



**Northwest**  
1216 Lincoln Street  
Eugene, Oregon 97401  
(541) 485-2471

**Rocky Mountains**  
103 Reeder's Alley  
Helena, Montana 59601  
(406) 443-3501

**Southwest**  
208 Paseo del Pueblo Sur #602  
Taos, New Mexico 87571  
(575) 751-0351

**Defending the West** [www.westernlaw.org](http://www.westernlaw.org)

## Western Environmental Law Center

December 14, 2012

*Sent via Electronic Mail*

### **August 2013 Lease Sale**

Barb Sharrow, Field Office Manager  
BLM Uncompahgre Field Office  
2465 South Townsend Avenue  
Montrose, Colorado 81401  
E-mail: [bsharrow@blm.gov](mailto:bsharrow@blm.gov)  
E-mail: [co\\_ufo\\_leasing@blm.gov](mailto:co_ufo_leasing@blm.gov)

Helen Hankins, State Director  
Bureau of Land Management  
Colorado State Office  
2850 Youngfield Street  
Lakewood, CO 80215  
E-mail: [hhankins@blm.gov](mailto:hhankins@blm.gov)

**Re: Citizens for a Healthy Community's Scoping Comments: August 2013 Lease Sale  
DOI-BLM-CO-S050-2013-0006 EA**

Dear Ms. Sharrow and Ms. Hankins:

The Western Environmental Law Center submits the following scoping comments on behalf of Citizens for a Healthy Community in response to the Bureau of Land Management ("BLM") Uncompahgre Field Office's ("UFO") intent to lease parcels in the August 2013 competitive oil and gas lease sale, identified as: DOI-BLM-CO-S050-2013-0006 EA.

Citizens for a Healthy Community ("CHC") is a grass-roots organization formed in 2010 for the purpose of protecting people and their environment from irresponsible oil and gas development in the Delta County region. CHC's members and supporters include organic farmers, ranchers, vineyard and winery owners, sportsmen, realtors, and other concerned citizens impacted by oil and gas development. CHC members have been actively involved in commenting on BLM's oil and gas activities.

As you are well aware, CHC has been actively engaged in BLM's oil and gas leasing and development decisionmaking. This includes, but is certainly not limited to, BLM's intent to lease parcels in the North Fork Valley. CHC and the public were blindsided when, on November 16, 2012, the agency re-listed North Fork parcels for inclusion in the February 2013 lease sale without any prior notice or warning. Not only did BLM fail to provide any opportunity for additional public comment on the substantially new Environmental Assessment ("EA"), but BLM's announcement also initiated the protest period for this sale, with a deadline of December 17, 2012. Unfortunately, this is the same date that scoping comments on the UFO's August 2013 are due. The timing of these conjoined deadlines leads to the fairly obvious perception that BLM has either intentionally, or at least without regard for ensuring meaningful public comment, made a decision that will suppress public participation in the scoping phase of the August 2013 lease sale.

As CHC continues to point out, Council on Environmental Quality ("CEQ") regulations provide that "public scrutiny [is] essential to implementing NEPA." 40 C.F.R. § 1500.1(b). In particular, the federal agency must "involve environmental agencies, applicants, and the public, to the extent practicable," 40 C.F.R. § 1501.4(b), and "[m]ake diligent efforts to involve the public in preparing and implementing their NEPA procedures." *Id.* at § 1506.6(a); *see also, e.g., Bering Strait Citizens for Responsible Development v. U.S. Army Corps of Engineers*, 511 F.3d 1011, 1024 (9<sup>th</sup> Cir. 2008) (providing a framework for public participation in the NEPA process). "NEPA's public comment procedures are at the heart of the NEPA review process" and reflect "the paramount Congressional desire to internalize opposing viewpoints into the decision making process to ensure that an agency is cognizant of all the environmental trade-offs that are implicit in a decision." *California v. Block*, 690 F.2d 753, 770-71 (9<sup>th</sup> Cir. 1982). Moreover, as the Tenth Circuit has provided: "The purpose behind NEPA is to ensure that the agency will only reach a decision on a proposed action after carefully considering the environmental impacts of several alternative courses of action and *after taking public comment into account.*" *Forest Guardians v. U.S. Fish and Wildlife Service*, 611 F.3d 692, 717 (10<sup>th</sup> Cir. 2010) (emphasis added). BLM's decision to require scoping comments for the August 2013 lease sale to be submitted on *the same day* as the North Fork Valley protest will inevitably lead to an overwhelmed public and the suppression of public participation in agency decisionmaking, in violation of NEPA.

Moreover, and as CHC has consistently warned in previously submitted comments to BLM, a moratorium on all UFO oil and gas leasing and development decisionmaking is required when, as here, there is a pending revision to the Resource Management Plan ("RMP") and environmental impact statement ("EIS"). BLM UFO's revision of the Uncompahgre Basin RMP is meant to update the out-of-date and inoperable 1989 UFO RMP. An adequate RMP is critical to establishing the foundation of BLM's oil and gas decisionmaking process. When a revision such as this one is underway, NEPA establishes a duty "to stop actions that adversely impact the environment, that limit the choice of alternatives for the EIS, or that constitute an 'irreversible and irretrievable commitment of resources.'" *Conner v. Burford*, 848 F.2d 1441, 1446 (9<sup>th</sup> Cir. 1988). Additionally, NEPA regulations established by the Council of Environmental Quality ("CEQ") prohibit an agency from taking any actions that would significantly impact the environment. 40 C.F.R. § 1506.1(c) (1997). As CHC has provided, and pursuant to these CEQ regulations:

While work on a required program environmental impact statement is in progress and the action is not covered by an existing program statement, agencies shall not undertake in the interim any major Federal action covered by the program which may significantly affect the quality of the human environment unless such action:

- (1) Is justified independently of the program;
- (2) Is itself accompanied by an adequate environmental impact statement;  
and
- (3) Will not prejudice the ultimate decision on the program. Interim action prejudices the ultimate decision on the program when it tends to determine subsequent development or limit alternatives.

40 C.F.R. §§ 1506.1(c)(1)-(3).

Proceeding with the August 2013 lease sale – or any other major Federal action covered by the stale 1989 RMP – is impermissible due to the inherent prejudice that this action will cause to the pending revision of the Uncompahgre Basin RMP and EIS. Revision of the 1989 RMP is fundamental to the public land use decision-making process in the UFO – creating the foundation upon which all mineral resource management decisions are made – and in its current form is woefully incapable of performing this function. The 1989 RMP contains very little analysis of oil and gas drilling in the Uncompahgre area generally, much less any analysis of the impacts that could be caused by drilling in this particular area. *See* 1989 RMP at 28, 31. The 1989 RMP, accompanying EIS, and technical report for oil and gas simply did not analyze the site-specific impacts of gas development using today’s modern extraction techniques – specifically the use of hydraulic fracturing, or fracking – much less any analysis of the parcels nominated in the August 2013 lease sale. Moreover, there is no updated, current analysis that identifies what overall level of development – and the nature of that development (e.g., oil or natural gas, what technologies and drilling techniques, etc., would be used to extract resources) – is reasonably foreseeable. Without this analysis, it seems self evident that there is considerable uncertainty and controversy regarding the size, nature, and impacts of further leasing, in particular relative to cumulative impacts.

BLM UFO itself recognizes these shortcomings, and has provided that “[p]reparation of the Uncompahgre RMP is necessary in order to respond to changing resource conditions, new issues, and federal policies, as well as to prepare a comprehensive framework for managing public lands administered by the UFO.” BLM UFO, *Uncompahgre RMP Newsletter* (December 2009). “Management is becoming more complex due to the emergence of new issues of national significance, as well as heightened controversy surrounding certain existing issues. Increased oil, gas, and uranium activity, recreation demands, impacts from a growing population and urban interface, and pressures on wildlife and land health are among the many challenges to be addressed.” BLM UFO, *Analysis of the Management Situation: for the BLM Uncompahgre Planning Area* (June 2010). Given the significant challenges and management issues that must be addressed in the pending Uncompahgre Basin RMP, it would be impossible for BLM to push forward with the sale of these parcels without prejudicing the ultimate mineral development decisions made in the revised RMP.

The whole point of NEPA is to study the impact of an action on the environment before the action is taken. *See Conner*, 848 F.2d at 1452 (NEPA requires that agencies prepare an EIS before there is “any irreversible and irretrievable commitment of resources”). Where “[i]nterim action prejudices the ultimate decision on the program,” NEPA forbids it. 40 C.F.R. §§ 1506.1(c)(1)-(3). Action prejudices the outcome “when it tends to determine subsequent development or limit alternatives.” *Id.* In this case, once oil and gas lease rights are conveyed, lessees have a right to drill, and the impact on the environment from the exercise of those rights cannot be undone, which is exactly the situation NEPA disallows – allowing new activity that limits alternatives in the future.

Accordingly, BLM UFO should defer the August 2013 lease sale until the Uncompahgre Basin RMP is completed and the agency has the opportunity to premise its oil and gas leasing and development decisionmaking on up-to-date and current analysis of management conditions in the UFO. Moreover, this deferral will allow the public time to fully engage and help guide agency decisionmaking on parcels included in the August 2013 lease sale.

Should you have any questions, please do not hesitate to contact me.

Sincerely,



---

Kyle Tisdel  
Megan Anderson  
WESTERN ENVIRONMENTAL LAW CENTER  
208 Paseo del Pueblo Sur, Unit 602  
Taos, New Mexico 87571  
575.751.0351  
tisdel@westernlaw.org  
anderson@westernlaw.org

**COUNSEL FOR CITIZENS FOR A HEALTHY COMMUNITY**

cc. Jim Ramey, Director  
Citizens for a Healthy Community  
PO Box 291  
Hotchkiss, Colorado 81419