April 21, 2006

VIA EMAIL & CERTIFIED MAIL
RETURN RECEIPT REQUESTED

U.S. Bureau of Land Management
Bakersfield Field Office
Attn: Nora DeDios
3801 Pegasus Dr.
Bakersfield, CA 93308
ndedios@ca.blm.gov

Re: Comments on the Environmental Assessment for Leasing Certain Parcels Within the Bakersfield Field Office for the June 14, 2006 Oil and Gas Lease Sale (EA No. CA-160-06-057)

Dear Ms. DeDios:

Los Padres ForestWatch and the Center for Biological Diversity submit the following comments on the Environmental Assessment ("EA") for leasing certain parcels within the Bakersfield Field Office of the Bureau of Land Management ("BLM") for the June 14, 2006 oil and gas lease sale. We submit these comments on behalf of our members, our staff, and members of the public with an interest in protecting the natural resources of the Los Padres National Forest, the Carrizo Plain National Monument, the Bitter Creek National Wildlife Refuge, and nearby public and private lands with mineral resources administered by the BLM.

Los Padres ForestWatch ("ForestWatch") is a non-profit 501(c)(3) organization working to protect and restore the natural and cultural heritage of the Los Padres National Forest and surrounding lands through community involvement, scientific collaboration, and legal advocacy. The Center for Biological Diversity ("Center") is a non-profit, public interest environmental organization dedicated to the protection of native species and their habitats through science, policy, and environmental law. Our members regularly use and enjoy these lands for hiking, backpacking, hunting, fishing, photography, wildlife viewing, scientific study, and other recreational, aesthetic, and educational purposes. We ask that you carefully consider this area's unique recreation, rare plants and animals, wildlife habitat, and scenic values before deciding to irretrievably commit these important and undeveloped lands to oil and gas development.

The BLM proposes to lease over 20,800 acres of public and private land for oil and gas development in Kings, Kern, Ventura, Santa Barbara, and San Luis Obispo counties. Several of the parcels are near environmentally sensitive areas such as the Los Padres National Forest, the

Carrizo Plain National Monument, the Bitter Creek National Wildlife Refuge, the Cuyama River, and several Areas of Critical Environmental Concern. Every single one of these parcels contains rare plants and animals – such as the San Joaquin kit fox, the blunt-nosed leopard lizard, the California condor, steelhead, and the California jewelflower – that are protected by federal and/or state laws and regulations. Some of the parcels identified for leasing also contain prime farmland, floodplains, and serve as gateways to popular recreation areas like the Dick Smith Wilderness Area in the Los Padres National Forest, and the Carrizo Plain National Monument. Most of the parcels are located in rural areas with undeveloped character, where oil development does not currently occur. Oil exploration and drilling would introduce excessive air and water pollutants, as well as a host of roads, transmission wires, pipelines, and oil derricks, into areas completely unsuitable for these types of intensive development activities.

Because of the importance of these lands to recreation, scenic enjoyment, clean air and water, heritage resources, rare plant and animal habitat, and scientific study, it is of the utmost importance that your agency adequately documents the environmental damage that will be caused by intensive oil and gas operations in these areas. *It is also important to involve interested members of the public – such as landowners, conservation organizations, and expert agencies – at the earliest possible stage of the process to assist your agency in determining ways to reduce environmental damage.*

Unfortunately, the EA prepared by the BLM falls far short of these important standards. The BLM failed to properly notify the public and expert agencies about the availability of the environmental documentation. Nor does the EA contain an adequate description and analysis of the environmental setting, consequences, alternatives, or mitigation measures as required by our nation's longstanding environmental protection laws. The agency fails to incorporate the high level of scientific integrity required by the National Environmental Policy Act, and relies on several outdated studies to arrive at inaccurate and unsubstantiated conclusions.

For these reasons, we insist that the agency prepare a full Environmental Impact Statement before proceeding with the lease sale. We also urge the BLM to more fully involve the public in the process. Please provide each of the undersigned organizations with a copy of all subsequent versions of the EA/EIS, the Finding of No Significant Impact, the Decision Record, and any other NEPA documentation associated with this lease sale.

1. The BLM Failed to Properly Notify Interested Parties About the Availability of the Environmental Assessment and Comment Period

The public process provided by BLM on this action is wholly inadequate and fails to abide by the letter and intent of the National Environmental Policy Act (NEPA). The NEPA directs that all federal agencies "shall to the fullest extent possible…[e]ncourage and facilitate public involvement in decisions which affect the quality of the human environment." 40 C.F.R. § 1500.2(d). To achieve this goal, agencies shall "[p]rovide public notice of NEPA-related hearings, public meetings, and the availability of environmental documents *so as to inform those persons and agencies who may be interested or affected. In all cases the agency shall mail notice to those who have requested it on an individual action.*" 40 C.F.R. § 1506.6(b).

a. The BLM Failed to Notify All Interested and Affected Parties of the Availability of the EA and of the Public Comment Period

On August 11, 2005, ForestWatch wrote to the BLM requesting notification of all future BLM oil and gas lease sales in the BLM's Bakersfield district, including this particular lease sale. In that letter, ForestWatch also requested "any other public notices related to oil and/or gas activities within your jurisdiction, *such as notices of public comment periods, notices of availability of environmental documents,* and any documents notifying the public of decisions made by your agency," (emphasis added).

This request was intended to notify the BLM of ForestWatch's interest in oil and gas drilling operations and proposals on lands within the jurisdiction of the Bakersfield Field Office. It was also intended to notify the BLM that ForestWatch, and its members, would be affected by oil and gas leasing, exploration, and drilling operations.

Despite ForestWatch's obvious status as an "interested or affected" party under NEPA, the BLM failed to notify ForestWatch of the availability of this EA and the beginning of the thirty-day comment period. ForestWatch did not become aware of the EA and comment period until stumbling upon it on the agency's website several days into the comment period. The BLM's failure to notify ForestWatch of the comment period effectively denied ForestWatch from participating fully in this process, and violates NEPA.

This is not the first time that the BLM has failed to properly notify the public in accordance with legal requirements, and the BLM's continued disregard for public input is particularly troubling in light of the high environmental sensitivity of these lands. Most of the parcels studied for leasing in the EA are the very same parcels that were offered at the December 2005 lease sale. ForestWatch filed an administrative protest of that lease sale, and as your agency is well aware, the BLM cancelled the lease sale in response to their protest. Coincidentally, the reason for cancellation was that the BLM failed to properly notify the public about the proper procedures to challenge the lease sale. Clearly, the BLM was at all times fully aware of ForestWatch's interest in the proposed action, and BLM's failure to notify us of the availability of the EA is a serious violation of the law and the public's trust.

This oversight effectively prevented ForestWatch, its members, and other partner organizations such as CBD from fully participating in the public process. This violates the BLM's own internal guidance (BLM NEPA Handbook H-1790-1), which states on p. IV-6 that "a copy of the EA and FONSI must be provided to individuals and organizations who requested one. Copies should also be provided to individuals and organizations affected by or known to have an interest in the action."

b. The BLM Failed to Provide EA Supporting Documents to the Public

On April 17, 2006, ForestWatch submitted a written request to the BLM for several documents that were specifically referenced in the EA. These documents would help ForestWatch and other partner organizations prepare meaningful and helpful comments on the EA, and to provide helpful suggestions to reduce or eliminate environmental damage associated with oil leasing. Jeff Kuyper, ForestWatch executive director, expressed his intent to drive three hours to pick up

these documents in person from the BLM's Bakersfield Field Office the following day, further evidencing the urgent nature of the request.

The BLM did not provide a response to ForestWatch's request until five days later, and only one day before the end of the comment period, even though ForestWatch emphasized on several occasions that time was of the essence. BLM refused to provide ForestWatch with most documents, even though these documents were specifically referenced in the EA. BLM also notified ForestWatch that it would charge $0.13 per page to copy the remaining documents.

"[T]he very purpose of NEPA…is to 'ensure [] that federal agencies are informed of environmental consequences before making decisions and that the information is available to the public.'" Citizens for Better Forestry v. USDA, 341 F.3d 961, 970-71 (9th Cir. 2003). See also 40 C.F.R. §§ 1500.1(b) ("public scrutiny [is] essential"); 1500.2(d) (the agency must "encourage and facilitate public involvement"); 1501.4 (the agency must "involve the public, to the extent practicable, in preparing [EAs]"); 1506.6 (the agency must "make diligent efforts to involve the public" in preparing environmental documents, give "public notice of…the availability of environmental documents so as to inform those persons…who may be interested or affected," and "solicit appropriate information from the public.") Moreover, supporting documents "shall be provided to the public *without charge* to the extent practicable." 40 CFR § 1506.6 (emphasis added).

The BLM violated every single one of these obligations by denying access to the requested documents, waiting until the last day of the comment period to even provide a response, and charging fees.

c. The BLM Should Make the FONSI Available for Public Review Before Making a Final Determination

The FONSI should be available for public review for 30 days before the agency's final determination when there is a reasonable argument for preparation of an EIS, when it is an unusual case, a new kind of action, or a precedent setting case, when there is either scientific or public controversy over the proposal, or when it involves a proposal which is or is closely similar to one which normally requires preparation of an EIS. (Sections 1501.4(e)(2), 1508.27). Agencies also must allow a period of public review of the FONSI if the proposed action would be located in a floodplain or wetland. E.O. 11988, Sec. 2(a)(4); E.O. 11990, Sec. 2(b); *see also* the Council on Environmental Quality's *NEPA's Forty Most Asked Questions*, § 37(b).

Appellants contend, for the reasons stated below, that a "reasonable argument" could be made for the preparation of an EIS, that there is both scientific and public controversy over the proposal, and that this proposal is similar to ones which normally require preparation of an EIS. For these reasons, *at a minimum* the BLM should make the FONSI available for public review and comment for thirty days *before* issuing the decision.

For these reasons, the BLM should re-issue the EA and FONSI, properly notify ForestWatch and other interested or affected parties of its availability, and reinstate the public comment period to fully encourage public involvement as required by NEPA.

2. The BLM Must Prepare a Full Environmental Impact Statement

The Forest Service must prepare an EIS for all "major Federal actions significantly affecting the quality of the human environment." 42 U.S.C. § 4332(C). A major federal action "includes actions with effects that may be major and which are potentially subject to Federal control and responsibility." 40 C.F.R. § 1508.18(a) (emphasis added). Indisputably, this includes the proposed action to lease over 20,000 acres of sensitive land for oil exploration and development.

An EIS can be avoided only if the federal action will have "no significant impact" on the environment. 40 C.F.R. § 1501.4(e). On the other hand, an EIS is required if there are "substantial questions whether a project may have a significant effect." LaFlamme v. Federal Energy Regulatory Comm'n, 852 F.2d 389, 397 (9th Cir. 1988). The BLM NEPA Handbook (page I-2) states that "[a]ctions normally requiring an EIS (516 DM 6, Appendix 5) and other actions whose impacts are expected to be significant and which are not fully covered in an existing EIS must be analyzed in a new or supplemental EIS. *An EIS should also be prepared if, after or during preparation of an EA, it is determined that the impacts of the proposed action are significant,*" (emphasis added).

Because the proposed lease sale will most certainly have significant effects, and because these effects are not fully analyzed in the EIS for the Caliente Resource Management Plan ("RMP"), the BLM must prepare a full EIS before proceeding with this particular lease sale.

a. The Proposed Leasing May Cause Significant Environmental Impacts, and the BLM Should Proceed With Preparation of a Full EIS

The BLM's proposed lease sale may have significant effects in light of the context and intensity of the proposed action. *See* 40 C.F.R. § 1508.27 ("Significantly" as used in NEPA requires considerations of both context and intensity"). The BLM is proposing to lease over 20,000 acres, and these individual parcels are spread out over a much larger area.

The context of this action is extremely broad and therefore necessitates the preparation of an EIS. The BLM is proposing to lease over 20,800 acres of land across five separate counties – Kings, Kern, Ventura, Santa Barbara, and San Luis Obispo counties. These 36 parcels are not concentrated in a single area; rather, they are spread out over a 3,000 square mile area (not including the Ventura parcel or the Kings County parcel). The broad geographic scope of the proposed action requires preparation of an EIS.

The intensity and severity of the environmental impacts also demonstrate the need to prepare an EIS (40 C.F.R. § 1507.27(b)):

i. Leasing the parcels will significantly affect public health by contributing to excessive levels of air pollution to an area that is already in non-compliance with air quality standards.

The EA correctly concludes that each of the four air basins affected by the proposed leasing is in non-attainment for at least one ambient air pollutant. The San Joaquin Valley and Ventura County are in non-attainment for state and federal PM_{10}, $PM_{2.5}$, and ozone (San Joaquin Valley is an *extreme* non-attainment area for the federal 1-hour ozone standard and a serious non-attainment area for the 8-hour ozone standard and PM_{10}). San Luis Obispo County is in non-attainment for PM_{10}, Santa Barbara County for PM_{10} and ozone.

The EA predicts that leasing all 20,800 acres would result in the development of only 20 new wells and that:

> this would generate an estimated emission of less than 1,000 pounds of PM10 emissions and less than 1200 pounds of NO_x per year. These emissions would be scattered between the five air districts. These emissions are well below deminimus emission levels for the pollutants…and insignificant in light of the 1000-2000+ new wells that are drilled in these areas every year, along with the very large volume of automobile and truck traffic and significant other industrial and agricultural sources.

EA at pp. 22-23. The EA fails to provide citations for any of the assumptions in this analysis. The EA states that these numbers are "based on existing estimates for oil and gas development" but fails to disclose what these existing estimates are or the nature of the underlying data. The statement that the emissions would be "scattered between the five air districts" is misleading, since most of lands (and thus most of the air pollution) would be concentrated in the San Joaquin Valley and Santa Barbara County.

The BLM's characterization of these new emissions as "deminimus" is incorrect. The emissions, collectively and possibly individually, would exceed the de minimus threshold. Any emissions in nonattainment areas must be considered a significant impact, both individually and cumulatively. The San Joaquin Valley has particularly poor air quality with serious adverse consequences for human health as discussed below. In this context, the proposed action's direct and cumulative air quality impacts cannot be dismissed. The degree to which the proposed action affects public health must be considered in evaluating the intensity of the action's impact. 40 C.F.R. § 1508.27(b)(2).

ii. The geographic area covered by the proposed action contains unique characteristics such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, and ecologically critical areas.

The unique characteristics of the geographic area affected by the proposed action must also be considered in determining the intensity of the action's impact. 40 C.F.R. § 1508.27(b)(3). The area affected by the proposed action contains a rich assemblage of Native American rock art, sacred lands and rockforms, and village sites from three Native American cultures, including the Yokut, Chumash, and Salinan. The EA states that "[p]rehistoric sites common to this region include pictograph rock art, bedrock mortar and millingstone food processing stations, lithic

scatters, and village or hamlet sites." EA at p. 18. The EA goes on to admit that a "very limited amount" of surveys have been conducted on the subject parcels, defers further analysis to the site-specific level, and contains no analysis whatsoever of the environmental consequences of oil drilling to culturally and historically significant sites. Because the locations of – and impacts to – these heritage sites are unknown, the BLM cannot conclude that there will be no significant impacts. Preparation of an EIS is warranted in situations like these that require further study and analysis of potentially significant impacts.

Several of the subject parcels are located in close proximity to parklands like the Los Padres National Forest and the Carrizo Plain National Monument. Four parcels totaling 5,964.6 acres (Parcels 22, 24, 25, and 26) share a boundary with the Los Padres National Forest. Another four parcels totaling 1,876.27 acres (Parcels 8, 20, 23, and 33) share a boundary with the Carrizo Plain National Monument. Another six parcels totaling 2,344.01 acres (Parcels 21, 27, 28, 29, 36, and 37) are within one mile of these parklands. All together, there are 14 parcels totaling 10,184.88 acres that are within one mile or less of these parklands. *Thus, nearly one-half of the 20,800 total acres that are the subject of the proposed lease sale are in extremely close proximity to parklands.*

Both the Cuyama Valley and the San Joaquin Valley contain prime farmlands. Many of the subject parcels are located within close proximity to these farmlands. According to the EA, "over 90 percent of parcels 28 and 37 are under current or recent agricultural cultivation" (p. 8); Parcel 7 is "within an area previously (and possibly now) under cultivation" (p. 11); Parcels 1, 2, 3, 4, and 5 "are currently or previously in cultivation" (p. 12); Parcel 32 "is under active cultivation with row crops" (p. 13); Parcels 11 and 13 "are either currently in cultivation or bear evidence of recent cultivation" (p. 13); and Parcel 10 "shows evidence of cultivation" including recent cultivation (p. 16). The EA does not disclose whether these farmlands are considered "prime." The BLM, in preparing an EIS, should consult with the U.S.D.A. Natural Resource Conservation Service to determine whether any of the lands qualify as prime farmlands as that term is defined in 7 U.S.C. § 4201(c)(1)(C) ("land that has the best combination of physical and chemical characteristics for producing food, feed, fiber, forage, oilseed, and other agricultural crops with minimum inputs of fuel, fertilizer, pesticides, and labor, and without intolerable soil erosion.")

The area also contains several ecologically critical areas. The Forest Service has declared the entire Upper Cuyama River Valley as an "Area of High Ecological Significance" (AHES) because it contains "unique topography and habitats and contains relictual populations" of several plant and animal species. This designation extends outside of national forest lands to encompass part or all of Parcels 24, 25, 26, and 26. These AHESs are "key places" that include "critical habitats for rare and vulnerable species, areas of high ecological integrity, and locations with unique ecological associations. Primarily they are places where a number of ecologically significant features overlap. Thus, the need for effective stewardship of these areas is particularly important…. The purpose of highlighting thee places is to increase public and

agency awareness of their regional significance. They are key parts of the ecological heritage of southern California and should be recognized as such."[1]

Finally, the parcels proposed for leasing are in close proximity to several "ecologically critical areas" that the BLM has designated as "Areas of Critical Environmental Concern." According to the RMP, ACECs include lands "where special management attention and direction is needed to protect and prevent irreparable damage to important…fish, or wildlife resources or other natural systems or processes" and indicates "significant" ecological values of the area. The EA states that "[t]here are several lease sale parcels that are adjacent to ACECs" including the Lokern, Chico Martinez, and Carrizo Plain National Monument ACECs. Several of the parcels are in close proximity to these ecologically critical areas, further evidence than an EIS is warranted in this case.

iii. The environmental effects of leasing the parcels are highly controversial.

The BLM must also consider the degree to which the proposed action's environmental effects are likely to be highly controversial. 40 C.F.R. § 1508.27(b)(4). The high level of controversy surrounding the BLM's proposed lease sale should come as no surprise. ForestWatch filed a protest over most of these very same parcels just five months ago. Oil drilling on parcels that contain habitat for threatened and endangered plants and animals, rare cultural heritage resources, in air quality non-attainment basins, and within the viewsheds of several popular recreation areas are controversial.

It is also representative of increasing controversy and public opposition to oil drilling on public lands across the West. According to the federal government's General Accounting Office, the total number of drilling permits approved by BLM has more than tripled in the last five years, from 1,803 in 1999 to 6,399 in 2004.

Many of the parcels proposed for leasing are split-estate (the surface is privately-owned and the sub-surface mineral rights are federally-owned). Because of the controversy surrounding the impacts of split-estate leasing on privately-owned lands, Congress recently directed the BLM to undertake a review of current policies surrounding split-estate leasing as part of the Energy Policy Act of 2005. The Act directed the BLM to consult with private property owners while undertaking this review, and as a result, the BLM received over 3,000 public comments revealing the high level of public controversy surrounding split-estate leasing. These comments are incorporated by reference into this letter.

iv. Leasing the parcels will establish a precedent for future actions like exploration and drilling with significant effects, and represents a decision in principle about a future consideration.

The BLM must also consider the degree to which the proposed action may establish a precedent for future actions with significant effects or represents a decision in principle about a future

[1] Stephenson, John R.; Calcarone, Gena M. 1999. Southern California mountains and foothills assessment: habitat and species conservation issues. General Technical Report GTR-PSW-175. Pacific Southwest Research Station, Forest Servce, U.S. Department of Agriculture; 402pp.

consideration in evaluating the intensity of the action's impact. 40 C.F.R. § 1508.27(b)(6). Leasing a parcel of land is the first step in the oil and gas exploration and development process on federal lands. Once a lease is issued, the lessee has contractual rights and the BLM does not have the right to deny an application for permit to drill. *See* 43 CFR 3101.1-2. Clearly, leasing these parcels will establish a precedent for future actions like exploration and drilling, with potentially significant effects. Making these lands available for oil and gas exploration and drilling also represents a decision in principle about a future consideration. Therefore, an EIS is warranted in this case.

v. Leasing the parcels is related to other actions with individually insignificant but cumulatively significant impacts, and it is reasonable to anticipate a cumulatively significant impact on the environment.

NEPA requires consideration of whether the action is related to other actions with individually insignificant but cumulatively significant impacts in determining the intensity of the action's impact. 40 C.F.R. § 1508.27(b)(7). The environmental document must include an analysis of all effects of the proposed action, including cumulative impacts from other related activities. 40 C.F.R. § 1508.8 (effects include ecological, aesthetic, historical, cultural, economic, social or health impacts, whether direct, indirect, or cumulative). NEPA defines a "cumulative impact" as

> the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions, *regardless of what agency* (Federal or non-Federal) *or person* undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

40 C.F.R. § 1508.7 (emphasis added). If the combination of these cumulative effects would result in significant impacts to the human environment, the Forest Service must prepare a full EIS. Inland Empire Public Lands Council v. Schultz, 992 F.2d 977, 981 (9th Cir. 1993).

Under NEPA, the Forest Service is required to analyze all environmental impacts of the proposed action, including direct, indirect, connected, and cumulative effects. 42 U.S.C. § 4332(C)(i); 40 C.F.R. § 1508.25. Direct effects that are actually caused by the proposed action, indirect effects "are caused by the action and are later in time or farther removed in distance, *but are still reasonably foreseeable*," connected effects "are interdependent parts of a larger action and depend on the larger action for their justification," and cumulative effects "is the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions." See generally 40 C.F.R. § 1508.

In the context of oil and gas leasing on federal lands, courts have interpreted these provisions of NEPA to require a "comprehensive" analysis of the "successive, interdependent steps culminating in oil and gas development and production," including the "effects of oil and gas activities beyond the lease sale phase." Connor v. Burford, 848 F.2d 1441, 1444-45 (9th Cir. 1988). Thus, "the government's inability to fully ascertain the precise extent of mineral leasing in a national forest is not . . . a justification for failing to estimate what those effects might be . .

." Id. at 1450. If the BLM cannot provide a meaningful evaluation of such effects, it should—at the most—only approve NSO leases. Sierra Club v. Peterson, 717 F.2d 1409, 1415 (D.C. Cir. 1983).

The EA fails to meet NEPA's cumulative effects mandate. NEPA demands that such analysis be not only comprehensive, but detailed and quantified. See Lands Council v. Powell, 379 F.3d 738, 745 (9th Cir. 2004) (NEPA analysis "must give a sufficiently detailed catalogue of past, present, and future projects, and provide adequate analysis about how these projects, and differences between the projects, are thought to have impacted the environment."); Neighbors of Cuddy Mountain v. United States Forest Service, 137 F.3d 1372, 1379 (9th Cir. 1998)("To 'consider' cumulative effects, some quantified or detailed information is required. Without such information, neither the courts nor the public, in reviewing the [agency's] decisions, can be assured that the Forest Service provided the hard look that it is required to provide.").

NEPA, however, demands far more than merely mentioning the likelihood of future oil and gas operations. An assessment of cumulative effects must include a "useful analysis," including "discussion and an analysis in sufficient detail" to assist the agency in its decisionmaking process and its efforts to avoid environmental impacts. Churchhill County v. Norton, 276 F.3d 1060, 1080 (9th Cir. 2001), citing Muckleshoot Indian Tribe v. U.S. Forest Service, 177 F.3d 800, 809-810 (9th Cir. 1999).

At a minimum, the BLM should have included "detailed" information on the exact location of these operations, their relation to endangered species habitat, perennial waters, and other environmentally important or sensitive areas, the nature and extent of past environmental damage or contamination caused by spills or other accidents at those locations, and the amount of road construction and other infrastructure associated with the facilities. Similarly, there is absolutely no assessment of such information in relation to the approved but undeveloped leases in the area. As discussed in detail below, this failure to assess the potential effects of new oil and gas development on the Los Padres, in conjunction with the effects of existing development and other actions that may affect the species, habitat, water and other natural resources, represents a clear violation of NEPA's cumulative effects requirement.

One glaring omission in the BLM's cumulative impacts analysis is the recently-passed plan by the U.S. Forest Service to allow oil drilling to expand across 52,075 acres of the Los Padres National Forest. This plan allows new oil drilling to occur in one of the three High Oil and Gas Potential Areas (HOGPAs). The largest HOGPA – the 80,258-acre South Cuyama HOGPA – is adjacent to several of the parcels proposed for leasing. Oil development here is reasonably foreseeable and should be accounted for in the BLM's cumulative impacts analysis.

The EA does not even mention the number of existing leases and amount of acres already leased for oil and gas development. This information must be disclosed in the cumulative impacts analysis.

vi. Leasing the parcels may adversely affect districts, sites, and objects listed in or eligible for listing in the National Register of Historic Places, and may cause loss or destruction of significant scientific, cultural, or historical resources.

NEPA requires consideration of the degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Registry of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources. 40 C.F.R. § 1508.27(b)(8). As discussed above, the area affected by the proposed action contains some of the most unique characteristics of the region. The region contains a rich assemblage of Native American rock art, sacred lands and rockforms, and village sites from three Native American cultures, including the Yokut, Chumash, and Salinan. The EA states that "[p]rehistoric sites common to this region include pictograph rock art, bedrock mortar and millingstone food processing stations, lithic scatters, and village or hamlet sites." EA at p. 18. The EA goes on to admit that a "very limited amount" of surveys have been conducted on the subject parcels, defers further analysis to the site-specific level, and contains no analysis whatsoever of the environmental consequences of oil drilling to culturally and historically significant sites. Because the locations of – and impacts to – these heritage sites are unknown, the BLM cannot conclude that there will be no significant impacts. Preparation of an EIS is warranted in situations like these that require further study and analysis of potentially significant impacts.

vii. Leasing the parcels may adversely affect several endangered or threatened plants and animals and their critical habitat.

NEPA requires consideration of the degree to which the proposed action may adversely affect an endangered or threatened species or its habitat in evaluating the intensity of the action's impact. 40 C.F.R. § 1508.27(b)(9). The entire region is an ecologically critical area because it contains such a high diversity of rare plants and animals. The nearby Los Padres National Forest has the highest number of threatened, endangered, and sensitive species than any other forest in the country, and the Carrizo Plain National Monument supports the highest concentration of rare species in all of California. As stated above, most of the parcels are located in close proximity to these biologically rich areas. Several of the parcels are located in areas designated in the RMP as "Threatened and Endangered Species Conservation Areas."

According to the EA, each parcel proposed for leasing contains threatened or endangered plants and/or animals. Parcels 21, 22, and 27 support the San Joaquin kit fox, the San Joaquin antelope squirrel, giant kangaroo rat, blunt-nosed leopard lizard, California condor, and California jewelflower. Parcel 6 contains the San Joaquin kit fox, the San Joaquin antelope squirrel, blunt-nosed leopard lizard, San Joaquin woollythreads, and Kern mallow. Parcels 28, 36, and 37 contain the San Joaquin kit fox, blunt-nosed leopard lizard, San Joaquin antelope squirrel, San Joaquin woollythreads, and California jewelflower. Parcel 29 contains the San Joaquin kit fox, the San Joaquin antelope squirrel, the giant kangaroo rat, and the blunt-nosed leopard lizard. Parcel 35 overlaps the boundary of critical habitat for the southern steelhead ESU. Parcel 7 contains the San Joaquin kit fox, the San Joaquin antelope squirrel, the blunt-nosed leopard lizard, the Tipton kangaroo rat, and San Joaquin woollythreads. Parcel 8 contains the San Joaquin kit fox and giant kangaroo rat. Parcel 20 contains the San Joaquin kit fox, the San

Joaquin antelope squirrel, giant kangaroo rat, blunt-nosed leopard lizard, and California condor. Parcels 1-5 contain the San Joaquin kit fox, San Joaquin antelope squirrel, and blunt-nosed leopard lizard. Parcel 32 contains giant kangaroo rat, San Joaquin antelope squirrel and San Joaquin kit fox. Parcels 11-15 and 30-31 contain San Joaquin kit fox blunt-nosed leopard lizard, San Joaquin woollythreads, and California jewelflower. Parcel 19 contains San Joaquin kit fox, San Joaquin antelope squirrel, and blunt-nosed leopard lizard. Parcels 24-26 and 36 contain San Joaquin kit fox, blunt-nosed leopard lizard, and California jewelflower. Parcels 23 and 33 contain San Joaquin kit fox, the San Joaquin antelope squirrel, and giant kangaroo rat. Parcels 9-10 include the San Joaquin kit fox, San Joaquin antelope squirrel, the Tipton kangaroo rat, and the blunt-nosed leopard lizard. Parcel 16 contains the California condor and is within critical habitat for the southern steelhead ESU. Because every single one of the parcels supports at least one endangered or threatened species (and some even contain designated critical habitat), they must all be considered "ecologically critical areas" warranting further analysis in an EIS.

viii. Leasing the parcels threatens a violation of Federal and State laws and regulations designed to protect the environment.

NEPA requires consideration of whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment in evaluating the intensity of the action's impact. 40 C.F.R. § 1508.27(b)(10). Throughout this letter, we have identified a host of federal and state laws and regulations with which the BLM's leasing proposal and environmental documentation are inconsistent. Because the BLM's leasing proposal threatens violations of these environmental protection requirements, the BLM must prepare a full EIS.

We also note that the EA fails to identify any of the state or local permitting requirements necessary to implement the proposed action. The BLM NEPA Handbook (p. IV-10) requires that "[s]tate or local permitting requirements or other authorizing actions necessary for implementing the proposed action should also be identified" in the EA.

b. The Effects of Leasing Are Not Fully Covered in the RMP EIS

The BLM states that the EA is tiered to the Caliente Resource Management Plan/ Environmental Impact Statement (RMP/EIS) dated May 5, 1997 and that "[a] more complete description of activities and impacts related to oil and gas leasing, development, production, etc. can be found in that document." EA at p.1. It also states that any future development on the proposed parcels "is well within the scope of activities which have been previously analyzed in the Caliente Resource Management Plan and the Reasonable Foreseeable Oil and Gas Development." EA at p.20. However, tiering to this document does not satisfy BLM's duties under NEPA to prepare an EIS, and does not even provide an adequate foundation for analysis in the EA. At nine years old, the Caliente RMP EIS is outdated, does not take into account new information, and relies on an outdated and inaccurate Reasonable Foreseeable Development (RFD) scenario.

The BLM's Instruction Memorandum IM 2004-089, *Policy for Reasonably Foreseeable Development (RFD) Scenario for Oil and Gas*, sets out guidance to assist the agency in the preparation of accurate and reliable RFDs. It states, in relevant part:

> In addition to estimates concerning the presence of oil and gas resources based on geology, the RFD also considers other factors that affect oil and gas activity… includ[ing] economics, changes in exploration, drilling, completion or production technology, physical limitations affecting surface access, bid performance at lease sales, oil and gas related infrastructure, and transportation.
>
> …Over time, new drilling provides additional information about the geology and nature of occurrence of oil and gas resources in the RFD study area. Advanced technological developments usually become economical and more widely used. This frequently changes the approach industry uses to develop the resource. Consequently, estimates about the occurrence and development of the resource may be different from those assumed in a previous RFD. <u>If an RFD did not assume a significant activity, development or circumstance discovered after the RFD study is completed, a new RFD may be necessary.</u>
>
> …<u>The study must be credible, supported by technical information, well documented, and incorporate reasonable assumptions as a basis for estimates of future activity</u>.
>
> …The RFD is based on a review of geological factors that control the potential for oil and gas resource occurrence and past and present technological factors that control the type and level of oil and gas activity. The RFD also considers petroleum engineering principles and practices and economics associated with discovering and producing oil and gas.

The 2006 EA, however, makes no attempt whatsoever to question the assumptions laid out in the 1997 RMP, when all manner of circumstances pertaining to oil and gas development were significantly different. These significant changes (since 1997) include (but are in no means limited to), changes in technology, changes in spacing patterns, changes in economics (particularly the price of a barrel of oil has skyrocketed), and changes in transportation facilities and other infrastructure.

Leasing is an irretrievable commitment of resources, which requires preparation of an EIS. *See*, *Pennaco Energy, Inc. v. U.S. Department of Interior*, 377 F.3d 1147, 1160 (10th Cir. 2004). As recent court decisions have confirmed, if the impacts of oil and gas leasing and development have not been adequately considered in an RMP, then leasing cannot commence. See *Pennaco*, 377 F.3d at 1156 - 1160 (because RMP and related EIS did not analyze specific potential effects of coalbed methane, development was not properly authorized until these effects were fully evaluated); *Montana Wilderness Association v. Fry*, 310 F.Supp.2d 1127 (D. Montana 2004) (RMP and related EIS did not consider impacts of leasing, so leases issued under the RMP were not validly issued).

Nor does the updated RFD in the EA include any citations to credible sources, or any other references to how the BLM arrived at the calculations. The EA merely states that the information is "based on data for the past 10 years," cites only to "[d]ata from the Califrnia Department of Conservation, Division of Oil and Gas" without specifying what that data is or

how the public can review and verify it, and claims that the BLM estimates are "[b]ased on historical records and proximity of leases to existing fields," again without summarizing these historical records or providing any context. The EA RFD also contains numerous unsubstantiated assumptions, such as "present economic and political conditions," the percentage of exploratory vs. development wells, the well success rate, and that the amount of newly disturbed land is being offset. EA at p.20. The EA also states, without any supporting evidence, that the activities resulting from the proposed lease sale "would be proportionately smaller than those described in the previous analyses, including miles of seismic lines run, number of wells, amount and size of surface facilities, and total acres of disturbance." EA at p.20. The EA must disclose more information about the assumptions and data the BLM relied upon in calculating its RFD.

The EA also provides a chart showing that it anticipates only 10 in-field wells, 2 tank batteries, 10 exploration wells, and 20 miles of cross-country seismic lines that combined would result in only 72 acres of surface disturbance. EA at pp.20-21. The EA offers no explanation for how the BLM calculated these numbers, nor the assumptions inherent in them. The EA merely states that the proposed activities would be "proportionately smaller than those described in previous analyses" without providing any explanation as to why. How did the BLM decide that 10 exploration wells and accompanying roads would only result in 30 acres of surface disturbance? And on what basis did the BLM assume that one mile of cross-country seismic lines causes 1.5 acres of "transient" surface disturbance?

Because of the BLM's refusal to provide us with the requested documents (including a copy of the RMP EIS and RFD scenario, both of which are not available on the agency's website), we are unable to further analyze the proposed action's consistency with these old documents. We remain concerned that the old RFD scenario is no longer accurate or reliable, and that the environmental impacts of the proposed action (including the specific parcels) were not fully analyzed in the RMP EIS. For now, we simply note that an amendment of an existing RMP is required if BLM needs to consider monitoring and evaluation findings, new data, new or revised policy, a change in circumstances or a proposed action that may result in a change in the scope of resource uses, or a change in the terms, conditions and decisions of the approved plan. 43 C.F.R. § 1610.5-5. As stated in BLM's Land Use Planning Handbook (Section VII.B), RMP amendments are prompted by the need to: "respond to new, intensified, or changed uses on public land" or "consider significant new information from resource assessments."

3. The EA Fails to Contain Sufficient Evidence and Analysis, Fails to Use "High Quality" Scientific Information, and Does Not Rely on Accurate Scientific Analysis as Required by NEPA

An EA must contain "*sufficient* evidence and *analysis* for determining whether to prepare an EIS or a FONSI." 40 C.F.R. § 1508.9(a) (emphasis added). NEPA requires the Forest Service to provide the "hard data" upon which it relies for its conclusions and decisions. Idaho Sporting Congress v. Thomas, 137 F.3d 1146, 1150 (9th Cir. 1998). The record must disclose the studies and data that were used in compiling the NEPA documents, which must be "sufficient to enable those who did not have a part in its compilation to understand and consider meaningfully the facts involved." Environmental Defense Fund v. Corps of Engineers, 492 F. 2d 1123, 1136 (5th

Cir. 1974). Without full disclosure, the public is not able to make independent judgments about the agency's action. Izaak Walton League of America v. Marsh, 655 F. 2d 346, 368-369 (D.C. Cir. 1981). "Conclusory statements which do not refer to scientific or objective data supporting them do not satisfy NEPA's requirement for a 'detailed statement'" Citizens Against Toxic Sprays v. Bergland, 428 F. Supp. at 908.

Furthermore,

> Agencies shall insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements. They shall identify any methodologies used and shall make explicit reference by footnote to the scientific and other sources relied upon for conclusions in the statement.

40 C.F.R. § 1502.24. Agencies must disclose "any responsible opposing view" in the analysis. 40 C.F.R. § 1502.9(b); see also Center for Biological Diversity v. United States Forest Service, 349 F.3d 1157 (9th Cir. 2003) (holding that an agency's failure to disclose opposing scientific opinion violates NEPA); Seattle Audubon Society v. Moseley, 798 F.Supp. 1473, 1482 (W.D. Wash. 1992) ("NEPA requires that the agency candidly disclose in its EIS the risks of its proposed action, and that it respond to the adverse opinions held by respected scientists.").

The EA ignores virtually all of these requirements, not only violating NEPA, but also leaving the public in the dark regarding whether the conclusions in the document are supported by sound science, or are the mere opinions of agency officials. "[A]llowing the [agency] to rely on expert opinion without hard data either vitiates a plaintiff's ability to challenge an agency action or results in the courts second guessing an agency's scientific conclusions. As both of these results are unacceptable, we conclude that NEPA requires that the public receive the underlying environmental data from which a Forest Service expert derived her opinion." Idaho Sporting Congress v. Thomas, 137 F.3d 1146, 1150 (9th Cir. 1998); see also Blue Mountain Biodiversity Project v. Blackwood, 161 F.3d 1208, 1214 (9th Cir. 1998) (holding an environmental analysis inadequate when "virtually no reference to any material in support of or in opposition to its conclusions").

"An agency must set forth a reasoned explanation for its decision and cannot simply assert that its decision will have an insignificant effect on the environment." Marble Mountain Audubon Society v. Rice, 914 F.2d 179, 182 (9th Cir. 1990) (citing Kleppe v. Sierra Club, 427 U.S. 390, 410 n.21 (1976).

Nor did the agency fulfill its duty to consult with expert agencies. The NEPA requires BLM to request the participation of cooperating agencies "at the earliest possible time" and to "cooperate with State and local agencies to the fullest extent possible." 40 C.F.R. §§ 1501.6(a)(1), 1506.2(b). These consultations must be disclosed in the environmental document. *See* 40 C.F.R. § 1508.9(b) (requiring EAs to include "a listing of agencies and persons consulted"); *see also* BLM NEPA Handbook ("manager must notify the public, including affected State and local governments and Indian tribes, of the review period," p. IV-6, and "an EA must contain…a listing of agencies and persons consulted," p. IV-7). The BLM apparently consulted with seven

"Native American Contacts" but failed to list any other agencies it consulted with in preparing the EA. EA at 33-34.

The entire analysis does not have to be included, but incorporation by reference is required by CEQ regulations standards to be accomplished "without impeding agency and public review of the action," and the supporting material "shall be cited in the statement and its content briefly described." 40 C.F.R. § 1502.21. The EA does not even contain a list of references.

NEPA requires that all agencies utilize a "systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decision making." NEPA § 102(A), 42 U.S.C. § 4332(A).

The BLM is required to use "high quality" scientific information and "accurate scientific analysis." 40 C.F.R. § 1500.1(b). These directions instruct the agency to use the best available science when making decisions, as well as rely upon accurate information, even when that information is contrary to the agency's own opinion. Furthermore, the agency should follow the recommendations outlined in its "scientific" references, or provide some explanation where there are differences. The EA fails to achieve NEPA standards.

4. The EA Fails to Take the Requisite "Hard Look" at Environmental Impacts

The majority of the EA consists of general information including parcel listings, lease stipulations and guidelines, and charts depicting all of the rare plants and animals found on *all* lands administered by the BLM's Bakersfield Field Office. Most of these documents are not specific to the proposed action, are extraneous and encyclopedic, and do not constitute the requisite "hard look."

a. The BLM Unlawfully Defers Analysis of Significant Impacts to an Undefined Time in the Future

The EA is correct in stating that a site-specific NEPA document would be prepared prior to approval of any surface-disturbing activities. However, this does not eliminate the BLM's duty to adequately analyze the direct, indirect, and cumulative impacts at the leasing stage. Conducting an adequate environmental analysis at this stage of the process is of the utmost importance. Once the lease is issued, the lessee has contractual rights and the BLM does not have the right to deny an application for permit to drill. *See* 43 CFR § 3101.1-2. The requisite NEPA analysis must occur *before* the lease is issued and the BLM cannot legally defer this analysis to the site-specific stage.

Under NEPA, the BLM is required to analyze all environmental impacts of the proposed action, including direct, indirect, and cumulative effects. 42 U.S.C. § 4332(C)(i); 40 C.F.R. § 1502.16. These effects include direct effects that are actually caused by the proposed action, and indirect effects "that are caused by the action and are later in time or farther removed in distance, *but are still reasonably foreseeable*." 40 C.F.R. § 1508.8.

The BLM fails to provide meaningful analysis of the potential environmental effects of new oil and gas development on these ecologically critical lands. Although programmatic documents may lawfully defer full evaluation of site-specific impacts to later decisions, NEPA still requires that the Forest Service provide within the document "sufficient detail to foster informed decision-making." Friends of Yosemite Valley v. Norton, 348 F.3d 789, 800 (9th Cir. 2003). The Council on Environmental Quality has also spoken on this issue, stating that

> It must be remembered that the basic thrust of an agency's responsibilities under NEPA is to predict the environmental effects of a proposed action before the action is taken and make those effects known. Reasonable forecasting and speculation is thus implicit in NEPA, and we must reject any attempt by agencies to shirk their responsibilities under NEPA by labeling any and all discussion of future environmental effects as "crystal ball inquiry."

51 Fed. Reg. 15618 (1986).

The EA fails to meet this broad standard, punting all analysis of future effects of the proposed action, even though many of those effects are both reasonably foreseeable and possible to predict and estimate. For example:

> "A very limited amount of cultural resource surveys have been conducted on the lands identified for lease sale. Therefore, as realty or oil and gas projects are proposed on these lands, Native American consultation and archaeological surveys will be conducted to identify national register eligible properties." (p.18)
>
> "The impacts from well pads, roads, seismic exploration, and facilities would be subject to site-specific NEPA assessments that would mitigate and/or avoid impacts to these ACEC units and the National Monument." (p.21)
>
> "[S]ite-specific NEPA analysis would identify measures to minimize the risk of flood damage and oil spills entering the Cuyama River." (p.21)
>
> "Individual projects would be subject to NEPA and ESA review. If a project is determined to adversely affect listed species, the project would be subject to compliance with the Oil and Gas Programmatic Biological Opinion or a project level consultation." (p.26)
>
> "Should an exploration or development proposal be submitted for any of these leases, it will be subject to additional site-specific ESA review." (p.27)
>
> "Focused surveys for San Joaquin woollythreads will be undertaken at the project stage to avoid this species and occupied habitat." (p.28)

Such a deferential approach violates NEPA, which requires the BLM to evaluate all "reasonably foreseeable" effects of the proposed action. It also violates NEPA implementing regulations guiding incomplete or unavailable information. Specifically, 40 C.F.R. § 1502.22 states:

> a. If the incomplete information relevant to reasonably foreseeable significant adverse impacts is essential to a reasoned choice among alternatives and the overall costs of obtaining it are not exorbitant, the agency shall include the information in the environmental impact statement.
>
> b. If the information relevant to reasonably foreseeable significant adverse impacts cannot be obtained because the overall costs of obtaining it are exorbitant or the means to obtain it are not known, the agency shall include within the environmental impact statement:
>
> 1. A statement that such information is incomplete or unavailable;
> 2. a statement of the relevance of the incomplete or unavailable information to evaluating reasonably foreseeable significant adverse impacts on the human environment;
> 3. a summary of existing credible scientific evidence which is relevant to evaluating the reasonably foreseeable significant adverse impacts on the human environment; and
> 4. the agency's evaluation of such impacts based upon theoretical approaches or research methods generally accepted in the scientific community.

The Ninth Circuit determined that "Section 1502.22 clearly contemplates original research if necessary" and held that "NEPA law requires research whenever the information is significant. As long as the information is…essential or significant, it must be provided when the costs are not exorbitant in light of the size of the project and the possible harm to the environment." Save Our Ecosystems v. Clark, 747 F.2d 1240, 1244 n.5 (9th Cir. 1984). Much of the deferred analysis is quite essential and very significant, and are not exorbitant in relation to the enormity of this project and the possible harm to the environment.

The agency cannot "increase the risk of harm to the environment and then perform its studies…. This approach has the process exactly backwards." National Parks & Conservation Ass'n v. Babbitt, 241 F.3d 722, 733 (9th Cir. 2001). "Before one brings about a potentially significant and irreversible change to the environment, an EIS must be prepared that sufficiently explores the intensity of the environmental effects it acknowledges." *Id.* An agency's "lack of knowledge does not excuse the preparation of an EIS; rather it requires the [agency] to do the necessary work to obtain it." *Id.*

By deferring analysis to the project level, the BLM is essentially arguing that such information is not currently available or the means to attain it are unknown. In these situations, NEPA is clear that the agency must at least make a good-faith effort to evaluate the reasonably foreseeable impacts, summarize credible scientific evidence, and evaluate such impacts as best it can using acceptable theoretical approaches or research methods. The EA contains none of these for those impacts deferred to future analysis.

b. Biological Resources

The 20,800 acres of BLM lands proposed for leasing support a treasure trove of rare and imperiled plants and animals that are unique to the San Joaquin Valley. These lands consist primarily of valley saltbush scrub, a sensitive plant community, as well as sensitive valley sink scrub, blue oak woodlands, juniper-oak woodlands, and annual grasslands. These lands are home to some of the most endangered species in the Central Valley, including the blunt-nosed leopard lizard, the San Joaquin kit fox, the giant and Tipton's kangaroo rats, the Kern mallow, San Joaquin woollythreads, and Hoover's woolly-star. These publicly owned lands have been recognized as vital to the continued survival of these species in the San Joaquin Valley region. Any activities that occur on these lands must ensure that the continued existence of these federally protected species, as well as a host of other sensitive species on the project site, is not compromised.

Unfortunately, the EA fails to adequately disclose and analyze the potentially severe impacts of the proposed oil and gas operations on the rare biological resources of the project site, and fails to demonstrate that the project will not result in serious harm to federally listed species. The Environmental Consequences section offers only a few paragraphs of extremely broad, qualitative discussion of potential impacts. The mitigations offered for the impacts involve conducting site-specific NEPA and ESA review, and following Limited Surface Occupancy stipulations – and the EA then concludes that the impacts are mitigated. The EA contains no detailed, quantitative analyses whatsoever to support its conclusions regarding the impacts of the plan on resources, as required by law. 40 C.F.R. § 1502.1.

When the EA does mention environmental impacts on biological resources, it fails to provide any actual analysis of the scope and magnitude of those impacts (current or projected). In other words, in those instances where the EA mentions relevant environmental impacts, it fails to provide any disclosure or assessment of the extent to which the proposed oil and gas exploration and development might be expected to produce those impacts.

NEPA requires the BLM to ensure the scientific integrity and accuracy of the information used in its decision-making. 40 CFR § 1502.24. The regulations specify that the agency "must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken. The information must be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential." 40 C.F.R. § 1500.1(b). An agency's NEPA analysis "shall be supported by evidence." 40 C.F.R. § 1502.1. Where complete data is unavailable, the EA also must contain an analysis of the worst-case scenario that would result from the oil and gas operations. Friends of Endangered Species v. Jantzen, 760 F.3d 976, 988 (9th Cir. 1985) (NEPA requires a worst case analysis when information relevant to impacts is essential and not known and the costs of obtaining the information are exorbitant or the means of obtaining it are not known) citing Save our Ecosystems v. Clark, 747 F.2d 1240, 1243 (9th Cir. 1984); 40 C.F.R. § 1502.22. The EA fails to include this required analysis because it does not cite to any scientific literature or even any hard data derived from any surveys in its "analyses" of effects.

This lack of critical analyses clearly fails to meet the requirements for full disclosure and, in particular, for taking a "hard look." Simply mentioning some of the types of impacts that might occur to biological resources without estimating their magnitude either quantitatively or qualitatively does nothing to facilitate an intelligent and reasoned evaluation of the extent of environmental impacts that might be expected as the oil and gas exploration and drilling proceeds.

1. Vegetative Communities

The BLM estimates that the construction and operation of wells, in conjunction with well pads, infrastructure, roads, and seismic exploration, would result in permanent direct impacts to 15 acres, temporary impacts to 27 acres, and transient impacts to 30 acres, for a total of 72 acres affected. EA at p. 23. As explained above, the EA provides no evidence showing where the agency arrived at these estimates. Moreover, the BLM goes to great lengths to downplay any direct impacts to habitats by suggesting that the area impacted is only a small overall percentage of the total lands: "With the exception of the alkali sink scrub community in the Lakebed Unit and the scrub habitat in the Cuyama River Unit, the vegetative communities potentially impacted by this leasing proposal (non-native annual grassland, saltbush scrub, arid scrub, and juniper woodland) are widely distributed within the individual parcel units and within the Cuyama and San Joaquin Valley regions." EA at p. 29. The EA also states: "the impacts associated with well pads and roads…would be very site-specific and are not expected to significantly affect these habitats at the community scale." Id. Yet the EA provides no data or citations to support these broad, sweeping conclusions. The public is expected simply to accept without question the opinion of the BLM that there will be no significant impacts to vegetative communities.

In another example, the EA notes that "monitoring and post-project reports from previous geophysical projects indicates that seismic projects result in transitory impacts to soil and vegetation." EA at p. 30. However, the EA fails to provide the results of those studies so the public and decision-makers can independently review the results. NEPA requires that government agencies provide the "hard data" upon which it relies for its conclusions and decisions. (Idaho Sporting Congress v. Thomas, 137 F.3d 1146, 1150 (9th Cir. 1998). The record must disclose the studies and data that were used in compiling the NEPA documents, which must be "sufficient to enable those who did not have a part in its compilation to understand and consider meaningfully the facts involved." (Environmental Defense Fund v. Corps of Engineers, 492 F. 2d 1123, 1136 (5th Cir. 1974). Without full disclosure, the public is not able to make independent judgments about the agency's action. (Izaak Walton League of America v. Marsh, 655 F. 2d 346, 368-369 (D.C. Cir. 1981). The EA clearly fails to meet the basic requirements of NEPA because it relies on sweeping generalizations and blanket statements that are unsupported by evidence. "Conclusory statements which do not refer to scientific or objective data supporting them do not satisfy NEPA's requirement for a 'detailed statement'" (Citizens Against Toxic Sprays v. Bergland, 428 F. Supp. at 908).

The EA also completely neglects to quantify the acreage of vegetation and habitats for at-risk species that would be affected by indirect and cumulative impacts of construction and operation of oil and gas facilities, including invasion of non-native species, pollution, soil erosion, noise, habitat fragmentation, and other adverse impacts which reach far beyond the direct area of

disturbance. The EA simply lists a projected amount of habitat to be directly disturbed by development. This number does not account for the much larger acreage that will be impacted by the roads, other infrastructure and other impacts resulting from the exploration, development and operational activities. Whatever the directly disturbed surface acreage is, it surely will not be confined to a single neatly defined sacrifice area. Instead, the roads, pipelines, power lines and well pads will be dispersed over vast areas, fragmenting wildlife habitat, disturbing vegetative communities, and spoiling recreational experiences.

2. Oak Woodlands

The EA also fails to disclose the dire situation of oak woodlands and oak forests in California, and to specifically identify the highly sensitive oak woodlands vegetative alliances in within the project area, including acreage and location with respect to potential oil and gas operations. Sensitive oak woodlands on the project site consist mainly of blue oak types.

Blue oaks have experienced serious lack of regeneration over the past century (Borchert et al. 1989, Borchert et al. 1993, Standiford et al. 1997, Swiecki et al. 1997). Introduced Mediterranean annual grasses may be interfering with oak sapling recruitment by competing with seedlings for surface water. Root damage is another potential threat to oak woodlands. California's native oaks have developed adaptations to survive the long, dry summers. When an acorn first sprouts, rapid root development occurs to reach moisture deep underground, with little growth occurring above the ground. An extensive lateral root system then spreads out well beyond the trunk as the tree matures. Soil compaction, trenching for underground utilities, and other activities associated with oil and gas exploration and development near the roots impede water absorption and damage roots. Also, oak trees are pollinated by wind, and the density of pollen grains declines with increasing distance from the source. Therefore, habitat fragmentation and isolation of individual oak trees can decrease pollen availability and reduce acorn production, as has been shown in blue oaks (Knapp et al. 2002).

In addition, oak forests in north-central coastal California have been falling victim to sudden oak death syndrome (SODS), a disease caused by a previously unknown species of *Phytopthora*, a fungus-like organism that has killed large numbers of oaks (coast live oak and black oak) and tanoaks (Švihra et al. 2001). The EA completely fails to disclose the potential threat of SODS in the areas considered for leasing.

3. At-risk Plants and Animals

The EA contains literally no survey data and no detailed, quantitative analyses to support its conclusions regarding the impacts of the plan on at-risk species, as required by law. 40 C.F.R. § 1502.1. NEPA requires that where an agency has outdated, insufficient, or no information on potential impacts, it must develop the information as part of the NEPA process. 40 C.F.R. § 1502.22. Emphasis added. In fact, the EA provides no population data whatsoever on any at-risk plant or animal species. This information is indisputably critical to any proper, scientifically based analyses of the direct, indirect, and cumulative impacts of a project on a particular biological resource. The Affected Environment section simply lists the species that might potentially occur on each Unit (EA at pp. 12-22) and the Environmental Consequences section

qualitatively describes very general impacts, such direct mortality, soil disturbance, and introduction of weedy species (EA at pp. 29-35).

As described above, when the EA does mention environmental impacts, it fails to provide any analysis of the full scope and magnitude of those impacts on species on the project site. The EA does not adequately consider the full scope of impacts associated with electrical power lines, natural gas pipelines, telephone lines, radio systems, roads, and other infrastructures that are likely to occur on BLM lands or off-site as a result of extensive exploration and operation of wells. These impacts will have adverse indirect effects that are not considered or mitigated in this EA. Such impacts include spreading noxious invasive weeds, increasing predation by ravens, fragmenting habitats for small vertebrates unlikely to cross roads and areas with large surface disturbance, and increasing dust and noise pollution.

The EA also fails to properly analyze the cumulative impacts on biological resources of new oil and gas drilling and development in combination with existing and expanded drilling, as described above. As explained above, "cumulative impact" is "the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time." 40 C.F.R. § 1508.7.

4. Mitigation

Mitigation for the impacts involves simply complying with existing regulation, conducting site-specific NEPA and ESA review, and subjecting leases to Limited Surface Use – and the EA then concludes that any adverse impacts are thus mitigated. Again, these conclusions do not take into account the significant indirect and cumulative impacts of exploration and operation on biological resources and, thus, the proposed mitigation is inadequate.

c. Water Quality, Wetlands & Riparian Vegetation Impacts

The EA refers to the Unified Federal Policy to Ensure a Watershed Approach in Federal Land and Resource Management (UFP), and states that the "EA should analyze oil and gas operations within the Watershed Concept described in the UFP." EA at p.7. However, the BLM fails to incorporate the Watershed Concept into any of its analysis in the EA, or any other concepts for that matter. Instead, the BLM merely (and incorrectly) concludes that "[l]ands within these parcels contain no naturally occurring streams, lakes, or ponds containing fresh water." EA at p.23.

This statement is contradicted by other evidence throughout the EA. For example, the EA states that portions of Parcels 28 and 36 are located within the *floodplain of the Cuyama River*. EA at p.21. It also suggests that Parcel 37 is located in the floodplain. EA at p.8. (If this is the case, then the list of parcels within floodplains on p.21 should be amended to include parcel 37 as well.) The parcel map does not show the location of the Cuyama River, but comparing the parcel maps with other maps reveals that these two parcels are partially or wholly within the river bed itself. The EA states that a portion of parcel 36 "includes the active Cuyama River

channel and adjacent terrace." EA at p.8. This seems to contradict the statement that none of the parcels contain naturally occurring streams.

The EA states that other streams and wetlands occur on other parcels also. For example, Parcel 35 contains an old mining pond. EA at p.10. The Santa Barbara Canyon Unit (Parcels 24, 25, 26, and 36) "is bisected by Olive, Goode, and Tennison Canyons," is characterized by "steep canyons" and "the drainages are emphemeral" with "running water in response to rainfall events." EA at pp. 14-15. The Valley Floor Unit (Parcels 9 and 10) include "shallow drainages crossing the landscape." EA at p.16.

Clearly, oil exploration and drilling operations occurring on these parcels could have a significant impact on water quality, wetlands, floodplains, and streamside vegetation. However, the BLM concludes without explanation that there will be no impacts to water quality, wetlands, or riparian vegetation. EA at p. 21. No further evidence is provided to support the conclusion that the proposed action will not cause direct, indirect, or cumulative impacts to water quality, wetlands, or riparian vegetation on these and other parcels.

The EA fails to contain any analysis of impacts to groundwater quality or quantity. This is a violation of NEPA. The analysis should identify water sources for oil operations, how water is used in the oil development process (i.e. groundwater injection), the possibility of introducing pollutants into groundwater, and the cumulative impacts of groundwater extraction combined with other extractive uses in the area. Of particular concern is the cumulative rate of groundwater extraction in the Cuyama Valley from oil operations, farms, and other sources. There are already significant drawdowns of the groundwater supply in this area, and additional oil operations will only contribute further to this significant impact.

The EA should also analyze the impacts of reasonably foreseeable access routes to these parcels. Roads are one of the biggest contributors to runoff and sedimentation of streams, and the direct, indirect, and cumulative impacts of additional road construction must be analyzed in this EA.

d. Air Pollution

The EA does not adequately describe the existing regulatory setting for the proposed action. The EA discloses that the San Joaquin Valley air basin is in non-attainment for state and federal PM_{10}, $PM_{2.5}$, and ozone (8-hour standard). In fact, the San Joaquin Valley air basin is designated as an *extreme* non-attainment area for the federal 1-hour ozone standard and a *serious* non-attainment area for the federal 8-hour ozone and PM_{10} standards. The proposed action's emissions must be evaluated in the context of this extreme/serious non-attainment status.

The EA further fails to discuss the health consequences of the basin's poor air quality. In some areas of the San Joaquin Valley the asthma rate is over three times the national average. One study found that in Kern County alone, 223 deaths per year are due to current $PM_{2.5}$ levels, and 96 deaths and 13,296 asthma attacks per year are due current PM_{10} levels. The EA fails to include even the most basic information on the link between air quality and human health effects.

The EA further discusses baseline emissions of NO_x *only* in Kern County – it does not evaluate

baseline emissions of other substances in any location, nor does it analyze baseline levels of NO_x in any of the other areas where the proposed action will be carried out – San Luis Obispo, Santa Barbara, Ventura, and King Counties. This failure to describe the environmental setting, including all baseline emissions, for the proposed action renders the air quality analysis meaningless – what are the inventories in the respective counties for the various pollutants? What are the thresholds of signficance for the pollutants in each of the counties? What offset requirements currently exist to mitigate emissions associated with the proposed action? These fundamental questions must be resolved in order to provide a complete understanding of the proposed action's potential impacts.

The EA fails to quantify, or analyze at all, the hazardous air pollutant (HAP) emissions from diesel engines and other sources associated with the proposed action. The U.S. EPA considers that an "acceptable" cancer risk caused by HAPs is a one-in-one million chance of contracting cancer over the course of an average person's lifetime. The California Air Resources Board currently monitors and assesses the health risks of 10 HAPs in California, including acetaldehyde, benzene, 1,3-butadiene, carbon tetrachloride, chromium (hexavalent), *para*-dichlorobenzene, formaldehyde, methylene chloride, perchloroethylene, and diesel particulates. The proposed action will emit or has the potential to emit these HAPs from mobile sources and operation of the drilling rig, generators, and other equipment. The cancer risk in the San Joaquin Valley air basin from diesel exhaust alone is currently approximately 510-in-one million. This is 510 times the level considered "safe" by the U.S. EPA. The project's direct and cumulative contribution to HAP emissions, including diesel particulates must be fully disclosed, analyzed, avoided, minimized, and mitigated by binding mitigation conditions or an EIS must be prepared.

The EA minimizes the effect of emissions from the proposed action based on the contention that "[t]he expected emissions from the proposed action would be low both in relation to the overall activity in the five county region, and by itself." The EA states (pp. 22-23) that "emissions are well below deminimus emission levels for the pollutants (10 tons per year for VOC or NO_x and 70 tons per year for PM_{10}) and insignificant in light of the 1000-2000+ new wells that are drilled in these areas every year, along with the very large volume of automobile and truck traffic and significant other industrial and agricultural sources." However, expected emissions of "less than 1,000 pounds of PM_{10} emissions and less than 1200 pounds of NO_x per year" would not be below the de minimus levels, even if scattered over the five county region. The EA fails to provide any evidence that emissions will be below de minimis levels even on a project-by-project basis.

In addition, the fact that emissions associated with the proposed action may be small relative to background emissions does not excuse the need to evaluate the impacts of these emissions. On the contrary, NEPA requires an analysis of cumulative impacts to help identify and minimize this very type of impact. A cumulative impact on the environment "results from the incremental impact of the action when added to other past, present, and reasonably foreseeable actions regardless of what agency . . . or person undertakes such actions." 40 C.F.R. § 1508.7. Cumulative impacts may accrue from "individually insignificant but cumulatively significant impacts." *Id*. Courts have held that an EA "may be deficient if it fails to include a cumulative impact analysis or to tier to an EIS that has conducted such an analysis." Kern v. BLM, 284 F.3d 1062, 1076 (9th Cir. 2002). Here, even if the EA is tiered to the Caliente RMP/EIS (1997), that EIS provides an analysis of cumulative impacts that is outdated by nearly a decade and fails to

take into consideration current information regarding new projects and the affected environment. The EA must be recirculated with an adequate analysis of cumulative air quality impacts, or an EIS must be prepared.

The EA further fails to quantify and evaluate the proposed action's contribution to emissions of carbon dioxide (CO_2) and other greenhouse gases. The action will result in fugitive emissions of CO_2 and methane associated with production and storage of fossil fuels. In addition, these fuels will subsequently be burned, releasing more CO_2. CO_2 and methane are greenhouse gases that will result in an incremental contribution to global warming. The Intergovernmental Panel on Climate Change (IPCC) predicts that the global average temperature will warm between 1.4 and 5.8 °C by the end of this century, with attendant severe ecological, human health, sea level, and meteorological impacts. Warming will be greater in the Arctic, where the annual average temperatures will rise across the entire Arctic, with increases of approximately 3-5 °C over the land areas and up to 7 °C over the oceans. Winter temperatures are projected to rise even more significantly, with increases of approximately 4-7 °C over land areas and approximately 7-10 °C over oceans (*Impacts of a Warming Climate: Arctic Climate Impact Assessment*. Cambridge University Press. Available at http://amap.no/acia/). Mitigation and avoidance measures are available to reduce the proposed action's fugitive greenhouse gas emissions. Emissions associated with combustion of hydrocarbons may be mitigated by purchase of tradeable credits. Markets for such credits currently exist in the United States. The EA must be revised to include a full disclosure of the proposed action's greenhouse gas emissions impacts, and these impacts must be mitigated through binding measures, or an EIS must be prepared.

e. Recreation Impacts

As dicussed above, many of the parcels are located within close proximity (and even share a boundary with) several popular recreation areas, like the Los Padres National Forest and the Carrizo Plain National Monument. The BLM's parcel map does not show hiking trails and access roads used by visitors to these areas. The environmental document should include an analysis of direct, indirect, and cumulative impacts to recreation in these areas, including all access roads, trails, campsites, and other areas. For example, the document should contain an analysis of viewshed, noise, and traffic impacts to these areas. Several of the parcels are located in Santa Barbara Canyon, a popular access route to the Dick Smith Wilderness Area. Several of the parcels are within sight of the Sierra Madre Ridge in the Los Padres National Forest, also a popular destination for forest visitors. And many of the parcels are visible from Highway 33, a California State Scenic Highway.

f. Heritage Sites

The EA contains a description of the environmental setting for cultural heritage sites, but contains no analysis of the impacts to these sites. Rather, it postpones analysis to the site-specific stage. No analysis of direct, indirect, or cumulative impacts caused by leasing is presented in this document, in violation of NEPA.

g. Viewshed, Noise, Traffic Impacts

The EA fails to analyze any impacts whatsoever to scenic viewsheds, noise, and traffic. The EA must fully consider the impacts of roads construction and use including among other things, increased erosion of extremely sensitive soils, increased vehicular emissions, wildlife habitat fragmentation, introduction of exotic and invasive plant species, noise pollution that will disturb both wildlife and the recreating public, slope stability, alteration of natural runoff, and soil compaction hindering reclamation.
Such an analysis is vitally important, since many of the parcels occur in relatively undeveloped areas characterized by low levels of noise, traffic, and scenic intrusions. Also, the EA fails to disclose and analyze the increased level of traffic associated with the reasonably foreseeable development scenario during the exploration, development, and abandonment phases of oil operations.

h. Soil, Hazardous Wastes & Oil Spills

The environmental document fails to disclose the host of chemicals involved in the oil production process, nor how they will be disposed. The EA does address oil spills on p. 23, but only in relation to impacts to soils. Oil spills should also be analyzed in relation to wildlife, recreation, and water quality.

The EA offers no analysis of the potential impacts such spills would have on wildlife. The EA must disclose and discuss the impacts hazardous spills would have including, but not limited to impacts on vegetative communities, impacts on wildlife (specifically sensitive, threatened and endangered species), related fire and air pollution impacts.

The document also does not contain an adequate analysis of impacts to soils. It states that "impacts due to this disturbance will be reduced" without explaining what the disturbance to soil structure is. The document should explain how oil exploration (including seismic testing and the use of thumper trucks) and development (including access roads) will affect soils.

The EA also concludes that impacts to soils will be small because activities will be subject to spill prevention and control plans, and rehabilitation and mitigation measures. The EA fails to disclose what these plans and measures are, leaving the public with little assurance that they will be successful.

i. Noxious Weeds

The EA fails to analyze or disclose any impacts to the proliferation of invasive, noxious weeds. This omission is particularly troublesome since it appears that many of the parcels already contain large amounts of weedy species. The document must disclose how oil exploration and development could contribute to the further spread of these non-native weeds.

Non-native invasive species have severe social, economic, and environmental costs. The U.S. Forest Service national website states that economically, invasive weeds cost the U.S. about $13 billion per year. For all invasives combined, it comes to about $138 billion per year in total

economic damages and associated control costs. Moreover, ecologically, invasive species threaten the survival of native species. Scientists estimate that invasives contribute to the decline of up to half of all endangered species. Invasives are the single greatest cause of loss of biodiversity in the US, second only to loss of habitat.

5. The EA Fails to Comply With Other Procedural Requirements of NEPA

a. The Purpose and Need is Too Narrow

The EA must "specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action." 40 C.F.R. § 1502.13. The purpose and need statement plays an essential role in defining the scope of alternatives considered. The purpose and need of the proposed action, however, cannot be defined so narrowly that only one alternative will satisfy the stated purpose and need. Muckleshoot Indian Tribe v. U.S. Forest Service, 177 F.3d 800, 814 n.7 (9th Cir. 1999). An overly narrow statement of purpose and need will also have the effect of foreclosing consideration of reasonable alternatives to the proposed action.

The EA provides the following purpose and needs statement: "The Reform Act of 1987 direects the BLM to conduct quarterly oil and gas lease sales with each state whenever eligible tracts are available for leasing. The action is to conduct a competitive oil and gas lease sale." EA at p.3.

This statement of purpose and need is overly narrow, and has the result of restricting the range of reasonable alternative analyzed in the FEIS. The stated purpose and need focuses narrowly on *conducting* the lease sale, rather than on *determining* which parcels to make available for lease and which restrictions to place on the parcels to protect resources.

b. The BLM Failed to Evaluate a Reasonable Range of Alternatives

NEPA requires that federal agencies consider alternatives to recommended actions whenever those actions "involve[ ] unresolved conflicts concerning alternative uses of available resources." 42 U.S.C. § 4332(2)(E); Bob Marshall Alliance v. Hodel, 852 F.2d 1223, 1228 (9th Cir. 1988). This requirement applies equally to EAs and EISs. *Id*. at 1228-29; 40 C.F.R. § 1508.9(b). The purpose of NEPA's alternatives requirement is to ensure agencies do not undertake projects "without intense consideration of other more ecologically sound courses of action, including shelving the entire project, or of accomplishing the same result by entirely different means." Envnt'l Defense Fund., Inc. v. U.S. Army Corps. of Eng'rs, 492 F.2d 1123, 1135 (5th Cir. 1974); *see also* Or. Envtl. Council v. Kunzman, 614 F.Supp. 657, 659-660 (D. Or. 1985) (stating that the alternatives that must be considered under NEPA are those that would "avoid or minimize" adverse environmental effects).

Thus, consideration of alternatives is necessary in an EA to further "[t]he goal of the statute … to ensure 'that federal agencies infuse in project planning a thorough consideration of environmental values.'" Bob Marshall Alliance, 852 F.2d at 1228 (citations omitted). "The consideration of alternatives requirement furthers that goal by guaranteeing that agency

decisionmakers '[have] before [them] and take [ ] into proper account all possible approaches to a particular project (*including total abandonment of the project*) which would alter the environmental impact and the cost-benefit balance.'" *Id*. (quoting Calvert Cliffs' Coordinating Committee, Inc. v. United States Atomic Energy Commission, 449 F.2d 1109, 1114 (D.C. Cir. 1971)) (emphasis in original).

Here, there are unresolved conflicts concerning alternative uses of the available resources, namely in the surface and subsurface areas that will be subject to leasing under the proposed action. In particular, as discussed in these comments, there is concern regarding *site-specific* resource uses that was not adequately addressed in the Caliente RMP/EIS. Accordingly, the EA must evaluate reasonable alternatives to the proposed action. Despite these clear requirements, the EA fails to consider a reasonable range of alternatives. Instead, the EA considers only the proposed action and a No Action alternative. These alternatives do not constitute a reasonable range of alternatives as required by NEPA. The EA fails to evaluate alternatives involving leasing only a portion of the parcels, alternatives that set No Surface Occupancy limitations to avoid surface development of areas with the greatest environmental sensitivity (for example, riparian areas and floodplains), alternatives that provide buffers between areas subject to surface development and sensitive areas, and alternatives that use directional drilling from existing developed areas in combination with a No Surface Occupancy limitation when such directional drilling is possible. BLM has provided no legitimate reasons for failing to consider or rejecting any of these reasonable alternatives.

These alternatives are consistent with BLM's own guidance. IM No. 2004-194 requires BLM to consider and apply "Best Management Practices" (BMPs) that may lessen the impacts of oil and gas development. The practices discussed in this IM specifically include drilling multiple wells from a single drill pad and could also include directional drilling, which would permit leasing with application of NSO stipulations (with drilling from outside the protected area), while preserving wilderness characteristics. Other protective measures, such as closed loop (or pitless) drilling can help to protect the condition of soils and water. The EA or EIS should thoroughly and expressly consider using No Surface Occupancy stipulations and directional drilling as well as other BMPs that could protect stipulations addressing scenic and natural values and steep slopes.

6. The Mitigation Measures Are Unsubstantiated and Inadequate to Reduce the Impacts to Less than Significant Levels, in Violation of NEPA

The NEPA requires that "[f]ederal agencies shall to the fullest extent possible…[u]se all practicable means…to restore and enhance the quality of the human environment and avoid or minimize any possible adverse effects of their actions upon the quality of the human environment." 40 C.F.R. § 1500.2(f). To this end, NEPA requires a discussion of all relevant mitigation measures in the environmental document. Specifically, "to ensure that environmental effects of a proposed action are fairly assessed, the probability of the mitigation measures being implemented must also be discussed" and the environmental document "should indicate the likelihood that such measures will be adopted or enforced by the responsible agencies." CEQ, NEPA's Forty Most Asked Questions, § 19b, citing 40 C.F.R. §§ 1502.16(h), 1505.2.

In order to show that mitigation will reduce environmental impacts to insignificant levels, the BLM must discuss the mitigation measures "in sufficient detail to ensure that environmental consequences have been fairly evaluated…" Communities, Inc. v. Busey, 956 F.2d 619, 626 (6th Cir. 1992). Simply identifying mitigation measures, without analyzing the effectiveness of the measures, violates NEPA. Agencies must "analyze the mitigation measures in detail [and] explain how effective the measures would be . . . A mere listing of mitigation measures is insufficient to qualify as the reasoned discussion required by NEPA." Northwest Indian Cemetery Protective Association v. Peterson, 764 F.2d 581, 588 (9th Cir. 1985), rev'd on other grounds 485 U.S. 439 (1988).

The BLM does not discuss its mitigation measures in sufficient detail, nor does it provide an explanation of their efficacy or likelihood of implementation. Instead, the BLM opts to present a half-page list of general mitigation measures, and references to general stipulations and generic "site specific" mitigation strategies. EA at p.33. The BLM must analyze these mitigation measures in light of the specific proposal, and must also describe the efficacy of each mitigation measure. Since this EA does neither, BLM cannot rely on it to support a FONSI and avoid preparation of a stand-alone EIS.

Due to the rapid pace of oil drilling in the West, the U.S. General Accounting Office has become concerned about the BLM's ability to adequately monitor its mitigation measures.[2] This report is incorporated by reference into these comments. A particularly noteworthy conclusion in this report is the following:

> BLM's ability to meet its environmental mitigation responsibilities for oil and gas development has been lessened by a dramatic increase in oil and gas operations on federal lands over the past 6 years. Nationwide, the total number of drilling permits approved by BLM more than tripled, from 1,803 in fiscal year 1999 to 6,399 in fiscal year 2004. BLM officials in five out of eight field offices that GAO visited explained that as a result of the increases in drilling permit workloads, staff had to devote increased time to processing drilling permits, leaving less time for mitigation activities, such as environmental inspections and idle-well reviews.

The EA should discuss – in light of this report – the Bakersfield BLM's ability to properly monitor operations on the leased parcels to ensure that mitigation measures are carried out and impacts are reduced as much as possible.

An agency's decision to forego an EIS may be based upon the adoption of mitigation measures. Nat'l Parks & Conservation Ass'n v. Babbit, 241 F.3d 722, 733-34 (9th Cir. 2001). While the agency need not detail the "precise nature" of its mitigation plans, they must be "developed to a reasonable degree." Id. at 734 (quotation marks and citations omitted). As summarized by the Ninth Circuit,

[2] U.S. General Accounting Office. June 2005. *Oil and Gas Development: Increased Permitting Activity Has Lessened BLM's Ability to Meet its Environmental Protection Responsibilities.* Report No. GAO-06-418.

> [i]n evaluating the sufficiency of mitigation measures, we consider whether they constitute an adequate buffer against the negative impacts that may result from the authorized activity. Specifically, we examine whether the mitigation measures will render such impacts so minor as to not warrant an EIS.

Id. at 734. A "perfunctory description" or a "mere listing" without supporting analytical data is "insufficient to support a finding of no significant impact." Id.; see also Oregon Natural Desert Ass'n v. Singleton, 47 F.Supp. 2d 1182, 1193 (D. Or. 1998) ("mere listing" is insufficient, and measures "should be supported by analytical data"). An agency "must analyze mitigation measures in detail and explain how effective the measures would be." Oregon Natural Desert Ass'n, 47 F.Supp. 2d at 1193.

BLM does not provide any detail or description as to what precise measures are taken during any "site-specific project mitigation" nor any discussion as to the level of protection provided by this undefined "mitigation" in combination with the scenic and natural values stipulation. Without a definitive delineation of the measures the agency will actually implement, the public is provided little opportunity to comment on the project or estimate the actual significance of impacts and benefits of the suggested mitigation measures. For example, the EA states that mitigation measures to prevent air pollution include "dust control using application of water or pre-soaking and limiting traffic speed on unpaved roads" without describing how these measures would be applied to activities. EA at p. 33. Likewise, the soil mitigation measures only refer to "rehabilitation and mitigation measures that are included in sundry notices and applications for permits to drill," without explaining what these measures are. *Id.* The EA fails to describe any mitigation measures for water quality.

For those mitigation efforts that are listed, BLM has not provided any information to support their efficacy. Even more troubling is BLM's contention that analysis of these mitigation measures will only become available after the decision to lease the area has been made and BLM receives an APD.

The EA's consideration of only the proposed action and the No Action alternative does not meet the requirements of NEPA. In Curry v. U.S. Forest Service, 988 F. Supp. 541 (W.D. Penn. 1997), the Court reviewed a proposed Forest Service timber sale for which the EA only addressed a "no action" alternative and the "proposed action" alternative. In holding that this violated NEPA's mandate to consider a range of alternatives, the Court specified that in its "extensive research in connection with plaintiff's claims under the NFMA and NEPA, the court did not find one case in which the Forest Service had considered so few alternatives." Id. at 553. Similarly, where the Forest Service considered only a no-action alternative along with "two virtually identical alternatives," the Court held that the agency "failed to consider an adequate range of alternatives." Muckleshoot Indian Tribe v. U.S. Forest Service, 177 F.3d 800, 813 (9th Circuit 1999). Even if an EA leads to a Finding of No Significant Impact, the agency still must consider alternatives to the proposed action. Bob Marshall Alliance v. Hodel, 852 F.2d 1223, 1228-1229 (9th Cir. 1988); Surfrider Foundation v. Dalton, 989 F. Supp. 1309, 1325 (S.D. Cal. 1998). Accordingly, BLM must evaluate action alternatives that would reduce or avoid the proposed action's significant environmental effects.

7. Conclusion

For these reasons, we respectfully request that BLM withdraw this EA and suspend any decision to lease the proposed parcels until the agency has complied with federal law and considered all significant new information, changed circumstances, and relevant issues. The BLM must prepare an EIS, and a more robust, meaningful comment period is required, especially in light of the fact that the BLM did not adequately notify the public of the availability of the EA and failed to provide public access to most of the supporting documents.

Thank you for this opportunity to submit comments on the appropriate management for our shared public lands and on the development of our nation's publicly owned mineral resources. Please give any of us a call at the numbers below if you wish to discuss this, or any matter, in more detail.

Sincerely,

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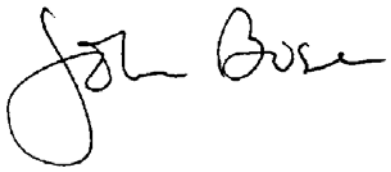

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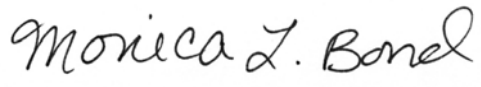

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