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

November 20, 2006

Ms. Stephanie Howard
Bureau of Land Management
Vernal Field Office
170 S 500 E
Vernal, Utah 84078

*Re: Enduring Resources' Rock House Gas Well Proposal,
Environmental Assessment UT-080-05-309*

Greetings:

Southern Utah Wilderness Alliance appreciates the opportunity to submit comments on the Enduring Resources' Rock House Gas Well Proposal Environmental Assessment (the "Rock House EA" or the "EA"). These comments are submitted on behalf of the Southern Utah Wilderness Alliance, Natural Resources Defense Council, and The Wilderness Society (collectively referred to herein as "SUWA") and their approximately 1 million members. SUWA members regularly use and enjoy Utah's spectacular public lands in the project area, particularly the area surrounding the White River, and are intensely interested in highly controversial public lands issues such as this proposed natural gas project and the associated facilities that would also be constructed.

In short, the BLM's Rock House EA complies with neither the letter nor the spirit of several important federal environmental and historic preservation laws, including the National Environmental Policy Act (NEPA) and the National Historic Preservation Act (NHPA). The EA 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. In addition, and as described below, the Rock House EA does not comply with the Federal Land Policy and Management Act (FLPMA).

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

1. THE ROCK HOUSE EA VIOLATES NEPA.

A. The Rock House EA 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 Enduring and its third party contractors. This includes, but is not limited to, information on the potential noise impacts from project operations, feasibility of alternatives to the proposed action, and air quality impacts. In addition, any information supplied by the applicant or its third party consultants in response to comments submitted by SUWA or others must also be independently evaluated. BLM must also disclose the qualifications of agency reviewers, or, if BLM contracts with a third party, who provided an independent analysis of this information and their qualifications.

B. Inadequate Range of Alternatives.¹

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). As stated in 40 C.F.R. § 1508.9(b), this statutory provision is independent of the environmental impact statement (EIS) requirement and mandates that agencies seek alternatives for *all* proposals, including those for which the agency prepares only an environmental assessment. *Davis v. Mineta*, 302 F.3d 1104, 1120 (10th Cir. 2002) (“A properly-drafted [environmental assessment] must include a discussion of appropriate alternatives to the proposed project.”) (citing 42 U.S.C. § 4332(2)(E) and 40 C.F.R. § 1508.9(b)). *See also Bob Marshall Alliance v. Hodel*, 852 F.2d 1223, 1228-29 (9th Cir. 1988) (“[C]onsideration of alternatives is critical to the goals of NEPA even where a proposed action does not trigger the EIS process In short, any proposed federal action involving unresolved conflicts as to the proper use of resources triggers NEPA’s consideration of alternatives requirement, whether or not an EIS is also required.”); *River Road Alliance, Inc. v. Corps of Eng’rs*, 764 F.2d 445, 452 (7th Cir. 1985) (“This requirement is independent of the question of environmental impact statements, and operative even if the agency finds no significant environmental impact. *For nonsignificant impact does not equal no impact; so if an even less harmful alternative is feasible, it ought to be considered.*”) (emphasis added) (internal citation omitted).

Thus, agencies, whether in an EIS or environmental assessment, must “to the fullest extent possible...study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts

¹ This section of SUWA’s comments – addressing the range of alternatives – was prepared with the assistance of Mr. Ken Kreckel. Mr. Kreckel is a professional geophysicist with over thirty years of experience in oil and gas exploration and development in North America (including Utah) and abroad. SUWA expressly incorporates Mr. Kreckel’s comments (attached hereto) by reference.

concerning alternative uses of available resources.” *Southern Utah Wilderness Alliance v. Norton*, 237 F. Supp. 2d. 48, 53-54 (D.D.C. 2002) (quoting 42 U.S.C. § 4332(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). While an agency may not “completely ignor[e] a private applicant’s objectives” in evaluating the reasonableness of alternatives, *Colorado Envtl. Coalition v. Dombeck*, 185 F.3d 1162, 1174-75 (10th Cir. 1999) (citations omitted), neither may it let these objectives control its consideration of alternatives. On the contrary, “the evaluation of alternatives mandated by [the National Environmental Policy Act] is to be an evaluation of alternative means to accomplish the general goals of an action; it is not an evaluation of the alternative means by which a particular applicant can reach his goals.” *Id.* at 1174 (citations omitted).

Mr. Kreckel’s analysis details two alternatives to help rectify certain inadequacies and failings of the Rock House EA. See Ken Kreckel, Comments on Enduring Resources’ Rock House Gas Well Proposal Environmental Assessment, UT-080-05-309 (Kreckel Comments) (attached as Exhibit 1). The Rock House EA does not analyze, evaluate, or consider these alternative directional drilling plans. To comply with the letter and spirit of NEPA, the EA must fully analyze these directional drilling alternatives. As Mr. Kreckel points out in his analysis, the two directional drilling alternatives, both technically and economically feasible, would significantly reduce surface impacts of the project while still permitting Enduring Resources’ to achieve the same level of production. Mr. Kreckel’s comments are briefly summarized below:

- Instituting either of Mr. Kreckel’s alternatives would eliminate nine proposed well pads and the associated surface disturbance, and thus provide added protections for the White River wilderness inventory area and sensitive White River viewsheds. Kreckel Comments at 1-2.
- Neither of the alternatives would pose any additional technical challenge to the operator, since both utilize the same parameters as proposed by the BLM. Kreckel Comments at 1-3.
- The additional costs of the two alternatives are minimal and can be significantly recovered by the operator through the elimination of site construction and associated infrastructure. Kreckel Comments at 3-4.

C. The Rock House EA Fails to Take a “Hard Look” at Resource Damage that Will Likely Be Caused by the Proposed Project.

The EA fails to take a “hard look” at the impacts of the proposed project on the proposed White River area of critical environmental concern (ACEC), cultural resources, paleontological resources, recreation and noise impacts, soils, disturbance estimates, visual impacts, wild and scenic river designation, wilderness character, and air quality. 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 environmental assessment. *See Blue Mountain Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1212 (9th Cir. 1998). An environmental assessment’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:

- ACEC
 - The Rock House EA erroneously concludes that impacts from the proposed project would be “minor” on the resource values of the proposed ACEC. *See* Rock House EA at 39-40. On the contrary, as the EA itself states, the White River ACEC’s relevant values include, among other things, “spectacular scenery” and “wildlife viewing.” *Id.* at 25. According to the BLM, the resource values of this proposed ACEC make the area “fragile, sensitive, rare, irreplaceable, exemplary, and unique.” Kerr-McGee Bonanza Area Environmental Assessment, Draft, BLM EA No. UT-080-2006-240, at 3-7, 3-8. Yet, as discussed below, the proposed action would definitely have adverse impacts on the area’s visual resources, the area’s abundant natural quiet, and wildlife. *See, e.g.*, Rock House EA at 44, 46-52 (admitting that “reduced visual harmony” will result from the project, that eight wells could potentially be seen from the Goblin City Overlook, that the project will result in losses of sage-grouse foraging and brooding habitat, and that it is “likely to adversely affect” populations of the humpback chub, bonytail, razorback sucker, and Colorado pikeminnow). Based on this admission and others, BLM’s assertion that the proposed action will have only a “minor” affect on the proposed ACEC is without basis. Therefore, the BLM has not taken a

hard look at the potential impact of this project on the values of the proposed ACEC.

- Cultural Resources
 - The Rock House EA only briefly mentions long-term impacts to cultural resources; it simply suggests, through conjecture, that these long-term impacts could or could not be significant. *See* Rock House EA at 40. The EA does not quantify these impacts so that a determination of significance can be reached. Hence, it fails to take a hard look at the likelihood of adverse effects (i.e., indirect effects) to cultural resources from greater access to the area. Increased vehicular access and traffic to the area would likely result in augmented rates of vandalism, collection, and other resource damage. *See* Rock House EA at 40. *See* also the following discussions of the impacts of access roads to cultural resources: BLM, *BLM Cultural Resources at Risk*, Strategic Paper 5-6 (May 4, 2000); Paul R. Nickens et al., Cultural Resource Series No. 11, *A Survey of Vandalism to Archeological Resources in Southwestern Colorado* 129 (1981); Richard V.N. Ahlstrom, Cultural Resource Management Series No. 13 *Pothunting in Central Arizona: The Perry Mesa Archeological Site Vandalism Study* 17 (1992).

- Paleontological Resources
 - The BLM does not know the frequency of paleontological resources in the area. Therefore, it impermissibly concludes that the adverse impacts of the project will not be significant since it does not know the likelihood of encountering paleontological resources. *See* EA at 40.

- Recreation and Noise Impacts
 - The Rock House EA contains information demonstrating that the proposed action will almost certainly have significant impacts (i.e., noise) to recreation in the project area and along the White River. Eight wells would be visible from the Goblin City Overlook. EA at 44. Future recreational use of the area would likely decrease as the potential users became aware of oil and gas activity. *See id.* “Visible development would diminish the recreational experience of some visitors seeking a natural setting devoid of human influence.” *Id.* These adverse effects, alone, represent significant impact.

 - The EA unjustifiably determines that noise impacts would be insignificant to recreationists in the area. *See* Rock House EA at 44-45. There are at least five significant problems with the Rock House EA’s evaluation of noise impacts:

- The EA indefensibly states that “no noise impacts would occur to recreationists during operational activities” at the Goblin City Overlook, apparently relying upon the fact that the nearest well location would be 0.6 miles from the overlook. *See* Rock House EA at 44. However, this information is unsubstantiated, contradicts analysis provided by the BLM, and also ignores noise from construction activity. According to analysis by the BLM in a separate NEPA document, noise levels from a well located approximately 0.6 miles from an overlook could be substantially noticeable. *See* BLM, Draft, Resource Management Plan Amendment/Environmental Impact Statement for Federal Fluid Minerals Leasing and Development in Sierra and Otero Counties 4-28 – 4-31 (November 2000) (Sierra and Otero Counties DRMPA/EIS) (excerpts attached hereto as Exhibit 2). Based on that previous analysis, a person standing approximately 0.6 miles from exploration and development activity and within line-of-site could likely expect sounds in excess of 55dBA, a noise level in excess of Environmental Protection Agency (EPA) guidelines. *See id.* at 4-29. This figure may be derived by using the noise attenuation estimate formula of 6 dBA for each doubling of distance. *See id.* Accordingly, if a residence in line-of-site located 2,800 feet from exploration and development activities can expect noise levels in excess of 55dBA, then a person standing in line-of-site 0.6 miles (or 3,168 feet) would be 1.131 times as far from the activity as the residence and could expect noise levels to be, on average, 0.79 dBA less than at the residence. *See id.* Therefore, because of the insignificant decrease in noise levels from the increased distance, the person standing line-of-site 0.6 miles from exploration and development activities could expect noise levels to be significant. Using this same analysis, a person at the Goblin City Overlook standing line-of-site one mile from exploration and development activity would only experience a 5.3 dBA decrease in noise levels from that of the residence at 2,800 feet; a figure that could still suggest significant interference. *See id.* *Cf.* Mace, B. L. et al., *Aesthetic, Affective, and Cognitive Effects of Noise on Natural Landscape Assessment*, 12 Soc’y & Nat. Resources 225 (1999) (finding that helicopter noise measured at 40 dBA negatively affects visitor experience and the perceived aesthetic quality of landscapes).
- Based on prior BLM analysis, the sound level of the generator understates the expected noise level at the river. *See* Sierra and Otero Counties DRMPA/EIS at 4-29. Using the 6 dBA attenuation rate estimate per doubling of distance and taking the standard noise level of a generator to be 67 dBA at 21 feet, noise levels at the river (approx. 100 feet away) should average 45 dBA. *See id.*;

Rock House EA at 44. This is much greater than the Rock House EA estimate of 37 dBA. *See* EA at 44. *Cf.* Mace, B. L. et al. (showing that even at 40 dBA unnatural sounds, in this case helicopters, can negatively affect visitor experience and perceived aesthetic quality). In addition, the Rock House EA likely overstates to ability of the White River to drown out sounds from the generator. *See* Rock House EA at 44. The Rock House EA relies upon an average sound reading from May 3, 2006. *Id.* This is the month of the second highest mean monthly discharges for the river. United States Geological Survey, USGS Surface-Water Monthly Statistics for Utah, White River Near Watson, Utah, http://waterdata.usgs.gov/ut/nwis/monthly/?referred_module=sw&site_no=09306500&por_09306500_2=448491,00060,2,1923-04,2005-09&format=html_table&date_format=YYYY-MM-DD&rdb_compression=file&submitted_form=parameter_selection_list (Nov. 16, 2006). Outside of June, no month even experiences flows half as large as the mean discharge for May. *Id.* Therefore, the White River should generally create much less ambient noise and be less likely to overpower the noise of the generator.

- Impacts on threatened and endangered wildlife from increased noise levels associated with exploration and development activities could be significant. *See* Sierra and Otero Counties DRMPA/EIS at 4-31 (stating that threatened and endangered species could be significantly impacted by production activities within 1,600 feet of occupied habitat). Despite this possibility, the potential impacts from increased noise levels are not discussed in the EA.
- The Rock House EA fails to provide any site specific data on ambient noise levels, other than the one reading from the White River at the mouth of Saddletree Draw. *See* EA at 44. The BLM has not analyzed ambient noise levels at other important locations, such as the Goblin City Overlook. Without data on the average background or ambient noise levels of the project area, the BLM cannot conclude if the adverse noise impacts from the project will be significant or not. For example, the average background or ambient noise levels at Zion National Park “vary, but are often in the low 20 dBA.” *Grand Canyon Trust v. FAA*, 290 F.3d 339, 344 (D.C. Cir. 2002) (citation omitted). If the project area had a similar background noise level then the proposed activity would likely create significant impacts in terms of noise levels. *See, e.g.,* Sierra and Otero Counties DRMPA/EIS at 4-29 – 4-31 (describing typical noise levels associate with oil and gas production activity).

- The Rock House EA fails to analyze cumulative noise impacts from all sources in this proposed action; it also fails to consider the noise impacts from ongoing and proposed projects in the immediate area. *See Grand Canyon Trust*, 290 F.3d at 341-47 (requiring the Federal Aviation Administration to examine cumulative noise impacts from a proposed airport near Zion National Park). It is very likely that this project along with the proposed Kerr-McGee Bonanza project on the north side of the White River will create substantial increases noise level and correspondingly reduce the recreational experience on the White River and in the Goblin City area. *Cf. Mace, B. L. et al.*
- SUWA hereby incorporates the comments of Mr. Richard Kolano and Mr. Richard Fullmer by reference. Mr. Kolano's comments are attached hereto as Exhibit 3 and Mr. Fullmer's comments are attached hereto as Exhibit 4. Mr. Kolano and Mr. Fullmer's comments are briefly summarized below:
 - There is no basis for the 37 dBA figure on page 46 of the Enduring EA regarding the proposed generator. Rather, the noise level is predicted to be at least 53 dBA. Kolano Comments at 1-2; Fullmer Comments at 1-2.
 - The ambient noise level of the White River was taken in May 2006 – the time of the year with the highest river flow. Fullmer Comments, at 2; Kolano Comments at 2-3. This noise level “is believed to produce an uncharacteristically high background noise level against which to compare an understated generator noise level.” Kolano Comments at 3. River noise will likely not mask the noise from the generator at 53 dBA for most of the year (during non-peak flows). Fullmer Comments at 3.
 - Natural gas development activities will plainly be heard from the Goblin City Overlook. Fullmer Comments at 3; Kolano Comments at 3.
 - The Enduring EA did not conduct a thorough or supportable noise impact analysis study to determine baseline (ambient) noise levels. Kolano Comments at 3-4.
 - “The Enduring EA is erroneous in its conclusion that noise impact of the proposed well drilling operations will not likely impact recreational users of this [area].” Kolano Comments at 4.

- Soils
 - The BLM admits that soil crust studies have not been completed in the area. *See* Rock House EA at 29. Therefore, it cannot determine whether the proposed action will have a significant impact on these soil crusts.
 - The BLM's estimates for sediment erosion may be based on incorrect data. The EA states that the proposed well sites can expect an erosion rate of one ton of sediment per acre per year. Rock House EA at 29. However, the EA itself incorrectly assumes that reclamation will reduce the size of the initial disturbance from the construction activity. *Compare* Rock House EA at 16, 21 (suggesting that reclamation will reduce initial disturbance from pipelines 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.”) (emphasis added). The Rock House EA's does not evaluate how these recent BLM findings would affect the estimates of yearly soil erosion for the project area.

- Disturbance Estimates
 - The Rock House EA incorrectly assumes that reclamation efforts will reduce the long-term disturbance of the project from access roads and pipelines. *See* Rock House EA at 14-16. However, “[r]ecent 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.” BLM, North Chapita Natural Gas Well Development Project, Environmental Assessment No. UT-080-2003-0307V, at 81-82 (March 2006).

- Visual Impacts
 - The Rock House EA states that the Draft Vernal Resource Management Plan analyzes changing the visual resource management (VRM) classifications under every alternative but Alternative D. EA at 52. However, the BLM, in spite of this ongoing analysis, chooses to ignore the possibility of change for the VRM classifications in the area. *See id.* The BLM erroneously concludes that simply because there are pre-existing rights it is relieved of any burden of fully analyzing environmental impacts to visual resources and considering possible alternatives. The

BLM must further analyze the potential impacts to visual resources in light of the Draft Vernal Resource Management Plan.

- The BLM must fully consider and analyze a directional drilling alternative which would eliminate adverse visual impacts in the VRM II areas.
- Wild and Scenic River Designation
 - The Rock House EA identifies the construction of a new road segment and the placement of a generator, pump, and water pipelines within the ¼-mile wide corridor of the proposed Wild and Scenic River designation. EA at 52-53. Despite this, the BLM concludes that these intrusions would only create a minor impact to the values of the proposed Wild and Scenic River. *See id.* This conclusion, in light of the EA's admissions is unjustifiable; the BLM must fully analyze the impacts of these projects on the proposed Wild and Scenic River.
- Wilderness Character
 - The BLM states that impacts to areas of wilderness character would only amount to ninety-two acres. Rock House EA at 53. However, this completely ignores the indirect effect of gas production on the surrounding naturalness and solitude.
 - In this section, the Rock House EA relies upon the same problematic analysis of noise impacts as it did in the recreation section. *Compare* EA at 53-54 *with* EA at 44-45. As discussed above, noise impacts would be substantially greater, and therefore the impact on naturalness and solitude, than what is detailed in this analysis. *See supra* at 5-8.
- Air Quality
 - The Rock House EA fails to examine the potential impacts of this project on air quality. There is no analysis on air quality in the EA. The BLM must analyze the potential impacts on air quality.
 - SUWA expressly incorporates by reference the comments submitted by Ms. Megan Williams regarding the Rock House EA's absence of air quality analysis. *See* Megan Williams, Comments on Enduring Resources' Rock House Environmental Assessment, UT-080-05-309, Regarding Air Quality Impacts (Williams Comments). To summarize her comments:
 - The BLM must include a characterization of emissions before ruling that no air quality analysis is needed; otherwise the public has no way of evaluating the BLM's conclusion. Williams Comments at 2-3.

- The BLM must include a modeling analysis to insure compliance with national ambient air quality standards. Williams Comments at 3-4.
- The BLM must also include an analysis of hazardous air pollutant emissions. Williams Comments at 5.
- Finally, the BLM must undertake a modeling analysis of cumulative air quality impacts. Williams Comments at 5-6.

D. The Proposed Action Violates 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 Vernal Resource Management Plan (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" (ACECs) 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 Vernal Field Office's RMP and the consideration of an ACEC nomination, a Wild and Scenic River designation, and changes to the VRM classifications in the area. As explained below, a decision on the proposed project should wait until after these ongoing planning efforts are complete or consider alternatives that would eliminate impacts to the proposed ACEC, eliminate impacts to the proposed Wild and Scenic River, and comply with the likely changes to the VRM classifications.

The project, as currently proposed, would allow intensive well development in the portions of the project area that include a proposed ACEC. It would also permit the installation of infrastructure within the proposed Wild and Scenic River and could potentially violate VRM reclassifications. Such drilling and associated infrastructure 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 currently in the midst of a regional planning process.

- The proposed action would authorize landscape-changing activity. Selection of any of this alternative would limit the BLM's choice of reasonable alternatives in the ongoing Vernal RMP process because it would allow a fundamental change in the character of the project area. Selection of this alternative effectively precludes other reasonable, less-extractive land use alternatives. *See* 40 C.F.R. §

1506.1(a)(2). A decision on the Enduring Resources proposal should wait until after the Vernal RMP process is completed.

- Among the reasonable choices available in the Vernal RMP process are management decisions that would lead to increased restrictions on portions of the project area (such as management of certain parcels as Areas of Critical Environmental Concern, newly reclassified VRM areas that would limit visual intrusions, Wild and Scenic Rivers, or areas where no impairment of wilderness characteristics is allowed). Because these management decisions may not be compatible with intensive gas development, approval of such exploration must wait until after the RMP process.

E. The Rock House EA 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). While the EA clearly attempts to address the impacts of reasonably foreseeable impacts, it fails to quantify or identify preexisting impacts. Cumulative impacts analysis clearly requires that past actions be included in the analysis as well. SUWA would expect that the final EA would include analysis and quantification of past impacts as well, specifically impacts from past oil and gas projects.

- The BLM completely omitted any discussion of cumulative impacts to air quality. This error prevents the BLM from being able to accurately evaluate long-term impacts.

- The Rock House EA fails to evaluate cumulative impacts of this proposed project and other proposed projects in the area to visual resources. *See* Rock House EA at 73-74. There is no mention even made of other projects in the area. *Id.* For example, at present the BLM is considering the Kerr-McGee Bonanza proposal, a significant project directly north of this proposed action that would create substantial cumulative impacts on visual resources—in addition to noise levels, wilderness characteristics, and recreation in the White River area. *See* Kerr-McGee Bonanza Area Environmental Assessment, Draft, BLM EA No. UT-080-2006-240.
- The Rock House EA fails to consider the noise impacts from ongoing and proposed projects in the immediate area. *See Grand Canyon Trust*, 290 F.3d at 341-47 (requiring the Federal Aviation Administration to examine cumulative noise impacts from a proposed airport near Zion National Park). It is very likely that this project along with the proposed Kerr-McGee Bonanza project on the north side of the White River will create substantial increases noise level and correspondingly reduce the recreational experience on the White River and in the Goblin City area. *Cf.* Mace, B. L. et al.
- Although the section on cumulative impacts dealing with wilderness characteristics does discuss other reasonably foreseeable projects in the area, it fails to fully analyze their impact on this resource. *See* Rock House EA at 74-75. Again, as an example, the Kerr-McGee Bonanza project will be intruding on the area of wilderness characteristics to the north. The BLM must evaluate the potential cumulative effects of all these proposed projects on the wilderness characteristics of the area. Focusing only on the number of surface acreage disturbed by wells, roads, and pipelines ignores the impacts of such development on the naturalness and solitude of a much larger area. *See* EA at 74-75.
- The section on recreation fails to even mention or analyze impacts from other reasonably foreseeable projects in the area on this resource value. *See* Rock House EA at 70.
- The Rock House EA contains minimal analysis of the likely indirect effects and cumulative impacts that the full project will have on cultural resources, coupled with the ongoing and proposed projects in the area. *See* 40 C.F.R. §§ 1508.7 (cumulative impacts) and 1508.8(b) (indirect effects).
- The Rock House EA only briefly mentions long-term impacts to cultural resources; it fails to take a hard look at the likelihood of adverse effects (i.e., indirect effects) to cultural resources from greater access to the area and from ongoing project work and maintenance. Increased vehicular access and traffic to the area would likely result in augmented rates of vandalism, collection, and other resource damage. *See* the following discussions of the impacts of access roads to cultural resources: BLM, *BLM Cultural Resources at Risk*, Strategic Paper 5-6 (May 4, 2000); Paul R. Nickens et al., Cultural Resource Series No. 11, *A Survey*

of Vandalism to Archeological Resources in Southwestern Colorado 129 (1981); Richard V.N. Ahlstrom, Cultural Resource Management Series No. 13 *Potheadhunting in Central Arizona: The Perry Mesa Archeological Site Vandalism Study* 17 (1992).

- The BLM fails to include any cumulative impacts analysis for this project resulting from proposed and ongoing projects for lands managed by the State of Utah School and Institutional Trust Lands Administration. These projects must be part of the BLM's analysis of cumulative impacts to wilderness characteristics, air quality, recreation, visual resources, ACEC designation, and Wild and Scenic River designation.

F. BLM Must Prepare an Environmental Impact Statement.

An EIS is required for Enduring's proposed action because it may significantly affect the environment. As the D.C. Circuit has explained, there is an established standard for reviewing an agency's finding of no significant impact to determine whether:

First, the agency [has] accurately identified the relevant environmental concerns. Second, once the agency has identified the problem it must have taken a "hard look" at the problem in preparing the EA. Third, if a finding of no significant impact is made, the agency must be able to make a convincing case for its finding. Last, if the agency does find an impact of true significance, preparation of an EIS can be avoided only if the agency finds that the changes or safeguards in the project sufficiently reduce the impact to a minimum.

Grand Canyon Trust, 290 F.3d at 340-41 (citations omitted). To trigger the requirement to prepare an EIS, SUWA "'need not show that significant effects will in fact occur,' [but] raising 'substantial questions whether a project may have a significant effect' is sufficient.'" Ocean Advocates, 361 F.3d at 1124 (citations omitted) (emphasis in original). See also National Audubon Soc'y v. Hoffman, 132 F.3d 7, 18 (2d Cir. 1997) ("[W]hen it is a close call whether there will be a significant environmental impact from a proposed action, an EIS should be prepared."). As described above, Enduring's proposed action (or even an alternative thereto) may have a significant effect to, among other things, the White River wilderness inventory area and its wilderness characteristics (i.e., naturalness, outstanding opportunities for solitude and primitive and unconfined recreation, natural quiet, etc.), and therefore an EIS must be prepared to fully consider, analyze, and disclose these effects.

2. FAILURE TO COMPLY WITH NHPA.

The Rock House EA 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) consult with the State Historic Preservation Officer and Indian Tribes.

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.

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

The EA 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.

- The Rock House EA fails to fully consider the likelihood of adverse effects (i.e., indirect effects) to cultural resources from increased access to the area and the inevitable side-effects of construction and gas production in this area. This failure

comes because the Rock House EA does not fully analyze cumulative impacts to cultural resources from this project and from ongoing and proposed projects in the surrounding area. *See* Rock House EA at 68-69. The BLM failed to discuss the potential adverse impacts that will occur from visual and auditory interference with the historic features of cultural properties in the area. *See* Rock House EA at 40 (failing to analyze these issues); 36 C.F.R. § 800.5(a)(2)(v) (stating that adverse effects can include these elements). Increased vehicular access and traffic to the area would likely result in augmented rates of vandalism, collection, and other resource damage. *See* the following discussions of the impacts of access roads to cultural resources: BLM, *BLM Cultural Resources at Risk*, Strategic Paper 5-6 (May 4, 2000); Paul R. Nickens et al., Cultural Resource Series No. 11, *A Survey of Vandalism to Archeological Resources in Southwestern Colorado* 129 (1981); Richard V.N. Ahlstrom, Cultural Resource Management Series No. 13 *Potheadhunting in Central Arizona: The Perry Mesa Archeological Site Vandalism Study* 17 (1992).

D. BLM Failed To Consult with the State Historic Preservation Officer and Indian Tribes.

BLM is required to consult with the State Historic Preservation Office (SHPO) and Native American tribes regarding the potential effects of an undertaking such as the proposed action. *See* 36 C.F.R. §§ 800.3 and 800.4. In addition, should BLM determine that the proposed action will result in a “no historic properties affected” finding, the documentation supporting such a finding must be made available to the public for inspection. *Id.* § 800.4(d)(1). The EA does not document that BLM has consulted with the SHPO, Native American tribes, or made any information regarding historic properties available for public inspection.

If the effects of the project may be adverse, the agency must then seek ways to avoid, minimize, or mitigate those adverse effects, in consultation with the State Historic Preservation Officer and the relevant Indian tribes. *See* 36 C.F.R. § 800.5. Regulations define “adverse effect” to encompass a wide range of potential direct, indirect, and cumulative impacts: “[a]n adverse effect is found when an undertaking *may alter, directly or indirectly*, any of the characteristics of a historic property *Adverse effects may include reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance or be cumulative.*” 36 C.F.R. § 800.5(a)(1) (emphasis added).

The last sentence in this section (36 C.F.R. § 800.5(a)(1)) is intended to amplify the indirect effects concept, similar to the NEPA regulations, which call for consideration of such effects when they are reasonably foreseeable effects.² If the agency determines

² *See* 36 C.F.R. § 800.5(a)(2) (examples of adverse effects include, but are not limited to, (i) “[p]hysical destruction of or damage to all or part of the property;” (iii) “[r]emoval of the property from its historic location;” and (iv) “[c]hange of the character of the property’s use or physical features within the property’s setting that contribute to its historic significance.”).

that the action would have an adverse effect on an historic property, it begins consultation to identify ways to avoid, minimize, or mitigate adverse effects. *See* 36 C.F.R. § 800.5.

In this case, what little analysis the BLM conducted regarding the potential direct and indirect effects of the proposed project indicates that there could be foreseeable adverse affects on historic properties. Consultation is therefore required since the Rock House EA recognizes the potential damage to cultural resources from access near historic sites. *See* Rock House EA at 40.

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

Sincerely,

Stephen Bloch
Staff Attorney

David Garbett
Legal Fellow