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December 5, 2012

Brenda Hudgens-Williams
Director (210)
20 M Street SE, Room 2134LM
Washington, D.C. 20003

Re: Protest of the Proposed Land Use Plan Amendments for Allocation of Oil Shale and Tar Sands Resources on Lands Administered by the Bureau of Land Management in Colorado, Utah, and Wyoming and Final Programmatic Environmental Impact Statement[1]

Dear Ms. Hudgens-Williams:

Pursuant to 43 CFR 1610.5-2, the Center for Regulatory Effectiveness (CRE) is writing to protest the Bureau Land Management's (BLM's) *Proposed Land Use Plan Amendments for Allocation of Oil Shale and Tar Sands Resources on Lands Administered by the Bureau of Land Management in Colorado, Utah, and Wyoming and Final Programmatic Environmental Impact Statement* (hereinafter "Final PEIS").[2] CRE has an interest which is adversely affected by the amended resource management plans (RMPs). In addition, CRE participated in the planning process by submitting scoping comments to BLM,[3] comments on the draft PEIS,[4] and a white paper assessing the PEIS.[5] Thus, the CRE has standing to protest the amended RMPs. Each of the issues being protested are detailed below, with references to the parts of amendments beings protested.

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1 77 FR 67663; PEIS is available at http://ostseis.anl.gov/documents/peis2012/vol/OSTS_Volume_1.pdf s
2 *Id.*
3 Comments available here: http://www.thecre.com/oil/?p=16
4 Comments available here: http://www.thecre.com/oil/?p=160
5 White Paper is available here: http://www.thecre.com/oira/wp-content/uploads/2012/09/Evaluation-of-NGO-Oil-Shale-Comments-4....pdf

I. THE DECISION TO REVISIT THE OIL SHALE PEIS IS ARBITRARY AND CAPRICIOUS

In the Draft PEIS, BLM stated that the "purpose and need for this proposed planning action is to reassess the appropriate mix of allowable uses with respect to oil shale and tar sands leasing and potential development."[6] BLM further justifies "tak[ing] a fresh look" stating, "Chief among these [reasons] was "new information" available in 2008, including:

1. A recently completed U.S. Geological Survey (USGS) in-place assessment of oil shale and nahcolite resources in Colorado, Utah, and Wyoming,
2. A March 2010 U.S. Fish and Wildlife Service (USFWS) Notice of Petition Findings, Endangered Wildlife and Plants, 12-month Findings to List the Greater Sage-Grouse as Threatened or Endangered.
3. BLM's updated inventory of lands having wilderness characteristics (LWC) and Areas of Critical Environmental Concern (ACECs)." [7]

Each of these are addressed in more detail below:

i. USGS In-Place Assessment Of Oil Shale Resources In Colorado, Utah, And Wyoming

Although USGS has completed its in-place assessment of oil shale since the 2008 PEIS, the findings in the report do not justify amending the 2008 land use plans. In fact, the USGS report does just the opposite and actually justifies devoting additional resources to developing oil shale resources. Specifically, in the report, USGS concluded that there are 1.525 trillion barrels of oil alone in just the Piceance Basin of western Colorado—an upward increase of nearly 50% from the 1989 USGS assessment of 1 trillion barrels of oil.[8] Interestingly, despite this substantial increase of in-place oil shale, BLM specifically chose not to incorporate the USGS findings into the 2012 PEIS by failing to update and expand the study area based on USGS' report.

ii. 2010 U.S. Fish and Wildlife and Plants, 12 month Findings to List the Greater-Sage Grouse as Threatened or Endangered

The USFWS did release a finding in 2010 on the Greater-Sage Grouse, but importantly USFWS decided not to list the Greater Sage-Grouse as a threatened or endangered species,

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6 2012 Draft Oil Shale and Tar Sands Programmatic Environmental Impact Statement, pages ES-2, available at http://ostseis.anl.gov/documents/dpeis2012/vol/OSTS_VOLUME_1.pdf (hereinafter "2012 Draft PEIS").

7 2012 Draft PEIS at 1-5.

8 USGS in place assessment Fact sheet available at http://pubs.usgs.gov/fs/2009/3012/pdf/FS09-3012.pdf

because there were "higher priority listings"[9] and "because the threats have a moderate to low magnitude."[10] Moreover, the 2008 EIS thoroughly analyzed the impact of oil shale development on the Greater Sage-Grouse,[11] for which the analysis is nearly identical as that listed in the 2012 Draft PEIS.[12] Thus, absent any new findings or analyses concerning the impact of oil shale development on the Greater Sage-Grouse, BLM is not justified in amending the 2008 land use plans based on the Greater Sage-Grouse nor using it as a reason to "take a hard look" at the RMPs. As was the case with the 2008 PEIS, the additional levels of NEPA analysis at the leasing and site development stage are more than sufficient to avoid unnecessary harm to the habitat of the Greater Sage-Grouse.

iii. BLM's updated inventory of lands having wilderness characteristics (LWC) and Areas of Critical Environmental Concern (ACECs).

ACECs only account for a small proportion of land coincident with land that is designated for oil shale development. Specifically, ACECs comprised only 76,666 acres of the 2,017,714 acres of land available for oil shale leasing. Just as the ACECs and LWCs were accounted for in the 2008 PEIS, the environmental integrity of the ACECs can be preserved with the additional required NEPA analysis for the leasing and project development phases.

Accordingly, not one of the pieces of "new information" justify the decision to revisit the 2008 PEIS nor justify amending the RMPs. Especially, because all of the "new information" can be accommodated during the environmental analyses required during leasing and site development stages. What is driving BLM's decision to modify the RMPs is the lawsuit[13] and settlement agreement[14] with the Environmental NGO Coalition.[15] A lawsuit representing a

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9 U.S. Fish and Wildlife Service (USFWS) Notice of Petition Findings, Endangered Wildlife and Plants, 12-month Findings to List the Greater Sage-Grouse as Threatened or Endangered.

10 2012 Final Oil Shale and Tar Sands Programmatic Environmental Impact Statement, pages 3-202; available at http://ostseis.anl.gov/documents/peis2012/chp/OSTS_Chapter_3.pdf [hereinafter *2012 Final PEIS*]

11 2008 Final Oil Shale and Tar Sands Programmatic Environmental Impact Statement, pages 3-148 – 3-149; 4-78 – 4-80, available at http://ostseis.anl.gov/documents/fpeis/volumes/OSTS_FPEIS_Vol_1.pdf

12 2012 Draft Oil Shale and Tar Sands Programmatic Environmental Impact Statement, pages 4-124 – 4-126; available at http://ostseis.anl.gov/documents/peis2012/vol/OSTS_VOLUME_2.pdf

13 Legal complaint, *Colorado Environmental Coalition v. Salazar,* p. 31-32 (civil action No. 1:09-cv-00085-jlk (D. Col. 2011) [hereinafter *Environmental NGO Coalition Legal Complaint*].

14 BLM justifies its choice to reevaluate the land use plans with the 2012 PEIS by stating, "As part of a settlement agreement entered into by the United States to resolve the lawsuit *and in light of new information that has emerged since the 2008 OSTS PEIS was prepared*, the BLM has decided to take a fresh look at the land allocations analyzed in the 2008 OSTS PEIS and to consider excluding certain lands from future leasing of oil shale and tar sands resources." BLM, *Draft Programmatic Environmental Impact Statement and Possible Land Use Plan Amendments for Allocation of Oil Shale and Tar Sands Resources on Lands Administered by the Bureau of Land Management in Colorado, Utah, and Wyoming*, p ES-3 (2012), available at http://ostseis.anl.gov/documents/peis2012/index.cfm

special interest group's narrow perspective is clearly not a legal justification for an abrupt change in a policy, which was developed lawfully through the regulatory process and required by Congress. It is instead a blatant instance of an interest group that has circumvented the regulatory process, and public input, to achieve its narrow policy objectives. In effect, the only aim that has been achieved is greater regulatory costs and policy paralysis by analysis for BLM.

II. THE PROPOSED LAND USE PLAN AMENDMENTS ARE ARBITRARY AND CAPRICIOUS

BLM offers the following explanation for its substantial reduction in land available for oil shale and for replacing the commercial lease program with a RD&D only program:

> BLM would like to maintain focus on RD&D projects, so as to obtain more information about the technological requirements for development of oil shale, as well as the environmental implications, before committing to broad-scale commercial development. For instance, the BLM looks forward to gaining a clearer understanding of the implications of development of oil shale for water quality and quantity.[16]

Accordingly, the rationale for BLM's substantial reduction in oil shale development is to "obtain more information about the technological requirements for development of oil shale, as well as environmental implications."[17] However, the 2008 PEIS and corresponding ROD were tempered approaches to oil shale development that were designed to serve this very purpose. Specifically, the 2008 PEIS was designed to balance environmental needs with the mandate to develop commercial oil shale leasing, which the 2012 Final PEIS fails to do.

BLM found in 2008 that the Alternative selected for the 2012 Final PEIS "unreasonably fragments the area that would be available for application, resulting in parcels that are unlikely to be explored lease or developed."[18] In addition, "Alternative C [the Alternative selected in 2012] was not selected as the Proposed Plan Amendment because the alternative would not make the ―most geologically prospective lands in Colorado, Utah and Wyoming as available for

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15 The plaintiffs in the lawsuit included: Colorado Environmental Coalition, Western Colorado Congress, Wilderness Workshop, Biodiversity Conservation Alliance, Southern Utah Wilderness Alliance, Red Rock Forests, Western Resource Advocates, National Wildlife Federation, Center For Biological Diversity, The Wilderness Society, Natural Resources Defense Council, Defenders Of Wildlife, and Sierra Club [hereinafter *Environmental NGO Coalition*].

16 2012 Final Oil Shale and Tar Sands Programmatic Environmental Impact Statement, pages ES-9; available at http://ostseis.anl.gov/documents/dpeis2012/vol/OSTS_VOLUME_1.pdf [hereinafter *2012 Final PEIS*]

17 *Id.*

18 Bureau of Land Management, *Record of Decision: Oil Shale and Tar Sands Resources Resource Management Plan Amendments*, page 22 November 17, 2008, available at http://www.blm.gov/pgdata/etc/medialib/blm/wo/MINERALS__REALTY__AND_RESOURCE_PROTECTION_/energy.Par.23588.File.dat/OSTS_ROD.pdf (emphasis added).

application for leasing. ***Thus it is not fully consistent with the mandate of the Energy Policy Act of 2005***. Much of the most geologically prospective acreage would be excluded under Alternative C…In addition, this unreasonably fragments the area that would be available for application, resulting in parcels that are unlikely to be explored, leased, or developed."[19]

The 2008 land allocations for oil shale do nothing more than lay the foundation for future commercial oil shale development. It is not the final policy statement, nor is it the final statement of the environmental impacts of oil shale development. Thus, it is disingenuous to conclude that the 2008 PEIS "is deficient" where BLM has prescribed subsequent NEPA analyses to be conducted when reasonably foreseeable issues become "ripe."

The analyses for the 2008 and 2012 PEIS are notably consistent. The major difference between NEPA documents are the outcomes, which is a direct result of the lawsuit filed by the Environmental NGO Coalition. NEPA is a procedural law, not a substantive law. Thus, challenges to Environmental Impact Statements can only allege that the agency has failed to comply with necessary NEPA procedures. Third parties cannot challenge the outcome that the agency arrived at after its analysis and prevail. In the present case, the Environmental NGO Coalition effectually challenged the conclusions reached by BLM in the 2008 PEIS. This resulted in an abrupt change in a policy that has been enacted pursuant to a Congressional statute and the regulatory process.

It is insightful to recall BLM's initial reasoning in its 2008 PEIS Record of Decision (ROD) explaining why it chose the 2008 land allocations for oil shale. BLM justified its decision in the 2008 ROD (alternative B in the 2008 PEIS; no-active alternative in the 2012 PEIS):

> ***Rationale for Selection:*** Alternative B for oil shale was selected as the Proposed Plan Amendment based on: 1) its consistency with the requirements of the Energy Policy Act of 2005, 2) its balanced use and protection of resources, 3) the FPEIS's analysis of potential environmental impacts, and 4) the comments and recommendations from cooperating agencies and the public.
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> Alternative B is structured to be consistent with the congressional mandate of the Energy Policy Act to emphasize the ―most geologically prospective lands in Colorado, Utah and Wyoming as available for application for leasing. Alternative B, therefore, identifies and offers the most geologically prospective acreage (based on grade and thickness of the oil shale deposits) of the Green River

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[19] Bureau of Land Management, *Record of Decision: Oil Shale and Tar Sands Resources Resource Management Plan Amendments*, page 22 November 17, 2008, available at http://www.blm.gov/pgdata/etc/medialib/blm/wo/MINERALS__REALTY__AND_RESOURCE_PROTECTION_/energy.Par.23588.File.dat/OSTS_ROD.pdf (emphasis added).

Formation located in the Piceance, Uinta, Green River, and Washakie Basins of Colorado, Utah, and Wyoming. As compared with Alternative C, Alternative B makes more Federal oil shale available for application, and provides for fewer fragmented tracts. Alternative B also provides for more contiguous tracts that could be configured for economically and technically feasible extraction or recovery of the resources. Alternative B would also allow access to more of the most geologically prospective oil shale lands, particularly in Colorado.

Unlike Alternative C, which excludes lands based on existing management decisions for oil and gas development, Alternative B provides the decisionmaker with the discretion to balance the oil shale use and protection of resources on the public lands during subsequent site-specific NEPA analysis. This balanced approach is consistent with FLPMA principles of ―multiple use, and ―sustained yield. The requirement to perform future NEPA analyses and to comply with other environmental laws allows the decisionmaker to optimize the recovery of energy resources, to establish appropriate lease stipulations to mitigate anticipated impacts, or to fully protect a resource or resource value by choosing not to offer an area for lease at any particular time. Even if some technologies may not allow mining of some tracts to proceed without unacceptable impacts to other resource values, Alternative B would allow the agency the opportunity to choose to offer leases when a technology is proposed that can be used compatibly with the resource values in question. This is consistent with the comments that supported a viable and sustainable commercial oil shale leasing program, while ensuring that any impacts to sensitive resources or resource values are mitigated to any commercial development. It is also consistent with the planning decisions for other mineral resources for these parcels which authorize leasing subject to restrictive conditions, rather than preclude leasing altogether.

Alternative B does, however, exclude certain lands within the most geologically prospective oil shale areas under the basis of existing laws and regulations, executive orders and other administrative designations or withdrawal. These include WSAs, National Monuments, WSRs, NCAs, and existing ACECs that are closed to mineral development.[20]

[20] Bureau of Land Management, *Record of Decision: Oil Shale and Tar Sands Resources Resource Management Plan Amendments*, page 16-17 November 17, 2008, available at http://www.blm.gov/pgdata/etc/medialib/blm/wo/MINERALS__REALTY__AND_RESOURCE_PROTECTION_/energy.Par.23588.File.dat/OSTS_ROD.pdf.

Also worthy of note, in the 2008 ROD, BLM also argued against Alternative C, which happens to be nearly the same as BLM's chosen Alternative in the 2012 PEIS. Specifically, BLM argued against what is now its selected Alternative:

> ***Rationale for Non-Selection:*** Alternative C was not selected as the Proposed Plan Amendment ***because the alternative would not make the ―most geologically prospective lands in Colorado, Utah and Wyoming as available for application for leasing. Thus it is not fully consistent with the mandate of the Energy Policy Act of 2005. Much of the most geologically prospective acreage would be excluded under Alternative C***…In addition, this unreasonably fragments the area that would be available for application, resulting in parcels that are unlikely to be explored, leased, or developed. This could be an impediment to sound and rational development of the resource and can reduce the economic return to the public. If oil shale resources are by-passed because of the exclusions in Alternative C, that could also limit the benefits to the nation from exploitation of a domestic unconventional energy source.
>
> Selection of alternative C precipitously limits or restricts the decisionmaker's discretion to balance oil shale use and the protection of resources or resource values, in accordance with FLPMA's principal of ―multiple use.…***It would be premature to eliminate areas prior to site-specific analysis based on factors that are not known now, but that would be known at the leasing or operation permitting stages,*** such as location, timing and type of oil shale technology, that may show that these resources could be adequately protected through mitigation. Unlike Alternative B, Alternative C does not give the decisionmaker the necessary discretion to optimize the recovery of energy resources, establish appropriate lease stipulations to mitigate anticipated impacts, or to fully protect a resource or resource value by choosing not to offer an area for lease.[21]

The 2008 PEIS was a measured approach taken to balance environmental considerations with the congressional mandate to devise a commercial leasing program. BLM specifically chose the 2008 PEIS (no-action alternative) on the basis that there would be two additional stages of environmental analysis before any commercial development of oil shale could occur. Accordingly, the 2012 no-action alternative does not commit BLM to "broad scale commercial development" nor does it preclude BLM from fully understanding all of the environmental

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[21] Bureau of Land Management, *Record of Decision: Oil Shale and Tar Sands Resources Resource Management Plan Amendments*, page 22 November 17, 2008, available at http://www.blm.gov/pgdata/etc/medialib/blm/wo/MINERALS__REALTY__AND_RESOURCE_PROTECTION_/energy.Par.23588.File.dat/OSTS_ROD.pdf (emphasis added).

implications of oil shale development. As such, the unjustified shift by BLM in the 2012 PEIS is arbitrary and capricious.

III. THE PROPOSED LAND USE PLAN AMENDMENTS VIOLATE THE 2005 ENERGY POLICY ACT

In the 2012 Final PEIS, BLM states that it "would like to maintain focus on RD&D projects, so as to obtain more information about the technological requirements for development of oil shale, as well as the environmental implications, before committing to broad-scale commercial development."[22] However, the Energy Policy Act of 2005 requires that "the Secretary shall complete a programmatic environmental impact statement for a commercial leasing program for oil shale and tar sands resources on public lands, with an emphasis on the most geologically prospective lands within each of the States of Colorado, Utah, and Wyoming."[23] The 2012 Final PEIS is not a PEIS for commercial oil shale development as required by the Energy Policy Act of 2005. It is instead a PEIS to develop a RD&D leasing program. This is a clear violation of a mandatory obligation set forth by Congress.

Moreover, the Energy Policy Act of 2005 requires the Secretary to consult with state and local governments to determine if there is sufficient support for a lease sale under the commercial leasing program. If there is sufficient support, then the Secretary may then conduct a commercial lease sale. Under the 2012 PEIS, state and local governments will never be afforded the opportunity to consult with the Department of Interior regarding commercial lease sales, because there is no commercial leasing program created by the 2012 PEIS. Thus, this is also a violation of the Energy Policy Act of 2005.

Furthermore, the Energy Policy Act of 2005 mandates the Department of the Interior to develop a commercial leasing program "with an emphasis on the most geologically prospective lands." Even if the RD&D first requirement does marginally constitute developing a commercial leasing program, BLM still ignores the statutory requirement that the commercial leasing program is based upon the "most geologically prospective lands." The 75% reduction in land available under the 2012 PEIS is a clear disregard for statutory requirement that a leasing program be focused on the most geologically prospective lands."

Ironically, BLM need only look to its own findings to conclude that the 2012 Alternative "is not fully consistent with the mandate of the Energy Policy Act of 2005." In the 2008 ROD, BLM argued against the alternative it selected in the 2012 PEIS. Specifically, BLM argued:

> Alternative C [Alternative selected in the 2012 Final PEIS] was not selected as the Proposed Plan Amendment because the alternative would not make the ―most geologically prospective lands in Colorado, Utah and Wyoming as available for application for leasing. ***Thus it is not fully consistent with the***

[22] 2012 Final Oil Shale and Tar Sands Programmatic Environmental Impact Statement, pages ES-9; available at http://ostseis.anl.gov/documents/dpeis2012/vol/OSTS_VOLUME_1.pdf

[23] Energy Policy Act of 2005, P.L. 109–58, § 369.

> ***mandate of the Energy Policy Act of 2005***. Much of the most geologically prospective acreage would be excluded under Alternative C.[24]

Thus, BLM admittedly, is in agreement that the 2012 Final PEIS violates the Energy Policy Act of 2005.

IV. THERE ARE ADEQUATE WATER SUPPLIES TO SUSTAIN OIL SHALE DEVELOPMENT

The Environmental NGO Coalition that initiated the 2012 PEIS process with its lawsuit challenging the 2008 PEIS, views water availability for oil shale development as the primary basis for not pursuing oil shale development in the United States. The Coalition asserts, "Water resources in the West are scarce and under increasing pressure from development. In Colorado and Utah, water will be largely, if not completely spoken for by 2050, the timeline the BLM projects industry could develop large-scale oil shale or tar sands operations."[25] Unfortunately, the Coalition is unable to support this proposition with any data. While it is important to be cautious about resource availability and its competing uses, the Environmental NGO Coalition's assertion also contradicts the data incorporated into the PEIS by BLM. Both the 2008 PEIS, 2012 Draft PEIS, and 2012 Final PEIS conclude that there will be a water surplus of 340,348 (ac-ft/yr) in 2000 and 268,425 (ac-ft/yr) in 2030 in Colorado.[26]

Water availability also served as a primary justification for bringing the lawsuit by the Environmental NGO Coalition. The complaint contended that "commercial oil shale development will impact water supplies, as water dedicated to this use will increase stress on a resource already over taxed by other activities....[And] commercial oil shale development will cumulatively impact water supplies by contributing to global warming."[27] Likewise, reports issued by Western Resource Advocates offer cautionary language about water usage and oil shale development.[28] While extracting oil from oil shale would require significant amounts of water, there is no evidence that the water usage required would be unsustainable or problematic.

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24 Bureau of Land Management, *Record of Decision: Oil Shale and Tar Sands Resources Resource Management Plan Amendments*, page 22 November 17, 2008, available at http://www.blm.gov/pgdata/etc/medialib/blm/wo/MINERALS__REALTY__AND_RESOURCE_PROTECTION_/energy.Par.23588.File.dat/OSTS_ROD.pdf (emphasis added).

25 Western Resources Advocates, et al., *Comments: 2012 Draft Oil Shale and Tar Sands PEIS*¸ April 27, 2012 [hereinafter *Environmental NGO Coalition 2012 PEIS Comments*] (this comment was drafted by many of the same organizations that were parties to the 2011 lawsuit challenging the 2008 PEIS).

26 2012 Draft PEIS, at 3-67; 2012 Final PEIS at 3-72.

27 *Id.*

28 Western Resource Advocates, Oil Shale 2050: Data, Definitions, and What You Need to Know About Oil Shale in the West, p 21, available at http://www.westernresourceadvocates.org/oilshale2050/WRA-OilShale2050.pdf.

Of great importance, in the 2012 Draft PEIS, BLM has not identified the water usage required for the development of oil shale as a justification to revisit the 2008 land use plans.[29] Moreover, there has been no developments or research between the 2008 and 2012 PEIS that justify altering the 2008 land allocations based on water availability. Both the 2008 Final PEIS and the 2012 Final PEIS use the same assumptions and analyses regarding water usage for oil shale development. For example, both the 2008 PEIS and 2012 Final PEIS assume (based on a 2005 study by the Rand Corporation) that the in-situ process would require 1-3 bbl of water per barrel of oil shale produced; and that 2.6-4.0 bbl of water per barrel of oil shale produced would be required for a surface mine and surface retort.[30] Likewise, both the 2008 PEIS and 2012 Final PEIS find that production levels of 50,000 bbl of oil per day would require 7,050 acre-ft/year of water.[31]

Nevertheless, none of these assumptions factor in current and future technological advancements. For instance, Red Leaf Resources has recently stated that the company uses less than half barrel of water to produce a barrel of oil.[32] Red Leaf further explains that the amount of water required for oil shale production is unrelated to the technology used to produce the oil shale, but is instead required for dust control and to meet on-site worker demand.[33]
While the water requirements for oil shale production should not be overlooked it is also necessary to have some perspective, especially with the competing uses for water. In particular, a 23,800 bbl oil/day production facility would require the same amount of water daily as a golf course in a desert region, such as Palm Springs.[34] Palms Springs has fifty seven (57) golf courses. Fifty-seven (57) oil shale production facilities could produce 1,356,600 bbl oil/day. Thus, the same amount of water consumed for Palm Springs golf courses could produce 1.35 million barrels of oil per day.

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[29] 2012 Draft Oil Shale and Tar Sands Programmatic Environmental Impact Statement, pages 1-5, available at http://ostseis.anl.gov/documents/peis2012/vol/OSTS_VOLUME_2.pdf. The reasons stated in the April 14, 2011 Notice of Intent mirror the reasons outlined in the 2012 PEIS. Notably, BLM does not cite water issues as being a justification for "taking a hard look" or a "fresh look" at the land use plans finalized in the 2008 PEIS.

[30] 2012 Final PEIS at 4-35.

[31] 2012 Final PEIS at 4-11.

[32] Amy Joi O'Donoghue, *Oil Shale Project Approved*, KSL, April 1, 2012, available at http://www.ksl.com/?nid=960&sid=19773270

[33] *Id.*

[34] Frank Deford, *Water-Thirsty Golf Courses Need to Go Green*, National Public Radio, June 11, 2008, available at http://www.npr.org/templates/story/story.php?storyId=91363837 (stating "Audubon International estimates that the average American course uses 312,000 gallons per day. In a place like Palm Springs, where 57 golf courses challenge the desert, each course eats up a million gallons a day." Based on the assumption of Red Leaf's technology that only requires 1 barrel of water to produce 1 barrel of oil, 1,000,000 gallons of water per day could produce 1,000,000 gallons of oil per day, the equivalent of 23,809 barrels of oil per day.

Accordingly, BLM's statement that it "looks forward to gaining a clearer understanding of the implications of development oil shale for water quality and quantity," does not serve as a justification for the Amended RMPs in the 2012 PEIS where neither the data or analysis has changed since 2008.[35]

V. BLM HAS FAILED TO COMPLY WITH THE DATA QUALITY ACT

The scientific data and studies relied upon and disseminated in the 2012 Final PEIS are subject to the Data Quality Act (DQA). The Office of Management and Budget's (OMB) government-wide data quality guidelines, implementing the DQA, requires that agencies establish a pre-dissemination review process to "substantiate the quality of the information it [the agency] has disseminated...."[36] In discussing the need for the pre-dissemination review process, OMB explains, "Agencies shall treat information quality as integral to every step of an agency's development of information, including creation, collection, maintenance, and dissemination."[37] Thus, the pre-dissemination review process is far more than a simple tick-list of steps that are applied to existing data to determine if it is ready for release. *The pre-dissemination review is an essential quality assurance process that takes place throughout the development and analysis of information disseminated by an agency.*

Accordingly, BLM needs to verify that the information complies with the DQA standards as part of its pre-dissemination review process. The DQA and its general government-wide guidance require that data used by an agency adhere to the "rigorous standards of objectivity, integrity, and utility." Under BLM DQA guidelines:

> Before disseminating information to members of the public, the originating office must ensure that the information is consistent with OMB and DOI guidelines and must determine that the information is of adequate quality for dissemination. If the information is influential, financial, scientific, or statistical information, then the BLM will provide a higher level of review of conclusions of the program offices and the program managers and senior management will be responsible for ensuring accountability for reviewing information to be disseminated to the public.[38]

While numerous agencies (such as the Department of Transportation and the Environmental Protection Agency) maintain pre-dissemination review records,[39] there is no

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35 2012 Final PEIS at page ES-9.

36 67 FR 8459

37 *Id.*

38 Bureau of Land Management, Information Quality Guidelines, page 10 (Feb 2012) available at http://www.blm.gov/pgdata/etc/medialib/blm/national/national_page.Par.7549.File.dat/guidelines.pdf

39 The Center for Regulatory Effectiveness, *A Library of Agency Pre-Dissemination Review Programs*, available at http://thecre.com/pdf/20121011_Pre-disseminationReviewLibrary.pdf

evidence that BLM has conducted any pre-dissemination review to ensure that the information in the PEIS is consistent with OMB and DOI guidelines and that it is of adequate quality for dissemination.

Moreover, in addition to failing to conduct a pre-dissemination review, BLM also has relied on information that does not meet the quality standards required by the DQA. The DQA and BLM guidelines require that BLM ensures and maximizes the "objectivity, utility, and integrity of disseminated information."[40] "'Objectivity' focuses on whether the disseminated information is being presented in an accurate, clear, complete, and unbiased manner, and as a matter of substance, is accurate, reliable, and unbiased. 'Integrity' refers to the protection of information from unauthorized access or revision, to ensure that the information is not compromised through corruption or falsification 'Utility' refers to the usefulness of the information to the intended users, including the public."[41]

BLM fails to maximize the objectivity, utility, and integrity of disseminated information by relying on numerous outdated, irrelevant, and unsubstantiated studies. Specifically, BLM fails to consider technological improvements by relying on the assumption that 2.6 to 4 bbl of water will be required per barrel of oil shale produced. As discussed in the preceding Section, these figures are not based on sound science and, thus, fail to meet the DQA requirements. In addition, in determining the amount of wastewater that will result from oil shale production, BLM cites an unnamed study by the Department of Interior dating back to 1973.[42] These are a few of the numerous instances of DQA violations that plague the 2012 Final PEIS.

VI. CONCLUSION

As demonstrated above, the conclusions in the 2012 PEIS are arbitrary and capricious, violate the 2005 Energy Policy Act of 2005, violate the DQA, and are not based on the sound science regarding water usage. Thus, the CRE requests that BLM vacate the findings in the 2012 PEIS and do not amend any of the relevant RMPs.

Respectfully submitted,

Jim Tozzi
Member, Board of Advisors
Center for Regulatory Effectiveness

40 Bureau of Land Management, Information Quality Guidelines, page 7 (Feb 2012) available at http://www.blm.gov/pgdata/etc/medialib/blm/national/national_page.Par.7549.File.dat/guidelines.pdf

41 *Id.*

42 2012 Final PEIS, page 4-3, FN e.