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Submitted electronically at ostseis.anl.gov

Bureau of Land Management Oil Shale and Tar Sands Programmatic Environmental
Impact Statement
Argonne National Laboratory EVS/900
9700 South Cass Avenue
Argonne, Illinois 60439

*Re: Comments on the Draft Oil Shale and Tar Sands Resource Management Plan
Amendments to Address Land Use Allocations in Colorado, Utah, and Wyoming and
Programmatic Environmental Impact Statement*

The following comments on the *Draft Oil Shale and Tar Sands Resource Management Plan Amendments to Address Land Use Allocations in Colorado, Utah, and Wyoming and Programmatic Environmental Impact Statement* (OSTS DPEIS) are submitted on behalf of the National Wildlife Federation, the Wyoming Wildlife Federation, and the Colorado Wildlife Federation (Wildlife Federations). As an organization, the National Wildlife Federation (NWF) represents the power and commitment of four million members and supporters joined by affiliated organizations in 47 states and territories. NWF and its affiliates have a long history of working to conserve the wildlife and wild places on federal public lands in the West. Many members of NWF and its affiliates use the lands and resources that will be impacted by the oil shale and tar sands extraction discussed in the OSTS DPEIS. The Wildlife Federations appreciate this opportunity to submit these comments to the Bureau of Land Management.¹

INTRODUCTION

The National Environmental Policy Act (NEPA) does not specifically address programmatic environmental impact statements (EISs). Council on Environmental Quality (CEQ) regulations at 40 CFR §1502.4(b) refer to EISs for broad actions. However, CEQ regulations and guidance discuss this topic only briefly and in very general terms. Courts, therefore, have played a significant role in fleshing out these concepts over time. While many major unresolved issues remain regarding the precise components of programmatic NEPA documents, there is a legal consensus that these EISs perform at least two important functions. First, programmatic EISs, by taking a broad view avoid segmenting environmental analyses of common concerns by analyzing them in the entire program or suite of related or similar actions. Second, programmatic NEPA documents can also be the most effective tool for addressing cumulative environmental impacts. Such programmatic documents thus have a global focus on environmental concerns that cut across programs and/or are shared by related or similar actions or plans.² Unfortunately, the OSTS DPEIS performs neither of these programmatic functions, particularly with respect to its treatment of the potential wildlife impacts of opening two million acres of public land to oil shale and tar sands development. The OSTS DPEIS contains almost no discussion of the cumulative impacts of the potential total loss of these lands to wildlife. Moreover, it invites the Bureau of Land Management (BLM) to segment its environmental analysis of those impacts by indicating that any assessment of those impacts will be done only when individual leases for oil shale or tar sands projects are issued.

¹ In addition to these comments, NWF joins in those filed by Western Resource Advocates.

² Programmatic EISs may be followed by site- or mission-specific documents. The follow-on NEPA documents do not have to provide detailed analyses of the shared environmental concerns addressed in the programmatic documents. The time, effort and resources for the follow-on documents can, thus, focus principally on smaller elements of the program or an individual action of concern but only if the programmatic document adequately and thoroughly addresses cumulative and connected impacts.

Because the OSTs DPEIS fails to perform either function of a programmatic EIS, the document also fails to provide guidance for any meaningful policy decisions. The document itself acknowledges that BLM lacks sufficient information on oil shale and tar sands extraction technologies to craft a commercial leasing policy. The agency has deferred that decision. The OSTs DPEIS instead proposes to amend twelve federal land and resource management plans in Colorado, Utah, and Wyoming to make lands available for whatever commercial leasing policy is adopted in the future. Unfortunately, the document provides insufficient information to support the proposed plan amendments as well.

RESOURCE MANAGEMENT PLANNING

According to BLM “a plan-level decision to open the lands to mineral leasing represents BLM’s determination, based on the information available at the time, that it is appropriate to allow development of the parcel consistent with the terms of the lease, laws, regulations, and orders, and subject to reasonable conditions of approval.” BLM Handbook H-1601-1, Appendix C at 24. However, the OSTs DPEIS contains no such determination with respect to oil shale and tar sands. BLM’s current guidance on oil shale leasing and land use planning requires its Resource Management Plans (RMPs) specifically to identify the following:

1. Areas open to leasing, subject to existing laws, regulations, and formal orders; and the terms and conditions of the standard lease form.
2. Areas open to leasing, subject to moderate constraints such as seasonal and controlled surface use restrictions. (These are areas where it has been determined that moderately restrictive lease stipulations may be required to mitigate impacts to other land uses or resource values.)
3. Areas open to leasing, subject to major constraints such as no-surface-occupancy stipulations on an area more than 40 acres in size or more than 0.25 mile in width. (These are areas where it has been determined that highly restrictive lease stipulations are required to mitigate impacts to other lands or resource values. This category also includes areas where overlapping moderate constraints would severely limit development of fluid mineral resources.)
4. Areas closed to leasing. (These are areas where it has been determined that other land uses or resource values cannot be adequately protected with even the most restrictive lease stipulations; appropriate protection can be ensured only by closing the lands to leasing.) Identify whether such closures are discretionary or nondiscretionary; and if discretionary, the rationale.
5. Resource condition objectives that have been established and specific lease stipulations and general/typical conditions of approval and best management practices that will be employed to accomplish these objectives in areas open to leasing.
6. For each lease stipulation, the circumstances for granting an exception, waiver, or modification. Identify the general documentation requirements and any public notification associated with granting exceptions, waivers, or modifications.

7. Whether the leasing and development decisions also apply to geophysical exploration.
8. Whether constraints identified in the land use plan for new leases also apply to areas currently under lease.
9. Long-term resource condition objectives for areas currently under development to guide reclamation activities prior to abandonment.

BLM Handbook H-1601-1, Appendix C at 23-24. The RMP amendments proposed in the OSTs DPEIS contain none of this information. In fact, there is no description of lease terms at all because those decisions have been deferred. OSTs DPEIS at 2-15 to 2-16.

Of course, it is understandable that BLM is unable to make these determinations at this time since it lacks the relevant information to do so. For example, after consulting with cooperating agencies, BLM concluded that, because it lacked sufficient information regarding the commercial viability of extractive technologies for both oil shale and tar sands, trying to anticipate a certain level of development would be too speculative. However, a detailed description of Reasonably Foreseeable Development (RFD) is precisely what is required by BLM's own land use planning guidance before RMPs can be adopted that open lands to mineral leasing. *See, e.g.*, BLM Handbook H-1601-1, Appendix F-4 at 18 (In the chapter on environmental consequences, draft and final RMPs/EISs must include "reasonably foreseeable development scenarios" for all uses.).

Without any information on the level of oil shale or tar sands development the opening of these lands will set in motion, it is impossible to determine whether the other management goals set forth in these RMPs can be met.³ Resource Management Plans, however, are required to provide adequate information not just on the plan's objectives but also on how those objectives will be reached. BLM's Land Use Planning Handbook states that "[l]and use plan decisions establish goals and objectives for resource management (i.e. desired future conditions), the measures needed to achieve those goals and objectives, and the parameters for using BLM lands. They identify lands that are open or available for certain uses, including any applicable restrictions, and lands that are closed to certain uses." BLM Handbook H-1601-1 at 11. "Land use plans must identify the actions needed to achieve desired outcomes, including actions to maintain, restore or

³ With respect to wildlife management goals, however, the OSTs DPEIS explicitly admits that these goals will not be met under Alternative B, BLM's Preferred Alternative:

To identify those lands that would be excluded on the basis of existing land use plan decisions, the BLM considered the possible impacts associated with individual commercial oil shale development projects. On the basis of these impact analyses, described in Chapter 4, it was determined that commercial oil shale development could be in conflict with existing land use plan decisions that require surface-disturbance restrictions or seasonal limitations on activities in order to adequately protect a specific resource. It was decided to exclude from Alternative C all lands where such surface-disturbance and seasonal limitations are in place to protect known sensitive resources.

OSTs DPEIS at 2-27 to 2-28.

protect land health.” *Id.* at 13. The RMPs amended by this document cannot meet these requirements.

Consistency with State Plans and Policies

FLPMA requires that BLM’s land use plans be consistent with officially approved resource related plans of State and local governments as well as Indian tribes. 43 U.S.C. § 1712(c)(9); *see also* 43 C.F.R. § 1610.3-2; BLM Handbook H-1601-1 11 (“Land use plans must be consistent with state and local plans to the maximum extent consistent with Federal law.”). There is no discussion in the OSTs DPEIS as to whether the proposed RMP amendments are consistent with the resource management goals of the impacted states and local governments. For example, it is the official policy of the Wyoming Game and Fish Commission that crucial habitat for wildlife species within the State should be managed to prevent “any loss of habitat function.” Wyoming Game and Fish Commission Policy No. VII H (April 28, 1998) at 138. Some modification of crucial habitat is permitted but only if “habitat function is maintained (i.e., the location, essential features, and species supported are unchanged).” *Id.* Pursuant to the RMP amendments proposed in Wyoming, 362,792 acres of mule deer crucial winter habitat and 262,273 acres of elk crucial winter habitat will be opened to oil shale development. Pursuant to FLPMA, the OSTs DPEIS must include a discussion of how that development will be conducted in a manner that results in no net loss of those habitats.

WILDLIFE

BLM has a duty to protect the diversity of all native wildlife on public lands.⁴ Habitat fragmentation, connectivity and other factors affecting biological diversity are inherently landscape-level considerations. Protecting biological diversity can only be dealt with appropriately at the programmatic or planning level. This is the only way to ensure biological diversity is preserved and that ecosystem attributes are not “nickel and dimed” to death by individually small but cumulatively significant site-specific projects. The project level is simply too small a scale for adequate exploration of impacts to the health of large ecosystems. Yet, this is precisely the course of action BLM proposes in the OSTs DPEIS.

⁴ FLPMA requires public land management to protect ecological and other values, and also requires that the lands be managed for multiple use and sustained yield. 43 U.S.C. §§ 1701(a)(7)-(8). NEPA requires BLM to fulfill its trustee obligation for future generations, assure productive surroundings, avoid environmental degradation, preserve important natural aspects of our national heritage, and enhance the quality of renewable resources. 42 U.S.C. §§ 4331(b)(1)-(6). The Clean Water Act establishes the objective of restoring and maintaining the chemical, physical, and biological integrity of the Nation’s waters. 33 U.S.C. § 1251. The Endangered Species Act establishes the purpose of conserving the ecosystems upon which threatened and endangered species depend. 16 U.S.C. § 1531(b). BLM’s livestock grazing standards and guidelines establish measures of ecological health applicable not only to livestock grazing, but to resource management generally. *See* 43 C.F.R. subpt. 4180. Read together, these and other legal standards establish that BLM must ensure the ecosystems it manages are fully protected so as to enhance biological diversity.

Because it lacks any usable information on the number of oil shale and tar sands projects industry might choose to pursue over the next twenty years or what technologies industry might use to conduct individual projects or where those projects might take place, BLM has deferred any meaningful analysis of the potential landscape-level impacts of that development. The discussion of impacts on wildlife consists of nothing more than a list of the “kinds” of impacts that an individual oil shale and tar sands project might cause, such as loss of habitat and mortality, without any analysis of the cumulative effect all oil shale and tar sands development, together with oil and gas drilling, livestock grazing and recreational uses, will have on wildlife. The OSTIS DPEIS has instead relegated any such analysis to future decisions regarding the issuance of individual leases.

With respect to big game, for example, the document admits that mortality from a single oil shale or tar sands project may be “large” defined as an impact that “would extend beyond the project area, could affect more than 50% of a local population, and result in a large measurable change (50% or more) in carrying capacity or population size in the affected area.” OSTIS DPEIS, Table 4.8.1-1 at 4-67. However, because the OSTIS DPEIS provides no information on the projected number or locations of such projects, there is no way of knowing how many “areas” will be “affected” or how many “local populations” of big game will suffer these huge declines.

According to the OSTIS DPEIS, most oil shale and tar sands projects will disturb 100 percent of the leased surface. See OSTIS DPEIS, Table 4.1.1-1 at 4-4, Table 4.1.2-1 at 4-8, Table 4.1.3-1 at 4-11.⁵ In other words, these projects will completely eliminate the value of those lands as wildlife habitat.⁶ In the arid environs where oil shale and tar sands development is being proposed, “reclamation to functional systems similar to that found pre-disturbance will take in excess of 50 years (Baker 2006).” Comments submitted by A. William Alldredge, Ph.D. at 4. Therefore, habitats disturbed by oil shale and tar sands development would be unavailable for decades even after reclamation has been initiated.”⁷ *Id.* Moreover, contrary to the suggestion of the OSTIS DPEIS, impacts on most wildlife are not proportional to the amount of habitat lost. *Id.* “Habitat is not all created equal, some areas of habitat are simply more valuable than others.” *Id.* Winter

⁵ With respect to both surface mines and in situ projects, “[i]t is assumed that the entire lease area will be disturbed during the 20-year time frame analyzed” in the DPEIS. With respect to underground mines, it is assumed that 1650 acres, or more than a quarter of each leased area will be covered by surface facilities and spent shale disposal.

⁶ A common misconception is that wildlife just moves somewhere else. The truth is that most wildlife habitat is already occupied and cannot support refugees displaced from other locations. See Comments submitted by A. William Alldredge at 6.

⁷ The OSTIS DPEIS’s attempt to suggest that impacts on wildlife will be mitigated by reclamation is unavailing at best and disingenuous at worst. See, e.g., OSTIS DPEIS at 4-66. Neither the life of the project nor the extent of the surface disturbance is stated. The length of time required for full reclamation is not discussed nor is the full extent of the projected spatial disturbance within important wildlife habitats. Moreover, “industry has yet to demonstrate that they can and will successfully reclaim habitats disturbed by energy development.” Comments of A. William Alldredge at 6.

range, for example, is considered a limiting factor for big game species.⁸ According to the OSTs DPEIS, at least 735,000 acres of mule deer winter habitat, including 78,093 acres of mule deer critical winter range; 31,479 acres of mule deer migration corridors; 649,700 acres of elk winter habitat; and 190,478 acres of elk production area is at risk. *See, e.g.*, OSTs DPEIS, Table 6.1.2-6 at 6-52; *see also* Comments submitted by the Colorado Department of Natural Resources.

Over half a million acres of identified sage-grouse habitat is also at risk.⁹ Sage-grouse are on the verge of requiring listing under the Endangered Species Act. They have declined precipitously range-wide. Declines have been estimated at over 50% in occupied area and up to 80% decline in bird abundance, with complete extirpation in several states. A federal court recently concluded that energy development in the eastern reaches of sage-grouse range, including Wyoming and Colorado, poses a significant threat to sage-grouse. *Western Watersheds Project v United States Fish and Wildlife Service*, No. CV-06-277-E-BLW, slip op. at 13 (D. Id. December 4, 2007). Leks, nesting habitat, and winter concentration areas are all vital to the continued viability of sage-grouse.

Based upon the information that is contained in the OSTs DPEIS, oil shale and tar sands development poses a huge threat to wildlife, including species that already are on the verge of disappearing. Hundreds of thousands of acres of vital wildlife habitats may be “occupied” by oil shale and tar sands projects to the exclusion of all other uses, including wildlife, perhaps for generations. Reclamation does not address this loss because habitat functions will not be restored for decades. Moreover, none of the other mitigation measures discussed in the OSTs DPEIS will reduce the impact of this loss because none of the measures currently in BLM’s toolbox were designed to redress a use that destroys and then occupies such vast amounts of land surface.

Wildlife Mitigation Measures Are Inadequate

The discussion of wildlife mitigation in the OSTs DPEIS is inadequate. First, it consists of nothing more than a list of measures that might be employed. *See* OSTs DPEIS at 4-103 to 4-106. Second, these measures simply are not up to the task of mitigating the impacts of oil shale and tar sands development on wildlife.¹⁰ With respect to the impacts of human activities on big game, for example, BLM traditionally has relied on seasonal restrictions such as limiting human access to winter ranges from mid-November to the

⁸ The mule deer die-off in Gunnison, Colorado this past winter provides a real-life example of what happens when big game are unable to access lands where snowfall does not accumulate and forage remains available.

⁹ In Colorado, under Alternative B, 6,506 acres of greater sage grouse leks, with a .6 mile buffer, would be available for commercial leasing. In addition, 125,563 acres of greater sage grouse production areas (with a 4-mile radius from leks) would be open to commercial leasing. *See* Comments submitted by the Colorado Department of Natural Resources.

¹⁰ BLM admits that it has not actually assessed either the “magnitude of impacts” nor “the applicability and effectiveness of mitigation measures”. OSTs DPEIS at ES-7.

end of April. *See* OSTIS PEIS at 4-106. However, limiting the construction activities associated with oil shale and tar sands projects to the summer months provides no protection for big game. When the animals return to the winter range in November, they will find their habitat has been hauled away, is covered with waste shale, or is devoid of vegetation.

The OSTIS DPEIS also references BLM's Best Management Practices (BMPs). OSTIS DPEIS at 2-6. However, most of BLM's wildlife BMPs are directed at limiting the surface disturbance associated with oil and gas development. They include such measures as directional drilling and clustering associated infrastructure in order to reduce the footprint of oil and gas development on wildlife habitat. *See also* OSTIS DPEIS at 4-104. Yet, BLM assumes that most oil shale and tar sands operations will either drill or mine 100 percent of the surface of the leased area.

There simply is no "effective" mitigation for some habitat losses resulting from oil shale, tar sands, and other forms of energy development.¹¹ For example, BLM states in the Final Environmental Impact Statement for the Jack Morrow Hills Coordinated Activity Plan (JMHCAP FEIS) that it may be impossible to reclaim some sagebrush habitats. JMHCAP FEIS at 4-74. Migration corridors for big game have been lost permanently to development. Animals are driven off of crucial ranges onto lands that will not support them. *See* Comments submitted by A. William Alldredge.

Greater Sage-grouse Protections Are Inadequate¹²

BLM itself has designated the Greater sage-grouse as a "sensitive" species.¹³ In doing so, the agency made a commitment to use "all methods and procedures which are necessary to improve the condition of special status species and their habitats to a point where their special status recognition is no longer warranted."¹⁴ BLM Manual 6840 at .01.

¹¹ BLM's latest tool for addressing the impacts of intensive oil and gas development is off-site mitigation, essentially an attempt to re-create lost habitat somewhere else. The Wildlife Federations are concerned about the increasing reliance on off-site mitigation and trust accounts as a way to authorize irreparable habitat losses. No off-site mitigation proposal should be accepted without a thorough assessment of: 1) the availability of other habitat, 2) the feasibility of long-term restoration/enhancement/protection of alternative habitat, and 3) the adequacy of funding to sustain the alternative habitat for the life of the project (including time required for final reclamation standards to be achieved). Notably, the OSTIS DPEIS contains no such assessment.

¹² This discussion focuses on the Greater sage-grouse as just one of many sagebrush-obligate species that are threatened by the potential losses of this habitat type posed by oil shale and tar sands development within Colorado, Utah, and Wyoming. Widespread degradation of the sagebrush ecosystem in the western United States, including the invasion of cheatgrass, has prompted resource managers to consider a variety of approaches to restore and conserve habitats for sagebrush-associated species. *See* Krissman (2006). However, the impacts of oil shale and tar sands development have not been calculated.

¹³ Sensitive species are those species that:

(1) could become endangered in or extirpated from a State, or within a significant portion of its distribution; (2) are under status review by the FWS and/or NMFS; (3) are undergoing significant current or predicted downward trends in habitat capability that would reduce a species' existing

Scientific data has shown that even a minimal level of development within 3-5 km of a sage-grouse lek negatively influences breeding activity. In fact, recent information from a doctoral dissertation on the impacts of oil and gas development to Greater sage-grouse on the Pinedale Anticline in Wyoming revealed that, as development increased, lek activity declined up to 100%. Holloran (2005). Based on these findings, both Holloran (2005) and Connelly *et al.* (2000) recommend implementing at least a 5 km buffer around active sage-grouse leks.

Despite these recommendations, a ¼-mile NSO buffer around known sage-grouse leks remains BLM's mitigation measure of choice.¹⁵ The Wildlife Federations do not believe that this buffer is adequate to conserve Greater sage-grouse and their habitat. The United States Fish and Wildlife Service repeatedly has stated that this ¼-mile buffer should not be considered as appropriate mitigation for sage-grouse.¹⁶

Based upon a memorandum analyzing the most recent research on sage-grouse, no more than one well pad per section should be permitted within two miles of sage-grouse leks. In addition, seasonal restrictions should apply from March through June in mapped breeding habitats or within four miles of active leks and NSO buffers should be applied to wintering habitats. *See* State wildlife agencies ad hoc committee for sage-grouse and oil and gas development. 2008. *Using the best available science to coordinate conservation actions that benefit greater sage-grouse across states affected by oil and gas development in Management Zones I-II (Colorado, Montana, North Dakota, South Dakota, Utah and Wyoming)*. Unpublished report. Colorado Division of Wildlife, Denver; Montana Fish, Wildlife and Parks, Helena; North Dakota Game and Fish

distribution; (4) are undergoing significant current or predicted downward trends in population or density such that federal listed, proposed, candidate, or State listed status may become necessary; (5) typically have small and widely dispersed populations; (6) inhabit ecological refugia or other specialized or unique habitats; or (7) are State listed but which may be better conserved through application of BLM sensitive species status.

BLM Manual 6840 (Glossary of Terms at 8).

¹⁴ Approximately half of the remaining sage-grouse habitat is under BLM jurisdiction and management; therefore, BLM land plays a significant role in the conservation of sage-grouse and other sagebrush-dependent wildlife species. BLM, National Sage-Grouse Habitat Conservation Strategy (November 2004) at 7.

¹⁵ The Wildlife Federations strongly suggest that BLM review the sage-grouse mitigation measures proposed in other western states. For example, the State of Colorado is revising its sage-grouse conservation strategy. The ¼-mile NSO buffer for leks is not part of that proposal.¹⁵ Instead, Colorado's Division of Wildlife has proposed a buffer of 0.6 miles. *See* Draft Colorado Greater Sage-grouse Conservation Plan, Appendix B at B-6 (June 15, 2007) [available at <http://wildlife.state.co.us/WildlifeSpecies/SpeciesOfConcern/Birds/GreaterSagegrouseConservationPlan.htm>]. The State of Montana's Fish Wildlife and Parks Department has pushed to expand closed areas to four miles for the seasonal restrictions and one mile for the year-round closures.

¹⁶ *See* Comments filed by the United States Fish and Wildlife Service on the Decision Record for the Red Rim POD (Quarter mile NSO "should not be considered a mitigation measure.").

Department, Bismarck; Utah Division of Wildlife Resources, Salt Lake City; Wyoming Game and Fish Department, Cheyenne. BLM has no such mitigation measures for sage-grouse. However, even if BLM were to adopt the recommendations developed by multi-state committee of wildlife agencies, the use of seasonal restrictions in breeding habitats impacted by oil shale or tar sands development would be of little efficacy.

Pursuant to BLM policy, “[l]and use plans shall be sufficiently detailed to identify and resolve significant land use conflicts with special status species without deferring conflict resolution to implementation-level planning.” BLM Manual 6840 at .21J. The RMP amendments proposed in the OSTs DPEIS fail to meet this requirement. In fact, they specifically defer resolution of the obvious conflicts between sage-grouse and oil shale and tar sands development until the leasing or project approval stage.

Alternative C and Wildlife

In the OSTs DPEIS, Alternative C is presented as BLM’s attempt to:

identify those lands that would be excluded on the basis of existing land use plan decisions, the BLM considered the possible impacts associated with individual commercial oil shale development projects. On the basis of these impact analyses, described in Chapter 4, it was determined that commercial oil shale development could be in conflict with existing land use plan decisions that require surface-disturbance restrictions or seasonal limitations on activities in order to adequately protect a specific resource. It was decided to exclude from Alternative C all lands where such surface-disturbance and seasonal limitations are in place to protect known sensitive resources. The BLM made the determination that the most effective means of identifying lands that should be excluded on this basis was to exclude those lands within each field office where stipulations for no surface disturbance or seasonal limitations are in place for oil and gas leasing. Under this alternative, the BLM would place a priority on protecting known sensitive resources within each field office by excluding certain lands from application for leasing.

OSTs DPEIS at 2-27 to 2-28. While the Wildlife Federations welcome this attempt and agree that the lands identified in the tables on pages 2-33 and 2-49 should be off-limits to commercial oil shale and tar sands leasing, the list of lands is incomplete. Resource managers and the public have had no opportunity to consider whether oil shale or tar sands extraction would be incompatible with other land management objectives. For example, many lands designated as Areas of Critical Environmental Concern (ACECs) are not closed to all surface-disturbing activities. At the time of designation, it was assumed that the sensitive resources within these ACECs could withstand some level of disturbance from oil and gas drilling or other human activity. Oil shale and tar sands

development represents quite a different level of surface disturbance, one that is irreconcilable with the protection of most other resource values.¹⁷

With respect to sage-grouse, much of the vital habitat has not been identified and mapped by either BLM or state wildlife agencies. *See, e.g.*, OSTs DPEIS, Table 6.1.2-6 at 6-52. With respect to many other wildlife species, there is simply no usable data regarding the location and condition of important habitats. As for big game, winter range traditionally has been considered the limiting factor, however, significant losses of summer and/or transitional ranges as a result of oil shale and tar sands projects could also pose threats to the continued vitality of big game populations. Because the OSTs DPEIS contains no information regarding the migration and use patterns of big game herds, it is impossible to estimate those impacts. *See* Comments submitted by A. William Alldredge. However, conservation of big game populations and distributions may require additional ranges be set off-limits.¹⁸

CONCLUSION

It is only impossible for BLM to make any predictions regarding how and where future oil shale and tar sands development will occur because the agency refuses to exert the authority it has to control the pace and direction of private activities on the lands it manages. Nothing in the Mineral Leasing Act or the Energy Policy Act of 2005 requires BLM to issue oil shale and/or tar sands leases wherever industry might choose. The leases it issues can contain stipulations on the time, place, and manner of both exploration and development. BLM has the power to suspend existing leases or to re-acquire the mineral rights under lease. It has the authority to condition its approval of mining and drilling permits. The public lands are subject to the whims of industry and the market only because BLM has chosen to make them so.

FLPMA demands that BLM develop its own vision for the public lands, one that includes sustainable wildlife populations. The policy set forth in the OSTs DPEIS of allowing the industry to nominate and then lease and develop lands helter-skelter across federal public lands should be abandoned.¹⁹ Instead, a revised draft of this document should examine alternatives that call for staged development in which some blocks of lands are open to leasing, some are permanently off-limits, and others are temporarily withdrawn from

¹⁷ The Wildlife Federations assert that all “special management areas”, including all ACECs should be off-limits to oil shale and tar sands leasing, in the absence of an affirmative finding by BLM that oil shale or tar sands extraction would be compatible with the current management objectives for those areas.

¹⁸ Colorado, Utah, and Wyoming all have game management plans as well as population goals and Memoranda of Understanding (MOUs) with the Department of the Interior regarding the achievement of those goals. The OS DPEIS should address how the proposed RMP amendments are consistent with those management plans and MOUs.

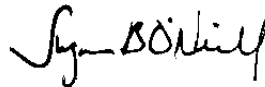
¹⁹ This appears to be the one policy determination the OSTs DPEIS makes and it does so on the basis of no supporting documentation with respect to potential impacts on the environment of allowing oil shale and tar sands development to be undertaken in such a chaotic manner.

leasing and development until a later time.²⁰ In addition, the RMP amendments should impose reasonable measures to minimize adverse impacts to other resources, including placing sensitive wildlife habitats off-limits to leasing. In the absence of better information about potential impacts, the revised document should require a cautious approach to development with monitoring adequate to ensure that predicted impacts to environmental resources have not been exceeded and that mitigation measures are sufficient.²¹

The sole alternative supported by the analysis contained in the OSTs DPEIS is Alternative A.



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²⁰ See *Northern Plains Resource Council v. U.S. Bureau of Land Management*, No. CV 03-69-BLG-RWA (D. Mt. Feb. 25, 2005) (“BLM’s failure to analyze a phased development alternative renders the [BLM’s Final Statewide Oil and Gas Environmental Impact and Proposed Amendments to Resource Management Plans in Montana] inadequate.”).

²¹ The Wildlife Federations note that, while it was recommended that BLM adopt an alternative grounded in the carrying capacity of the public lands and resources, the agency refused to do:

A number of commentors suggested that the BLM consider the potential impacts of oil shale development within the context of the carrying capacity of the regional and local environment and economies. The carrying capacity of a system is the maximum level of activity that can be sustained within a specific area without significant, detrimental impact. The White River RMP (BLM 1997b) established carrying-capacity thresholds specific to oil shale development and potential impacts on air quality, socioeconomic impacts, big game habitat, and water quality. Carrying-capacity thresholds have not been established anywhere else within the three-state study area. Although the programmatic alternatives do not explicitly consider carrying-capacity thresholds nor propose that commercial leasing levels be constrained in the future by these thresholds, they do require that additional site-specific NEPA analyses be conducted prior to the issuance of commercial leases. At that time, when complete information is available defining the location of the commercial development, technologies to be employed, scale of operations, and time line for development, analyses can more reliably define appropriate carrying-capacity thresholds and evaluate potential impacts.

OSTS DPEIS at 2-53. Still, BLM left those thresholds in place within the White River Resource Area. The Wildlife Federations believe similar thresholds should be in place for all of the Resource Areas potentially impacted by oil shale and tar sands development before any leases are issued.