November 23, 2015

Submitted via email: blm_ut_mb_mlpcomments@blm.gov

Brent Northrup
Project Manager
Utah Bureau of Land Management
Canyon Country District Office
82 East Dogwood
Moab, Utah 84532

Re: Moab Master Leasing Plan and Draft Resource Management Plan Amendments/Draft Environmental Impact Statement for the Moab and Monticello Field Offices, UT

Dear Mr. Northrup:

Western Energy Alliance and the American Petroleum Institute (the Trades) do not believe the Master Leasing Plan (MLP), Draft Resource Management Plan Amendments (DRMPA), and a Draft Environmental Impact Statement (DEIS) for the Moab and Monticello Field Offices is a valid or necessary use of planning resources. Furthermore, we are concerned that the MLP closes off extensive areas to oil and natural gas leasing and generally includes new lease stipulations that are more restrictive than necessary. We therefore support Alternative A (no action), but if the MLP moves forward both the Purpose and Need statement and the alternatives considered in the EIS must be expanded to include consideration of more balanced approaches to oil and natural gas development in the planning area.

The MLP is a draconian attempt to address a non-existent problem. The Bureau of Land Management (BLM) completed the Moab and Monticello Resource Management Plans (RMP) for the planning area seven years ago in 2008, well within the 20 year time horizon for an RMP. BLM cites changes in the potash market as a primary driver for the MLP, but BLM MLP policy IM 2010-117 is addressed to oil and natural gas leasing, not potash leasing, and the use of the instrument to address changes in potash markets is a square peg in a round hole. Similarly, while BLM notes that recreation is a primary use of lands in the planning area, the EIS also concludes that recreational uses have continued to grow alongside oil and natural gas development and that the two uses have not been in conflict. Yet BLM's proposed alternative will result in a loss of nearly $2 billion of economic output. DEIS at 4-93 – 4-101. The MLP is unnecessary and harmful, and BLM should abandon this planning effort.

Western Energy Alliance represents over 450 companies engaged in all aspects of environmentally responsible exploration and production of oil and natural gas in the West, including member companies with interest in oil and natural gas development in the planning area. Alliance members are independents, the majority of which are small businesses with an average of fifteen employees. The American Petroleum Institute (API) is the national trade association representing all facets of the oil and natural gas industry, which supports 9.8 million U.S. jobs and 8 percent of the U.S. economy. API has more than 625 members, including members with interest in oil and natural gas development in the

planning area, that include large integrated companies, as well as exploration and production, refining, marketing, pipeline, and marine businesses, and service and supply firms.

No Purpose or Need

The development of the MLP is of questionable need and purpose. The Moab and Monticello RMPs were completed in 2008, with significant public input and agency effort over a seven year period.

In response to controversy surrounding initial attempts to lease under the 2008 RMPs, the Secretary of the Interior created the new MLP process by Secretarial Order, creating another unnecessarily lengthy process that will further constrain and impede mineral development on federal lands. Given the lengthy public comment opportunity afforded attendant to the 2008 Moab and Monticello RMPs, the need to create another lengthy public process is unclear.

Contrary to arguments that the MLP will bring certainty to the area, that is not the case, except the certainty that 57% of the area that will be removed from leasing or will be leased with a no surface occupancy stipulation. The uncertainty affiliated with the myriad of overlapping constraints applied to any development on the remaining 43% of the MLP area will be substantial. Even though the document refers to possible exceptions, modifications, or waivers for the identified constraints, it creates another level of review and cost to determine if or when a development stipulation could be "excepted, modified or waived."

Ambiguity in the MLP regarding the application of constraints to valid existing rights will likely result in added legal review to settle questions of how far new constraints can be applied to operations on pre-existing leases, or valid existing rights, and how far legal operating rights granted with leases can be modified or constrained. BLM is subject to an express statutory and regulatory mandate to protect valid existing lease rights, which precludes BLM from rendering leasehold development uneconomic by imposing restrictions that unreasonably conflict with existing development rights. 43 U.S.C. § 1701 note (h); 43 U.S.C. § 1610.5-3(b) (requiring BLM to recognize valid existing lease rights); *Conner v. Burford*, 848 F.2d 1441, 1449-50 (9th Cir. 1988).

Many of the constraints BLM seeks to impose would codify, through a land use plan and stipulation additions to lease documents, some of the same mitigation requirements currently being applied to lease development in the area. But there are also new restraints that BLM seeks to apply, which are costly, contrary to existing lease rights, and add great uncertainty to preexisting operational plans. Further, these new restraints will likely set precedent for MLPs elsewhere.

In contrast to the inchoate and questionable need of the MLP is the certainty that the MLP will adversely affect the economy, workers, and tax revenues of eastern Utah. The DEIS projects a loss of nearly $2 billion in economic output resulting from adoption of BLM's preferred alternative. DEIS at 4-93 – 4-101. The total economic output of Grand and San Juan Counties combined in 2012 was less than $1 billion, so this is not an insignificant impact by any measure. The costs dwarf any potential benefits of the MLP, and BLM should not move forward with this process.

The Purpose and Need Statement is Improperly Narrow

The purpose and need statement in a NEPA document must "briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action." 40 C.F.R. § 1506.5. The purpose and need statement is critical because it drives the alternatives to be analyzed in the NEPA document. *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 195 (D.C. Cir. 1991) ("The goals of an action delimit the universe of the action's reasonable alternatives."). The agency "may eliminate alternatives … that do not meet the purpose and needs of the project." *Biodiversity Cons. Alliance v. BLM*, 608 F.3d 709, 714 (10th Cir. 2010). This means that the objectives identified in the purpose and need define, to a large part, the scope of alternatives analyzed in the EIS.

An agency may not "define the objectives of its action in terms so unreasonably narrow that only one alternative … would accomplish the goals of the agency's action, and the EIS would become a foreordained formality." *Citizens Against Burlington, Inc.*, 938 F.2d at 196. The purpose and need statement in the DEIS here is unreasonably narrow because it focuses only on imposing new restrictions on oil and natural gas development or removing certain lands from availability for leasing, and the result of this error is an EIS that fails to evaluate an appropriate range of alternatives.

The purpose and need of the DEIS is limited to consideration of additional *constraints* on oil and natural gas development. *See, e.g.*, DEIS at 1-1, 2 ("develop mitigation strategies through leasing stipulations and best management practices" and "consider a range of *new constraints*, including prohibiting surface occupancy or closing areas to leasing"). Nowhere does the DEIS include a purpose and need statement related to facilitating the development of our nation's energy resources (an important aspect of BLM's multiple use mandate). *See* 43 U.S.C. § 1701(a)(12) (expressly stating that BLM must manage public lands "in a manner which recognizes the Nation's need for domestic sources of minerals, [and other commodities] from the public lands.").

BLM's narrow focus on imposing additional constraints is at odds with, and an overly narrow reading of, BLM policy governing the development of MLPs. The BLM purpose and need statement quotes from one paragraph on page 4 of BLM Instruction Memorandum No. 2010-117. But the stated "purpose" of that 2010 IM is to "ensur[e] orderly, effective, timely, and environmentally responsible leasing of oil and natural gas resources" and to "create more certainty and predictability, protect multiple use values … and provide for consideration of natural and cultural resources …." This broader purpose, which includes concepts such as ensuring effective leasing and protecting multiple uses, does not appear in the DEIS. It should. BLM should revise the EIS to reframe the purpose and need statement to include fostering development of energy resources, which in turn must drive the remainder of BLM's analysis and the alternatives that BLM considers.

BLM MLP Policy Was Adopted Without Following the Administrative Procedure Act (APA)

BLM adopted its MLP planning process as an "Instruction Memorandum" in private, without involving the public. *See* Instruction Memorandum (IM) 2010-117, Oil and Gas Leasing Reform – Land Use Planning and Lease Parcel Reviews. Yet the Federal Land Policy and Management Act (FLPMA) establishes a congressional requirement to develop, and standards for the content of, BLM RMPs. 43

U.S.C. § 1712(a). BLM regulations establish a clear and precise process for developing and amending those RMPs. *See* 43 C.F.R. § 1610.

The 2010 IM amends and alters these regulations by adding new standards and requirements, without a public process involving the public. For example, the IM establishes new criteria for when an MLP should be prepared. IM 2010-117 at 4. Unlike the regulations governing the development and revision of RMPs, the IM deems that certain leasing recommendations are not appealable or protestable decisions. IM 2010-117 at 5.

The APA requires agencies to adhere to three steps when they promulgate rules: (1) give the public notice of the proposed rulemaking in the Federal Register; (2) afford "interested persons an opportunity to participate … through submission of written data, views, or arguments"; and (3) explain the rule ultimately adopted. *See* 5 U.S.C. § 553(b)-(c); *see also Natural Resources Defense Council v. EPA*, 643 F.3d 311, 320-21 (D.C. Cir. 2011) (finding that EPA policy guidance constituted a legislative rule requiring compliance with APA rulemaking procedures). None of that happened for the 2010-IM, which was adopted with no public process.

The Trades are concerned that BLM MLP policy impermissibly circumvents APA rulemaking requirements, especially given that it amends and supplements properly promulgated planning rules in the Code of Federal Regulations. BLM must address the legality of its reliance upon the MLP policy before issuing a final Moab MLP that may be subject to immediate invalidation given that IM 2010-117 was not issued in compliance with the APA.

The DEIS Does Not Consider a Reasonable Range of Alternatives

NEPA requires agencies to evaluate all "reasonable" alternatives to the proposed action. 40 C.F.R. § 1502.14. This evaluation of alternatives "is the heart of the environmental impact statement." *Id.* If BLM has decided to eliminate an alternative from further review, it must "briefly discuss the reasons for" doing so. 40 C.F.R. § 1502.14; *Laguna Greenbelt, Inc. v. U.S. Dep't of Transp.*, 42 F.3d 517, 525 (9th Cir. 1994).

Here, every action alternative is projected to result in less oil and natural gas development and will impose more restrictive stipulations on such development, when compared with the status quo. *See* DEIS at 2-2 (Description of Alternatives, noting that Alternative A (the no action alternative) is the "least restrictive to mineral leasing and development.") This is not surprising given the narrow focus in BLM's purpose and need statement. But BLM should not limit its review to considering whether to remove lands from availability for leasing or to impose new conditions on oil and natural gas development. Such a limited review prejudges the outcome; the question is no longer how best to structure the leasing process to meet the multiple use mandate, the question in the EIS becomes how to *limit* oil and natural gas development. The EIS should not be such a "foreordained formality." *Citizens Against Burlington,*

Inc., 938 F.2d at 196. BLM should consider all reasonable alternatives, including providing for leasing with standard terms and conditions.[1]

The Trades Support Adoption of Alternative A

Alternative A, the No Action Alternative, provides for leasing with management restrictions which were studied and approved in the current RMPs. This alternative is not "open season" for oil and natural gas development. It imposes restrictive timing limitations (TL), controlled surface use (CSU), and no surface occupancy (NSO) stipulations on 573,930 of the total 784,814 acres open of oil and natural gas leasing. This alternative allows oil, natural gas and potash leasing and development "where it is consistent with the leasing decisions in the RMPs" and provides protection for special designations and constraints for special resources. Alternative A also provides for oil, natural gas and potash leasing and development to occur on the same tracts of land where it is consistent with leasing decisions in the RMPs. Although the Trades believe even Alternative A imposes significant impediments to oil and natural gas development, the Trades do not support re-opening the extensive planning process that produced the existing RMPs and instead support Alternative A.

Alternative B, including Alternatives B1 and B2, contemplates mineral leasing but complicates the leasing process by substituting BLM's judgment for market conditions that currently do not exist. While oil, natural gas and potash resources are known to exist in the MLP area, there is not sufficient geologic information to determine which commodity may exist in economic quantities. An orderly lease sale, exploration, geologic evaluation and evaluation of market conditions is needed to ensure development of mineral resources. Alternative B does not contemplate an orderly, "reasonable" process which has proven successful for decades on federal, state and private lands. Certain alternatives also attempt to solve multiple mineral development conflicts by limiting leasing options, including by precluding oil and natural gas leasing in certain Potash Leasing Areas under Alternatives B1 and D until the feasibility of potash development can be tested for a period of 10 years. Again, BLM is substituting its judgment for that of the market, and as noted above, without orderly leasing, exploration and feasibility studies ("reasonable" proven techniques) it will be impossible to assemble enough information to allow development to go forward. Alternative A affords such opportunities, Alternative B does not.

BLM's structuring of Alternative B in the manner proposed appears to be an attempt to avoid multiple mineral development conflicts. Delaying oil and natural gas leasing while potash development feasibility is tested is unnecessary. Utah law grants the Utah Board of Oil, Gas, and Mining the jurisdiction to "hear any questions regarding multiple mineral development conflicts with oil and gas operations." Utah Code Ann. § 40-6-5(b). In Alternative B, BLM has not recognized the Utah Board of Oil, Gas and Mining's state-wide authority to adjudicate multiple mineral development conflicts, notwithstanding BLM's appearance at past multiple mineral development adjudicative hearings at the Board. Alternative B complicates leasing, precluding market conditions that contribute to scientific and economic evaluation of development options while failing to recognize that established mineral exploration and development techniques brings demonstrated economic contributions to federal, state and local revenues.

[1] As Table 2-17 demonstrates, even the least restrictive alternative (Alternative A) limits areas subject to standard terms and conditions to only 210,884 of 784,814 acres. All other alternatives provide for *no* acres open to leasing with standard terms and conditions.

Alternatives C and D fail to recognize the need for orderly leasing and development, and again attempt to limit leasing without allowing for proven scientific and economic evaluation of mineral resources. Emphasis on resource protection (Alternative C) or an overemphasis on scenic quality without the opportunity to conduct scientific and economic analysis of mineral potential through a predictable, orderly leasing process is a violation of BLM's underlying multiple-use mission, and therefore Alternatives C and D are "unreasonable" alternatives. Alternatives B, C and D all ignore BLM's thorough analysis of environmental resource impacts and management prescriptions in the Moab and Monticello RMPs that properly balanced the competing uses of the public domain in conformance with BLM's multiple use mandate. 43 U.S.C. § 1701(a)(12).

Stipulations and Withdrawals from Leasing

In accordance with congressional mandate and FLPMA, BLM must analyze any withdrawal of land from mineral leasing, including impacts and cost. In order to withdraw tracts of land greater than 5,000 acres from mineral leasing, BLM must provide Congress with a variety of information detailing the impacts, costs, and need so that Congress can properly decide whether to approve the withdrawal. A withdrawal also requires public notice and hearing, and consultation with state and local governments.

Under FLPMA, a withdrawal is defined as "withholding an area of Federal land from settlement, sale, location, or entry, under some or all of the general land laws, for the purpose of limiting activities under those laws…"[2]

Furthermore, BLM policy forbids the closure of thousands of acres of public lands to oil and natural gas leasing without following FLPMA's Section 204 withdrawal procedures:

> Except for Congressional withdrawals, public lands shall remain open and available for mineral exploration and development unless withdrawal or other administrative actions are clearly justified in the national interest in accordance with the Department of the Interior Land Withdrawal Manual 603 DM 1, and the BLM regulations at 43 C.F.R. 2310.[3]

Under Preferred Alternative D, 451,183 out of 785,000 acres (57%) in the MLP area would no longer be available for leasing or would be subject to No Surface Occupancy (NSO) leasing, up from 134,327 acres (17%) in BLM's 2008 RMP. More than 100,000 acres would also be set aside for potential potash development over an "MLP directed" ten year period. This Potash Leasing Area (PLA) would not be available for oil and natural gas leasing. The Preferred Alternative would further designate 22,293 acres as Areas of Critical Environmental Concern and impose NSO on those acres. Finally, 210,884 acres have been removed from standard leasing and development operations, leaving zero acres in the MLP area for leasing with standard terms and conditions. These restrictions to the acreage in the planning area constitute a withdrawal under FLPMA, and BLM therefore may not take the specified actions without Congressional approval.

Furthermore, the Energy Policy Act of 2005 (EPAct) requires the Secretary of the Interior and the Secretary of Agriculture to enter into a Memorandum of Understanding (MOU) regarding oil and natural

[2] 43 U.S.C. § 1702(j)
[3] BLM Energy and Non-Energy Mineral Policy (April 21, 2006)

gas leasing and to ensure that lease stipulations are applied consistently, coordinated between agencies, and "only as restrictive as necessary to protect the resources for which the stipulations are applied." EPAct, Pub. L. No. 109-58, § 363(b)(3), 119 Stat. 594, 722 (2005). This MOU was finalized in April of 2006 as BLM MOU WO300-2006-07 and, like EPAct, requires that lease stipulations will be "only as restrictive as necessary to protect the resource(s) for which they are applied."

The DEIS does not indicate that BLM has attempted to comply with this mandate, and the restrictive measures in Alternatives B, C, and D far exceed what is necessary to protect on-the-ground resources. Instead, BLM without explanation includes as an "issue considered but not further analyzed" on page 1-11 of the DEIS: "Utilization of the least restrictive stipulations necessary to protect the applicable resource in accordance with WO IM 2002-174." That is precisely what the EPAct *requires* BLM to consider and adopt. BLM's citation to WO IM 2002-174 in this context is unclear. This 2002 IM addresses stipulations for threatened and endangered species, but does not address the "least restrictive stipulation" obligation. BLM should clarify its intent in citing this 2002 IM, should delete the consideration of "least restrictive stipulations" from the list of issues not further analyzed, and should adopt only those stipulations that are the least restrictive means necessary to protect the subject resource.

Valid Existing Lease Rights

The DEIS recognizes that much of the planning area has already been leased for oil and natural gas development, yet the MLP impedes lessees from exercising their valid existing rights, particularly through the imposition of overly restrictive stipulations and Conditions of Approval (COA). FLPMA requires BLM to ensure that valid existing lease rights are unequivocally protected. 43 U.S.C. § 1701 note (h). Although BLM states that the MLP will recognize the existence of valid existing rights, Preferred Alternative D and the other action alternatives apply timing limitations, CSU and NSO stipulations, and other management prescriptions across the planning area that may unlawfully preclude the development of valid existing oil and natural gas lease rights.

Such a result is not permissible, as explicitly stated in FLPMA, "All actions…under this Act shall be subject to valid existing rights." 43 U.S.C. § 1701 note (h); *see also* 43 C.F.R. § 1610.5-3(b) (requiring BLM to recognize valid existing lease rights). The statute does not leave room for discretionary actions that would be contrary to existing terms and stipulations. As it does not adequately protect valid existing rights, the MLP is once again in violation of FLPMA, and the preferred alternative and other action alternatives should not be applied.

The Trades recognize that BLM has included certain "analysis assumptions" on page 4-3 and 4-4 of the DEIS. These assumptions include a statement that "Implementation actions will comply with valid existing lease rights" and that "existing leases would be subject to the specific lease stipulations that were applied under previous land use plans." Yet the assumptions continue, and state that "While the BLM may not unilaterally add a new stipulation to an existing lease that it has already issued, the BLM can subject development of existing leases to reasonable conditions, as necessary, through the application of Conditions of Approval at the time of permitting." While these statements are technically accurate, they are incomplete because BLM fails to recognize and disclose that its authority with respect

to development of existing leases is significantly different, and lesser, than its authority at the leasing stage.

Federal oil and natural gas leases are real property rights. *See, e.g.*, *Winkler v, Andrus,* 614 F.2d 707, 712 (10th Cir. 1980); *Union Oil Co. v. Morton,* 512 F.2d 743, 747 (9th Cir. 1975). Lessees have a legal right to occupy the surface to explore for, produce, and develop their leases. *Pennaco Energy v. U.S. Dep't of the Interior,* 377 F.3d 1147, 1160 (10th Cir. 2004). The Interior Board of Land Appeals (IBLA) has similarly recognized that where BLM does not retain the right to preclude surface disturbance on oil and natural gas leases, "issuance of a lease constitutes an irreversible, irretrievable commitment of resources." *Southern Utah Wilderness Alliance,* 164 IBLA 1, 21 (2004). Although BLM can impose reasonable conditions on existing leases, it cannot deny an Application for Permit to Drill and certainly cannot impose NSO stipulations on existing leases where none existed before. *Sierra Club v. Peterson*, 717 F.2d 1409, 141 1 (D.C. Cir. 1983) (holding that for "land leased without a No Surface Occupancy Stipulation the Department cannot deny the permit to drill; it can only impose 'reasonable' conditions . . . ."); *see also Southern Utah Wilderness Alliance*, 164 IBLA at 21 (stating that BLM's "assumption that under the Standard Lease Form and terms it possesses the authority to preclude surface disturbance where it affects cultural resources" was "unsubstantiated and . . . not born out by the present regulatory scheme").

Moreover, once BLM decides to offer a lease for sale and accepts the prospective lessee's payment for that lease, the lease constitutes a binding contract between the parties that governs the leased minerals' development. *Mobil Oil Exploration & Producing S.E., Inc. v. United States*, 530 U.S. 604, 607-8 (2000); *Anadarko Prod. Co*., 66 IBLA 174, 176 (1982) (citing *United States v. Ohio Oil Co.*, 163 F.2d 633 (10th Cir. 1947). The lease terms, conditions, and stipulations, which are established prior to the lease sale, operate as contractual limitations on BLM's authority to restrict the lessee's subsequent leasehold development activities. *See* 43 C.F.R. § 3101.1-3; *Mobil Exploration*, 530 U.S. at 615-18 (finding the terms of government's lease contract limit the application of subsequent environmental laws and regulations).

Applicable regulations provide that an oil and natural gas lessee "shall have the right to use so much of the leased lands as is necessary to explore for, drill for . . . remove and dispose of all the leased resource in a leasehold . . ." 43 C.F.R. § 3101.1-2. This right is subject only to: (1) lease stipulations; (2) restrictions from nondiscretionary statutes; and (3) "reasonable measures" imposed to minimize impacts provided they are "consistent with lease rights granted." *Id.* Examples of "reasonable measures" include measures that do not require "relocation of operations by more than 200 meters" or prohibit surface occupancy by more than 60 days per year. *Id*.

The Final EIS, MLP, and RMP amendments should recognize these express limitations on BLM's authority. This is especially critical here, where BLM does not seek to impose a single new restriction on oil and natural gas development, but rather proposes a suite of overlapping management prescriptions that collectively could severely impede or even preclude development of existing leases. Such collective restrictions are not contemplated by the "200 meter/60 day" example in BLM's regulations and may exceed BLM's contractual authority under the terms of the various leases. BLM must make explicit in the Final EIS, MLP, and RMP amendments that the authorized officer may not impose management direction in a way that *cumulatively* violates existing lease rights.

Private Property Rights and Negotiated Surface Use Agreements

The DEIS states that pursuant to the MLP: "On 15,136 acres of split-estate lands, BLM would apply the same lease stipulations as those applied to surrounding lands with Federal surface." DEIS at 2-16. This is an improperly rigid application of management direction to privately owned surface estate that conflicts with existing BLM policy.

BLM's 2007 "Split Estate Rights, Responsibilities, and Opportunities" brochure states that BLM's policy is to "offer[] the surface owner the same level of resource protection provided on federally owned surface." It does not say that BLM will mandate the surface use terms for private surface estate in the RMP. The 2007 brochure states that the operator must consult in good faith with the surface owner and that the surface owner "will have [his or her] views on protection standards and construction and operation issues carefully considered by the BLM as the BLM determines appropriate mitigation measures." How is BLM supposed to "carefully consider" the surface owner's views when BLM has bound itself to apply all RMP management direction to split estate land regardless of the surface owner's views?

Under the procedure contemplated in Onshore Order Number 1, an operator must engage in good-faith negotiations with the private surface owner to reach an agreement for the protection of surface resources and reclamation of the disturbed areas. BLM should respect this process. The MLP should expressly state that surface use issues on private surface will be resolved primarily between the surface owner and the operator and that BLM will not apply management direction that conflicts with the agreement reached between the surface owner and operator.

Development Assumptions

The DEIS includes as an "assumption" the statement that "Directional and/or horizontal drilling could be used to access hydrocarbon resources under areas constrained by surface use restrictions (e.g., NSO restrictions)." DEIS at 4-39. While the Trades agree that directional and horizontal drilling have unlocked previously inaccessible oil and natural gas resources, the DEIS overstates these techniques' capabilities. The exploration and production successes using these techniques have not been tested in the planning area, and the reach of a directionally or horizontally drilled lateral is not infinite. Alternatives B, C, and D contain extensive NSO areas that will not be accessible, even from a wellpad placed on the border of the NSO area. The assumption contained in the DEIS causes BLM to understate the impact the alternatives will have on oil and natural gas development.

Wildlife

The State of Utah currently regulates the impacts of oil and natural gas development on wildlife via the Utah Comprehensive Wildlife Conservation Strategy (UCWCS), which was developed by both the Division of Wildlife Resources (DWR) and the Department of Natural Resources (DNR). The UCWCS provides reasonable, appropriate, and extensive protections for wildlife resources. BLM should defer to the state's rules and not impose any duplicative or burdensome mechanism for wildlife protection.

Besides the fact that daily operations follow and comply with state regulations and the Endangered Species Act to protect wildlife, the western oil and natural gas industry has a rich legacy of improving wildlife habitat in the areas where it is developing energy resources. Our members work cooperatively with BLM, Utah DWR and DNR, and wildlife conservation groups to improve wildlife habitat and reduce the impact of development on the environment. Companies take their stewardship responsibilities seriously and over the years have voluntarily taken on many projects to improve habitat throughout the West. BLM should recognize these efforts and their positive impact on wildlife species during development of the MLP.

Potash Conflicts

The MLP's Reasonable Foreseeable Development section for potash delineates 906,755 acres as having moderate to high certainty of Potash Occurrence Potential. In addition to those acres, BLM has created three Known Potash Leasing Areas (KPLAs) covering more than 130,000 acres. Notwithstanding demonstrated geologic potential and industry interest, BLM has not issued any competitive potash leases within the KPLAs.

Appendix A - Mineral Leasing Stipulations contains 59 pages of proposed regulations dictating how activities possibly affecting resources within or juxtaposed to potash and other leasable commodities would be conducted should the draft MLP go into effect. While it is helpful to have a list of resources within the MLP domain, the effect of Appendix A would likely be to stifle or preclude mineral development. Instead, BLM should follow its current regulations governing potash leasing and review proposed site-specific disturbances on their own merit, rather than discouraging mineral development through the proposal of stipulations that may not be supported by law.

Lands with Wilderness Characteristics

Preferred Alternative D would designate more than 192,000 acres as new Lands with Wilderness Characteristics (LWCs) areas. Designation of these areas would result in burdensome restrictions on development of substantial portions of the Planning Area, including NSO, CSU, and TL stipulations.

Under Section 102 of FLPMA, Congress directed BLM to manage lands on a multiple-use basis to "…best meet the present and future needs of the American people" in a "combination of balanced and diverse resource uses," including minerals development. Importantly, in Section 103(c) of FLPMA, Congress listed resources that BLM should take into account in allocating management, and "wilderness characteristics" is not included as such a resource. On the other hand, mineral development is a "principal or major use" of public lands under FLPMA. Congress further emphasized the importance of minerals development by, as noted above, declaring that public lands be managed "in a manner which recognizes the Nation's need for domestic sources of minerals." 43 U.S.C. § 1701(a)(12).

In addition, designation of LWCs conflicts with a Congressional prohibition. Congress has explicitly denied funding for the implementation of Secretarial Order 3310 concerning the designation of "Wild Lands." LWCs are "wild lands" in all but name. It is therefore a violation of law to designate LWCs through the MLP and RMPA process. BLM designation of LWCs violates FLMPA's multiple-use directive, and as such these designations should be removed from the MLP.

Visual and Cultural Resource Management

The Visual and Cultural Resource Management stipulations specified in Appendix A - Mineral Lease Stipulations are overbroad and unreasonable because they propose to inhibit or preclude oil and natural gas development activity. Stipulations in Appendix A fail to recognize the relatively short-term surface disturbance resulting from oil and natural gas operations. Multiple uses of federal lands provide economic and cultural values to society. The broad application of stipulations does not demonstrate BLM compliance with NEPA's provision of consideration of reasonable alternatives. Such an approach may be an abuse of discretion.

In Chapter 3 - Affected Environment, BLM correctly states that the planning area has some of the most iconic scenery on the Colorado Plateau. However, the visual assets and spectacular scenery exist along with ongoing oil and natural gas operations. Many areas within the MLP area have a long history of oil and natural gas activity, which has not inhibited recreational activities.

Rather than develop a leasing policy that inhibits energy production in the MLP area, BLM could instead emphasize the need for and success of oil and natural gas development in the Moab and Monticello RMP areas. If anything, BLM should be educating the public on the reliance of recreational activities on dependable, affordable domestic energy production, while highlighting its current compatibility with visual and other resource values.

Socioeconomics

The MLP must be revised to include a comprehensive analysis of the cumulative socio-economic impacts of the proposed leasing and development restrictions. As a general matter, NEPA requires that BLM's cumulative impacts analysis provide "some quantified or detailed information," because "without such information, neither courts nor the public . . . can be assured that the [agency] provided the hard look that it is required to provide." *Neighbors of Cuddy Mountain v. U.S. Forest Service*, 137 F.3d 1372, 1379 (9th Cir. 1998); *see also* 40 C.F.R. § 1508.1 (defining cumulative impacts as impacts resulting from "incremental impact of the action when added to other past, present, and reasonably foreseeable future actions . . ."). In the Moab MLP, BLM has failed to properly consider cumulative impacts in accordance with NEPA.

The MLP examines the various leasing restrictions separately and finds that they will suppress economic output by an estimated $2.15 billion dollars over the next 15 years, but this may significantly underestimate the severity of the restrictions. For example, the MLP proposes an array of overlapping timing limitations for rutting, lambing, nesting, and fledging periods; setback requirements from riparian and other areas; noise and visual resource restrictions; and numerous other constraints. It is impossible to determine what areas would be available for surface development, and under what conditions after application of all of these management constraints. In addition, BLM proposes to close access to significant domestic energy resources in the MLP area. These closures and restrictive lease stipulations would have a significant negative impact on capital investment in energy development, job creation, and economic activity in the planning area.

To inform the public, and foster informed agency decision-making, BLM should provide maps that overlay by alternative the timing and spatial limitations in combination with withdrawals and other proposed restrictions on oil and natural gas leasing and development, and then fully assess the cumulative economic impact thereof. These limitations include, but are not limited to, wildlife stipulations, ACEC designations, special management designations, Visual Resource Management, and Travel Plan access restrictions. BLM should analyze and disclose the total effect of all of the stipulations and restrictions imposed upon energy development and quantify the amount of oil and natural gas resources that would not be developed in terms of lost royalties, taxes, economic output, and jobs.

Utah's oil and natural gas industry contributes significantly to the local, state, and national economy, providing millions of dollars each year in royalties, bonuses, and severance taxes, besides the added benefits of direct capital investment to local economies and thousands of high paying jobs. Continued access to oil and natural gas resources on Utah's public lands is critical to ensuring economic growth and job creation in Utah.

Furthermore, Utah School and Institutional Trust Lands (SITLA) occur within the boundaries of the proposed MLP. The stipulations proposed will not only threaten oil and natural gas development on federal lands but will stifle development on school trust lands. Oil and natural gas leasing reflects geologic factors rather than political boundaries, and production economics are dictated by geology. Development of SITLA's lands will be severely hampered if development of adjacent federal lands is prohibited, affecting economic return to Utah's school children. BLM has failed to assess the full economic impact of the withdrawals and restrictions.

Environmentally responsible development of oil and natural gas in the Moab planning area could continue to provide significant benefits to local communities, the state, and the nation. BLM must develop reasonable multiple-use alternatives that will provide for development of oil and natural gas while minimizing impacts on wildlife, plant species, cultural, recreational and other resources. Instead, MLP Alternatives B, C and D violate BLM's multiple-use mandate, unlawfully restrict mineral extraction, and promote conservation to the exclusion of responsible economic development.

Should BLM proceed with the adoption of an MLP, the Trades believe Alternative A, the No Action Alternative, is the only reasonable, lawful alternative. Please do not hesitate to contact us should you have questions about our recommendations.

Sincerely,

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