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Green River Action Network
Canyon Country Rising Tide
Upper Green River Network
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August 9, 2018

Bureau of Land Management
Vernal Field Office
ATTN: Stephanie Howard
170 South 500 East
Vernal, UT 84078

Sent Via eMail: BLM_UT_Vernal_Comments@blm.gov

Re: Proposed Classification of Public Lands for State Indemnity Selection (IL 333) Surface and Mineral Estate, NEPA #: DOI-BLM-UT-G010-2014-0142-EA

Dear Ms. Howard,

Thank you for this opportunity to provide comments for the Environmental Assessment regarding the SITLA's Indemnity Selection of public land in Uintah County. This is very important to our organizations and the members that support it.

INTRODUCTION

Living Rivers & Colorado Riverkeeper is a nonprofit organization based in Moab, Utah. Moab is the county seat of Grand County and the parcel is located about 90 miles to the north. The Green River forms the western boundary of Grand County and the Colorado River flows through Moab. Living Rivers has approximately 1,200 members in Utah, Colorado, and other states. Since its inception in the year 2000, Living Rivers has been engaged in advocating for responsible management of the Colorado River system for wildlife and humans. In 2002 Living Rivers was designated as the official Colorado Riverkeeper by the Waterkeeper Alliance, which is comprised of over 300 "Waterkeepers" on six continents. Living Rivers' trustees, partners, and members live, work, and recreate on the land and waters of the Colorado River and other areas downstream of Enefit's private land holdings and SITLA's Indemnity Selection.

OIL SHALE'S DESTRUCTIVE FOOTPRINT

Enefit American Oil, an Estonian based oil shale company, owns all of the lands and minerals surrounding the parcel of land selected by SITLA for the indemnity exchange. Enefit holds the land with the express purpose of developing oil shale reserves in this area. The BLM and Enefit are currently in permitting procedure for a right-of-way through BLM land for a utility corridor to service an oil shale processing plant near the parcel in question. The only reason that SITLA would chose this parcel of land for exchange is to further their mandate to accrue revenue from state lands for their beneficiaries. There are high instances of mineable oil shale deposits in the parcel and little else to incentivize SITLA to select this property for revenue generating purposes. All of these facts demonstrate that this SITLA Indemnity Selection is related to oil shale development. We believe that the Environmental Assessment (EA) should address the possibility of large scale strip mining and oil shale development on the land because the exchange would increase the likelihood of this happening, whether it be the result of leasing by SITLA or the outright selling of the land to Enefit.

Section 5.5 of the Mineral Land Report for the State of Utah prepared for the EA states, "the parcel has a high potential for oil shale with a high degree of confidence."

In Section 6 of the same report, the author concludes that the parcel is not "Mineral in Character," mainly based on the size of the parcel and the unknown economics of oil shale production. These reasons do not constitute enough evidence to justify excluding the possibility of oil shale development on the land. The size of the parcel alone becomes irrelevant when considering that it is entirely surrounded by land already held for the purpose of mining oil shale. The size of the entire deposit underlying state and private land surrounding and including this parcel is enough to "justify expenditures of funds for a primary and secondary treatment facility to upgrade the small amount of shale oil to remove the nitrogen to reach the specifications for conventional oil."¹ In fact, Enefit is in the process of acquiring permits to build such a plant.

It is irresponsible to exclude the possibility of this parcel being mined for oil shale on economic terms alone. We have seen company after company (U.S. Oil Sands, Red Leaf Resources, Oil Shale Exploration Company (predecessor of Enefit American), Shell, Exxon Mobil and Chevron) mine for oil shale or tar sands, develop expensive processing plants, build infrastructure, and severely impact the land, only to fail because their economic logic didn't pan out. It is also uncertain if one of these companies will actually succeed in making some technological breakthrough that allows them to mine and process oil shale at a profit. This, after all, is what they are all trying to do.

¹Perkes, E. Stanley. March 1, 2018. Mineral Land Report for the State of Utah, SITLA Indemnity (In Lieu) Selection. p. 10. Accessed at https://eplanning.blm.gov/epl-front-office/projects/nepa/39206/151750/185966/Perkes_2018.pdf

While it is likely that in order to mine for oil shale in an economically feasible way, oil needs to be slightly more expensive than the current price per barrel (\$69.6 on NASDAQ, July 26th 2018), it is also important to look at larger global trends when ruling out the possibility of oil shale mining. For the past year, oil prices have been steadily rising. In July, the price of crude oil ranged from \$67 to \$72.50 on the NASDAQ.² In May CNBC reported, “Oil prices look set to temporarily hit \$90 a barrel during the first half of next year, if not sooner, and risk spiking to as much as \$100 a barrel, depending on geopolitical events and other factors, say Bank of America Merrill Lynch analysts.”³

Many factors that we can’t predict could influence the price of oil, but extremely high prices are possible in the near future. In the Environmental Assessment, the BLM used an inflation calculator and the Rand Corporation’s original estimate to conclude that oil shale surface retorting plants (including mining and processing) would unlikely be profitable unless crude oil prices were between \$91 and \$123 per barrel. Our uncertain geopolitical future leaves this as a distinct possibility.

We believe that the EA is insufficient to address the impacts of strip mining for oil shale and that an Environmental Impact Statement is required to outline the full environmental consequences of such an action. This is very important to us because this parcel is in the watershed of the Colorado River. Any strip mining, and the associated pollution, in the watershed has the potential to impact the 35 million people downstream that rely on this water. We are also concerned about the high carbon footprint of oil shale. The Colorado River Basin is predicted to sustain greater heat and drought because of climate change, so water supply will diminish as a direct result of fossil fuel development.

A technical memo and policy brief recently released by Ecoshift Consulting, LLC analyzes potential water use and carbon dioxide emissions related to the development of oil shale and tar sands in the Colorado River Basin on lands now available for leasing. There is much important technical information contained within both reports, which are hyperlinked in the footnotes below.

The Report finds that “if full commercial scale development occurs, U.S. greenhouse gas emissions from unconventional fuels alone would be over three times the United States’ total emissions in 2014; the water footprint of the United States’ unconventional fuel industry would equal between 1/5 to eight times the annual flow of the Colorado River.”⁴

² Crude Oil, WTI (NYMEX) Price. NASDAQ. Accessed at <https://www.nasdaq.com/markets/crude-oil.aspx?timeframe=1m>

³ Domm, Patti. May 10, 2018. “Oil prices risk spiking to \$100 next year, Bank of America analysts say.” CNBC (Market Analysis). Accessed at <https://www.cnbc.com/2018/05/10/oil-prices-risk-spiking-to-100-next-year-bank-of-america-analysts-say.html>

⁴ Ecoshift Consulting, LLC. April 2017. The Potential Water and Carbon Costs of Oil Shale Development in the Upper Colorado River Basin: A Policy Brief. <http://www.riversimulator.org/Resources/OSTS/EcoshiftExecutiveSummary2018.pdf>

Secretarial Order 3289, signed by Ken Salazar on September 14, 2009, directs Department of the Interior agencies, including the BLM, to consider and analyze potential climate change impacts. The Order “establishes a Department-wide approach for applying scientific tools to increase understanding of climate change and to coordinate an effective response to its impacts on the land, water, ocean, fish, and wildlife, and cultural heritage resources that the Department manages.”⁵

The BLM needs to be addressing the carbon footprint of each project and addressing this in each individual NEPA process and taking steps to limit overall greenhouse gas emissions.

THE PARCEL LIES WITHIN THE EXTERNAL BOUNDARY OF THE UINTAH AND OURAY RESERVATION

The Indemnity Selection parcel of land is located within the external boundaries of the Uintah and Ouray Reservation. The Ute Tribe recently filed a lawsuit that deals with disputed lands, water, and past royalties collected by the federal government in this area:

“Among other things, the Tribe's complaint alleges that the United States has violated (and continues to violate) federal law by treating Reservation lands as though they are owned by the United States outright, rather than in trust for the Tribe. The Tribe claims that, as a result, the United States has been “wrongfully appropriating revenue” relating to the sale or leasing of lands within the Reservation (for example, sales to the Utah School and Institutional Trust Lands Administration, “SITLA,” and leases for natural resource extraction).”⁶

This lawsuit is directly relevant to the Indemnity Selection of this parcel by SITLA. Appendix A of the EA references communications between the BLM and SITLA over this parcel:

“The Ute Tribe responded in a letter dated 8/2/2016 that they did not support the land exchange because the land is within the exterior boundaries of the Uintah and Ouray Reservation and assert ownership of those lands. The exchange was also brought up to the Ute Business Committee on 4/24/2017 and they oppose the idea.”

⁵ Secretarial Order No. 3289, (Sept. 14, 2009), https://casc.usgs.gov/sites/default/files/documents/other/SO_3289_Amended.pdf.

⁶ LeMieux, Andrew and Davis, A. John III. March 18, 2018. Ute Indian Tribe Asserts Ownership of All Federal Lands in the Uncompahgre Reservation. Holland and Heart. Accessed at <https://www.holland-hart.com/ute-indian-tribe-asserts-ownership-of-all-federal-lands-in-the-uncompahgre-reservation>

The BLM is mandated by many Secretarial Orders, Executive Orders, and other laws to “engaging in regular and meaningful consultation and collaboration with federally recognized tribes in the development of Federal policies and decisions that have tribal implications.”⁷ An extensive list of these laws can be found in BLM Manual 1780 for Tribal Relations. From Secretarial Order 3342:

“Central to the [Interior] Department’s mission is honoring and supporting the United States government-to-government relationships with tribes. Underlying this relationship is the Department’s obligation to uphold the Federal trust responsibilities to tribes.”⁸

Secretarial Order 3335 states:

“The trust responsibility consists of the highest moral obligations that the United States must meet to ensure the protection of tribal and individual Indian lands, assets, resources, and treaty and similarly recognized rights.”⁹

In the spirit of these laws and mandates, the BLM should put considerably more effort into communicating and collaborating with the Tribe to find a solution to this ongoing issue. The BLM should wait until the lawsuit between the United State and the Northern Ute Tribe is settled before furthering the exchange for this Indemnity Selection with SIT-LA. This issue is highly contentious. Furthering the exchange without proper and meaningful communication, compensation, and collaboration with the Northern Ute Tribe will only deepen the distrust that permeates the relationship between the US government and the Northern Ute Tribe.

In conclusion, we encourage the BLM to take into consideration the cumulative effects of strip mining for oil shale on this land as a result of the exchange. We believe this likelihood warrants an EIS. We also encourage stronger participation with the Ute Tribe, on whose land the project resides. As always, we encourage you to do your best at administering these lands for present and future generations. We live in critical times, and your decisions have critical consequences.

Sincerely,

⁷ United State Department of the Interior. December 15, 2016. BLM Manual 1780 Tribal Relations (P). p. 1-1.

⁸ Secretarial Order 3342. October 21, 2016. Identifying Opportunities for Cooperative and Collaborative Partnership with Federally Recognized Indian Tribes in the Management of Federal Lands and Resources. Accessed at https://www.doi.gov/sites/doi.gov/files/uploads/so3342_partnerships.pdf

⁹ Secretarial order 3335. August 20, 2014. Reaffirmation of the Federal trust responsibility to federally recognized indian tribes and individual indian beneficiaries. Accessed at <https://www.doi.gov/sites/doi.gov/files/migrated/news/pressreleases/upload/Signed-SO-3335.pdf>

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