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alliance

**BY ELECTRONIC MAIL (UT_Pr_Comments@blm.gov) AND FIRST CLASS MAIL
(Attachments Sent Via Hard Copy Only)**

May 1, 2008

Bureau of Land Management
Price Field Office
Attn: West Tavaputs Plateau Natural Gas Full Field Development Plan DEIS
125 S 600 W
Price, Utah 84501

*Re: West Tavaputs Plateau Natural Gas Full Field Development Plan, Draft
Environmental Impact Statement UT-070-05-055 (February 2008)*

Greetings:

Southern Utah Wilderness Alliance, Natural Resources Defense Council, The Wilderness Society, Center for Native Ecosystems, River Runners for Wilderness, and Living Rivers (collectively "SUWA") appreciate the opportunity to submit comments on the West Tavaputs Plateau Natural Gas Full Field Development Plan, Draft Environmental Impact Statement UT-070-05-055 (February 2008) (the "WTP DEIS" or the "DEIS"). SUWA members regularly use and enjoy Utah's spectacular public lands in the project area, particularly the regions surrounding Nine Mile Canyon, Desolation Canyon and its tributary canyons, the Jack Canyon wilderness study area (WSA), the Desolation Canyon WSA, the Jack Canyon non-WSA lands with wilderness characteristics (WCA), and the Desolation Canyon WCA, and are intensely interested in public lands issues such as this proposed development project and the associated facilities that would also be constructed.

In short, the Bureau of Land Management's (BLM's) WTP DEIS complies with neither the letter nor the spirit of several important federal environmental and historic preservation laws, including the National Environmental Policy Act (NEPA), the Federal Land Policy and Management Act (FLPMA), and the National Historic Preservation Act (NHPA). The DEIS neither fully informs the public or the decision maker as to all of the issues associated with this proposal, nor does it adequately analyze the potential impacts of the proposed action to many of the resources that the BLM manages. The proposed action would result in the large scale destruction of one of the most remote and primitive areas of the State of Utah. It would lead to the degradation and ultimate destruction of a

treasure trove of cultural resource relics. This is an area beloved by river runners, hikers, wildlife enthusiasts, historians, and cultural resource devotees. Every development proposal in the WTP DEIS would sacrifice the long-term management and protection of incredibly scenic, tranquil, and unique resources for short-term gain, while ignoring a myriad of BLM statutory and regulatory obligations. No alternative development alternative proffered by the BLM in the DEIS is acceptable.

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

1. THE WTP DEIS VIOLATES NEPA.

A. Problems with Third Party Involvement.

1. The WTP DEIS Fails to Provide Independent Evaluation of Information Provided by the Applicant.

Pursuant to 40 C.F.R. § 1506.5 (a)-(b), BLM must independently evaluate all environmental information provided by Bill Barrett Corporation's (BBC's) third party consultants that prepared the WTP DEIS. *See* DEIS at 7-2.

- Specifically, the BLM must disclose who provided independent analysis of the information submitted by BBC and BBC's third-party consultants and the qualifications of those reviewers.
- The BLM should particularly scrutinize the information submitted on well locations and directional drilling for every alternative contained in the DEIS as this is a critical component of the proposed project. As presented, every development alternative – and likely even the no action alternative in some cases – violates the current Price River Management Framework Plan (MFP) and the Desolation and Gray Canyons of the Green River Management Plan (River Management Plan), forecloses options in the pending Price and Vernal Resource Management Plans (RMPs), and would intrude upon WSAs, WCAs, and existing and proposed areas of critical environmental concern (ACEC). In addition, none of the development alternatives significantly differ in terms of the number of proposed wells on leased lands, the so called “Conservation Alternative,” Alternative D, fails to even significantly minimize surface impacts when compared to the other development alternatives. *See* DEIS at 2-3. None of these alternatives adopt a more aggressive directional drilling framework to substantially reduce surface impacts. Yet, greater use of directional drilling is both technically feasible and economically practical. In his comments, Mr. Ken Kreckel, a professional geophysicist with over thirty years of experience in oil and gas exploration and development in North America (including Utah) and abroad, has pointed out many of the shortcomings of the current proposed drilling program and alternatives; in addition, he also disputes the BLM's dismissal of an alternative with greater use of directional drilling. *See* Ken

Kreckel, Comments on the West Tavaputs Plateau Natural Gas Full Field Development Plan Draft Environmental Impact Statement UT-070-05-055 (Kreckel Comments) (attached as Exhibit 1). SUWA expressly incorporates Mr. Kreckel's comments by reference. Alternate well locations and greater use of directional drilling would help alleviate some of the conflicts presented in the development alternatives and decrease surface impacts. The BLM must consider a new alternative that makes use of 160 acre well pad spacing.

- The BLM must also scrutinize the DEIS's dismissal of the lease exchange alternative, the lease buy back alternative, and the leases suspension alternative since the rejection of these alternatives relies on erroneous information, an overly narrow purpose, and very little analysis. See DEIS at 2-147.

2. Wilderness Characteristics Information Provided by Buys & Associates Is Unreliable.

[RESERVED]

3. Buys & Associates Has an Interest in the Outcome of This Project in Violation of Federal Regulations.

[RESERVED]

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

NEPA requires federal agencies to "study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources." 42 U.S.C. § 4332(2)(E). Both the Tenth Circuit and Interior Board of Land Appeals apply a "rule of reason" analysis to determine whether the range of alternatives BLM considered, "and the extent to which it discuss[ed] them," was adequate. *Utahns for Better Transp. v. Dep't of Transp.*, 305 F.3d 11521166-67 (10th 2002) (citing *City of Grapevine v. Dep't of Transp.*, 17 F.3d 1502, 1506 (D.C. Cir. 1994)). See *Owen Severance et al.*, 163 IBLA 208, 220 (2004). A reasonable alternative is one that is "non-speculative . . . and bounded by some notion of feasibility." *Utahns for Better Transp.*, 305 F.3d at 1172 (citing *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council*, 435 U.S. 519, 551 (1978)) (additional citations omitted).

This section of SUWA's comments – addressing the range of alternatives – was prepared, in part, with the assistance of Mr. Kreckel. He points out in his comments that the WTP DEIS fails to consider an alternative that would reduce surface impact – leading to fewer violations of the relevant land use plans. See generally Kreckel Comments. It is both economically and technically feasible for the BLM to fully consider and analyze an alternative implementing 160-acre well pad spacing. *Id.* It is important to note that 160-acre spacing, in and of itself, will not completely eliminate conflicts between the current RMPs, the pending RMP, the MFP, the River Management Plan, the WSAs, the WCAs,

and other current and potential special management designations. However, in as much as these conflicts are found in Mr. Kreckel's alternative, they are greatly reduced when compared to the WTP DEIS's current range of development alternatives. The BLM is responsible for disclosing the full nature of these conflicts and for attempting to eliminate them. Regardless of what alternative BLM ultimately selects (with the exception of a lease exchange/buyback alternative), it must also prepare a land use plan amendment to address this conflict and permit the public to review this proposed change to the land use plan.

The BLM must fully analyze and consider a lease exchange/buyback alternative since well production data is readily available in the area, such estimates are not completely reliant on well production, and it is the only alternative that will accomplish the stated goals of the BLM in the Price River MFP, the River Management Plan, the management of Desolation Canyon and Jack Canyon WSAs, and the Draft Price RMP. The BLM must also fully consider and analyze an option that would suspend all post-FLPMA leases found within the two WSAs.

The BLM must also consider alternatives that will not violate the management standards for the two WSAs, as detailed in Handbook H-8550-1 Interim Management Policy for Lands under Wilderness Review (1995) (IMP). *See infra* (discussing management of WSAs and the IMP). Alternatives A, C, and E violate the IMP by allowing new roads and pad locations inside of Desolation Canyon and Jack Canyon WSAs. The BLM certainly may not promote an alternative that would violate the IMP, which Alternative E currently does.

Ultimately, the BLM should consider a combined alternative that would allow development of BBC's existing leases in the western portion of the project while implementing 160-acre surface spacing to minimize impacts, that would access the leases via a route through Trail and Harmon canyons, that would not permit new roads or well pads inside of the WSAs, that would suspend all post-FLPMA leases found inside of the WSAs, and that would implement a lease buyback/exchange for the leases inside of the WCAs.

C. The WTP DEIS Fails to Take a "Hard Look" at Resource Damage That Will Likely Be Caused by the Proposed Project.

The DEIS fails to take a "hard look" at the direct and indirect effects and cumulative impacts of the proposed project on air quality, soils, global warming, resources affected by the housing proposals, water, resources affected by the proponent's mitigation plans, leases, cultural resources, existing and proposed ACECs, recreation, wildlife, vegetation, visual resources, WCAs and WSAs, sound, and socioeconomics. NEPA requires that BLM take a "hard look" when it analyzes and evaluates the impacts of proposed project "utilizing public comment and the best available scientific information." *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989). Moreover, NEPA requires that federal agencies carefully consider relevant "detailed information concerning significant environmental impacts" and share that information

with the public in the EIS. *See Blue Mountain Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1212 (9th Cir. 1998). An EIS's general statements about "possible" effects and "some risk" do not constitute a "hard look" absent a showing of why more definitive information could not be provided. *Neighbors of Cuddy Mountain v. U.S. Forest Serv.*, 137 F.3d 1372, 1380 (9th Cir. 1998).

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

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

- Air Quality
 - As part of its air quality comments, SUWA incorporates and adopts the comment letter from Ms. Megan Williams to the BLM regarding the WTP DEIS. *See Generally* Letter from Megan Williams to West Tavaputs Plateau Natural Gas Full Field Development Plan DEIS Project Manager (May 1, 2008) (attached as Exhibit 13).
 - The BLM failed to consider the cumulative impact of this project combined with other projects in the region. The WTP DEIS does not analyze the fact that this project – even under Alternative B, the no action alternative – will result in violations of national ambient air quality standards (NAAQS). The combination of any of the action alternatives analyzed in the WTP DEIS combined with the recently approved project analyzed in the Record of Decision and Final Environmental Impact Statement, Greater Deadman Bench Oil and Gas Producing Region, Questar Exploration and Production Company, UT-080-2003-0369V (January 2008) alone will violate NAAQS in the Greater Deadman Bench area and at the Ouray National Wildlife Refuge along with the Clean Air Act's (CAA's) prevention of significant deterioration (PSD) increments. *See generally* SUWA, Request for State Director Review, In the Matter of the March 31, 2008 Record of Decision for the Questar Exploration and Production Greater Deadman Bench Oil and Gas Producing Region (Apr.15, 2008) (attached as Exhibit 14). Combined with other proposed and recently approved projects in the Uinta Basin – including, but not limited to, the Greater Deadman Bench project – the WTP DEIS is certain to lead to exceedences of NAAQS and PSD increments.
 - The BLM is required to comply with the CAA by FLPMA, agency regulations, and its own land use plans. This means that the BLM may not approve the WTP DEIS if it results in exceedences of NAAQS or PSD increments.

- As part of its air quality modeling the WTP DEIS incorrectly assumes that the heavy duty pickups used by BBC, its contractors, and other operators in the project area will all be gasoline powered. *See, e.g.*, DEIS, App. J, Near-Field Air Quality Technical Support Document for the West Tavaputs Plateau Oil and Gas Producing Region Environmental Impact Statement, App. A Proposed Action Emissions Inventory, Sheets 6-8. However, observations of heavy duty pickups currently being used by operators in the Nine Mile Canyon area confirm that many of these vehicles are diesel powered. *See* Exhibit 15 (a recent photo from Nine Mile Canyon of a contractor's diesel-powered pickup). Thus, this modeling must be recalculated to more accurately reflect the use of diesel-powered pickups in the project area.

- Soils
 - The WTP DEIS incorrectly assumes that long-term surface disturbance will be much less than the initial surface disturbance due to reclamation measures. *See, e.g.*, DEIS at 2-19 to -20. This assumption then impacts the entire analysis found in the WTP DEIS; as in, it assumes that erosion rates will no longer increase once reclamation succeeds in stabilizing soils, it assumes that water quality impacts will decrease as interim reclamation succeeds, it assumes that surface impacts will rapidly disappear, and it assumes that air quality impacts from fugitive dust will decrease as soils stabilize from successful interim reclamation. However, this incorrectly assumes that reclamation will reduce the size of the initial disturbance from the construction activity and that reclamation before the retirement of producing wells will be productive. *Compare id.* (suggesting that reclamation will reduce initial disturbance from pipelines, pads, and roads) *with* BLM, North Chapita Natural Gas Well Development Project, Environmental Assessment No. UT-080-2003-0307V, at 81-82 (March 2006) (“Recent BLM monitoring has documented that interim reclamation efforts in oil and gas development areas have largely been unsuccessful at establishing soil stability and vegetation. Accordingly, BLM field inspections are indicating that initial disturbance should be more accurately portrayed as long-term impacts for the life of the project.”). Furthermore, most of the soils in the project area have an admittedly poor reclamation rating. *See* DEIS at 4-44 to -45. The WTP DEIS must recalculate impacts from well pad construction, road and pipeline corridor construction, and all other surface-disturbing activities to account for the fact that interim reclamation will likely fail. The WTP DEIS does not fully evaluate how these recent BLM findings would affect the estimates of yearly soil erosion, vegetation loss, water contamination, and air quality degradation for the project area.

- The WTP DEIS contains insufficient discussion of the importance of biological soil crusts, the sensitivity of these crusts to disturbance and their slow rate of restoration, or their actual distribution in the project area. The BLM should consult such resources as the following: Belnap, J., “Recovery Rates of Cryptobiotic Crusts: Inoculant Use and Assessment Methods,” *53 Great Basin Naturalist* (1), 89-95 (1994). Belnap, J., et al., “Biological Soil Crusts: Ecology and Management,” U.S. Dep’t of the Interior, BLM, Technical Reference 1730-2 (2001). Johansen, J.R. and S.R. Rushforth, “Cryptogamic Crusts: Seasonal Variation in Algae Populations in the Tintic Mountains, Juab County, Utah, USA,” *45 Great Basin Naturalist* 14-21 (1985). Biological soil crusts are vital components of the current ecosystem. They take decades and possibly hundreds of years to recover fully. Their removal will likely lead to rates of erosion beyond what the WTP DEIS predicts, thereby further impacting water quality and preventing reclamation success. For this reason it is vital that the BLM map biological soil crusts to accurately understand the likely impacts of this project on those crusts and the secondary impacts of failed reclamation, increased erosion, and poor water quality.
- The WTP DEIS contains no analysis (direct, indirect, or cumulative) of how surface disturbing activities from this project will increase eolian dust deposition – or cumulative eolian dust deposition from this project and other disturbances – on regional climate, mountainous snow cover, or terrestrial nutrient cycling. Such depositions can accelerate snow melt and reduce snow cover by significant amounts – up to a month – in nearby mountains thereby negatively impacting water availability, can modify regional climate, and reduce soil fertility. See J.C. Neff et al., *Increasing Eolian Dust Deposition in the Western United States Linked to Human Activity*, *Nature Geoscience* 1, Advanced Online Publication, 189 (2008) (attached as Exhibit 16).
- Global Warming
 - Although recognizing global warming and human-caused contributions as a potential concern in its Chapter 3 background, the WTP DEIS fails to provide any analysis of the contributions of this project to global warming. It neither quantifies these greenhouse gas emissions nor does it analyze their potential contribution to global warming.

There is broad scientific consensus that climate change is occurring, with sweeping changes that will affect all portions of the Earth, including the WTP DEIS project area. Yet the WTP DEIS fails to analyze predicted changes in the project area and the Colorado Plateau in general. This omission is a significant oversight given that federal departments and agencies including the Department of Interior, the U.S. Environmental Protection Agency (EPA), and the U.S. Geological Survey have all

published reports and/or provided public statements and congressional testimony acknowledging the impacts of climate change on public lands resources. The BLM has failed to take the necessary “hard look” at the likely impacts from global warming on the project area and the contributions from this project to global warming.

Recently, Department of Interior Deputy Secretary Lynn Scarlett told the House Interior Appropriations Subcommittee that global climate change could dramatically reshape America’s public lands with increased species extinctions and wildfire. *See* Dan Berman, ‘Dramatic’ Effects of Rising Temps Being Seen on Public Lands – Interior, Earth News (Apr. 28, 2007), <http://www.earthportal.org/news/?p=93>. Ron Huntsinger, the BLM’s own science coordinator, said, “[w]e can anticipate further reductions in the level of allowable uses on public lands due to the loss of productivity and capacity. . . . The results are more fragile ecosystems, a greater susceptibility to the outbreaks of attacks by parasites and disease, increased vulnerability to wildland fire and erosion and an overall reduction in the carrying capacity of the land.” *Id.*

These observations and predictions coincide with the findings of an array of climate specialists and other scientists. For example, a recent study by the U.S. Geological Survey predicts that precipitation in the upper Colorado River basin, which includes the project area, will decrease by 15-20%, and that temperatures will rise by 4-6 degrees Celsius due to climate change. *See* U.S. Geological Survey, *Impacts of Climate Change on Water and Ecosystems in the Upper Colorado River Basin* (August 2007). Increased temperatures are expected to decrease runoff by as much as 30%, with dry soil conditions worse than those experienced during the Dust Bowl and subsequent droughts. *Id.* If fact, dust storms are predicted, some of which obscure highway visibility and create safety risks. These predictions are conservative. *Id.* The report further notes that soil disturbing activities such as energy exploitation “reduce or remove the natural components that stabilize desert soils [which] increases soil loss through wind and water erosion.” *Id.* These uses also enhance the invasion of exotic vegetation, which are much more likely to exacerbate the frequency and intensity of wildfire. *Id.* This creates a feedback loop in which soil disturbance decreases ecosystem resilience to land use impacts [like roads and ORV use] and further increases the frequency and magnitude of erosion events. *Id.* Impacts to riparian areas and the native wildlife that depend on them will be devastating where ORV use denudes soil, creating gullying and dropping the water table too deep for plants to reach. *Id.*

A U.S. Climate Change Science Program working group published a report which predicts and elaborates on the widespread impact of climate change on public lands in areas like the cold deserts of the Colorado

Plateau. See U.S. Department of Agriculture, *The Effects of Climate Change on Agriculture, Land Resources, Water Resources and Biodiversity*, Public Review Draft of Synthesis and Assessment Product 4.3 (Sep. 11, 2007), <http://www.climatescience.gov/Library/sap/sap4-3/public-review-draft/default.htm>. The report notes that “the climate changes that we can expect are very likely to continue to have significant effects on the ecosystems of the United States.” *Id.* at 3. These impacts include:

- Climate effects on disturbances such as fire, insect outbreaks and wind and ice storms are very likely important in shaping ecosystem structure and function;
- Grasslands will transform into woody shrub lands with reduced capacity for water absorption and greater vulnerability to channelization and erosion;
- Droughts early in the 21st Century are likely to increase rates of perennial plant mortality in arid lands, accelerate rates of erosion and create opportunities for exotic plant invasions;
- Proliferation of non-native annual and perennial grass is virtually certain to predispose sites to fire. The climate-driven dynamics of the fire cycle is likely to become the single most important feature controlling future plant distribution in arid lands of United States;
- Climate change is likely to result in shrinking water resources and place increasing pressure on montane water sources to arid land rivers, and increase competition among all major water depletions in arid land river and riparian ecosystems;
- Major disturbances like floods and droughts that structure arid land river corridors are likely to increase in number and intensity (with associated increases in erosion and native plant loss);
- Land use change, increased nutrient availability, increasing human water demand and continued pressure from exotic species will act synergistically with climate warming to *restructure* the rivers and riparian zones of arid lands;
- Climate change will increase the erosive impact of precipitation and wind;
- Surface soils will become more erodible; and
- Increases in wind speed and gustiness will likely increase wind erosion.

See generally id.

The report also notes that “[g]iven that many organisms in arid lands are near their physiological limits for temperature and water stress tolerance, slight changes in temperature and precipitation . . . that affect water availability and water requirements could have substantial ramifications

for species composition and abundance, as well as the ecosystem goods and services these lands can provide for humans.” U.S. Department of Agriculture, *The Effects of Climate Change on Agriculture, Land Resources, Water Resources and Biodiversity* at 9. While these findings are dramatic, the report further notes that “[i]t is likely that these changes will increase over the next several decades in both frequency and magnitude, and it is possible that they will accelerate.” *Id.* at 23.

The BLM should have discussed all of these predicted effects of global warming in Chapter 3’s assessment of existing conditions and then provided actual analysis in Chapter 4’s discussion of the impacts to global warming from the various alternatives of this project.

A description of the current effects of climate change on existing conditions such as the prevalence of exotic plant species, the availability of water and the health of riparian areas, and zones of soil erosion or vulnerability to erosion, all provide critical baseline information necessary to the BLM’s ability to determine whether the project area and the Price Field Office’s resources can sustain any of the proposed alternatives for either the long or short term— particularly if the BLM is envisioning that this document will act as an amendment to the current and future land use plans. Without this basic foundational information about the existing health of the land, it is impossible to make any informed decision about the level, location and kind of activities it can support in the future.

Understanding of the predicted impacts of climate change should shape in important ways the various alternatives under consideration by the BLM in the WTP DEIS. For example, given that so many of the predicted outcomes of climate change center on increased soil erosivity, dust storms, shrinking water resources, loss of riparian areas, invasion of exotic plants, and the spread of hotter, larger wildfires, the BLM must design alternatives that minimize soil disturbance as much as possible (i.e. adopting 160-acre surface spacing). The BLM’s own science coordinator noted that the effects of climate change should result in an anticipated reduction in the allowed use of certain activities on BLM lands – yet anticipatory planning is not present in the WTP DEIS. The combination alternative recommended by SUWA would do more to reduce surface impacts than the development alternatives presented in the WTP DEIS. Furthermore, the BLM must require the capture of methane gas from all well heads and eliminate leakage from all pipelines and well facilities. *See Eryn Gable, Climate Change Concerns Voiced in Protests to BLM Leases*, Land Letter (Apr. 20, 2008) (attached as Exhibit 17) (discussing ways in which gas operators have been reducing emissions in the San Juan Basin).

The Intergovernmental Panel on Climate Change noted in 2001 that

for the future of rangelands, it is important to reduce the vulnerability of these systems to climate change. This is likely to be achieved by considering social and economic factors that determine land use by human populations . . . Soil stability and thus maintenance of water and nutrient cycles are essential in reducing the risk of desertification. Any changes in these processes could make rangelands particularly vulnerable to climate change.

Intergovernmental Panel on Climate Change, *Climate Change 2001: The Scientific Basis* (2001)

http://www.grida.no/CLIMATE/IPCC_TAR/wg1/index.htm. Likewise, BLM's sister agency, the U.S. Geologic Survey notes that "understanding interactions of landscape with changing environmental conditions, and their relative influence on the severity of drought, are important for natural resources planning and land use sustainability."
<http://geomaps.wr.usgs.gov/navajo/drought.html>.

The WTP DEIS does not discuss the cumulative effects of various uses like ORV recreation and grazing on, for example, riparian areas and soil stability. These cumulative effects should also be considered in the context of climate change and how these uses, combined with the proposed project will act to exacerbate climate change on both a global and regional scale.

- Resources Affected by the Housing Proposals
 - The WTP DEIS does not fully analyze the likely impacts from the proposed housing units, man camps, that would be located in the project area under various alternatives. *See* DEIS at 2-3. The BLM must consider the likelihood that such housing will result in increased rates of vandalism of cultural resources, illegal off-road vehicle use, the proliferation of exotic weeds, and will generally increase surface disturbance.

- Water
 - Mr. Elliot Lipps, an expert in geology and hydrology, with substantial experience crafting studies to evaluate impacts from extractive projects on water resources, has prepared comments regarding the WTP DEIS. *See* Elliot Lipps, Comments (Lipps Comments) (attached as Exhibit 18). SUWA expressly incorporates Mr. Lipps's comments by reference.
 - The alternatives analyzed in the WTP DEIS will result in violations of the Clean Water Act (CWA), which the BLM cannot approve. Currently, Nine Mile Creek, the Green River, and Jack Creek all violate Federal

Drinking Quality Standards Primary Maximum Contaminant Level and Federal Drinking Quality Secondary Standards. *See* DEIS at 3-56 to -63. The BLM acknowledges that every action alternative will increase various water contaminants in these three water bodies that will further exceed CWA standards; for example, the alternatives analyzed in the WTP DEIS will result in increases in total suspended solids – for which these three rivers/streams already exceed CWA standards – in these three waterways. *See* DEIS at 4-68 to -84.

- The WTP DEIS fails to quantify the various contaminant levels – contaminants as identified in the CWA – that will result from this project.
- The WTP DEIS also fails to quantify contaminant levels to be expected from cumulative impacts in the area.
- The BLM must disclose the total maximum daily load (TMDL) for Nine Mile Creek and then determine whether this project will lead to violations of those standards. The WTP DEIS discloses that Nine Mile Creek is one of the State of Utah’s “Section 303(d)” – referring the relevant section from the CWA – impaired waters, yet it fails to analyze how this project will contribute to further impairment. *See* WTP DEIS 3-63.
- Furthermore, as the WTP DEIS likely understates erosion because of its mistaken assumption that reclamation will be successful, these water quality problems are only likely to increase.
- Resources Effected by the Proponent’s Mitigation Plans
 - The WTP DEIS contains no specifics regarding the proposed wildlife mitigation plan. The plan itself is a mere page-and-a-half of general assertions that lack any specific details on proposed locations for mitigation, on the methods of mitigation, on the potential impacts of the intensive mitigation planned, etc. *See* DEIS, App. E. In short, the plan fails to take a hard look at the likely impacts of the proposed mitigation and certainly does not provide enough detail for the public to evaluate and insightfully comment on the proposed mitigation measures and their efficacy. The BLM must develop a specific, detailed plan and provide it for public comment.
 - Likewise, the Mitigation Compliance and Monitoring Plan is equally sparse and even shorter in length. *See* DEIS, App. D. It lacks specifics and provides nothing for the public to evaluate and comment on. The BLM must develop a specific, detailed plan and provide it for public comment.

- Leases
 - As discussed in detail below, the WTP DEIS fails to take a hard look at the options available to the BLM in dealing with BBC's pre- and post-FLPMA WSA leases. Despite the language of the document, resigned to completely relinquishing all control for time, manner, and place of gas development in the WSAs to BBC, the BLM maintains broad control over the leases and has an obligation to prevent impairment to the WSAs.
 - The WTP DEIS has not listed the relevant leases held by BBC that would permit the company to drill in WSAs and WCAs. When SUWA contacted the Price Field Office no one could provide information on the leases (lease numbers). This is an astounding oversight, particularly in light of the fact that the entire premise of Alternatives A, C, and E rest on the supposed lease rights of BBC. The public has no ability to review these leases to ensure that they are valid and promise the rights discussed by the BLM. The WTP DEIS must indicate which leases BBC, and other operators, currently hold in the project area and then give the public time to review these leases and comment on them.
- Cultural Resources
 - Mr. Jerry Spangler, an archeologist with substantial experience evaluating and understanding the causes and effects of adverse impacts to cultural and historic properties throughout the West, has prepared comments regarding the WTP DEIS. *See* Jerry Spangler, Colorado Plateau Archeological Alliance, Comments: West Tavaputs Plateau Natural Gas Full Field Development Draft Environmental Impact Statement (UT-070-05-055) (Apr. 23, 2008) (Spangler Comments) (submitted under separate cover). SUWA expressly incorporates Mr. Spangler's comments by reference.
- Existing and Proposed ACECs
 - FLPMA specifically requires the BLM to "give priority to the designation and protection of areas of critical environmental concern (ACEC)" in the planning process. 43 U.S.C. § 1712(c)(3). By approving Alternative A, C or E, the BLM will illegally limit its ability to establish the proposed Desolation Canyon and Nine Mile Canyon ACECs being considered as part of the Draft Price RMP and thus violate its obligations under FLPMA. The DEIS asserts that "an ACEC designation does not *necessarily* change the allowed use of the land." DEIS at 4-354 to -355. This completely ignores the WTP DEIS's own conclusion that impacts to the relevant values for these proposed ACECs will be "substantial" and that the predicted cumulative impacts to these ACECs are very high, in spite of a congressional mandate to prioritize ACEC designation and protection. *See*

DEIS at 4-354 to -355, 4-365, 4-368 to -369, 4-372 to -373 (explaining that impacts to potential ACECs from development alternatives will be significant); DEIS at 5-52 to -52, 5-54 to -55 (predicting very high numbers of gas wells in the potential ACECs – with Desolation Canyon WIA predictions serving as a proxy for disturbance in the potential ACEC). Instead of taking a hard look at these limitations and tradeoffs in terms of ACEC protection from approving this project, the WTP DEIS analysis seems instead to focus on downplaying any protective value of a potential ACEC and the mandate that such protection be give priority.

- The WTP DEIS has also failed to take a hard look at potential impacts to the existing Nine Mile Canyon ACEC. The DEIS contains very little analysis of these impacts, instead punting a discussion of them to other sections. *See, e.g.*, DEIS at 4-354. The BLM has not taken a hard look at how these significant impacts to the relevant values for which the Nine Mile ACEC was designated will clash with its current land use plans. The BLM must disclose that its development alternatives will lead to a significant impact on the relevant values for which the Nine Mile Canyon ACEC was designated in violation of this designation and BLM’s regulatory duties.
- Recreation
 - The development alternatives evaluated in the WTP DEIS would violate the management guidelines for the Nine Mile Canyon Special Recreation and Cultural Management Area (SRCMA) by diminishing the recreational experience. DEIS at 4-197 to -201, 4-203 to -211.
 - Every development alternative considered in the WTP DEIS would also violate the River Management Plan by placing sights and sounds of development within the river view. DEIS at 4-197 to -201, 4-203 to -211.
 - The WTP DEIS fails to analyze the decreased primitive recreational experience and opportunities for solitude that will result to both hikers, hunters, and river runners in the project area as a result of increase off-road vehicle use in the area facilitated by the increased development and improved and new roads.
- Wildlife
 - A recently released study has shown that sage grouse are declining at a rapid pace in areas of gas development. *See* Dustin Bleizeffer, “Studies: Drilling Imperils Grouse,” *Casper Star Tribune* (July 5, 2007), <http://www.trib.com/articles/2007/07/05/news/wyoming/d9242fbe70a20aeb8725730e00036584.txt>. The WTP DEIS itself states that sage grouse are affected by human activity. *See* DEIS at 4-165. However, despite such

research, the DEIS inexplicably concludes that while this project is likely to result in a downward population trend the wildlife mitigation plan will rectify any such decreases in the project area. *See* DEIS at 4-166. Yet, the wildlife mitigation plan provides absolutely no studies or analysis showing that sage grouse are likely to be relocated successfully or are willing to accept mechanically created habitat in a new area as is proposed in the mitigation plan.

- The DEIS also fails to consider the likelihood that the increased energy development activity in the area will lead to increased rates of poaching. *See* Patrick O'Driscoll, "Poachers Making a Killing in West's Oil and Gas Fields," *Deseret News* (from *USA Today*), Feb. 26, 2007.
- The BLM must ensure that mitigations are effective. The DEIS claims that proposed mitigations will result in a net benefit for sage-grouse, but this is not self-evident. The proposed road realignments in this project should be conducted whether or not this project is approved, and the BBC Wildlife Mitigation Plan does not expect to reclaim these road segments. Without proper obliteration it is likely that these road segments will remain in use even if they are officially closed. Pinyon-juniper removal is only appropriate if sagebrush habitat has only recently been invaded, and removal of either pinyon-juniper or old stands of sagebrush may only have a positive effect if the BLM also actively works toward creating and supporting an understory composed of native plants. Creating new wet meadows does not mitigate the loss of crucial winter habitat. Finally, if the BLM approves vegetation treatments it should follow up with careful monitoring, especially regarding sage-grouse response to these treatments. Therefore several of the proposed mitigations may not actually reduce the risk to imperiled species.
- The public should be able to see and comment on the Biological Assessment and Biological Opinion during the NEPA process. It is difficult for the public to fully participate in the NEPA process when the Fish and Wildlife Service's (FWS's) input is not disclosed.
- The BLM must consider the cumulative effects of other approved and proposed projects when determining whether its actions will lead to a trend toward Endangered Species Act listing. For several special status species the BLM acknowledges that the project will reduce recovery potential, but claims that project approval will not lead to a trend toward Endangered Species Act listing. This does not comply with the BLM's duties under its own sensitive species manual. *See* BLM Manual, MS-6840.06c. The WTP DEIS does not consider how existing and proposed disturbances outside the project area may result in indirect and cumulative effects that do lead to a listing trend. Many of these imperiled endemic species of the Rocky Mountain West are at risk of death by a thousand

cuts where no single project dictates the fate of the species but where the BLM's overall approach to management does.

- The BLM should not approve projects that result in adverse modification of critical habitat. This project would result in the adverse modification of critical habitat for multiple species protected under the Endangered Species Act. The BLM should not approve projects which reduce the recovery potential for listed species.
- Mexican spotted owls require Protected Activity Centers (PACs). It is understood that a pair of owls has been nesting in Flat Canyon, adjacent to the project area. The BLM must act in accordance with the Mexican spotted owl recovery plan by designating PACs for these areas, and protecting them against disturbance. It may be that portions of a PAC for owls in Flat Canyon would fall within this project area boundary; therefore, the BLM should, without delay, designate this PAC and manage it for owl conservation.
- The BLM has not used the best available science in assessing impacts to sage-grouse. In several places the BLM cites older, outdated literature, especially in the sage-grouse discussion. Several new sources of information would be more appropriate. For example, as part of Colorado's Greater Sage-grouse Conservation Plan, Jeff Beck (2006) summarized twelve papers on the effects of oil and gas on sage-grouse and other related species. J.L. Beck, *Summary of Oil and Natural Gas Development Impacts on Prairie Grouse*, unpublished report, Colorado Division of Wildlife, Grand Junction (2006), <http://wildlife.state.co.us/NR/rdonlyres/750C3BB1-0E3F-4D64-8461-9E74C47E294E/0/AppendixHOGLitReview.pdf>. The Utah Division of Wildlife Resources also raised this issue in its comments. The BLM must consider this new information and reassess impacts to sage grouse and also redesign mitigations to be effective.
- Making a "will likely to adversely affect" finding for the four Colorado River fish but not their critical habitat is arbitrary and capricious. The WTP DEIS determines that the project will deplete and degrade the Green River where critical habitat has been designated, but then stunningly makes an "is not likely to adversely affect" finding for impacts to critical habitat for the endangered Colorado River fish. Adverse modification of critical habitat should be if anything an easier standard to meet, and the courts have supported this interpretation. *See Gifford Pinchot Task Force v. U.S. Fish and Wildlife Service*, 378 F.3d 1059 (9th Cir. 2004). The BLM must therefore enter into formal Section 7 consultation with FWS on both the effects to the four Colorado River fish and to their critical habitat.

- Imperiled plants will be further placed at risk by ozone resulting from approval of this project. The EPA recently cited ozone's detrimental effects on plant development when it tightened the standards regulating emissions that contribute to ozone. *See* National Ambient Air Quality Standard for Ozone, 73 Fed. Reg. 16,436 (March 27, 2008). The impacts of ozone on special status plants should be considered, analyzed, and discussed.
- Dust deposition is a serious concern for many resources, including Uinta Basin hookless cactus. Dust deposition is mentioned in the WTP DEIS as a concern for Graham's penstemon, but not Uinta Basin hookless cactus. *See* 72 Fed. Reg. 53,211 (Sep. 18, 2007). This threat should be included for all special status plants.
- The BLM must consider the impacts of the project on pollinators. The BLM's response to FWS over the proposed Endangered Species Act protection for Graham's penstemon in 2006 discussed the effects of oil and gas drilling on pollinators and the plants they service. *See* 71 Fed. Reg. 3,157 (Jan. 19, 2006). This should be considered here as well.
- BLM should require actual avoidance of sensitive resources. The WTP DEIS does not contain a specific requirement to avoid occupied or potential habitat for sensitive resources like Uinta Basin hookless cactus or Graham's penstemon. The BLM should ensure that occupied and potential habitat as well as buffers are protected from surface disturbance. In documents obtained by the Center for Native Ecosystems via the Freedom of Information Act, BLM staff clearly advocated for No Surface Occupancy stipulations for Graham's penstemon habitat as part of the Vernal RMP revision. The Utah Department of Natural Resources has also recommended No Surface Occupancy for some key sage-grouse habitats in the project area. The BLM should require relocation of surface disturbances outside of such sensitive areas.
- The BLM should adhere to the FWS's guidelines for conserving raptors. The FWS recently drafted guidelines for avoiding disturbance in raptor habitat, and the BLM should ensure that mitigation measures adhere to the FWS 's recommendations.
- Protecting large areas of land from human interference has been documented in many places in the scientific community as being a major means of increasing biomass and preventing the loss of biodiversity. *See* D. Bender, T. Contreras, L. Fahrig, *Habitat Loss and Population Decline: A Meta-Analysis of the Patch Size Effect*, Ecology, Vol. 79, No. 2, 517 (1998); M. Brooks, *Benefits of Protective Fencing to Plant and Rodent Communities of the Western Mojave Desert*, Environmental Management, Vol. 19, No. 1, 65 (1995); M. Brooks, *Does Protection of Desert Tortoise*

Habitat Generate Other Ecological Benefits in the Mojave Desert, Wilderness Science: In a Time of Change conference 68 (2000); P. Dolman and W. Sutherland, *The Response of Bird Populations to Habitat Loss*, Ibis, Vol. 1 (1995). The loss of biodiversity is of special importance to special status species, as their already sensitive nature prevents them from being as tolerant to changes in their habitat. The WTP DEIS does not take a hard look at this issue.

- The WTP DEIS discusses the impacts of noise as a result of construction on several species including the greater sage grouse. Construction related noise is expected to displace several species in the area.

Project-related noise (e.g., increased volumes or types of noise from construction, drilling, and production equipment, changes in ambient tones or tonal noises, and repetitive low frequency noise emanating from production equipment such as compressor stations) would affect sage-grouse during the period those activities take place. Sage-grouse could be temporarily displaced by noise and other human activities until activities are completed. Under the Proposed Action, development in sage-grouse use areas could temporarily displace sage-grouse due to increased traffic and noise levels.

DEIS at 4-166.

Mathew Holloran produced an important paper that discussed in detail the effects of natural gas development on Sage-grouse in western Wyoming, which has a similar ecological structure to the proposed areas in the WTP DEIS.

Greater sage-grouse in western Wyoming appeared to be excluded from attending leks situated within or near the development boundaries of natural gas fields. Declines in the number of displaying males were positively correlated with decreased distance from leks to gas-field-related sources of disturbance, increased levels of development surrounding leks, increased traffic volumes within 3 km of leks, and increased potential for greater noise intensity at leks.

Displacement of adult males and low recruitment of juvenile males contributed to declines in the number of breeding males on impacted leks. Additionally, responses of predatory species to development of gas fields could be responsible for decreased male survival on leks situated near the edges of developing fields and could extend the range-of-influence of gas fields. Generally, nesting females avoided

areas with high densities of producing wells, and brooding females avoided producing wells.

Mathew J. Holloran, *Greater Sage-Grouse (Centrocercus urophasianus) Population Response to Natural Gas Field Development in Western Wyoming*, dissertation at the University of Wyoming (2005), <http://www.cbsnews.com/stories/2006/01/20/ap/tech/mainD8F834S00.shtml>. Lek areas are areas where males gather in order to compete for females and the right to mate and pass on their genetic material. Holloran found a direct correlation between the noise and other disturbances related to development and a decrease in the number of active males and females at these sites. By decreasing the potential numbers of individuals in these areas, the effects on the species are far from the “short term” effects described in the WTP DEIS; loss of mating results in population decline, a smaller genetic pool to draw material from, and individual mortality.

The sage grouse life cycle relies on there being large areas of undisturbed sagebrush land. Clait Braun’s paper on Sage-grouse management states, “...sage-grouse have not adjusted, and doubtlessly will not adjust their life processes to fit a pattern of land use that eliminates or seriously disturbs large tracts of the sagebrush-grassland types on *any* of their seasonal ranges.” C. E. Braun et al., *Guidelines for the Maintenance for Sage Grouse Habitats*, Wildlife Society Bulletin, Vol. 5, No. 3, 99 (1977) (emphasis added). A disturbance to any of the sage grouse’s habitats can have a lasting effect on these species, and the WTP DEIS simply claiming that noise and other disturbance will have a short term effect and thus are negligible in importance does not take into account the real threat this type of development poses. Sage grouse are a good indicator species for sagebrush ecosystem viability, “Given that the health of sagebrush-dominated ecosystems is paramount to maintaining viable populations of many species of wildlife, the reaction of greater sage-grouse populations to habitat alterations caused by energy development could imply reactions of a wide array of wildlife species.” Holloran, *Greater Sage-Grouse*. An effect on sage grouse is also an effect on any species that relies on sagebrush-grassland habitat, and cannot be ignored.

The WTP DEIS names the loss of crucial winter habitat for the sage grouse as one of the irreversible and irretrievable effects of the proposed development. DESI at 4-169. The sage grouse relies on sagebrush for almost all of its dietary needs during winter, and as a result the loss of these areas during critical periods such as winter can be the difference in the survival of individuals, and cumulatively the species. Sara Oyler-McCance described the impacts of habitat fragmentation on species of sage-grouse, “[i]f current trends of habitat loss and fragmentation continue, Gunnison sage grouse (and perhaps other sage grouse-steppe obligates) may become extinct. Protecting the remaining habitat from

further loss and fragmentation is paramount to the survival of the species.” Sara Oyler-McCance et al., *Influence of Change in Sagebrush on Gunnison Sage Grouse in Southwestern Colorado*, *The Southwestern Naturalist*, Vol. 46, No. 3, 323 (2001). The Gunnison sage grouse is obviously very sensitive to changes in habitat, in particular fragmentation of habitat, and that sensitivity is not unique to this species of sage grouse. The alternatives proposed in the WTP DEIS have consequences that are not short term and pose direct threats to the mortality and survival of the sage grouse as a species.

- Vegetation
 - Approval of one of the development alternatives analyzed in the WTP DEIS will likely adversely affect the Uinta Basin hookless cactus as it will face habitat fragmentation and increased risk of collection. *See* DEIS at 4-163 to -164, 4-172, 4-177 to -178, 4-184 to -185, 4-190 to -191. Although the WTP DEIS acknowledges the myriad risks faced by this cactus, it down plays such risk by assuming that mitigation measures will be effective at protecting the cactus. *Id.* However, as discussed above, the hope that limited erosion will help to preserve the cactus is misplaced because of BLM observations in the area detailing the lack of reclamation success. *See id.; supra.*
 - As with the soils section discussed earlier, the improper disturbance estimates resulting from overoptimistic interim reclamation calculations lead to an underestimation of the true impacts of this project on vegetation. *See supra.*
- Visual Resources
 - The development proposals analyzed in the WTP DEIS would violate the current visual resource management classifications in the relevant land use plans. *See* DEIS at 4-339 to -353. As such, the BLM cannot approve these proposals. *See* 43 U.S.C. § 1732(b).
- WCAs and WSAs
 - The WTP DEIS neglects to mention, let alone analyze, that the pending Price RMP includes an alternative that would manage for the protection of the Desolation and Jack Canyon WCAs. *See* Supplement to the Price Field Office Draft Resource Management Plan/Environmental Impact Statement for Non-WSA Lands with Wilderness Characteristics 2-4, Map 3-27 (Sep. 2007). The WTP DEIS may not approve new leasing in these areas while this land use plan is pending as it would effectively limit options in that plan. *See* 40 C.F.R. § 1506.1.

- The WTP DEIS has failed to take a hard look at the obligations of the BLM to manage the Desolation Canyon and Jack Canyon WSAs according to the IMP. The IMP, as detailed below, does not grant BBC a blank slate to pursue development in WSAs where it holds leases. In fact, under the IMP the BLM may not permit BBC to build new roads or well pad locations in the WSAs. The BLM has failed to take a hard look at this point.
- In addition, the BLM has failed to take a hard look at the leases by which BBC claims to have a right to develop inside the WSAs. The WTP DEIS contains no information whatsoever regarding the nature of the leases, the date on which they were issued, whether each lease is pre- or post-FLPMA, etc. When contacted by the undersigned, no one in the Price Field Office could provide the public with information regarding the leases so that the public might verify that these lease rights are valid.
- The BLM failed to take a hard look at the suspension of any post-FLPMA leases found within either of the WSAs. A suspension is not the same as Alternative B or D. Simply ignoring a permitting decision now does not avoid the reality that BBC may return to the BLM immediately and seek authorization for lease development within the WSAs. A suspension, on the other hand, would foreclose an immediate application by BBC to develop these leases until Congress had a chance to consider whether or not Desolation Canyon and Jack Canyon WSAs should be designated as federally-protected wilderness.
- The BLM failed to take a hard look at the potential for a lease buyback or exchange in the WSAs and WCAs.
- The WTP DEIS fails to consider the impacts of the proposed project to perceived naturalness outside of the immediate physical boundaries of the proposed well pad and road upgrades after drilling has finished. This proposed project will affect visitor perceptions of naturalness and opportunities for solitude in an area much greater than acreage figures presented in the DEIS. *See, e.g.*, DEIS at 4-359 to -361. Although the DEIS mentions that these values will be impacted in the project area, it does not attempt to quantify this impact or the extent of the impact to perceived naturalness and solitude beyond the acres of terrain denuded of vegetation and after the drilling operations have ceased (while production continues). *See id.* Thus, the proposed project has the potential to impact wilderness character to an extent much greater than is discussed in the WTP DEIS.
- The WTP DEIS does not analyze the impacts to supplemental values of the WCAs.

- None of the proffered alternatives in the WTP DEIS would ultimately protect the wilderness values of the WCAs and WSAs at issue here.
- Sound
 - Mr. Richard A. Kolano, a noise and acoustics control engineer with substantial experience evaluating auditory impacts from human activity in outdoor settings has prepared comments regarding the WTP DEIS. *See* Richard Kolano, Review of Environmental Impact Statement UT-070-05-055 (May 1, 2008) (Kolano Comments) (attached as Exhibit 19). SUWA expressly incorporates Mr. Kolano's comments by reference.
 - The WTP DEIS has failed to provide any background information on noise levels in the project area. The establishment of such a baseline is "essential in order to determine the acoustical impact of any proposed development ... which could violate the solitude." Arno S. Bommer and Robert D. Bruce, *Long-Term Ambient Sound Monitoring in National Parks*, *Sound & Vibration* 16, 16 (Feb. 1992) (attached as Exhibit 20). SUWA has included an instructive article on how such baseline studies might be conducted; SUWA incorporates this article into its comments. *See generally id.*
 - The WTP DEIS erroneously adopts a 55 dBA health and welfare based standard to determine whether or not the proposed activities will have a significant effect on noise in the project area. *See* DEIS at 4-375. However, such a standard is wholly inappropriate for analyzing the potential invasion of a quiet, natural area from the industrial noises of decades-worth of gas development on the West Tavaputs Plateau. *See* James D. Foch, *Bryce Canyon National Park and the Protection of Natural Quiet*, *Sound & Vibration* 20, 20, 22-23 (Feb. 1992) (attached as Exhibit 21). Further, the WTP DEIS has no discussion of the fact that in order for intruding sounds to be inaudible they generally must be anywhere from 5-10 dBA less than the indigenous baseline of the area. *Id.* at 21. This means that noises generated by gas development and operations are likely to "stick out" even more than the WTP DEIS's simple analysis would suggest.
 - Ambient sound levels have been measured in national parks in Utah that present extremely low readings. For example, a monitor in Canyonlands National Park established in the winter measured L₉₉ values – for which ambient sound readings will be below ninety-nine percent of the time – of 18 dBA during the day and 19 dBA at night. Mary Ann Grasser and Kerry Moss, *The Sounds of Silence*, *Sound & Vibration* 24, 25 (Feb. 1992) (attached as Exhibit 22). In many cases, ambient sound levels in these parks are below the ability of the measuring equipment to detect. *Id.* at 24. Bryce Canyon has measurements of L₉₀ values of 35 dBA in the day

and 20 dBA at night. *Id.* at 25. Dinosaur National Monument and Glen Canyon National Recreation Area had L₉₀ values measured ranging from highs of 30 dBA to lows of 19 dBA throughout the year.¹ *Id.* at 25. The noise levels would be indicative of the background levels that the BLM might observe if it conducted an accurate study of ambient noise in the West Tavaputs Plateau.

- SUWA has provided a study performed by Collaboration in Science and Technology Inc. of ambient sound levels in parks of the Colorado Plateau. *See generally* Collaboration in Science and Technology Inc., Ambient Sound Monitoring Program for Colorado Plateau Parks (Sep. 20, 1990) (attached as Exhibit 23). This document is also instructive for modeling.
- Since decibels are measured on a logarithmic scale a doubling of sound energy is only equivalent to 3 dBA. *See* Collaboration in Science and Technology Inc. at 3. Thus, even if ambient background noise in the West Tavaputs were measured at a very high 35 dBA, a health-based standard of 55 dBA would represent a 100-fold increase in sound energy. *See id.* Partly for this reason the BLM's 55 dBA health and welfare-based standard is inappropriate for determining the true impacts of this project on the ambient sound levels of the project area.
- Furthermore, the River Management Plan specifically forbids the authorization of drilling projects that area located within sight or sound of the Green River. River Management Plan at 20, 29. The BLM has failed to take any background ambient noise level data on the Green River area and from the Desolation Canyon National Historic Landmark. Without the background ambient noise level and accurate modeling of potential noise sources the BLM cannot conclude that the alternatives analyzed in the WTP DEIS will comply with this management directive.
- Socioeconomics
 - Dr. Michelle Haefele, a resource economist with significant experience analyzing and evaluating the economic impacts of development activities on public lands in the western United States, has provided detailed and specific analysis regarding the WTP DEIS. *See generally* Michelle Haefele, Comments on Socioeconomic Analyses in the Draft West Tavaputs Plateau EIS (attached as Exhibit 24). SUWA expressly incorporates Dr. Haefele's comments by reference.

¹ Excluding measurements from Rainbow Bridge, which would be influenced by the noise of motorboats and are less likely to reflect a pristine natural area such as would be found in Desolation Canyon or in Desolation Canyon WSA.

D. The WTP DEIS Violates the Relevant Land Use Plans.

The BLM is required to manage public lands in conformance with developed land use plans. *See* 43 U.S.C. § 1732. As explained herein, the WTP DEIS contains numerous conflicts with the relevant land use plans: the Price River MFP and the River Management Plan. The WTP DEIS conflicts with their directives for the management of ACECs, visual resources, leasing, recreational management, and cultural resources. The WTP DEIS, either ignores these conflicts or fails to take a hard look, *see supra*, at their nature and the obligations of the BLM to manage according to the current land use plans. The BLM has a duty to not only disclose them, but to eliminate them. The BLM should consider new alternatives that would eliminate conflicts with these land use plans, would refuse any new leasing in WCAs, that would eliminate any new surface impacts in WSAs and WCAs, that would find an alternative transportation route away from Nine Mile Canyon, that would avoid negatively impacting proposed and existing ACECs, and that would greatly reduce surface impacts from this proposed project.

E. The WTP DEIS Fails To Properly Analyze Indirect and Cumulative Impacts.

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

General statements about ‘possible’ effects and ‘some risk’ do not constitute a ‘hard look’ absent an explanation of why more definitive information could not be provided.” *See Blue Mountains Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1214 (9th Cir. 1998). The WTP DEIS fails to quantify or identify preexisting and ongoing impacts. Cumulative impacts analysis clearly requires that past and present actions be included in the analysis as well. The DEIS should include analysis and quantification of past and present impacts as well as cumulative future impacts, specifically it should also analyze the impacts from off-road vehicle use in the area of the project.

- The BLM omitted discussion of past, present, and future off-road vehicle use in the area. This error prevents the BLM from being able to accurately evaluate long-term cumulative impacts.
- The DEIS also fails to consider cumulative impacts to cultural resources as discussed in the comments of Mr. Spangler.
- The WTP DEIS does not discuss the potential cumulative impacts to threatened, endangered, and sensitive species along with other wildlife from the inevitable erosion and run-off that will result from this project and others, such as increased total suspended solids and turbidity in the Green River or Nine Mile Creek.
- The WTP DEIS fails to discuss the cumulative impacts of lack of interim reclamation success in the region on a variety of resources: water, air quality, dust, vegetation, etc.
- The WTP DEIS fails to consider the full cumulative impacts of this project and others on air quality. For example, the cumulative impacts analysis for air quality show that the effects of this project and others on the Ouray National Wildlife Refuge combined with the emissions from the recently approved Greater Deadman Bench project will certainly lead to exceedences of NAAQS and PSD increments under the CAA. SUWA, Request for State Director Review, In the Matter of the March 31, 2008 Record of Decision for the Questar Exploration and Production Greater Deadman Bench Oil and Gas Producing Region (Apr.15, 2008) (Exhibit 14).
- The WTP DEIS fails to analyze the cumulative impacts that will result to WSAs and WCAs from greater off-road vehicle access in the area facilitated by the proposed and current oil and gas developments in the region and failed to analyze cumulative impacts from off-road vehicles to noise.

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

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

The proposed project comes in the midst of significant planning processes, including the preparation of the Price Field Office's RMP and its consideration of ACEC nominations in the area. As explained herein, a decision on the proposed project should

wait until after these ongoing planning efforts are complete or fully consider and adopt a directional drilling alternative that would eliminate impacts to the proposed ACECs and the WCAs.

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

G. Lack of Essential Data.

The BLM has failed to include information relevant to reasonably foreseeable significant adverse effects that is essential to a reasoned choice among alternatives. *See* 40 C.F.R. § 1502.22(a). NEPA regulations require that the BLM include such information when the costs of doing so are not exorbitant. *Id.* The BLM has failed to include such vital information, or explain why it cannot be obtained, for background ozone and PM_{2.5} levels; for up-to-date and accurate water quality information for Nine Mile Creek, Jack Creek, and Minnie Maude Creek; and for an ambient noise levels in the project area along with calculations of the likely noise impacts from development. BLM's failure to prepare this missing information is particularly egregious because this project has been under preparation for years.

2. FAILURE TO COMPLY WITH FLPMA.

A. Desolation Canyon and Jack Canyon WSAs and the IMP.

FLPMA requires that the Secretary of the Interior manage WSAs "so as not to impair the suitability of such areas for preservation as wilderness." 43 U.S.C. § 1782(c). *See State of Utah v. Babbitt*, 137 F.3d 1193, 1198 (10th Cir. 1998). The BLM's binding interpretation of the non-impairment mandate – the IMP – *requires* that the agency deny any proposed activity that will cause impairment to a WSA. IMP at 9. *See Rocky Mountain Oil & Gas Ass'n v. Watt*, 696 F.2d 734, 739 n.6 (10th Cir. 1982) (stating that the IMP was promulgated using notice and comment rulemaking and it is "Interior's interpretation of the non-impairment mandate.").

In order for an activity to meet FLPMA's non-impairment mandate, and thus be permitted to proceed in a WSA, two criteria must be met. First, the activity must be temporary and not cause surface disturbance. IMP at 9. Second, after the activity ends, "the wilderness values must not have been degraded so far as to significantly constrain the Congress's prerogative regarding the area's suitability for preservation as wilderness.

Id. Thus, the non-impairment test is not an “either/or” proposition, and a proposed activity must meet both criteria to be permitted to take place. *Id.*

If BBC has pre-FLPMA leases already in production, the BLM should require BBC to drill directionally from existing pads. There are pre-existing well pads in both the Jack Canyon and Desolation Canyon WSAs. *See* DEIS at Figure 2.3-1. The BLM must follow the non-impairment mandate unless it can show that doing so would unreasonably interfere with lease rights and even then it cannot permit undue/unnecessary degradation. Because BBC has already shown itself willing and able to drill directionally within close proximity to the WSAs at issue here an alternative that would only allow directional drilling from existing pads within the WSAs must be fully considered. If directional cannot be drilled (and assuming that there is existing production on-lease), BLM can still reasonably deny new wells because it will not be denying company enjoyment of its lease.

If BBC has post-FLPMA leases in WSAs, which the WTP DEIS does not disclose and must, then the BLM must manage according to the non-impairment mandate. *See* IMP Chapter III.B.1(b). This would mean considering alternative relying on directional drilling from outside of the WSA boundaries completely.

In either case – a pre- or post-FLPMA lease – no new access roads may be built, and no new pipelines may be installed because they would violate the IMP. *See* IMP Chapters I.B.9(b), III.B.1(a). In summary, the pre-FLPMA lease rights are not absolute, as they are portrayed in the WTP DEIS, and the BLM is still obligated to follow the non-impairment mandate of the IMP because doing so will not unreasonably limit development on pre-FLPMA leases. For this reason the agency may not approve Alternative A, C, or E.

B. BLM Must Comply with the Clean Air Act and the Clean Water Act.

FLPMA and its implementing regulations – along with the applicable land use plans – require that the BLM comply with all federal, state, and local environmental laws. *See* 43 U.S.C. § 1712(c)(8); 43 C.F.R. § 1610.3-2. The BLM is obligated, by FLPMA, to comply with the environmental standards established in the Clean Air Act and the Clean Water Act. This means that the BLM may not permit development that will result in exceedences of NAAQS, PSD increments, or air quality related values. The BLM may not permit activities that will lead to levels of contamination in waterways above standards established in the Clean Water Act. The WTP DEIS evaluates development alternatives (A, C, D, and E) that would violate standards established under the Clean Air Act and the Clean Water Act and therefore may not be approved by the BLM.

C. Overly Narrow Purpose and Need and Improper Emphasis on Mineral Leasing Act to the Detriment of FLPMA.

The WTP DEIS adopts an overly narrow purpose and need focused heavily on the Mineral Leasing Act (MLA) to the detriment of FLPMA. The WTP DEIS speaks of

allowing BBC and other operators to develop their lease rights under the MLA, stating that such “exploration and development of domestic oil and gas is in the best interest of the United States.” DEIS at 1-3. However, the purpose and need neglects to mention that ultimate guiding document for the BLM is FLPMA, which requires that lands be managed for multiple use and not solely for mineral development. This oversight is particularly egregious considering the fact that the WTP DEIS is also a document intended to consider whether or not certain lands in the project area should even be leased for mineral development in the first place and that this document may be intended as a plan amendment. The WTP DEIS purpose and need statement makes no mention of the fact that the BLM’s true priority in such case, according to FLPMA, is “the designation and protection of areas of critical environmental concern.” 43 U.S.C. § 1712(c)(3). In light of this direction from FLPMA the WTP DEIS’s overarching implication that oil and gas development should be placed ahead of all else is simply wrong. *See id.* (prioritizing ACEC designation); DEIS at 1-3 (emphasizing development of leases above other resources, even though many regions within the project area remain unleased); River Management Plan (mentioning national significance of area and recognizing its national importance). This narrowly drawn purpose and need is also likely to improperly predispose the outcome of ongoing land use planning in the Price Field Office. *See* 40 C.F.R. § 1506.1(c)(3).

3. SUWA INCORPORATES THESE ADDITIONAL COMMENTS.

SUWA adopts the comments submitted to the BLM for the WTP DEIS by the following entities, in addition to those already referenced herein:

- United States Environmental Protection Agency.
- National Trust for Historic Preservation.
- State of Utah, Public Lands Policy Coordination Office. SUWA adopts the comments found under the headings *Indirect Impacts Analysis*; *Air Quality*; *Division of Oil, Gas and Mining*; and *Division of Wildlife Resources*.
- Utah Rock Art Research Association.

4. FAILURE TO COMPLY WITH NHPA.

The WTP DEIS fails to comply with the NHPA because it fails to: (1) accurately identify the proposed project’s “area of potential of effects;” (2) assess adverse effects to historic properties from the proposed project; and (3) grant consulting party status to SUWA and other local, regional, and national organizations.

A. NHPA - Background

Congress enacted the NHPA in 1966 to implement a broad national policy encouraging the preservation and protection of America’s historic and cultural resources.

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

Pursuant to NHPA Section 106, before approving any undertaking a federal agency must identify all historic properties that may be affected by the undertaking, and must assess the effects of the project on those properties. See 36 C.F.R. §§ 800.4, 800.5. The procedural nature of Section 106 reinforces the importance of strict adherence to the binding process set out in the NHPA regulations: “While Section 106 may seem to be no more than a ‘command to consider,’ . . . the language is mandatory and the scope is broad.” *United States v. 62.20 Acres of Land, More or Less*, 639 F.2d 299, 302 (5th Cir. 1981).

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

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

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

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

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

- Mr. Spangler documents the inadequacies of the WTP DEIS in this regard.

D. BLM Failed to Grant Consulting Party Status to SUWA and Other Local, Regional, and National Organizations.

Parties with “demonstrated interest in the undertaking” may be granted consulting party status. See 36 C.F.R. § 800.2(5). SUWA, with a clearly demonstrated interest in

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the undertaking was denied consulting party status multiple times. Other local, regional, and national groups with demonstrated interests in the undertaking were also denied consulting party status. These denials were arbitrary. The BLM should grant these entities consulting party status for the reasons stated in SUWA's letters dated November 11, 2005 and June 7, 2006 and more recently in the Nine Mile Canyon Coalition's 2008 request for reconsideration of the BLM's denial of consulting party status.

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

Sincerely,

/s/ David Garbett

David Garbett
Stephen Bloch