives to be analyzed or analysis of effects), and these disagreements cannot be resolved, the BLM will include a summary of the Cooperator's views in the Draft RMPA/Draft PEIS and the Proposed RMPA/Final PEIS. The BLM will also describe substantial inconsistencies between its proposed action(s) and the objectives of state, local, or tribal land use plans and policies.

F. Management of information.

The Cooperator acknowledges that all supporting materials and draft documents may become part of the administrative record and may be subject to the requirements of the Freedom of Information Act (FOIA) and other federal statutes. The BLM acknowledges that the Cooperator's handling of these materials may be impacted by state statute or local ordinance. The Parties agree that the BLM, at its discretion, may withhold from the public those documents that would otherwise be available for public release.

G. Conflict Resolution

The Parties agree to make reasonable efforts to resolve procedural or substantive conflicts, and may agree to initiate an Alternative Dispute Resolution (ADR) process. The Parties acknowledge that BLM retains final responsibility for the decisions identified in the Oil Shale and Tar Sands Resource Management Plan Amendments to Address Land Use Allocations in Colorado, Utah, and Wyoming and RMPA/PEIS and ROD.

1. Facilitation. If the Parties deem necessary, they agree to retain an independent facilitator to foster clear and efficient communication.

2. Joint fact-finding. Where the Parties disagree on matters of scientific information, data collection, or analysis, procedures will be employed to prepare a neutral assessment of the contested scientific issues.

3. Other dispute resolutions. Appropriate procedures to be taken as necessary.

H. Coordination with BLM contractors. Argonne National Laboratory serves as the BLM's contractor for public involvement, data collection, environmental analysis, and RMPA/PEIS preparation. Cooperators may communicate with the contractor only through BLM's representative. The Cooperator acknowledges that the BLM retains the exclusive responsibility to authorize modifications to the contract with Argonne National Laboratory, and that the Cooperator is not authorized to provide technical or policy direction regarding the performance of this contract.

VI. Agency Representatives

Each Party will designate a representative and alternate representative, as described in Attachment C, to ensure coordination between the Cooperator[s] and the BLM during the planning process. Each Party may change its representative at will by providing written notice to the other Party.

VII. Administration of the MOU

A. Approval. This MOU becomes effective upon signature by the authorized officials of all the parties.

B. Amendment. This MOU may be amended through written agreement of all signatories.

C. Termination. If not terminated earlier, this MOU will end when the ROD for the Oil Shale and Tar Sands Resource Management Plan Amendments to Address Land Use Allocations in Colorado, Utah, and Wyoming and Programmatic Environmental Impact Statement RMPA/PEIS is approved by the BLM. Any Party may end its participation in this MOU by providing written notice to the other Party.

VIII. Signatures

The Parties hereto have executed this MOU on the dates shown below.

Uintah County Commission
152 East 100 North
Vernal, Utah, 84078

Darlene R. Burns
Darlene Burns, Chairwoman, Uintah County Commission

Date Oct. 26, 2011

Bureau of Land Management
Washington Office-WO320
20 M Street, SE
Washington D.C. 20003

/s/ Michael D. Nedd, Assistant Director, Minerals and Realty Management

Date 11-7-11

Attachment A
Cooperating Agency Participation in the Oil Shale and Tar Sands Resource Management Plan Amendments to Address Land Use Allocations in Colorado, Utah, and Wyoming and Programmatic Environmental Impact Statement RMPA/PEIS

	RMPA/PEIS Stage	Potential Activities of Cooperating Agencies (CAs) within their acknowledged areas of expertise
1	Conduct scoping and identify issues	Identify coordination requirements based on CA plans; identify significant issues; identify relevant local and regional organizations and interest groups; provide non-financial sponsorship of public forums with the BLM; identify connected, similar, and cumulative actions; identify other relevant agencies.
2	Collect inventory data	Identify data needs; provide data and technical analyses within the CA's expertise.
3	Analyze management situation	Provide input on the Draft Analysis of the Management Situation (AMS) and aid in interpreting the AMS to constituents.
4	Formulate alternatives	Suggest land allocations or management actions to resolve issues. **[Decision to select alternatives for analysis is reserved to the BLM.]**
5	Estimate effects of alternatives	Provide effects analysis within the CA's expertise; identify direct, indirect, and cumulative effects within the CA's expertise; suggest mitigation measures for adverse effects.
6	Select the preferred alternative; issue Draft RMPA/PEIS	Collaborate with project manager in evaluating alternatives and in developing criteria for selecting the preferred alternative; provide input on Preliminary Draft RMPA–DPEIS. The CAs may provide written, public comments on draft if desired. **[Decision to select a preferred alternative and to issue a draft is reserved to the BLM.]**
7	Respond to comments	As appropriate, review comments within the CA's expertise and provide assistance in preparing BLM's responses.
7a	Issue Proposed RMPA/FPEIS	**[Action reserved to BLM.]**
7b	Initiate Governor's Consistency Review	Once initiated by the BLM, State CAs should contribute to the Governor's Consistency Review.
8	Sign Record of Decision (ROD) [or]	**[Action reserved to the BLM.]**
8a	Resolve protests; modify Proposed RMP/FEIS if needed; sign ROD	**[Action reserved to the BLM.]** A CA that has provided information relevant to a protest may be asked for clarification.

Attachment B
Schedule

	Potential Activities of Cooperating Agencies (CAs) within their acknowledged areas of expertise	Input Needed By
1	Identify coordination requirements based on CA plans; identify significant issues; identify relevant local and regional organizations and interest groups.	May 9, 2011
2	Identify data needs; provide data and technical analyses within the CA's expertise.	May 15, 2011
4	Suggest land allocations or management actions to resolve issues. Decision to select alternatives for analysis is reserved to the BLM.	May 9, 2011
5	Collaborate with project manager in evaluating alternatives and in developing criteria for selecting the preferred alternative; provide input on Preliminary Draft RMP–DEIS. The CAs may provide written, public comments on draft if desired. Decision to select a preferred alternative is reserved to the BLM.	July 22, 2011 Preferred alternative selection: October 7-November 1, 2011; Preliminary Draft review: October 7-November 1, 2011; Public comment period: December 30, 2011-March 31, 2012
6	Provide effects analysis within the CA's expertise; identify direct, indirect, and cumulative effects within the CA's expertise; suggest mitigation measures for adverse effects.	July 22-August 22, 2011
7	Review comments within the CA's expertise and assist in preparing responses, as appropriate.	April 1-May 1, 2012
7a	Issue Proposed PEIS/PA. Action reserved to the BLM.	October 26, 2012
7b	Initiate Governors' Consistency Reviews. Action reserved to the BLM, in coordination with State cooperators. Expedited review requested.	October 26-December 26, 2012
8	Resolve Protests. Action reserved to the BLM. A CA that has provided information relevant to a protest may be asked for clarification.	November 26-December 26, 2012
8a	Sign Record of Decision. Action reserved to the BLM.	December 31, 2012

Attachment C
Agency Representatives

Bureau of Land Management

Plan: The Oil Shale and Tar Sands Resource Management Plan Amendments to Address Land Use Allocations in Colorado, Utah, and Wyoming and Programmatic Environmental Impact Statement (RMPA/PEIS)

Primary Representative: Sherri Thompson
Project Manager
303.239.3758

Backup Representative: Mitchell Leverette
Division Chief, Solid Minerals
202.912.7113

Uintah County, Utah

Primary Representative: Michael J. McKee
Uintah County Commissioner
435.781.5382

Backup Representative: Mark D. Raymond
Uintah County Commissioner
435.781.5381

MOFFAT COUNTY COMMISSION
RESOLUTION NO. #2012-51

A RESOLUTION OPPOSING THE BLM'S 2012 OIL SHALE AND TAR SANDS DRAFT PROGRAMMATIC ENVIRONMENTAL IMPACT STATEMENT, BLM PROJECT #WO-300-1310-PP-OSHL (HEREAFTER 2012 OSTS DPEIS) FOR LANDS ADMINISTERED BY THE BLM IN COLORADO, UTAH AND WYOMING

This Resolution is adopted in open meeting after due opportunity for public comment, by the Board of Commissioners of Moffat County, in order to redress the many violations of law, regulation, and policy by the BLM with respect to the BLM's 2012 OSTS DPEIS.

BACKGROUND

As background to this Resolution, Moffat County recites the following grievances:

WHEREAS, On April 14, 2011, the BLM caused to be published in the Federal Register, Volume 76, No 72/Thursday, April 14, 2011, pages 21003-21005, a notice of intent to prepare the 2012 OSTS DPEIS; and

WHEREAS, the preliminary purpose and need statement in the notice of intent, states the PEIS will analyze removing from oil shale and tar sands leasing "All areas that the BLM has identified or may identify as a result of inventories conducted during this planning process, as lands containing wilderness characteristics[.]" Id., at page 21004; and

WHEREAS, the notice of intent further states at page 21004:

> Lands that the BLM identifies as having wilderness characteristics will be considered during this planning initiative, as described above, and consistent with Secretarial Order No. 3310, dated Dec. 22, 2010, and BLM Manuals 6301 and 6302. Future leasing of lands determined by the BLM to have wilderness characteristics, if compatible with the allocation decisions stemming from this initiative, will subsequently be assessed in accordance with BLM Manual 6303, as appropriate (i.e., where the BLM has not determined, consistent with BLM Manual 6302, whether the lands with wilderness characteristics at issue should be receive a wild lands designation, BLM Manual 6303 will apply); and

WHEREAS, this language documents the BLM's intent to implement, administer and/or enforce Secretarial Order 3310 and one or more of the BLM guidance manuals promulgated under Order 3310; and

WHEREAS, any attempt by the BLM to implement, administer and/or enforce Secretarial Order 3310, including any effort by the BLM to proceed further on the 2012 OSTS DPEIS, violates the spending moratorium of Section 1769 of the April 21, 2011 Congressional Continuing Resolution to Fund Fiscal Year 2011 through September 30, 2011, which states:

> For the fiscal year ending September 30, 2011, none of the funds made available by this division or any other Act may be used to implement, administer, or enforce Secretarial Order No. 3310 issued by the Secretary of the Interior on December 22, 2010; and

WHEREAS, this spending moratorium has been carried forward in all subsequent Congressional spending resolutions up to and including the current spending resolution; and

WHEREAS, the 2012 OSTS DPEIS, is an admitted attempt by the BLM to implement, administer and/or enforce Secretarial Order 3310 and its policies and objectives, all in violation of the Spending Moratorium of the 2011 Continuing Resolution; and

WHEREAS, the 2008 Oil Shale and Tar Sands Programmatic EIS (2008 OSTS PEIS) was required under Section 369 (d) (1) of the Energy Policy Act of 2005 and was prepared in cooperation with 14 federal, state, and local governmental organizations; and

WHEREAS, the 2008 OSTS PEIS was 3 years in the making, and it honored the input of a task force of Governors and other stakeholders as per requirement of the 2005 Energy Policy Act;

WHEREAS, the Record of Decision (ROD) for the 2008 OSTS PEIS amended 10 land use plans in Colorado, Utah, and Wyoming to make approximately 2 million acres of public lands available for potential leasing and development of oil shale and approximately 430,000 acres available for tar sands leasing. Together with the regulations published in 2006 and 2008 for oil shale and tar sands resources, the 2008 OSTS PEIS and subsequent land use amendments constituted a reasonable and rational establishment of an oil shale and tar sands program as mandated in the Energy Policy Act of 2005; and

WHEREAS, the oil shale and tar sands program to which the 2008 OSTS PEIS and related regulations gave birth, was a reasonable response to the fact that oil shale and tar sands resources in the Green River Formation located in northeastern Utah, northwestern Colorado and southwestern Wyoming may reach 4 trillion barrels of oil; and

WHEREAS, the preferred alternative in the 2012 OSTS DPEIS drastically shrinks, diminishes and in many areas outright reverses virtually all of the lands made available for Oil Shale and Tar Sands development in 2008, and does so using the same data and science; and

WHEREAS, the 2012 OSTS DPEIS fails to analyze alternative 2b, and the BLM admits as much on pages 2-35 of the 2012 OSTS DPEIS; and

WHEREAS, such a drastic reversal in lands available for Oil Shale and Tar Sands development between the 2008 PEIS and the 2012 preferred alternative, violates regulatory Task Force requirements of certainty for industry and investors; and

WHEREAS, such a drastic reversal of lands available for Oil Shale and Tar Sands development in 2008, constitutes a de facto, piece-meal revision of previous BLM Resource Management Plans, in violation of the Section 202 Planning Process under FLPMA;

WHEREAS, the preferred alternative in the 2012 OSTS DPEIS entirely ignores the input of the task force, and stakeholders which the 2005 Energy Policy Act directed the BLM to honor and follow; and moreover the 2012 OSTS DPEIS may well violate various memoranda of understanding (MOUs) with counties, cities which require the BLM to publish the written input of cooperators who disagree with the preferred alternative; and

WHEREAS, the 2012 OSTS DPEIS restricts the acreage allotted in the 2008 PWID for research and development leasing;

WHEREAS, the 2012 OSTS DPEIS threatens to arbitrarily undermine the process and the work utilized in creation of the 2008 OSTS PEIS, and essentially dismantle a reasonable and rational oil shale and tar sands program in violation of Section 369 of the 2005 Energy Policy Act; and

WHEREAS, the 2012 OSTS DPEIS is the creature of a friendly lawsuit settlement agreement between the BLM and ideological opponents to oil shale development, and is therefore entirely pre-determined and pre-decisional in violation of NEPA, with no apparent rationale for revising the acreages approved in 2008; and

WHEREAS, the BLM has settled on a preferred alternative in the 2012 OSTS DPEIS admittedly without having first analyzed its impacts; BLM should be required to withdraw the preferred status of the alternative until it has performed this analysis; and

WHEREAS, the acreage approved for Oil Shale and Tar Sands development in the 2012 OSTS DPEIS preferred alternative bears no rational relationship to the stated purpose and need;

WHEREAS, the Department of Energy has basically abdicated the responsibility Congress placed upon it to defend and uphold a viable oil shale energy program in America, leaving it instead to the BLM encumbered by a host of anti-oil shale pre-wilderness groups steering BLM's every move;

WHERAS, the alternative adopted in the ROD of the 2008 OSTS PEIS is now the No Action Alternative of the 2012 OSTS DPEIS; and

WHEREAS, the 2008 OSTS PEIS chosen alternative is consistent with the multiple use, sustained yield mandate of the Federal Land Policy and Management Act (FLPMA) ; and

WHEREAS, the 2008 OSTS PEIS chosen alternative is consistent with county general plans and policies which call for responsible development of available energy resources; and

WHEREAS, even prior to 2008, technology to extract oil from the oil shale rock is not only economically feasible, but certain oil shale recovery processes require little to no consumption of water, contrary to the myths which falsely claim that oil shale extraction requires large consumption of water resources; and

WHEREAS, the energy captured in the extract of oil from shale (natural gas capture, etc.,) more than makes up for energy consumed in that extraction process, thus dispelling the myth that the oil shale extraction process consumes more energy than it produces;

WHEREAS, the rising price of gasoline, coupled with ever increasing loss of good paying jobs due to the Administration's policies against energy development on western public lands, result in increasing hardships for families and the local economy; and

WHEREAS, the 2012 OSTS DPEIS improperly limits technology testing to strictly in situ efforts and does not allow for development of other technologies; and

WHEREAS, the BLM has left insufficient time for the public and cooperators to meaningfully comment on the public 2012 OSTS DPEIS by the present comment deadline of May 4, 2012, because a highly relevant commercial oil shale BLM regulation is not due to be published until May 15, 2012 and the public should have the right to view that regulation first and then submit comments on the 2012 OSTS DPEIS in light of the regulation; and

WHEREAS, the same problems with lack of consistency with local plans and policies and failure to honor the input of cooperators and all stakeholders, also besets many public lands EIS projects, in addition to the 2012 OSTS DPEIS. The cooperators from Utah and Wyoming have already unanimously requested for the No-Action alternative in the 2012 OSTS DPEIS become the preferred alternative.

RESOLUTION

NOW THEREFORE, BE IT RESOLVED BY MOFFAT COUNTY, STATE OF COLORADO AS FOLLOWS:

1. Moffat County declares the BLM's continuing to administer and carry out the 2012 OSTS DPEIS, and updating any inventory of lands having wilderness characteristics, to be an open contempt and flaunting of the Congressional Spending Moratorium first imposed in the 2011 Continuing Resolution and carried forward in all subsequent Congressional spending resolutions up to and including the present;

2. Moffat County calls upon the BLM to cease all further activities with respect to administering and carrying out the 2012 OSTS DPEIS, because doing so constitutes an open contempt and violation of the Congressional Spending Moratorium against implementing, administering and/or enforcing Secretarial Order 3310, which Spending Moratorium was first imposed in the 2011 Continuing Resolution and carried forward in all subsequent Congressional spending resolutions up to and including the present;

3. Moffat County calls upon the BLM to immediately cease all activities related to the 2012 OSTS DPEIS and immediately publish a revised notice in the Federal Register signifying its cessation of all work on the Programmatic EIS in obedience to the above-quoted Spending Moratorium. Otherwise, the BLM would be in contempt of Congress;

4. Should BLM continue to go forward with the 2012 OSTS DPEIS regardless of these grievances, the only legally, viable alternative would be if the BLM adopted the NO-Action Alternative, which is identical to the Alternative chosen in the ROD of the 2008 OSTS PEIS;

5. Should BLM decide to proceed with the 2012 OSTS DPEIS, it is still obligated under FLPMA to be consistent with State and Local plans to the maximum extent possible;

6. The BLM should extend the May 4, 2012 deadline for public comment on the 2012 OSTS DPEIS at least 30 days after publication of the expected oil shale regulation due to be published on or around May 15, 2012.

7. The BLM should honor the input of cooperators, particularly if they are local governments, as required by Section 202(c)(9) of FLPMA and the relevant terms of the BLM-Cooperator MOUs, in all matters, not just with respect to the 2012 OSTS DPEIS.

APPROVED AND ADOPTED by the Board of County Commissioners of Moffat County Commissioners of Moffat County this 23th day of April, 2012.

BOARD OF COUNTY COMMISSIONERS
MOFFAT COUNTY, COLORADO

Tom Gray, Chairman
District 1

Audrey Danner
District 2

Tom Mathers
District 3

MOFFAT COUNTY SEAL COLORADO

Attest:

Lila Herod,
Moffat County Clerk and Recorder

RESOLUTION NO. 2012-02

RESOLUTION OF CARBON COUNTY STATE OF UTAH

OPPOSING THE BLM'S 2012 OIL SHALE AND TAR SANDS PROGRAMMATIC ENVIRONMENTAL IMPACT STATEMENT, BLM PROJECT # WO-300-1310-PP-OSHL (HEREAFTER 2011 OSTS PEIS) FOR LANDS ADMINISTERED BY THE BLM IN COLORADO, UTAH AND WYOMING.

This Resolution is adopted in open meeting by the Board of Commissioners of Carbon County, Utah in order to redress the many violations of law, regulation, and policy by the BLM with respect to the BLM's 2012 OSTS PEIS.

BACKGROUND

As background to this Resolution, Carbon County, Utah recites the following grievances:

WHEREAS, On April 14, 2011, the BLM caused to be published in the Federal Register, Volume 76, No 72/Thursday, April 14, 2011, pages 21003-21005, a notice of intent to prepare the above-referenced 2012 OSTS PEIS; and

WHEREAS, the preliminary purpose and need statement in the notice of intent, states the PEIS will analyze removing from oil shale and tar sands leasing "All areas that the BLM has identified or may identify as a result of inventories conducted during this planning process, as lands containing wilderness characteristics[.]" *Id.*, at page 21004; and

WHEREAS, the notice of intent further states at page 21004:

> Lands that the BLM identifies as having wilderness characteristics will be considered during this planning initiative, as described above, and consistent with Secretarial Order No. 3310, dated Dec. 22, 2010, and BLM Manuals 6301 and 6302. Future leasing of lands determined by the BLM to have wilderness characteristics, if compatible with the allocation decisions stemming from this initiative, will subsequently be assessed in accordance with BLM Manual 6303, as appropriate (i.e., where the BLM has not determined, consistent with BLM Manual 6302, whether the lands with wilderness characteristics at issue should be receive a wild lands designation, BLM Manual 6303 will apply); and

WHEREAS, this language documents the BLM's intent to implement, administer and/or enforce Secretarial Order 3310 and one or more of the BLM guidance manuals promulgated under Order 3310; and

WHEREAS, any attempt by the BLM to implement, administer and/or enforce Secretarial Order 3310, including any effort by the BLM to proceed further on the above-referenced Programmatic

EIS, violates the spending moratorium of Section 1769 of the April 21, 2011 Congressional Continuing Resolution to Fund Fiscal Year 2011 through September 30, 2011, which states:

> For the fiscal year ending September 30, 2011, none of the funds made available by this division or any other Act may be used to implement, administer, or enforce Secretarial Order No. 3310 issued by the Secretary of the Interior on December 22, 2010; and

WHEREAS, this spending moratorium has been carried forward in all subsequent Congressional spending resolutions up to and including the current spending resolution; and
WHEREAS, the 2012 OSTS PEIS, is an admitted attempt by the BLM to implement, administer and/or enforce Secretarial Order 3310 and its policies and objectives, all in violation of the Spending Moratorium of the 2011 Continuing Resolution; and

WHEREAS, the 2008 Oil Shale and Tar Sands Programmatic EIS (2008 OSTS PEIS) was required under Section 369 (d) (1) of the Energy Policy Act of 2005 and was prepared in cooperation with 14 federal, state, and local governmental organizations; and

WHEREAS THE 2008 OSTS PEIS was 3 years in the making, and it honored the input of a task force of Governors and other stakeholders as per requirement of the 2005 Energy Policy Act;

WHEREAS, the Record of Decision (ROD) for the 2008 OSTS PEIS amended 10 land use plans in Colorado, Utah, and Wyoming to make approximately 2 million acres of public lands available for potential leasing and development of oil shale and approximately 430,000 acres available for tar sands leasing. Together with the regulations published in 2006 and 2008 for oil shale and tar sands resources, the 2008 OSTS PEIS and subsequent land use amendments constituted a reasonable and rational establishment of an oil shale and tar sands program as mandated in the Energy Policy Act of 2005; and

WHEREAS, the oil shale and tar sands program to which the 2008 OSTS PEIS and related regulations gave birth, was a reasonable response to the fact that oil shale and tar sands resources in the Green River Formation located in northeastern Utah, northwestern Colorado and southwestern Wyoming may reach 8 trillion barrels of oil; and

WHEREAS, the preferred alternative in the draft 2012 OSTS PEIS drastically shrinks, diminishes and in many areas outright reverses virtually all of the lands made available for Oil Shale and Tar Sands development in 2008, and does so using the same data and science; and

WHEREAS, such a drastic reversal in lands available for Oil Shale and Tar Sands development between the 2008 PEIS and the 2012 preferred alternative, violates regulatory ran Task Force requirements of certainty for industry and investors; and

WHEREAS such a drastic reversal of lands available for Oil Shale and Tar Sands development in 2008, constitutes a de facto, piece-meal revision of previous BLM Resource Management Plans, in violation of the Section 202 Planning Process under FLPMA;

WHEREAS, the preferred alternative in the draft 2012 OSTS PEIS entirely ignores the input of the task force and stakeholders which the 2005 Energy Policy Act directed the BLM to honor and follow; and moreover the draft 2012 OSTS PEIS may well violate various memoranda of understanding (MOUs) with counties which require the BLM to publish the written input of cooperators who disagree with the preferred alternative;

WHEREAS the draft 2012 OSTS PEIS preferred alternative significantly restricts the acreage allotted in the 2008 PEIS for research and development leasing;

WHEREAS the draft 2012 OSTS PEIS preferred alternative threatens to arbitrarily undermine the process and the work utilized in creation of the 2008 OSTS PEIS, and essentially dismantle a reasonable and rational oil shale and tar sands program in violation of Section 369 of the 2005 Energy Policy Act; and

WHEREAS, the 2012 OSTS PEIS preferred alternative is the creature of a friendly lawsuit settlement agreement between the BLM and ideological opponents to oil shale development, and is therefore entirely pre-determined and pre-decisional in violation of NEPA, with no apparent rationale for revising the acreages approved in 2008; and

WHEREAS, the BLM has settled on a preferred alternative in the 2012 OSTS PEIS admittedly without having first analyzed its impacts: BLM should be required to withdraw the preferred status of the alternative until it has performed this analysis; and

WHEREAS, the acreage approved for Oil Shale and Tar Sands development in the draft 2012 OSTS PEIS preferred alternative bears no rational relationship to the stated purpose and need;

WHEREAS, the Department of Energy has basically abdicated the responsibility Congress placed upon it to defend and uphold a viable oil shale energy program in America, leaving it instead to the BLM encumbered by a host of anti-oil shale pro-wilderness groups steering BLM's every move;

WHEREAS, the alternative adopted in the ROD of the 2008 OSTS PEIS is now the No Action Alternative of the draft 2012 OSTS PEIS; and

WHEREAS, the 2008 OSTS PEIS chosen alternative is consistent with the multiple use, sustained yield of the Federal Land Policy Management Act (FLPMA); and

WHEREAS, the 2008 OSTS PEIS chosen alternative is consistent with county general plans and policies which call for responsible development of available energy resources; and

WHEREAS, the development and production of oil from oil shale has been proven beyond a doubt to be technologically and economically feasible; and

WHEREAS, this same technology to extract oil from the oil shale rock is not only economically feasible, ***but it requires little to no consumption of water,*** contrary to the myths which falsely claim that oil shale extraction requires large consumption of water resources; and

WHERAS, the energy captured in the extract of oil from shale (natural gas capture, etc.,) more than makes up for energy consumed in that extraction process, thus dispelling the myth that the oil shale extraction process consumes more energy than it produces;

WHEREAS, the rising price of gasoline, coupled with ever increasing loss of good paying jobs due to the Administration's policies against energy development on western public lands, result in increasing hardships for families and the local economy, to the point where some fear the window of opportunity is about to close for a civil, lawful and orderly response as citizens feel more and more pressured and desperate financially; and

WHEREAS, the 2012 OSTS PEIS improperly limits technology testing to strictly in situ efforts and does not allow for development of other technologies; and

WHEREAS, the BLM has left insufficient time for the public and cooperators to meaningfully comment on the public draft 2012 OSTS PEIS by the present comment deadline of May 4, 2012, because a highly relevant commercial oil shale BLM regulation is not due to be published until May 15, 2012 and the public should have the right to view that regulation first and then submit comments on the draft 2012 OSTS PEIS in light of that regulation; and

WHEREAS, the same problems with lack of consistency with local plans and policies and failure to honor the input of cooperators and all stakeholders, also besets many public lands EIS projects, in addition to the 2012 OSTS PEIS. The cooperators from Utah and Wyoming have already unanimously requested for the No-Action alternative in the draft 2012 OSTS PEIS become the preferred alternative.

RESOLUTION

NOW THEREFORE, BE IT RESOLVED BY CARBON COUNTY, STATE OF UTAH AS FOLLOWS:

1. Carbon County, Utah declares the BLM's continuing to administer and carry out the 2012 OSTS PEIS to be an open contempt and flaunting of the Congressional Spending Moratorium first imposed in the 2011 Continuing Resolution and carried forward in all subsequent Congressional spending resolutions up to and including the present;

2. Carbon County calls upon the BLM to cease all further activities with respect to administering and carrying out the 2012 OSTS PEIS, because doing so constitutes an open contempt and violation of the Congressional Spending Moratorium against implementing, administering and/or enforcing Secretarial Order 3310, which Spending Moratorium was first imposed in the 2011 Continuing Resolution and carried forward in all subsequent Congressional spending resolutions up to and including the present;

3. Carbon County calls upon the BLM to immediately cease and desist all activities related to the above-referenced 2012 OSTS PEIS and immediately publish a revised notice in the

Federal Register signifying its cessation of all work on the Programmatic EIS in obedience to the above-quoted Spending Moratorium. Otherwise, the BLM would be in contempt of Congress;

4. Should BLM continue to go forward with the 2012 OSTS PEIS regardless of these grievances, the only legally, viable alternative would be if the BLM adopted the No-Action Alternative, which is identical to the Alternative chosen in the ROD of the 2008 OSTS PEIS;

5. The BLM should extend the May 4, 2012 deadline for public comment on the draft 2012 OSTS PEIS at least 30 days after publication of the expected oil shale regulation due to be published on or around May 15, 2012.

6. The BLM should honor the input of cooperators, particularly if they are local governments, as required by Section 202(c)(9) of FLPMA, in all matters, not just with respect to the 2012 OSTS PEIS.

Passed this 4th day of April, 2012

BOARD OF CARBON COUNTY COMMISSIONERS

Michael S. Milovich, Chairman

Commissioner Milovich voted Absent
Commissioner Jones voted Yea
Commissioner Potter voted Yea

ATTEST:

Robert P. Pero, County Clerk/Auditor

STATE OF COLORADO)
)ss.
COUNTY OF GARFIELD)

At a regular meeting of the Board of County Commissioners for Garfield County, Colorado, held at the County Administration Building in Glenwood Springs on _____, the ____ day of _____, 20___, there were present:

Tom Jankovsky _____, Commissioner
Mike Samson _____, Commissioner
John Martin _____, Commissioner Chairman
Jean Alberico _____, Clerk to the Board

when the following proceedings, among others were had and done, to-wit:

RESOLUTION NO. 12-____

RESOLUTION OPPOSING THE BLM'S OIL SHALE AND TAR SANDS PROGRAMMATIC ENVIRONMENTAL IMPACT STATEMENT, BLM PROJECT # WO-300-1310-PP-OSHL (HEREAFTER 2011 OSTS PEIS) FOR LANDS ADMINISTERED BY THE BLM IN COLORADO, UTAH AND WYOMING

WHEREAS, the Board of County Commissioners of Garfield County, State of Colorado ("BOCC") is a legal and political subdivision of the State of Colorado for which the BOCC is authorized to act; and

WHEREAS, this Resolution is adopted in open meeting after due opportunity for public comment, by the Board of Commissioners of Garfield County, in order to redress the many violations of law, regulation, and policy by the BLM with respect to the BLM's 2012 OSTS PEIS; and

BACKGROUND

As background to this Resolution, the BOCC recites the following grievances:

WHEREAS, on April 14, 2011, the BLM caused to be published in the Federal Register, Volume 76, No 72/Thursday, April 14, 2011, pages 21003-21005, a notice of intent to prepare the above-referenced 2012 OSTS PEIS; and

WHEREAS, the preliminary purpose and need statement in the notice of intent, states the PEIS will analyze removing from oil shale and tar sands leasing "All areas that the BLM has identified or may identify as a result of inventories conducted during this planning process, as lands containing wilderness characteristics[.]" *Id.*, at page 21004; and

WHEREAS, the notice of intent further states at page 21004:

> Lands that the BLM identifies as having wilderness characteristics will be considered during this planning initiative, as described above, and consistent with Secretarial Order No. 3310, dated Dec. 22, 2010, and BLM Manuals 6301 and 6302. Future leasing of lands determined by the BLM to have wilderness characteristics, if compatible with the allocation decisions stemming from this initiative, will subsequently be assessed in accordance with BLM Manual 6303, as appropriate (i.e., where the BLM has not determined, consistent with BLM Manual 6302, whether the lands with wilderness characteristics at issue should receive a wild lands designation, BLM Manual 6303 will apply); and

WHEREAS, this language documents the BLM's intent to implement, administer and/or enforce Secretarial Order 3310 and one or more of the BLM guidance manuals promulgated under Order 3310; and

WHEREAS, any attempt by the BLM to implement, administer and/or enforce Secretarial Order 3310, including any effort by the BLM to proceed further on the above-referenced Programmatic EIS, violates the spending moratorium of Section 1769 of the April 21, 2011 Congressional Continuing Resolution to Fund Fiscal Year 2011 through September 30, 2011, which states:

> For the fiscal year ending September 30, 2011, none of the funds made available by this division or any other Act may be used to implement, administer, or enforce Secretarial Order No. 3310 issued by the Secretary of the Interior on December 22, 2010; and

WHEREAS, this spending moratorium has been carried forward in all subsequent Congressional spending resolutions up to and including the current spending resolution; and

WHEREAS, the 2012 OSTS PEIS, is an admitted attempt by the BLM to implement, administer and/or enforce Secretarial Order 3310 and its policies and objectives, all in violation of the Spending Moratorium of the 2011 Continuing Resolution; and

WHEREAS, the 2008 Oil Shale and Tar Sands Programmatic EIS (2008 OSTS PEIS) was required under Section 369 (d) (1) of the Energy Policy Act of 2005 and was prepared in cooperation with 14 federal, state, and local governmental organizations; and

WHEREAS, the 2008 OSTS PEIS was 3 years in the making, and it honored the input of a task force of Governors and other stakeholders as per requirement of the 2005 Energy Policy Act; and

WHEREAS, the Record of Decision (ROD) for the 2008 OSTS PEIS amended 10 land use plans in Colorado, Utah, and Wyoming to make approximately 2 million acres of public lands available for potential leasing and development of oil shale and approximately 430,000

acres available for tar sands leasing. Together with the regulations published in 2006 and 2008 for oil shale and tar sands resources, the 2008 OSTS PEIS and subsequent land use amendments constituted a reasonable and rational establishment of an oil shale and tar sands program as mandated in the Energy Policy Act of 2005; and

WHEREAS, the oil shale and tar sands program to which the 2008 OSTS PEIS and related regulations gave birth was a reasonable response to the fact that oil shale and tar sands resources in the Green River Formation located in northeastern Utah, northwestern Colorado and southwestern Wyoming may reach 8 trillion[1] barrels of oil; and

WHEREAS, the preferred alternative in the draft 2012 OSTS PEIS drastically shrinks, diminishes and in many areas outright reverses virtually all of the lands made available for Oil Shale and Tar Sands development in 2008, and does so using the same data and science; and

WHEREAS, such a drastic reversal in lands available for Oil Shale and Tar Sands development between the 2008 PEIS and the 2012 preferred alternative, violates regulatory ran Task Force requirements of certainty for industry and investors; and

WHEREAS such a drastic reversal of lands available for Oil Shale and Tar Sands development in 2008, constitutes a de facto, piece-meal revision of previous BLM Resource Management Plans, in violation of the Section 202 Planning Process under FLPMA; and

WHEREAS, the preferred alternative in the draft 2012 OSTS PEIS entirely ignores the input of the task force and stakeholders which the 2005 Energy Policy Act directed the BLM to honor and follow; and moreover the draft 2012 OSTS PEIS may well violate various memoranda of understanding (MOUs) with counties which require the BLM to publish the written input of cooperators who disagree with the preferred alternative; and

WHEREAS the draft 2012 OSTS PEIS preferred alternative significantly restricts the acreage allotted in the 2008 PEIS for research and development leasing; and

WHEREAS the draft 2012 OSTS PEIS preferred alternative threatens to arbitrarily undermine the process and the work utilized in creation of the 2008 OSTS PEIS, and essentially dismantle a reasonable and rational oil shale and tar sands program in violation of Section 369 of the 2005 Energy Policy Act; and

WHEREAS, the 2012 OSTS PEIS preferred alternative is the creature of a friendly lawsuit settlement agreement between the BLM and ideological opponents to oil shale development, and is therefore entirely pre-determined and pre-decisional in violation of NEPA, with no apparent rationale for revising the acreages approved in 2008; and

[1] On information and belief, Garfield County believes 4 trillion barrels to be a more accurate estimate.

WHEREAS, the BLM has settled on a preferred alternative in the 2012 OSTS PEIS admittedly without having first analyzed its impacts; BLM should be required to withdraw the preferred status of the alternative until it has performed this analysis; and

WHEREAS, the acreage approved for Oil Shale and Tar Sands development in the draft 2012 OSTS PEIS preferred alternative bears no rational relationship to the stated purpose and need; and

WHEREAS, the Department of Energy has basically abdicated the responsibility Congress placed upon it to defend and uphold a viable oil shale energy program in America, leaving it instead to the BLM encumbered by a host of anti-oil shale pro-wilderness groups steering BLM's every move; and

WHEREAS, the alternative adopted in the ROD of the 2008 OSTS PEIS is now the No Action Alternative of the draft 2012 OSTS PEIS; and

WHEREAS, the 2008 OSTS PEIS chosen alternative is consistent with the multiple use, sustained yield of the Federal Land Policy Management Act (FLPMA); and

WHEREAS, the 2008 OSTS PEIS chosen alternative is consistent with county general plans and policies which call for responsible development of available energy resources; and

WHEREAS, the development and production of oil from oil shale has been proven beyond a doubt to be technologically and economically feasible[2]; and

WHEREAS, this same technology to extract oil from the oil shale rock is not only economically feasible, but it requires little to no consumption of water, contrary to the myths which falsely claim that oil shale extraction requires large consumption of water resources[3]; and

WHEREAS, the energy captured in the extract of oil from shale (natural gas capture, etc.,) more than makes up for energy consumed in that extraction process, thus dispelling the myth that the oil shale extraction process consumes more energy than it produces; and

WHEREAS, the rising price of gasoline, coupled with ever increasing loss of good paying jobs due to the Administration's policies against energy development on western public lands, result in increasing hardships for families and the local economy, to the point where some fear the window of opportunity is about to close for a civil, lawful and orderly response as citizens feel more and more pressured and desperate financially; and

---

[2] Garfield County states this recital as: "WHEREAS the development and production of oil from oil shale in some processes has been proven to be technologically feasible; and"

[3] Garfield County states this recital as: "WHEREAS, this same technology to extract oil from the oil shale rock requires little to no consumption of water; and"

WHEREAS, the 2012 OSTS PEIS improperly limits technology testing to strictly in situ efforts and does not allow for development of other technologies; and

WHEREAS, the BLM has left insufficient time for the public and cooperators to meaningfully comment on the public draft 2012 OSTS PEIS by the present comment deadline of May 4, 2012, because a highly relevant commercial oil shale BLM regulation is not due to be published until May 15, 2012 and the public should have the right to view that regulation first and then submit comments on the draft 2012 OSTS PEIS in light of that regulation; and

WHEREAS, the same problems with lack of consistency with local plans and policies and failure to honor the input of cooperators and all stakeholders, also besets many public lands EIS projects, in addition to the 2012 OSTS PEIS. The cooperators from Utah and Wyoming have already unanimously requested for the No-Action alternative in the draft 2012 OSTS PEIS become the preferred alternative.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF GARFIELD COUNTY, STATE OF COLORADO AS FOLLOWS:

1. Garfield County declares the BLM's continuing to administer and carry out the 2012 OSTS PEIS to be an open contempt and flaunting of the Congressional Spending Moratorium first imposed in the 2011 Continuing Resolution and carried forward in all subsequent Congressional spending resolutions up to and including the present.

2. Garfield County calls upon the BLM to cease all further activities with respect to administering and carrying out the 2012 OSTS PEIS, because doing so constitutes an open Contempt and violation of the Congressional Spending Moratorium against implementing, administering and/or enforcing Secretarial Order 3310, which Spending Moratorium was first imposed in the 2011 Continuing Resolution and carried forward in all subsequent Congressional spending resolutions up to and including the present.

3. Garfield County calls upon the BLM to immediately cease and desist all activities related to the above-referenced 2012 OSTS PEIS and immediately publish a revised notice in the Federal Register signifying its cessation of all work on the Programmatic EIS in obedience to the above- quoted Spending Moratorium. Otherwise, the BLM would be in contempt of Congress.

4. Should BLM continue to go forward with the 2012 OSTS PEIS regardless of these grievances, the only legally, viable alternative would be if the BLM adopted the No-Action Alternative, which is identical to the Alternative chosen in the ROD of the 2008 OSTS PEIS.

5. The BLM should extend the May 4, 2012 deadline for public comment on the draft 2012 OSTS PEIS at least 30 days after publication of the expected oil shale regulation due to be published on or around May 15, 2012.

6. The BLM should honor the input of cooperators, particularly if they are local governments, as required by Section 202(c)(9) of FLPMA, in all matters, not just with respect to the 2012 OSTS PEIS.

DATED this ____ day of _____, 20___.

ATTEST:

BOARD OF COUNTY COMMISSIONERS OF GARFIELD COUNTY, STATE OF COLORADO

_____
Clerk to the Board

By: _____
Chairperson

Upon motion duly made and seconded the foregoing Resolution was adopted by the following vote:

Tom Jankovsky Aye
Mike Samson Aye
John Martin Aye
Commissioners

STATE OF COLORADO)
) ss.
COUNTY OF GARFIELD)

I, Jean Alberico, County Clerk and ex-officio Clerk of the Board of County Commissioners in and for the County and State aforesaid do hereby certify that the annexed and foregoing Resolution is truly copied from the Records of the Proceedings of the Board of County Commissioners for said Garfield County, now in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said County, at Glenwood Springs, this ___ day of _____, A.D. 20__.

County Clerk and ex-officio Clerk of
the Board of County Commissioners

_____

BOARD OF COUNTY COMMISSIONERS

WALLY J. JOHNSON, CHAIRMAN
JOHN K. KOLB, COMMISSIONER
GARY BAILIFF, COMMISSIONER
REID O. WEST, COMMISSIONER
DON VAN MATRE, COMMISSIONER

SWEETWATER COUNTY

80 WEST FLAMING GORGE WAY, SUITE 109
GREEN RIVER, WY 82935
PHONE: (307) 872-3890
FAX: (307) 872-3992

Thursday, April 19, 2012

Ms. Sherri Thompson - Project Manager
Oil Shale/Tar Sands Draft PEIS
BLM Colorado State Office
2830 Youngfield Street
Lakewood, Colorado 80215

RE: Sweetwater County Resolution 12-04-CC-02 - Opposing the Bureau of Land Management's (BLM) 2012 Oil Shale and Tars Sands Programmatic Environmental Impact Statement, Project #WO-300-1310-PP-OSHL (OSTS PEIS).

Dear Ms. Thompson:

Sweetwater County hereby formally submits to the Bureau of Land Management Sweetwater County Resolution 12-04-CC-02. By this Resolution, Sweetwater County joins other counties in Wyoming, Utah and Colorado in opposing the BLM's OSTS PEIS for lands administered by the BLM in Colorado, Utah and Wyoming.

Sweetwater County opposes the OSTS PEIS for the purposes of preserving the mineral based economy of the economy of the tri-state region, and for ensuring that the BLM's OSTS PEIS National Environmental Policy Act (NEPA) review process is fair, allows enough for review and is in compliance with all applicable laws.

If you have any questions concerning Sweetwater County's attached Resolution, please contact me at 307-872-3897.

Sincerely,

Wally J. Johnson, Chairman
Sweetwater County Board of County Commissioners

Enclosure: Sweetwater County Resolution 12-04-CC-02

cc Governor Matt Mead
Jerimiah Rieman, Governor's Natural Resource Policy Advisor
Wyoming's Congressional Delegation
John Ruhs, BLM High Desert District Manager
Lance Porter, BLM Rock Springs Field Office Manager
Sweetwater County Board of County Commissioners
Temple Stoellinger, WCCA Natural Resource Attorney
Kent Connelly, President - Coalition of Local Governments
Mary Thoman, President - Sweetwater County Conservation District
Eric Bingham, Sweetwater County Land Use Director

RESOLUTION 12-04-CC-02
SWEETWATER COUNTY, STATE OF WYOMING

OPPOSING THE BLM'S 2012 OIL SHALE AND TAR SANDS PROGRAMMATIC ENVIRONMENTAL IMPACT STATEMENT, BLM PROJECT # WO-300-1310-PP-OSHL
(HEREAFTER 2011 OSTS PEIS)
FOR LANDS ADMINISTERED BY THE BLM IN COLORADO, UTAH AND WYOMING,

This Resolution is adopted in open meeting after due opportunity for public comment, by the Board of Commissioners of Sweetwater County, in order to redress the many violations of law, regulation, and policy by the BLM with respect to the BLM's 2012 OSTS PEIS.

BACKGROUND

As background to this Resolution, Sweetwater County recites the following grievances:

WHEREAS, On April 14, 2011, the BLM caused to be published in the Federal Register, Volume 76, No 72/Thursday, April 14, 2011, pages 21003-21005, a notice of intent to prepare the above-referenced 2012 OSTS PEIS; and

WHEREAS, the preliminary purpose and need statement in the notice of intent, states the PEIS will analyze removing from oil shale and tar sands leasing "All areas that the BLM has identified or may identify as a result of inventories conducted during this planning process, as lands containing wilderness characteristics[.]" Id., at page 21004; and

WHEREAS, the notice of intent further states at page 21004:

> Lands that the BLM identifies as having wilderness characteristics will be considered during this planning initiative, as described above, and consistent with Secretarial Order No. 3310, dated Dec. 22, 2010, and BLM Manuals 6301 and 6302. Future leasing of lands determined by the BLM to have wilderness characteristics, if compatible with the allocation decisions stemming from this initiative, will subsequently be assessed in accordance with BLM Manual 6303, as appropriate (i.e., where the BLM has not determined, consistent with BLM Manual 6302, whether the lands with wilderness characteristics at issue should be receive a wild lands designation, BLM Manual 6303 will apply); and

WHEREAS, this language documents the BLM's intent to implement, administer and/or enforce Secretarial Order 3310 and one or more of the BLM guidance manuals promulgated under Order 3310; and

WHEREAS, any attempt by the BLM to implement, administer and/or enforce Secretarial Order 3310, including any effort by the BLM to proceed further on the above-referenced Programmatic EIS, violates the spending moratorium of Section 1769 of the April 21, 2011 Congressional Continuing Resolution to Fund Fiscal Year 2011 through September 30, 2011, which states:

> For the fiscal year ending September 30, 2011, none of the funds made available by this division or any other Act may be used to implement, administer, or enforce Secretarial Order No. 3310 issued by the Secretary of the Interior on December 22, 2010; and

WHEREAS, this spending moratorium has been carried forward in all subsequent Congressional spending resolutions up to and including the current spending resolution; and
WHEREAS, the 2012 OSTS PEIS, is an admitted attempt by the BLM to implement, administer and/or enforce Secretarial Order 3310 and its policies and objectives, all in violation of the Spending Moratorium of the 2011 Continuing Resolution; and

WHEREAS, the 2008 Oil Shale and Tar Sands Programmatic EIS (2008 OSTS PEIS) was required under Section 369 (d) (1) of the Energy Policy Act of 2005 and was prepared in cooperation with 14 federal, state, and local governmental organizations; and

WHEREAS THE 2008 OSTS PEIS was 3 years in the making, and it honored the input of a task force of Governors and other stakeholders as per requirement of the 2005 Energy Policy Act;

WHEREAS, the Record of Decision (ROD) for the 2008 OSTS PEIS amended 10 land use plans in Colorado, Utah, and Wyoming to make approximately 2 million acres of public lands available for potential leasing and development of oil shale and approximately 430,000 acres available for tar sands leasing. Together with the regulations published in 2006 and 2008 for oil shale and tar sands resources, the 2008 OSTS PEIS and subsequent land use amendments constituted a reasonable and rational establishment of an oil shale and tar sands program as mandated in the Energy Policy Act of 2005; and

WHEREAS, the oil shale and tar sands program to which the 2008 OSTS PEIS and related regulations gave birth, was a reasonable response to the fact that oil shale and tar sands resources in the Green River Formation located in northeastern Utah, northwestern Colorado and southwestern Wyoming may reach 8 trillion barrels of oil; and

WHEREAS, the preferred alternative in the draft 2012 OSTS PEIS drastically shrinks, diminishes and in many areas outright reverses virtually all of the lands made available for Oil Shale and Tar Sands development in 2008, and does so using the same data and science; and

WHEREAS, such a drastic reversal in lands available for Oil Shale and Tar Sands development between the 2008 PEIS and the 2012 preferred alternative, violates regulatory ran Task Force requirements of certainty for industry and investors; and

WHEREAS such a drastic reversal of lands available for Oil Shale and Tar Sands development in 2008, constitutes a de facto, piece-meal revision of previous BLM Resource Management Plans, in violation of the Section 202 Planning Process under FLPMA;

WHEREAS, the preferred alternative in the draft 2012 OSTS PEIS entirely ignores the input of the task force and stakeholders which the 2005 Energy Policy Act directed the BLM to honor and follow; and moreover the draft 2012 OSTS PEIS may well violate various memoranda of understanding (MOUs) with counties which require the BLM to publish the written input of cooperators who disagree with the preferred alternative;

WHEREAS the draft 2012 OSTS PEIS preferred alternative significantly restricts the acreage allotted in the 2008 PEIS for research and development leasing;

WHEREAS the draft 2012 OSTS PEIS preferred alternative threatens to arbitrarily undermine the process and the work utilized in creation of the 2008 OSTS PEIS, and essentially dismantle a reasonable and rational oil shale and tar sands program in violation of Section 369 of the 2005 Energy Policy Act; and

WHEREAS, the 2012 OSTS PEIS preferred alternative is the creature of a friendly lawsuit settlement agreement between the BLM and ideological opponents to oil shale development, and is therefore entirely pre-determined and pre-decisional in violation of NEPA, with no apparent rationale for revising the acreages approved in 2008; and

WHEREAS, the BLM has settled on a preferred alternative in the 2012 OSTS PEIS admittedly without having first analyzed its impacts; BLM should be required to withdraw the preferred status of the alternative until it has performed this analysis; and

WHEREAS, the acreage approved for Oil Shale and Tar Sands development in the draft 2012 OSTS PEIS preferred alternative bears no rational relationship to the stated purpose and need;

WHEREAS, the Department of Energy has basically abdicated the responsibility Congress placed upon it to defend and uphold a viable oil shale energy program in America, leaving it instead to the BLM encumbered by a host of anti-oil shale pro-wilderness groups steering BLM's every move;

WHEREAS, the alternative adopted in the ROD of the 2008 OSTS PEIS is now the No Action Alternative of the draft 2012 OSTS PEIS; and

WHEREAS, the 2008 OSTS PEIS chosen alternative is consistent with the multiple use, sustained yield of the Federal Land Policy Management Act (FLPMA); and

WHEREAS, the 2008 OSTS PEIS chosen alternative is consistent with county general plans and policies which call for responsible development of available energy resources; and

WHEREAS, the development and production of oil from oil shale has been proven beyond a doubt to be technologically and economically feasible; and

WHEREAS, this same technology to extract oil from the oil shale rock is not only economically feasible, but it requires little to no consumption of water, contrary to the myths which falsely claim that oil shale extraction requires large consumption of water resources; and

WHERAS, the energy captured in the extract of oil from shale (natural gas capture, etc.,) more than makes up for energy consumed in that extraction process, thus dispelling the myth that the oil shale extraction process consumes more energy than it produces;

WHEREAS, the rising price of gasoline, coupled with ever increasing loss of good paying jobs due to the Administration's policies against energy development on western public lands, result in increasing hardships for families and the local economy, to the point where some fear the window of opportunity is about to close for a civil, lawful and orderly response as citizens feel more and more pressured and desperate financially; and

WHEREAS, the 2012 OSTS PEIS improperly limits technology testing to strictly in situ efforts and does not allow for development of other technologies; and

WHEREAS, the BLM has left insufficient time for the public and cooperators to meaningfully comment on the public draft 2012 OSTS PEIS by the present comment deadline of May 4, 2012, because a highly relevant commercial oil shale BLM regulation is not due to be published until May 15, 2012 and the public should have the right to view that regulation first and then submit comments on the draft 2012 OSTS PEIS in light of that regulation; and

WHEREAS, the same problems with lack of consistency with local plans and policies and failure to honor the input of cooperators and all stakeholders, also besets many public lands EIS projects, in addition to the 2012 OSTS PEIS. The cooperators from Utah and Wyoming have already unanimously requested for the No-Action alternative in the draft 2012 OSTS PEIS become the preferred alternative.

RESOLUTION

NOW THEREFORE, BE IT RESOLVED BY SWEETWATER COUNTY, STATE OF WYOMING AS FOLLOWS:

1. Sweetwater County declares the BLM's continuing to administer and carry out the 2012 OSTS PEIS to be an open contempt and flaunting of the Congressional Spending Moratorium first imposed in the 2011 Continuing Resolution and carried forward in all subsequent Congressional spending resolutions up to and including the present;

2. Sweetwater County calls upon the BLM to cease all further activities with respect to administering and carrying out the 2012 OSTS PEIS, because doing so constitutes an open contempt and violation of the Congressional Spending Moratorium against implementing, administering and/or enforcing Secretarial Order 3310, which Spending Moratorium was first

imposed in the 2011 Continuing Resolution and carried forward in all subsequent Congressional spending resolutions up to and including the present;

3. Sweetwater Count calls upon the BLM to immediately cease and desist all activities related to the above-referenced 2012 OSTS PEIS and immediately publish a revised notice in the Federal Register signifying its cessation of all work on the Programmatic EIS in obedience to the above-quoted Spending Moratorium. Otherwise, the BLM would be in contempt of Congress;

4. Should BLM continue to go forward with the 2012 OSTS PEIS regardless of these grievances, the only legally, viable alternative would be if the BLM adopted the No-Action Alternative, which is identical to the Alternative chosen in the ROD of the 2008 OSTS PEIS;

5. The BLM should extend the May 4, 2012 deadline for public comment on the draft 2012 OSTS PEIS at least 30 days after publication of the expected oil shale regulation due to be published on or around May 15, 2012.

6. The BLM should honor the input of cooperators, particularly if they are local governments, as required by Section 202(c)(9) of FLPMA, in all matters, not just with respect to the 2012 OSTS PEIS.

Adopted at the regularly scheduled meeting of the Sweetwater County Board of County Commissioners, held on the 17th day of April 2012.

BOARD OF COUNTY COMMISSIONERS

Wally J. Johnson, Chairman

Gary Bailiff, Commissioner

John K. Kolb, Commissioner

Don Van Matre, Commissioner

Reid West, Commissioner

ATTESTED TO:

Steven Dale Davis, County Clerk
Sweetwater County, Wyoming

MCM 2012-034

RESOLUTION OF MESA COUNTY STATE OF COLORADO

OPPOSING THE BLM'S 2012 OIL SHALE AND TAR SANDS PROGRAMMATIC ENVIRONMENTAL IMPACT STATEMENT, BLM PROJECT # WO-300-1310-PP-OSHL (HEREAFTER 2011 OSTS PEIS) FOR LANDS ADMINISTERED BY THE BLM IN COLORADO, UTAH, AND WYOMING.

This Resolution is adopted in open meeting after due opportunity for public comment, by the Board of Commissioners of Mesa County, in order to redress the many violations of law, regulation, and policy by the BLM with respect to the BLM's 2012 OSTS PEIS.

BACKGROUND

As background to this Resolution, Mesa County recites the following grievances:

WHEREAS, On April 14, 2011, the BLM caused to be published in the Federal Register, Volume 76, No 72/Thursday, April 14, 2011, pages 21003-21005, a notice of intent to prepare the above-referenced 2012 OSTS PEIS; and

WHEREAS, the preliminary purpose and need statement in the notice of intent, states the PEIS will analyze removing from oil shale and tar sands leasing "All areas that the BLM has identified or may identify as a result of inventories conducted during this planning process, as lands containing wilderness characteristics[.]" *Id.*, at page 21004; and

WHEREAS, the notice of intent further states at page 21004:

> Lands that the BLM identifies as having wilderness characteristics will be considered during this planning initiative, as described above, and consistent with Secretarial Order No. 3310, dated Dec. 22, 2010, and BLM Manuals 6301 and 6302. Future leasing of lands determined by the BLM to have wilderness characteristics, if compatible with the allocation decisions stemming from this initiative, will subsequently be assessed in accordance with BLM Manual 6303, as appropriate (i.e., where the BLM has not determined, consistent with BLM Manual 6302, whether the lands with wilderness characteristics at issue should be receive a wild lands designation, BLM Manual 6303 will apply); and

WHEREAS, this language documents the BLM's intent to implement, administer and/or enforce Secretarial Order 3310 and one or more of the BLM guidance manuals promulgated under Order 3310; and

WHEREAS, any attempt by the BLM to implement, administer and/or enforce Secretarial Order 3310, including any effort by the BLM to proceed further on the above-referenced Programmatic

EIS, violates the spending moratorium of Section 1769 of the April 21, 2011 Congressional Continuing Resolution to Fund Fiscal Year 2011 through September 30, 2011, which states:

> For the fiscal year ending September 30, 2011, none of the funds made available by this division or any other Act may be used to implement, administer, or enforce Secretarial Order No. 3310 issued by the Secretary of the Interior on December 22, 2010; and

WHEREAS, this spending moratorium has been carried forward in all subsequent Congressional spending resolutions up to and including the current spending resolution; and

WHEREAS, the 2012 OSTS PEIS, is an admitted attempt by the BLM to implement, administer and/or enforce Secretarial Order 3310 and its policies and objectives, all in violation of the Spending Moratorium of the 2011 Continuing Resolution; and

WHEREAS, the 2008 Oil Shale and Tar Sands Programmatic EIS (2008 OSTS PEIS) was required under Section 369 (d) (1) of the Energy Policy Act of 2005 and was prepared in cooperation with 14 federal, state, and local governmental organizations; and

WHEREAS the 2008 OSTS PEIS was 3 years in the making, and it honored the input of a task force of Governors and other stakeholders as per requirement of the 2005 Energy Policy Act; and

WHEREAS, the Record of Decision (ROD) for the 2008 OSTS PEIS amended 10 land use plans in Colorado, Utah, and Wyoming to make approximately 2 million acres of public lands available for potential leasing and development of oil shale and approximately 430,000 acres available for tar sands leasing. Together with the regulations published in 2006 and 2008 for oil shale and tar sands resources, the 2008 OSTS PEIS and subsequent land use amendments constituted a reasonable and rational establishment of an oil shale and tar sands program as mandated in the Energy Policy Act of 2005; and

WHEREAS, the oil shale and tar sands program to which the 2008 OSTS PEIS and related regulations gave birth, was a reasonable response to the fact that oil shale and tar sands resources in the Green River Formation located in northeastern Utah, northwestern Colorado, and southwestern Wyoming may reach 4 trillion barrels of oil; and

WHEREAS, the preferred alternative in the draft 2012 OSTS PEIS drastically shrinks, diminishes and in many areas outright reverses virtually all of the lands made available for Oil Shale and Tar Sands development in 2008, and does so using the same data and science; and

WHEREAS, such a drastic reversal in lands available for Oil Shale and Tar Sands development between the 2008 PEIS and the 2012 preferred alternative, violates regulatory ran Task Force requirements of certainty for industry and investors; and

WHEREAS such a drastic reversal of lands available for Oil Shale and Tar Sands development in 2008, constitutes a de facto, piece-meal revision of previous BLM Resource Management Plans, in violation of the Section 202 Planning Process under FLPMA; and

WHEREAS, the preferred alternative in the draft 2012 OSTS PEIS entirely ignores the input of the task force and stakeholders which the 2005 Energy Policy Act directed the BLM to honor and follow; and moreover the draft 2012 OSTS PEIS may well violate various memoranda of understanding (MOUs) with counties which require the BLM to publish the written input of cooperators who disagree with the preferred alternative; and

WHEREAS the draft 2012 OSTS PEIS preferred alternative significantly restricts the acreage allotted in the 2008 PEIS for research and development leasing; and

WHEREAS the draft 2012 OSTS PEIS preferred alternative threatens to arbitrarily undermine the process and the work utilized in creation of the 2008 OSTS PEIS, and essentially dismantle a reasonable and rational oil shale and tar sands program in violation of Section 369 of the 2005 Energy Policy Act; and

WHEREAS, the 2012 OSTS PEIS preferred alternative is the creature of a friendly lawsuit settlement agreement between the BLM and ideological opponents to oil shale development, and is therefore entirely pre-determined and pre-decisional in violation of NEPA, with no apparent rationale for revising the acreages approved in 2008; and

WHEREAS, the BLM has settled on a preferred alternative in the 2012 OSTS PEIS admittedly without having first analyzed its impacts; BLM should be required to withdraw the preferred status of the alternative until it has performed this analysis; and

WHEREAS, the acreage approved for Oil Shale and Tar Sands development in the draft 2012 OSTS PEIS preferred alternative bears no rational relationship to the stated purpose and need; and

WHEREAS, the Department of Energy has basically abdicated the responsibility Congress placed upon it to defend and uphold a viable oil shale energy program in America, leaving it instead to the BLM encumbered by a host of anti-oil shale pro-wilderness groups steering BLM's every move; and

WHEREAS, the alternative adopted in the ROD of the 2008 OSTS PEIS is now the No Action Alternative of the draft 2012 OSTS PEIS; and

WHEREAS, the 2008 OSTS PEIS chosen alternative is consistent with the multiple use, sustained yield of the Federal Land Policy Management Act (FLPMA); and

WHEREAS, the 2008 OSTS PEIS chosen alternative is consistent with county general plans and policies which call for responsible development of available energy resources; and

WHEREAS, the development and production of oil from oil shale has been proven beyond a doubt to be technologically and economically feasible; and

WHEREAS, this same technology to extract oil from the oil shale rock is not only economically feasible, *but it requires little to no consumption of water,* contrary to the myths which falsely claim that oil shale extraction requires large consumption of water resources; and

WHERAS, the energy captured in the extract of oil from shale (natural gas capture, etc.,) more than makes up for energy consumed in that extraction process, thus dispelling the myth that the oil shale extraction process consumes more energy than it produces; and

WHEREAS, the rising price of gasoline, coupled with ever increasing loss of good paying jobs due to the Administration's policies against energy development on western public lands, result in increasing hardships for families and the local economy; and

WHEREAS, the 2012 OSTS PEIS improperly limits technology testing to strictly in situ efforts and does not allow for development of other technologies; and

WHEREAS, the BLM has left insufficient time for the public and cooperators to meaningfully comment on the public draft 2012 OSTS PEIS by the present comment deadline of May 4, 2012, because a highly relevant commercial oil shale BLM regulation is not due to be published until May 15, 2012 and the public should have the right to view that regulation first and then submit comments on the draft 2012 OSTS PEIS in light of that regulation; and

WHEREAS, the same problems with lack of consistency with local plans and policies and failure to honor the input of cooperators and all stakeholders, also besets many public lands EIS projects, in addition to the 2012 OSTS PEIS. The cooperators from Utah and Wyoming have already unanimously requested for the No-Action alternative in the draft 2012 OSTS PEIS become the preferred alternative.

RESOLUTION

NOW THEREFORE, BE IT RESOLVED BY MESA COUNTY, STATE OF COLORADO AS FOLLOWS:

1. Mesa County declares the BLM's continuing to administer and carry out the 2012 OSTS PEIS to be an open contempt and flaunting of the Congressional Spending Moratorium first imposed in the 2011 Continuing Resolution and carried forward in all subsequent Congressional spending resolutions up to and including the present;

2. Mesa County calls upon the BLM to cease all further activities with respect to administering and carrying out the 2012 OSTS PEIS, because doing so constitutes an open contempt and violation of the Congressional Spending Moratorium against implementing, administering and/or enforcing Secretarial Order 3310, which Spending Moratorium was first imposed in the 2011 Continuing Resolution and carried forward in all subsequent Congressional spending resolutions up to and including the present;

3. Mesa County calls upon the BLM to immediately cease and desist all activities related to the above-referenced 2012 OSTS PEIS and immediately publish a revised notice in the Federal Register signifying its cessation of all work on the Programmatic EIS in obedience to the above-quoted Spending Moratorium. Otherwise, the BLM would be in contempt of Congress;

4. Should BLM continue to go forward with the 2012 OSTS PEIS regardless of these grievances, the only legally, viable alternative would be if the BLM adopted the No-Action Alternative, which is identical to the Alternative chosen in the ROD of the 2008 OSTS PEIS;

5. The BLM should extend the May 4, 2012 deadline for public comment on the draft 2012 OSTS PEIS at least 30 days after publication of the expected oil shale regulation due to be published on or around May 15, 2012;

6. The BLM should honor the input of cooperators, particularly if they are local governments, as required by Section 202(c)(9) of FLPMA, in all matters, not just with respect to the 2012 OSTS PEIS.

DULY MOVED, SECONDED AND PASSED THIS 16th day of April, 2012

BOARD OF COUNTY COMMISSIONERS OF
MESA COUNTY, COLORADO

By: _____
Chairman

ATTEST:

Sheila Reiner
Mesa County Clerk & Recorder

S:\DRFT-AGN\RESO\Tristate Oil Shale Resolution 2012.docx

Deputy

RESOLUTION NO. 2012-___

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF RIO BLANCO COUNTY, COLORADO, OPPOSING THE UNITED STATE BUREAU OF LAND MANAGEMENT'S (BLM) 2012 OIL SHALE AND TAR SANDS PROGRAMMATIC ENVIRONMENTAL IMPACT STATEMENT, BLM PROJECT # WO-300-1310-PP-OSHL (HEREAFTER 2012 OSTS PEIS) FOR LANDS ADMINISTERED BY THE BLM IN COLORADO, UTAH AND WYOMING

Concerning Secretary of the Interior Secretarial Order 3310 issued December 22, 2010 ("Secretarial Order 3310").

WHEREAS, On April 14, 2011, the BLM caused to be published in the Federal Register, Volume 76, No 72/Thursday, April 14, 2011, pages 21003-21005, a notice of intent to prepare the above-referenced 2012 OSTS PEIS; and

WHEREAS, the preliminary purpose and need statement in the notice of intent, states the 2012 OSTS PEIS will analyze removing from oil shale and tar sands leasing "All areas that the BLM has identified or may identify as a result of inventories conducted during this planning process, as lands containing wilderness characteristics[.]" *Id.,* at page 21004; and

WHEREAS, the notice of intent further states at page 21004:

> "Lands that the BLM identifies as having wilderness characteristics will be considered during this planning initiative, as described above, and consistent with Secretarial Order No. 3310, dated Dec. 22, 2010, and BLM Manuals 6301 and 6302. Future leasing of lands determined by the BLM to have wilderness characteristics, if compatible with the allocation decisions stemming from this initiative, will subsequently be assessed in accordance with BLM Manual 6303, as appropriate (Le., where the BLM has not determined, consistent with BLM Manual 6302, whether the lands with wilderness characteristics at issue should be receive a wild lands designation, BLM Manual 6303 will apply)"; and

WHEREAS, this language documents the BLM's intent to implement, administer and/or enforce Secretarial Order 3310 and one or more of the BLM guidance manuals promulgated under Order 3310; and

WHEREAS, any attempt by the BLM to implement, administer and/or enforce Secretarial Order 3310, including any effort by the BLM to proceed further on the 2012OSTS PEIS, violates the spending moratorium of Section 1769 of the April 21, 2011 Congressional Continuing Resolution to Fund Fiscal Year 2011 through September 30, 2011, which states:

> "For the fiscal year ending September 30, 2011, none of the funds made available by this division or any other Act may be used to implement, administer, or enforce Secretarial Order No. 3310 issued by the Secretary of the Interior on December 22, 2010"; and

WHEREAS, this spending moratorium has been carried forward in all subsequent Congressional spending resolutions up to and including the current spending resolution; and

WHEREAS, the 2012 OSTS PEIS, is an admitted attempt by the BLM to implement, administer and/or enforce Secretarial Order 3310 and its policies and objectives, all in violation of the Spending Moratorium of the 2011 Continuing Resolution; and

Concerning the 2008 OSTS PEIS

WHEREAS, the 2008 Oil Shale and Tar Sands Programmatic EIS (2008 OSTS PEIS) was required under Section 369 (d) (1) of the Energy Policy Act of 2005 and was prepared in cooperation with 14 Federal, state, and local governmental organizations; and

WHEREAS, the 2008 OSTS PEIS was three years in the making, and honored the input of a task force of Governors and other stakeholders as required by the 2005 Energy Policy Act; and

WHEREAS, the Record of Decision (ROD) for the 2008 OSTS PEIS amended 10 land use plans in Colorado, Utah, and Wyoming to make approximately 2 million acres of public lands available for potential leasing and development of oil shale and approximately 430,000 acres available for leasing and development of tar sands. Together with the regulations published in 2006 and 2008 for oil shale and tar sands resources, the 2008 OSTS PEIS and subsequent land use amendments constituted a reasonable and rational establishment of an oil shale and tar sands program as mandated in the Energy Policy Act of 2005; and

WHEREAS, the oil shale and tar sands program which the 2008 OSTS PEIS and related regulations delivered, was a reasonable response to the fact that oil shale and tar sands resources in the Green River Formation located in northeastern Utah, northwestern Colorado and southwestern Wyoming are estimated to be the equivalent of 8 trillion barrels of oil; and

WHEREAS, the 2008 OSTS PEIS chosen alternative is consistent with the multiple use, sustained yield of the Federal Land Policy Management Act (FLPMA); and

WHEREAS, the 2008 OSTS PEIS chosen alternative is consistent with the County Master Plan and policies which call for responsible development of available energy resources; and

WHEREAS, the alternative adopted in the Record of Decision (ROD) of the 2008 OSTS PEIS is now the No Action Alternative of the draft 2012 OSTS PEIS; and

Concerning the 2012 OSTS PEIS

WHEREAS, the preferred alternative in the draft 2012 OSTS PEIS drastically shrinks, diminishes and in many areas outright reverses virtually all of the lands made available for Oil Shale and Tar Sands development in 2008, and does so using the same data and science; and

WHEREAS, such a drastic reversal in lands available for Oil Shale and Tar Sands development between the 2008 PEIS and the 2012 preferred alternative, violates regulatory Task Force requirements of certainty for industry and investors; and

WHEREAS, such a drastic reversal of lands available for Oil Shale and Tar Sands development in 2008, constitutes a de facto, piece-meal revision of previous BLM Resource Management Plans, in violation of the Section 202 Planning Process under FLPMA; and

WHEREAS, the preferred alternative in the draft 2012 OSTS PEIS entirely ignores the input of the task force and stakeholders which the 2005 Energy Policy Act directed the BLM to honor and follow; and moreover the draft 2012 OSTS PEIS may well violate various memoranda of understanding (MOUs) with counties which require the BLM to publish the written input of cooperators who disagree with the preferred alternative; and

WHEREAS, the draft 2012 OSTS PEIS preferred alternative significantly restricts the acreage allotted in the 2008 PEIS for research and development leasing; and

WHEREAS, the draft 2012 OSTS PEIS preferred alternative threatens to arbitrarily undermine the process and the work utilized in creation of the 2008 OSTS PEIS, and essentially dismantle a reasonable and rational oil shale and tar sands program in violation of Section 369 of the 2005 Energy Policy Act; and

WHEREAS, the 2012 OSTS PEIS improperly limits technology testing to strictly in situ efforts and does not allow for development of other technologies; and

WHEREAS, the 2012 OSTS PEIS preferred alternative is the creature of a friendly lawsuit settlement agreement between the BLM and ideological opponents to oil shale development, and is therefore entirely pre-determined and pre-decisional in violation of NEPA, with no apparent rationale for revising the acreages approved in 2008; and

WHEREAS, the BLM has settled on a preferred alternative in the 2012 OSTS PEIS admittedly without having first analyzed its impacts; the BLM should be required to withdraw the preferred status of the alternative until it has performed this analysis; and

WHEREAS, the acreage approved for Oil Shale and Tar Sands development in the preferred alternative of the draft 2012 OSTS PEIS bears no rational relationship to the stated purpose and need; and

Concerning Oil Shale Facts

WHEREAS, the development and production of oil from oil shale has been demonstrated to be technologically and economically feasible elsewhere in the world; and

WHEREAS, some technologies to extract oil from the oil shale rock are not only economically feasible, *but require little or no consumption of water*; and

WHEREAS, the energy captured in the extraction of oil and other hydrocarbons from shale more than makes up for energy consumed in that extraction process; and

Other Concerns

WHEREAS, the rising price of gasoline, coupled with ever-increasing loss of good paying jobs due to the Administration's policies against energy development on western public lands, results in increasing hardships for families and the local economy; and

WHEREAS, the Department of Energy has basically abdicated the responsibility Congress placed upon it to defend and uphold a viable oil shale energy program in America, leaving it instead to a BLM encumbered by a host of anti-oil shale pro-wilderness groups steering the BLM's oil shale policy; and

WHEREAS, the BLM has left insufficient time for the public and cooperators to meaningfully comment on the public draft 2012 OSTS PEIS by the present comment deadline of May 4, 2012, because a highly relevant commercial oil shale BLM regulation is not due to be published until May 15, 2012, and the public should have the right to view that regulation first and then submit comments on the draft 2012 OSTS PEIS in light of that regulation; and

WHEREAS, the same problems with lack of consistency with local plans and policies and failure to honor the input of cooperators and all stakeholders, also besets many public lands EIS projects, in addition to the 2012 OSTS PEIS. The cooperators from Utah and Wyoming have already unanimously requested for the No-Action alternative in the draft 2012 OSTS PEIS become the preferred alternative;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF RIO BLANCO COUNTY, COLORADO, THAT:

1. Rio Blanco County declares the BLM's continuing to administer and carry out the 2012 OSTS PEIS to be an open contempt and flaunting of the Congressional Spending Moratorium first imposed in the 2011 Continuing Resolution and carried forward in all subsequent Congressional spending resolutions up to and including the present one in effect.

2. Rio Blanco County calls upon the BLM to cease all further activities with respect to administering and carrying out the 2012 OSTS PEIS, because doing so is an open contempt and

violation of the Congressional Spending Moratorium against implementing, administering and/or enforcing Secretarial Order 3310, for which the Spending Moratorium was first imposed in the 2011 Continuing Resolution and carried forward in all subsequent Congressional spending resolutions up to and including the present.

3. Rio Blanco County calls upon the BLM to immediately cease and desist all activities related to the above-referenced 2012 OSTS PEIS and immediately publish a revised notice in the Federal Register signifying its cessation of all work on the Programmatic EIS in obedience to the above-quoted Spending Moratorium. Otherwise, the BLM would be in contempt of Congress.

4. Should BLM continue to go forward with the 2012 OSTS PEIS regardless of these grievances, the only legally, viable alternative would be if the BLM adopted the No-Action Alternative, which is identical to the Alternative chosen in the ROD of the 2008 OSTS PEIS.

5. The BLM should extend the May 4, 2012, deadline for public comment on the draft 2012 OSTS PEIS by at least 30 days after publication of the expected oil shale regulation which is due to be published on or around May 15, 2012.

6. The BLM should honor the input of cooperators, particularly if they are local governments, as required by Section 202(c)(9) of FLPMA, in all matters, not just with respect to the 2012 OSTS PEIS.

DULY MOVED, SECONDED, AND PASSED ON A VOTE OF _____FOR AND _____AGAINST THIS _____DAY OF _____2012.

BOARD OF COUNTY COMMISSIONERS OF RIO BLANCO COUNTY, COLORADO

_____

Shawn J. Bolton, Chairman

_____

Kenneth C. Parsons, Commissioner

_____

Kai M. Turner, Commissioner

ATTEST:

_____

Nancy R. Amick, Clerk to the Board

RESOLUTION #12-08
DUCHESNE COUNTY, STATE OF UTAH

A RESOLUTION OPPOSING THE BLM'S 2012 OIL SHALE AND TAR SANDS DRAFT PROGRAMMATIC ENVIRONMENTAL IMPACT STATEMENT, BLM PROJECT # WO-300-1310-PP-OSHL (HEREAFTER 2012 OSTS DPEIS) FOR LANDS ADMINISTERED BY THE BLM IN COLORADO, UTAH AND WYOMING,

This Resolution is adopted in open public meeting after due opportunity for public comment, by the Board of Commissioners of Duchesne County, Utah in order to redress the many violations of law, regulation and policy by the BLM with respect to the BLM's 2012 OSTS DPEIS.

As background to this Resolution, Duchesne County recites the following grievances:

WHEREAS, On April 14, 2011, the BLM caused to be published in the Federal Register, Volume 76, No 72/Thursday, April 14, 2011, pages 21003-21005, a Notice of Intent to prepare the above-referenced 2012 OSTS DPEIS; and

WHEREAS, the preliminary purpose and need statement in the notice of intent, states the PEIS will analyze removing from oil shale and tar sands leasing "All areas that the BLM has identified or may identify as a result of inventories conducted during this planning process, as lands containing wilderness characteristics[.]" *Id.*, at page 21004; and

WHEREAS, the notice of intent further states at page 21004:

> Lands that the BLM identifies as having wilderness characteristics will be considered during this planning initiative, as described above, and consistent with Secretarial Order No. 3310, dated Dec. 22, 2010, and BLM Manuals 6301 and 6302. Future leasing of lands determined by the BLM to have wilderness characteristics, if compatible with the allocation decisions stemming from this initiative, will subsequently be assessed in accordance with BLM Manual 6303, as appropriate (i.e., where the BLM has not determined, consistent with BLM Manual 6302, whether the lands with wilderness characteristics at issue should be receive a wild lands designation, BLM Manual 6303 will apply); and

WHEREAS, this language above documents the BLM's intent to implement, administer and/or enforce Secretarial Order 3310 and one or more of the BLM guidance manuals promulgated under Order 3310; and

WHEREAS, any attempt by the BLM to implement, administer and/or enforce Secretarial Order 3310, including any effort by the BLM to proceed further on the above-referenced Programmatic EIS violates the spending moratorium of Section 1769 of the April 21, 2011 Congressional Continuing Resolution to Fund Fiscal Year 2011 through September 30, 2011, which states:

> For the fiscal year ending September 30, 2011, none of the funds made available by this division or any other Act may be used to implement, administer, or enforce Secretarial Order No. 3310 issued by the Secretary of the Interior on December 22, 2010; and

WHEREAS, this spending moratorium has been carried forward in all subsequent Congressional spending resolutions up to and including the current spending resolution; and

WHEREAS THE 2008 OSTS PEIS was 3 years in the making, and it honored the input of a task force of Governors and other stakeholders as per the requirements of the 2005 Energy Policy Act;

WHEREAS, the Record of Decision (ROD) for the 2008 OSTS PEIS amended 10 land use plans in Colorado, Utah, and Wyoming to make approximately 2 million acres of public lands available for potential leasing and development of oil shale and approximately 430,000 acres available for tar sands leasing. Together with the regulations published in 2006 and 2008 for oil shale and tar sands resources, the 2008 OSTS PEIS and subsequent land use amendments constituted a reasonable and rational establishment of an oil shale and tar sands program as mandated by the Energy Policy Act of 2005; and

WHEREAS, the oil shale and tar sands program, to which the 2008 OSTS PEIS and related regulations gave birth, was a reasonable response to the fact that the recoverable oil equivalent from oil shale and tar sands resources in Utah, Colorado and Wyoming exceeds 4 trillion barrels per the latest USGS scientific estimate; and

WHEREAS, the preferred alternative in the draft 2012 OSTS DPEIS drastically shrinks, diminishes and in many areas outright reverses virtually all of the lands made available for Oil Shale and Tar Sands development in 2008, and does so using the same data and science; and

WHEREAS, the OSTS DPEIS fails to analyze BLM's preferred Alternative 2b, and the BLM admits as much on page 2-35 of the DPEIS; and

WHEREAS, such a drastic reversal in lands available for Oil Shale and Tar Sands development between the 2008 PEIS and the 2012 preferred alternative, violates regulatory Task Force requirements of certainty for industry and investors; and

WHEREAS such a drastic reversal of lands available for Oil Shale and Tar Sands development in 2008, constitutes a de facto, piece-meal revision of previous BLM Resource Management Plans, in violation of the Section 202 Planning Process under FLPMA;

WHEREAS, the preferred alternative in the draft 2012 OSTS PEIS entirely ignores the input of the task force, the cooperating agencies, and the other stakeholders which the 2005 Energy Policy Act directed the BLM to honor and follow; and moreover the draft 2012 OSTS DPEIS may well violate various memoranda of understanding (MOUs) with counties, cities and local government coalitions which require the BLM to (1) publish the written input of cooperators who have unresolved disagreements over the substantive elements of the EIS document, and (2) describe the objectives of the cooperators' land use plans and policies; and

WHEREAS the 2012 OSTS DPEIS preferred alternative greatly restricts the already meager acreage allotted in the 2008 PEIS for research and development leasing;

WHEREAS the 2012 OSTS DPEIS preferred alternative threatens to arbitrarily undermine all that was rationally and scientifically supported in the 2008 OSTS PEIS, and essentially dismantle a reasonable and rational oil shale and tar sands program in violation of Section 369 of the 2005 Energy Policy Act; and

WHEREAS, the 2012 OSTS DPEIS preferred alternative is the creature of a friendly lawsuit

WHEREAS, the Department of Energy has basically abdicated the responsibility Congress placed upon it to defend and uphold a viable oil shale energy program in America, leaving it instead to the BLM encumbered by a host of anti-oil shale, pro-wilderness groups steering BLM's every move;

WHEREAS, the alternative adopted in the ROD of the 2008 OSTS PEIS is now the No Action Alternative of the draft 2012 OSTS DPEIS; and

WHEREAS, the 2008 OSTS PEIS chosen alternative is consistent with the multiple use, sustained yield mandate of the Federal Land Policy Management Act (FLPMA); and

"WHEREAS, the 2008 OSTS PEIS chosen alternative is consistent with county general plans and policies which call for responsible development of available energy resources, but in stark contrast the 2012 OSTS PDEIS is plainly inconsistent with state and local plans and policies, plainly inconsistent with the Uintah Basin Energy Zone Legislation passed in the 2012 Utah Legislature (Senate Bill 83 – see Utah Code 63J-8-102 & 105.5), and it fails to adequately explain why consistency is not achievable; and

WHEREAS, the development and production of oil from oil shale has been proven beyond a doubt to be technologically and economically feasible when market rates for oil are at least $65.00 per barrel, which is well below current market rates; and

WHEREAS, this same technology to extract oil from the oil shale rock is not only economically feasible at $65.00 per barrel, *but it requires little or no consumption of water,* contrary to the myths which falsely claim that oil shale extraction requires large consumption of water resources; and

WHERAS, the energy captured in the extract of oil from shale (natural gas capture, etc.,) more than makes up for energy consumed in that extraction process, thus dispelling the myth that the oil shale extraction process consumes more energy than it produces;

WHEREAS, the rising price of gasoline, coupled with ever increasing loss of family-wage jobs due to the Obama Administration's policies against energy development on western public lands, result in increasing hardships for families and the local economy, to the point where some fear the window of opportunity is about to close for a civil, lawful and orderly response as citizens feel more and more pressured and desperate financially; and

WHEREAS, the 2012 OSTS DPEIS improperly limits technology testing to strictly in-situ efforts and does not allow for development of other technologies; and

WHEREAS, the BLM has left insufficient time for the public and cooperators to meaningfully comment on the public draft 2012 OSTS DPEIS by the present comment deadline of May 4, 2012, because a highly relevant commercial oil shale BLM regulation is not due to be published until May 15, 2012 and the public should have the right to view that regulation first and then submit comments on the draft 2012 OSTS DPEIS in light of that regulation; and

WHEREAS, the same problems with lack of consistency with local plans and policies and failure to honor the input of cooperators and all stakeholders, also besets many public lands EIS projects, in addition to the 2012 OSTS DPEIS; and

Resolution #12-08
Duchesne County, Utah
April 16, 2012
Page 4 of 4

1. Duchesne County declares the BLM's continuing to administer and carry out the 2012 OSTS DPEIS to be an open contempt and flaunting of the Congressional Spending Moratorium first imposed in the 2011 Continuing Resolution and carried forward in all subsequent Congressional spending resolutions up to and including the present;

2. Duchesne County calls upon the BLM to cease all further activities with respect to administering and carrying out the 2012 OSTS DPEIS, because doing so constitutes an open contempt and violation of the Congressional Spending Moratorium against implementing, administering and/or enforcing Secretarial Order 3310, which Spending Moratorium was first imposed in the 2011 Continuing Resolution and carried forward in all subsequent Congressional spending resolutions up to and including the present;

3. Duchesne County calls upon the BLM to immediately cease and desist all activities related to the above-referenced 2012 OSTS DPEIS and immediately publish a revised notice in the Federal Register signifying its cessation of all work on the Programmatic EIS in obedience to the above-quoted Spending Moratorium. Otherwise, the BLM would be in contempt of Congress;

4. Duchesne County finds that the only way the BLM could go forward with the 2012 OSTS DPEIS in light of the Congressional Spending Moratorium, would be if the BLM adopted the No-Action Alternative, which is identical to the Alternative chosen in the ROD of the 2008 OSTS PEIS;

5. Duchesne County requests that the BLM should extend the May 4, 2012 deadline for public comment on the draft 2012 OSTS DPEIS at least 30 days after publication of the expected oil shale regulation due to be published on or about May 15, 2012.

6. Duchesne County requests that the BLM honor the input of cooperators, particularly if they are local governments, as required by Section 202(c)(9) of FLPMA and the relevant terms of BLM-Cooperator MOUs, in all matters, not just with respect to the 2012 OSTS PEIS.

DATED this _____ day of _____ 2012.

ATTEST:

_____
Diane Freston
County Clerk/Auditor

DUCHESNE COUNTY
BOARD OF COMMISSIONERS

_____
Kirk J. Wood, Chairman

_____
Ronald Winterton, Member

_____
Kent R. Peatross, Member

Thank you for your comment, Audrey Graham.

The comment tracking number that has been assigned to your comment is OSTS2012D50016.

Comment Date: February 10, 2012 01:06:03AM
OSTS 2012 Draft PEIS
Comment ID: OSTS2012D50016

First Name: Audrey
Middle Initial:
Last Name: Graham
Organization: Grand County Council Member
Address: 1701 Murphy Lane
Address 2:
Address 3:
City: Moab
State: UT
Zip: 84532
Country: USA
Privacy Preference: Don't withhold name or address from public record
Attachment:

Comment Submitted:

Dear BLM, As a local elected official in Grand County Utah, where some of the proposed activities will take place, I request that a public hearing take place in our community in a timely and well-advertised manner. Thank you, Audrey

Thank you for your comment, Audrey Graham.

The comment tracking number that has been assigned to your comment is OSTS2012D50017.

Comment Date: February 14, 2012 14:21:28PM
OSTS 2012 Draft PEIS
Comment ID: OSTS2012D50017

First Name: Audrey
Middle Initial:
Last Name: Graham
Organization:
Address: 1701 Murphy Lane
Address 2:
Address 3:
City: Moab
State: UT
Zip: 85432
Country: USA
Privacy Preference: Don't withhold name or address from public record
Attachment:

Comment Submitted:

A second comment; in examining the maps more closely, I see that apparently the proposed area is not located in Grand County at all, nor in its watershed, except for the Green River. In addition, I can see that many communities which are located nearer than Moab to potential sites are not listed as hearing locations. I therefore respectfully withdraw my request to have a public hearing in Moab. Thank you.

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M.2 U.S. ENVIRONMENTAL PROTECTION AGENCY COMMENT LETTER AND BUREAU OF LAND MANAGEMENT RESPONSE LETTER

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8
1595 Wynkoop Street
Denver, CO 80202-1129
Phone 800-227-8917
http://www.epa.gov/region08

MAY 03 2012

Ref: 8EPR-N
Michael Nedd, Assistant Director
Bureau of Land Management
Minerals, Realty and Resource Protection
1849 "C" Street NW
Washington, D.C. 20240

Sherri Thompson, Project Manager
Bureau of Land Management
Colorado State Office
2850 Youngfield Street
Lakewood, Colorado 80215-7093

Re: EPA Comments on Draft Programmatic Environmental Impact Statement and Possible Land Use Plan Amendments for Allocation of Oil Shale and Tar Sands Resources
CEQ # 20120019

Dear Mr. Nedd and Ms. Thompson:

In accordance with our responsibilities under Section 102(2)(C) of the National Environmental Policy Act (NEPA), 42 U.S.C. Section 4332(2)(C), and Section 309 of the Clean Air Act (CAA), 42 U.S.C. Section 7609, the U.S. Environmental Protection Agency Region 8 (EPA) has reviewed the Bureau of Land Management's (BLM) Draft Programmatic Environmental Impact Statement and Possible Land Use Plan Amendments for Allocation of Oil Shale and Tar Sands Resources on Lands Administered by the BLM in Colorado, Utah, and Wyoming (Draft PEIS).

Background and Project Description

In 2008, the BLM amended twelve land use plans in Colorado, Utah and Wyoming to designate public lands administered by the BLM as available for commercial leasing for oil shale or tar sands development through the preparation of a PEIS (2008 OSTS PEIS). These 2008 amendments made approximately 2 million acres of public land available for application for leasing and development of oil shale, and approximately 431,000 acres of public land available for application for leasing and development of tar sands. In 2009 the 2008 OSTS PEIS was challenged in a lawsuit brought by a coalition of environmental organizations. As part of the resulting settlement agreement filed with the

U.S. District Court in Colorado in February of 2011, BLM decided to take a fresh look at the land allocations analyzed in the 2008 OSTS PEIS and consider excluding certain lands from future leasing of oil shale and tar sands resources.

It is important to note that the Preferred Alternative represents an approximate 77% reduction in land proposed as available for application for oil shale leasing as compared to the 2008 OSTS PEIS decision. Similarly for tar sands leasing, the Preferred Alternative represents an approximate 79% reduction in land proposed as available compared to the 2008 decision. These changes represent significant steps toward protecting environmental resources. The Draft PEIS analyses four alternatives: Alternative 1 (no action), Alternative 2 (conservation focus), Alternative 3 (research lands focus) and Alternative 4 (moderate development). Alternative 2 consists of two options for oil shale. Alternative 2(a) excludes all lands having wilderness characteristics (LWC), the whole of the Adobe Town "Very Rare or Uncommon Area," core or priority sage-grouse habitat and all areas of critical environmental concern (ACEC). Alternative 2(b) lands available for application for leasing and development of oil shale would be the same as Alternative 2(a); however, only for research, development and demonstration (RD&D) leases. A key benefit of Alternative 2(b) would be facilitation of a robust RD&D program for oil shale development. The BLM has identified Alternative 2(b) as the Agency's Preferred Alternative.

The EPA's Comments and Recommendations

The EPA appreciates having had the opportunity to consult with the BLM on the Draft PEIS and to see that many of our specific comments have been addressed. We remain committed to working with BLM to seek ways to address a few additional comments. The EPA focuses these comments on the need for rigorous NEPA analysis at future leasing and project decisions, particularly analysis regarding water resources and air quality. Along with an explanation of these comments, we offer recommendations on how the BLM might address them.

A. NEPA at Future Leasing and Project Decisions

The EPA's most essential remaining recommendation is that BLM make a strong and clear commitment in the Final PEIS that the agency will conduct additional NEPA analysis and disclosure prior to leasing any land for oil shale/tar sands development and also after development technologies and their potential impacts are better defined and understood. As the Draft PEIS explains, oil shale development will involve untested technologies where the magnitude and nature of impacts is currently undetermined, but may be significant. Furthermore, key information needed to evaluate and mitigate potential impacts is not yet available, including future project locations, operating characteristics, size and scope of the projects, and likely impacts and mitigation measures.

Given this situation, the EPA is reviewing this document with the assumption that the level of NEPA at future leasing and project decisions will be an EIS, and that BLM will perform rigorous NEPA analyses when technologies are better understood. We believe it is important for the Final PEIS to include a commitment to preparing EISs for future leasing and project decisions, and to confirm that BLM will fully disclose direct, indirect and cumulative impacts of future leasing and development decisions and apply mitigation necessary to reduce those impacts.

The Draft PEIS notes that the concept for the Preferred Alternative emerged during development of this document, is presented only in brief, and will be developed further in preparation of the Final PEIS

(page 2-35). The EPA believes the Preferred Alternative gives BLM an opportunity to acquire important data during RD&D leasing and prior to commercial leasing that will be useful to inform future NEPA analyses. The EPA recommends the Final PEIS discuss how the BLM intends to use the RD&D leasing process to assess potential impacts on water resources and air quality, thereby positioning BLM to mitigate these potential impacts in the event commercial leasing becomes viable. In addition, we recommend the Final PEIS identify the types of data sets that BLM may require be provided by RD&D lessees.

With respect to future leasing decisions, it would be useful to include information in the Final PEIS regarding criteria the BLM may be considering for converting research leases to commercial scale leases. This disclosure would be putting both industry and the public on notice regarding the decision-making process that BLM intends to undertake upon receipt of commercial lease applications.

B. Water Resources

1. Surface Water

The EPA recommends that the Final PEIS include the most up-to-date information on the existing quality of surface waters in these areas is included in the document, which can be obtained from each State (see below). This is particularly important since water bodies in portions of the study area are already impacted where significant oil and gas development is occurring. The number of impaired streams listed on the current 303(d) lists of impaired waters within both the Piceance Basin in Colorado and the Uinta Basin in Utah have increased since the previous listings, as outlined below.

Under the Clean Water Act (CWA), states are required to establish and maintain water quality standards to protect water bodies such as rivers, lakes and streams. Water bodies that do not meet these standards are placed on the State's Section 303(d) List of impaired waters. The Draft PEIS provides 2006 data for the 303(d) Lists from Colorado, Utah and Wyoming. Updated information is now available to replace 2006 impaired water body data in Table 3.4.1-1 (pages 3-64 and 3-65) within the study areas of Colorado, Utah and Wyoming. 2010 data is available for Utah, while 2012 data is in the process of being finalized for Colorado and Wyoming. The EPA recommends that the Final PEIS reflect these updates, as discussed in the following paragraphs.

In Colorado, the draft 2012 303(d) List indicates that water quality has become further impaired in the Piceance Basin since 2006. This draft 2012 303(d) List identifies five additional river segments in the basin. Colorado's Monitoring and Evaluation List (M&E List) identifies water bodies exhibiting some stress in the aquatic ecosystem, but where more data is needed to make an appropriate determination. The M&E List identifies one additional river segment within the Piceance-Yellow Creek watershed between the 2010 and 2012 lists. Based on the potential oil shale development in this area in addition to ongoing and planned oil and gas development, there is a trend toward further impairment and the potential for additional violations of surface water quality standards and the CWA if additional pollutant loads reach these impacted river segments. Colorado finalized their 2012 303(d) and M&E lists and submitted the 303(d) list to EPA on March 23, 2012 for approval. These lists can be found online at http://www.cdphe.state.co.us/op/wqcc/Reports/303(d)/93_2012(03).pdf. The following table identifies 5 additional water segment impairments in the Piceance Basin.

Colorado ID	Water Segment	Impairment
COLCWH13c	Yellow Creek	Fe (Trec) and Aquatic Life
COLCWH14a	Piceance Creek	Fe (Trec)
COLCWH15	Piceance Creek	Aquatic Life (provisional)
COLCWH20	Black Sulfur Creek	Aquatic Life (provisional)
COLCWH23	W. Douglas Creek	Aquatic Life

Source: CDPHE, 2012

In Utah, the 2010 303(d) List indicates that water quality has also become further impaired in the Uinta Basin since 2006. Based on the ongoing and planned oil and gas development in this area in addition to potential oil shale and tar sands development, there appears to be a high likelihood of further impairment and the potential for additional violations of surface water quality standards and the Clean Water Act if additional pollutant loads reach these impacted river segments. The 2010 303(d) list can be found at http://www.epa.gov/waters/ir/index.html.

Utah ID	Water Segment	Impairment
UT14050007-003	Evacuation Creek	TDS
UT14030001-001	Cottonwood Wash	Benthic Macro-invertebrate Assessment (BMAI)
UT14060006-001	Willow Creek	BMAI
UT14060004-002	Indian Canyon Creek	Arsenic and boron (in addition to TDS)
UT14060005-003	Ninemile Creek	Temperature

Source: UDEQ, 2010

In Wyoming, the draft 2012 303(d) List indicates that water quality impairments have not changed within the project's study area portion of the Green River Basin since 2006. Wyoming finalized their draft 2012 303(d) list on March 27, 2012. This list can be found at http://deq.state.wy.us/wqd/watershed/Downloads/305b/2012/WY2012IR_Draft_Doc11-1058.pdf.

The EPA recommends that BLM include all updated 303(d) list information for each state in the Final PEIS. EPA also recommends that the Final PEIS provide a discussion of the changes between 2006 and 2012 to clearly disclose any increases in impaired water bodies for each state's study area. Inclusion of this data represents a key piece of information needed to fully disclose current water quality conditions and to evaluate, and if necessary mitigate, impacts of any future oil shale and tar sands development.

2. *Groundwater*

In order to provide a baseline to accurately assess the potential impacts of the alternatives, we recommend that the Final PEIS add additional information to more thoroughly characterize groundwater resources in Utah and Wyoming. Specifically, we recommend the Final PEIS include the delineated depth of underground source of drinking water (USDWs) in the study areas as well as the quality of each zone within these aquifers, to the extent there is existing information to do so. Without this information, the Draft PEIS provides little information regarding the location or depth

of USDWs. All groundwater that has not been exempted through the aquifer exemption process and meets the definition of USDW at 40 C.F.R. § 144.3 is protected under the Safe Drinking Water Act. A USDW is defined as an aquifer or portion of an aquifer that supplies any public water system or that contains a sufficient quantity of ground water to supply a public water system, and currently supplies drinking water for human consumption, or that contains fewer than 10,000 mg/l total dissolved solids (TDS) and is not an exempted aquifer. Aquifers are presumed to be USDWs unless they have been specifically exempted or if they have been shown to fall outside the definition of a USDW (e.g., over 10,000 mg/L TDS). We provide the following sources for assistance to better characterize groundwater resources in the Final PEIS within Utah and Wyoming:

- In Utah, the Utah Geologic Survey has collected detailed groundwater information for its Uinta Basin Water Study. The purpose of this study is to better understand and characterize groundwater resources in the Uinta Basin in recognition of the fact that areas of potential oil shale development overlap with natural gas fields in the basin. The study can be found at http://geology.utah.gov/emp/UBwater_study/.

  In addition, the Greater Natural Buttes Draft Resource Management Plan (RMP) provides extensive characterization of the three major aquifer systems in the Uinta Basin. This information is provided in Section 3.13.3 of the Draft RMP, and can be found at http://www.blm.gov/ut/st/en/fo/vernal/planning/nepa_/greater_natural_buttes.html.

- In Wyoming, the Water Development Office recently completed the 2010 Green River Basin Plan Update, which presents a basinwide perspective on water resources and includes identification of the major aquifers in the basin and the physical and chemical characteristics of their groundwater. The plan can be found at http://waterplan.state.wy.us/plan/green/green-plan.html.

3. Issues Pertaining to Both Groundwater and Surface Water

Baseline Characterization of Drinking Water Sources

In order to accurately assess the potential impacts of the alternatives on drinking water sources, we recommend that all sources of drinking water in the study area be characterized in the Final PEIS. These sources include water in streams, rivers, lakes, springs and aquifers that is used as a supply of drinking water. This can be accomplished by including a discussion in the Final PEIS of each State's source water protection program, and including state-designated surface and groundwater protection zones. The EPA recommends this step so that the reader can fully understand the extent and location of these important resources. We recommend including a map illustrating locations of source water protection zones (both groundwater and surface water) for municipal supply. In addition, we provide the following contacts for assistance obtaining this information for each state:

- John Duggan at the Colorado Department of Public Health and Environment, Water Quality Control Division at (303) 692-3534
- Kate Johnson at the Utah Division of Environmental Quality, Division of Drinking Water at (801) 536-4206
- Kim Medina at the Wyoming Department of Environmental Quality, Water Quality Division

at (307) 473-3476, and Mark Pepper at the Wyoming Association of Rural Water Systems at (307) 436-8636

4. Wetlands

The Draft PEIS indicates that BLM will ensure that impacts to jurisdictional wetlands (those under the regulatory jurisdiction of the Clean Water Act (CWA), Section 404, and the USACE) would be avoided or mitigated. The EPA would like to clarify that the CWA §404(b)(1) guidelines require applicants to avoid, minimize and mitigate for impacts to all waters of the United States. We also note that according to Executive Order (EO) 11990, federal agencies are required to minimize the destruction, loss or degradation of wetlands, and to preserve and enhance the natural and beneficial values of wetlands in carrying out the agency's responsibilities, regardless of the jurisdictional status of the wetlands. To this end, we recommend that the Final PEIS include a commitment from BLM to comply with these requirements for all wetlands, not solely jurisdictional wetlands.

Throughout the Draft PEIS the BLM requires future projects to mitigate for impacts to wetlands and riparian areas. CWA §404(b)(1) requires permit applicants to first avoid impacts to waters of the U.S., then minimize the unavoidable impacts, prior to mitigating the remaining unavoidable impacts. We recommend that the Final PEIS reflect these CWA 404(b)(1) requirements wherever there are anticipated impacts to waters of the U.S. This will ensure that potential applicants are on notice of the full extent of requirements for the protection of waters of the U.S.

C. Air Quality

1. Need for Additional Disclosure of New Clean Air Act Designations

The Draft PEIS is lacking recently published important information regarding two CAA designations that will affect future development in the study area. While not a part of the NEPA requirements that must be included in the PEIS, before finalizing an approval of any project, the CAA requires that the BLM conduct a general conformity analysis for any project emissions occurring in such areas designated as nonattainment or maintenance for the National Ambient Air Quality Standards (NAAQS). The CAA states that in such areas, a determination must be made that the emissions (either direct or indirect) from a federal action will not exceed a *de minimis* threshold level measured in tons per year for the criteria pollutant of concern. If the Action exceeds the *de minimis* level, then a conformity determination is required to document how the federal action will affect implementation of the applicable implement plan to reach attainment.

The EPA issued a final rule on April 30, 2012, designating Sublette County and portions of Lincoln and Sweetwater counties in Wyoming as a marginal nonattainment area for ozone. Some of the proposed area available for oil shale leasing under the Preferred Alternative in Wyoming overlaps with this designated ozone nonattainment area in Sublette County and Sweetwater County. The final rule also designated Duchesne and Uintah counties in Utah as an ozone unclassifiable area. Some proposed areas for oil shale and tar sands leasing under the Preferred Alternative in Utah overlap with this designated ozone unclassifiable area in both Duchesne and Uintah counties. Given this situation, during the NEPA process for future leasing and project decisions in these areas, it will be important for BLM to fully analyze and disclose impacts and necessary mitigation, including the possibility of no net increase in emissions depending on the extent of the nonattainment problem.

Therefore, the EPA recommends that future oil shale leasing and plan development in the designated ozone nonattainment area in Wyoming describe whether general conformity analysis is required (i.e., whether the relevant emissions exceed *de minimis* thresholds) and how the future proposed actions would comply with the applicable implementation plan. If a general conformity analysis is necessary, the EPA recommends that it be included in the BLM's NEPA analysis.

2. *Power implications of in situ technologies for oil shale development*

The Draft PEIS assumes future in situ projects would require 600 MW of additional electrical generation capacity when commercial production levels are reached, and that this new electricity capacity would be provided by conventional coal-fired plants. In view of the potential magnitude of this additional energy need and the air quality in the region, it will be essential to fully analyze and be prepared to discuss in future NEPA documents the potential environmental impacts and mitigation measures associated with additional energy sources. We also strongly recommend that BLM commit to analyze a range of power generation options, including natural gas and renewable sources in view of currently development activity and air quality.

The EPA's Rating

Consistent with Section 309 of the CAA, it is the EPA's responsibility to provide an independent review and evaluation of the potential environmental impacts of this project. In accordance with our policies and procedures for reviews under NEPA and Section 309 of the CAA, the EPA is rating this Draft EIS as "Environment Concerns – Insufficient Information" (EC-2). The "EC" rating indicates that our review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce these impacts. The "2" rating indicates that the Draft EIS does not contain sufficient information for the EPA to fully assess environmental impacts that should be avoided in order to fully protect the environment. We have enclosed a description of the EPA's rating system for your convenience (Attachment 1).

We appreciate the opportunity to comment on this document, and hope our suggestions for improving it assist you with preparation of the Final PEIS. We would be happy to meet to discuss these comments and our suggested solutions. If you have any questions or requests, please feel free to contact either me at 303-312-6925 or David Fronczak of my staff at 303-312-6096.

Sincerely,

Suzanne J. Bohan
Director, NEPA Compliance and Review Program
Office of Ecosystems Protection and Remediation

Enclosures (1)

ATTACHMENT 1
U.S. Environmental Protection Agency Rating System for Draft Environmental Impact Statements

Definitions and Follow-Up Action*

Environmental Impact of the Action

LO - - Lack of Objections: The Environmental Protection Agency (EPA) review has not identified any potential environmental impacts requiring substantive changes to the proposal. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposal.

EC - - Environmental Concerns: The EPA review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce these impacts.

EO - - Environmental Objections: The EPA review has identified significant environmental impacts that should be avoided in order to provide adequate protection for the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no-action alternative or a new alternative). EPA intends to work with the lead agency to reduce these impacts.

EU - - Environmentally Unsatisfactory: The EPA review has identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of public health or welfare or environmental quality. EPA intends to work with the lead agency to reduce these impacts. If the potential unsatisfactory impacts are not corrected at the final EIS stage, this proposal will be recommended for referral to the Council on Environmental Quality (CEQ).

Adequacy of the Impact Statement

Category 1 - - Adequate: EPA believes the draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis of data collection is necessary, but the reviewer may suggest the addition of clarifying language or information.

Category 2 - - Insufficient Information: The draft EIS does not contain sufficient information for EPA to fully assess environmental impacts that should be avoided in order to fully protect the environment, or the EPA reviewer has identified new, reasonably available alternatives that are within the spectrum of alternatives analyzed in the draft EIS, which could reduce the environmental impacts of the action. The identified additional information, data, analyses or discussion should be included in the final EIS.

Category 3 - - Inadequate: EPA does not believe that the draft EIS adequately assesses potentially significant environmental impacts of the action, or the EPA reviewer has identified new, reasonably available alternatives that are outside of the spectrum of alternatives analyzed in the draft EIS, which should be analyzed in order to reduce the potentially significant environmental impacts. EPA believes that the identified additional information, data, analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. EPA does not believe that the draft EIS is adequate for the purposes of the National Environmental Policy Act and/or Section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS. On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to the CEQ.

* From EPA Manual 1640 Policy and Procedures for the Review of Federal Actions Impacting the Environment. February, 1987.

United States Department of the Interior
BUREAU OF LAND MANAGEMENT
Washington, D.C. 20240
http://www.blm.gov

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AUG 24 2012

Ms. Suzanne Bohan, Director
NEPA Compliance and Review Program
Environmental Protection Agency, Region 8
1595 Wynkoop Street
Denver, Colorado 80202-1129

Dear Ms. Bohan:

Your letter of May 3, 2012, provided comments on the Draft Oil Shale and Tar Sands Programmatic Environmental Impact Statement (PEIS). In accordance with Section 309 of the Clean Air Act, the letter provided a rating for the document after an independent review and evaluation of the potential environmental impacts of this project by the Environmental Protection Agency (EPA). The Bureau of Land Management (BLM) appreciates the opportunity to confer with the EPA on the Draft PEIS and the comments and recommendations that were provided in your letter. The BLM is currently considering all the comments that were received during the comment period; in the spirit of cooperation, I wanted to take this time to respond directly to the comments and recommendations in your letter.

A) NEPA at Future Leasing and Project Decisions

The EPA's first and "most essential" recommendation is that the BLM make a strong and clear commitment in the Final PEIS that the agency will conduct additional NEPA analysis and disclosure prior to leasing any lands for oil shale or tar sands development and also after development technologies and their potential impacts are better defined and understood. Specifically, the EPA is recommending that the Final PEIS include a commitment to preparing EIS level analysis for future leasing and project decisions. The EPA also suggests the Final PEIS confirm that the BLM will fully disclose direct, indirect and cumulative impacts of future leasing and development decisions and apply mitigation necessary to reduce those impacts. The EPA is recommending that the Final PEIS discuss how the BLM intends to use the RD&D leasing program to assess potential impacts on water resources and air quality. The EPA is also recommending the Final PEIS identify the types of data sets that BLM may require be provided by RD&D lessees. The EPA also suggested including information in the Final PEIS criteria the BLM may be considering for converting research leases to commercial scale leases.

Response: Just as in 2008, the Draft PEIS analyzes an allocation decision, the amendment of 10 existing land use plans to designate certain public lands as open, and certain other lands as closed for application for future oil shale and tar sands leasing. This land use allocation does not authorize any future lease or development proposal. As stated on page 1-1 of the Draft

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PEIS, prior to issuance of any commercial leases on lands that may be designated as available for application, the BLM must comply with all pertinent laws, regulations, and policies required to analyze the direct, indirect, and cumulative impacts of the proposed lease(s) for development of oil shale or tar sands resources, including, but not limited to, NEPA, National Historic Preservation Act of 1966 (NHPA), and Endangered Species Act of 1973 (ESA). NEPA analysis and other appropriate review would be required not only before approval of a lease, but also prior to approval of any subsequent plan of development on a lease, which would include analysis of particular activities at the specific location where development would occur. Appropriate stipulations and mitigation measures would be identified as part of both of these subsequent NEPA analyses. Similar language is found in Chapter 1 (pages 1-1 and 1-6), Chapter 2 (pages 2-20 and 2-58) and Chapter 6 (page 520). This language will remain in the Final PEIS.

In determining what level of environmental analysis will be done at each phase, the BLM will comply with the Council on Environmental Quality's (CEQ's) regulation at 40 CFR 1501.4, whether to prepare an Environmental Impact Statement, as well as all other applicable provisions of 40 CFR 1500-1508. This determination will weigh into account a number of factors which are currently unknown at this time. It would be premature and inappropriate at this point for the BLM to commit to a specific level of NEPA analysis for particular future proposed actions the character of which is unknown as this time. Specifically, the BLM does not have information regarding either the particular technology that may be used or the location in which that technology may be proposed for use. The BLM believes that the CEQ regulations, as well as the Department's own NEPA implementing regulations at 43 CFR Part 46, provide sufficient guidance as to how to conduct NEPA review in such circumstances. The BLM is taking a measured approach to oil shale development where each step builds upon a prior step. This staged approach ensures that any commercial oil shale program meets the intent of Congress, is consistent with the requirements of NEPA and FLPMA, takes advantage of the best available information and practices to minimize impacts and offers opportunities for states, tribes, local communities, and the public to be involved at each decision point. At future stages of environmental evaluation (i.e., leasing and/or plan of development), a landscape-level analysis will be performed, if appropriate. The scope of the analysis in subsequent NEPA documents would be dependent upon the number of applications received and the type and size of operations proposed by the applicant. This could result in a statewide, regional, basin-wide, or site specific analysis.

It would be premature, to include in the Final PEIS specific data set requirements at this time, which must be provided by the RD&D lessees. The BLM anticipates that RD&D lessees wishing to convert their lease to a commercial lease would need to provide the BLM with detailed technology information as well as information about environmental consequences to such resources as wildlife, air quality, water quality and quantity, etc. Until we know more about the proposed technology and the proposed location for application of that technology, it would be difficult to explain, in the Final PEIS, precisely how this data will be used.

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The regulations governing oil shale leasing and development, which may themselves be clarified by amendments that are currently in draft for proposal over the course of this summer, specify the criteria the BLM will be considering for conversion of an RD&D lease to a commercial lease. While a part of the overall oil shale program, the RD&D portion of that program is separate and apart from the land management actions being analyzed in the PEIS.

B) Water Resources

1. Surface Water. The EPA is recommending the Final PEIS include the most up-to-date information on existing surface water quality. Recent updates to the Clean Water Act Section 303(d) of the Clean Water Act Lists should be incorporated for all three states. EPA also recommends that the Final PEIS include a discussion of the changes between 2006 and 2012 to clearly disclose any increases in impairment for each state's study area.

Response: The BLM will incorporate the 2010 Section 303(d) data for Utah and the 2012 data for Colorado and Wyoming into the Final PEIS, as suggested. The Final PEIS will also include a discussion of the changes between 2006 and 2012 to clearly disclose any increases in impairment for each state's study area.

2. Groundwater. The EPA is recommending that the Final PEIS include the delineated depth of underground sources of drinking water (USDWs) in the study areas as well as the quality of each zone within these aquifers, to the extent there is existing information to do so.

Response: Aquifer systems and water quality in the basins are described generally in Sections 3.4.2.1, 3.4.3.1, and 3.4.4.1, and geologic information is provided in Sections 3.2.1.2, 3.4.3.1, and 3.4.4.1. Thicknesses, water quality, and especially depth of the aquifers vary on a site-specific basis. Because the PEIS provides an overview of the study areas, site-specific information is not included. An actual project would undergo two further levels of NEPA analysis (lease stage and project design phase), during which aquifer depths and other information would be assessed in detail. No change was made to the PEIS in response to this comment. BLM's contractor for this planning initiative, Argonne National Laboratory (ANL), did call the contacts that you provided. The Wyoming contact provided a website. The site lists 377 wellhead protection reports for Wyoming municipal wells, but has no map guide. None are obvious names of the study area. This information was not useful for a regional study. ANL also phoned Colorado and Utah and left messages, but still has not heard anything. ANL also searched their websites, and found that these websites include overview information about source water protection, but do not appear to offer a list of studies or a map of source water protection zone locations. ANL suggests that there would be little or no delineated source water protection zones in the study areas because very few public water systems are located in those places. Sections 3.4.2.1, 3.4.3.1, and 3.4.4.1 have been updated to refer to the source water protection programs in the three states.

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3. Issues Pertaining to Both Groundwater and Surface Water. The EPA is recommending that all sources of drinking water in the study area be characterized in the Final PEIS and include a map illustrating locations of source water protection zones for municipal supply.

Response: The PEIS provides an overview of the hydrology of the study areas. Site-specific information is not included in the PEIS. An actual project would undergo two further levels of NEPA analysis (lease stage and project design phase), during which groundwater and surface water protection zones would be assessed in detail. Sections 3.4.2.1, 3.4.3.1, and 3.4.4.1 have been updated to refer to the source water protection programs in the three states. Wellhead protection zones are very localized and unlikely to be present near remote developments. Surface waters also have a site-specific aspect.

4. Wetlands. The EPA provided a clarification of the Clean Water Act guidelines as they apply to jurisdictional wetlands and suggested that the Final PEIS include a commitment from the BLM to comply with both the Clean Water Act and Executive Order for all wetlands, not just jurisdictional wetlands. The EPA also recommends that the Final PEIS reflect the Clean Water Act Section 404(b)(1) requirements for impacts to waters of the U.S.

Response: The Final PEIS will be revised to note that the fundamental rationale of the Section 404 of the Clean Water Act program is that no discharge of dredged or fill material into waters of the United States should be permitted if there is a practicable alternative that would be less damaging to our aquatic resources or if significant degradation would occur to the nation's waters. The document will reference the Clean Water Act and the guidelines at Section 404(b)(1) of the Clean Water Act. The document will also include a statement that permit review and issuance follows a sequenced process that encourages avoidance of impacts, followed by minimizing impacts and, finally, requiring mitigation for unavoidable impacts to the aquatic environment.

Language on page 2-4, under the Floodplains and wetlands bullet, has been changed to, "Leasing and development of oil shale and tar sands resources will be subject to statutory requirements and authorities addressing the protection of wetlands or floodplains, such as the Clean Water Act and Executive Order 11990."

C) Air Quality

1. Disclosure of New Clean Air Act Designations. The EPA is recommending a qualitative discussion of the new Clean Air Act designations (April 30, 2012) in portions of Wyoming and Utah as marginal nonattainment areas for ozone and ozone unclassified areas respectively. In addition, the EPA would like to see some general discussion in the document related to potential future conformity analysis as it may or may not apply to these new designations.

Response: The BLM will incorporate this data as suggested.

2. Power implications of in situ technologies in future NEPA documents. The EPA is recommending that the BLM commit in the Final PEIS to analyzing a range of power options, including natural gas and renewable sources, in future NEPA documents for leasing and for site specific development.

Response: It would not be appropriate for the BLM, at this time, to commit to requiring elements of future NEPA documents without a proposed action. The scope of the analysis in subsequent NEPA documents would depend upon the number of applications received and the type, size, and location of operations proposed by the applicant, including the type of power generation proposed, as well as what appears reasonable in terms of alternatives for that power generation, at the time such application is processed. The Department could decide, as a matter of policy, that all future analyses NEPA would include such an analysis, even where not necessarily reasonable or proposed, however, a commitment to such policy would not be part of a targeted land use allocation plan amendment such as this. That said and in response to your suggestion, additional discussion at a programmatic level, related to natural gas plants as an alternative power source, has been added to the document to provide some perspective on the issue to the public, and decision makers.

Sincerely,

for Michael D. Nedd,
Assistant Director, Minerals and Realty Management

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