VIA OVERNIGHT MAIL

May 26, 2006

Mike Pool
California State Director
Bureau of Land Management
2800 Cottage Way, Suite W-1834
Sacramento, CA 95825

RE: PROTEST OF THE INCLUSION OF PARCELS NEAR THE BOUNDARY OF THE LOS PADRES NATIONAL FOREST, THE BITTER CREEK NATIONAL WILDLIFE REFUGE, THE CARRIZO PLAIN NATIONAL MONUMENT, AND WITHIN THE CUYAMA RIVER, IN THE JUNE 14, 2006 COMPETITIVE OIL AND GAS LEASE SALE

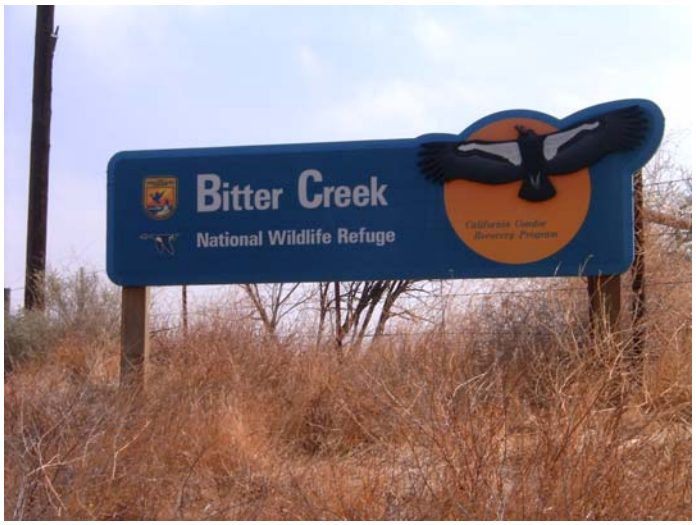
Dear Mr. Pool:

Los Padres ForestWatch and the Center for Biological Diversity formally protest the inclusion of certain parcels in the Bureau of Land Management's (BLM) June 14, 2006 competitive oil and gas lease sale. These parcels are located along the boundary of the Los Padres National Forest, the Bitter Creek National Wildlife Refuge, the Carrizo Plain National Monument, and along the Cuyama River. This protest is filed pursuant to 43 C.F.R. §§ 4.450-2 and 3120.1-3 on behalf of our members, our staff, and members of the public with an interest in protecting these areas.

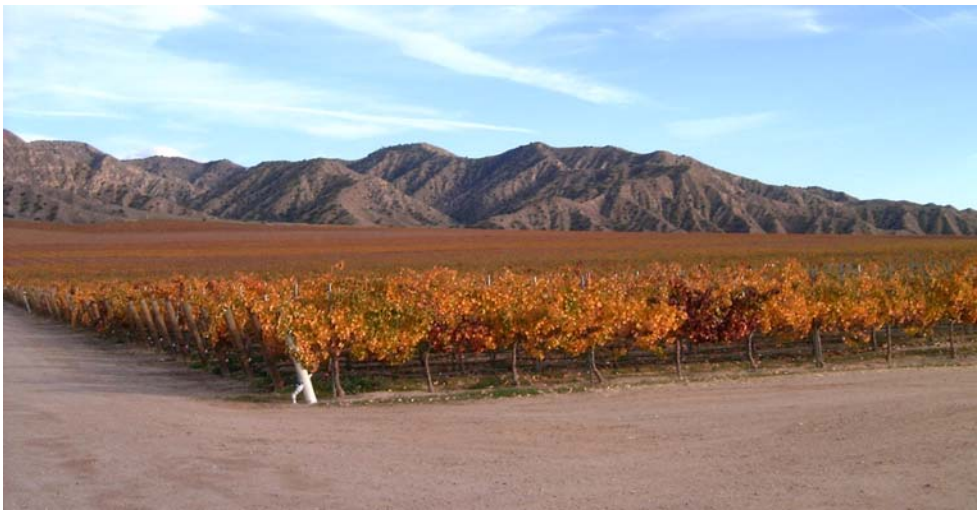
For the reasons outlined in the attached Statement of Reasons, we respectfully request that the following parcels be withdrawn from the June 14, 2006 lease sale:

Los Padres National Forest parcels	Carrizo Plain National Monument parcels	Bitter Creek National Wildlife Refuge parcels	Cuyama River parcels
6-06-26	6-06-8	6-06-22	6-06-27
6-06-27	6-06-25	6-06-23	6-06-30
6-06-28	6-06-29	6-06-24	
	6-06-31	6-06-29	

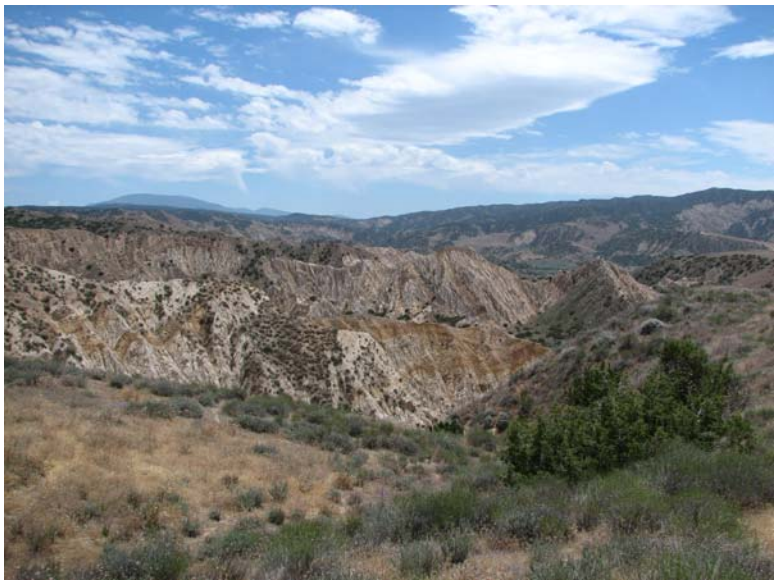
These eleven parcels – totaling 10,088 acres – are part of a combined 19,780 acres of public and private land that the BLM is auctioning for oil and gas development in Kings, Kern, Ventura, Santa Barbara, and San Luis Obispo counties. Several of the parcels are near environmentally sensitive areas such as the Los Padres National Forest, the Carrizo Plain National Monument, the Bitter Creek National Wildlife Refuge, the Cuyama River, several Areas of Critical Environmental Concern, and within an Area of High Ecological Significance. Each of these parcels contain 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 and relatively undeveloped areas where oil development does not currently occur. Oil exploration and drilling would introduce excessive air and water pollutants, noise, and a host of roads, transmission wires, pipelines, and oil derricks, into areas completely unsuitable for these types of intensive development activities.

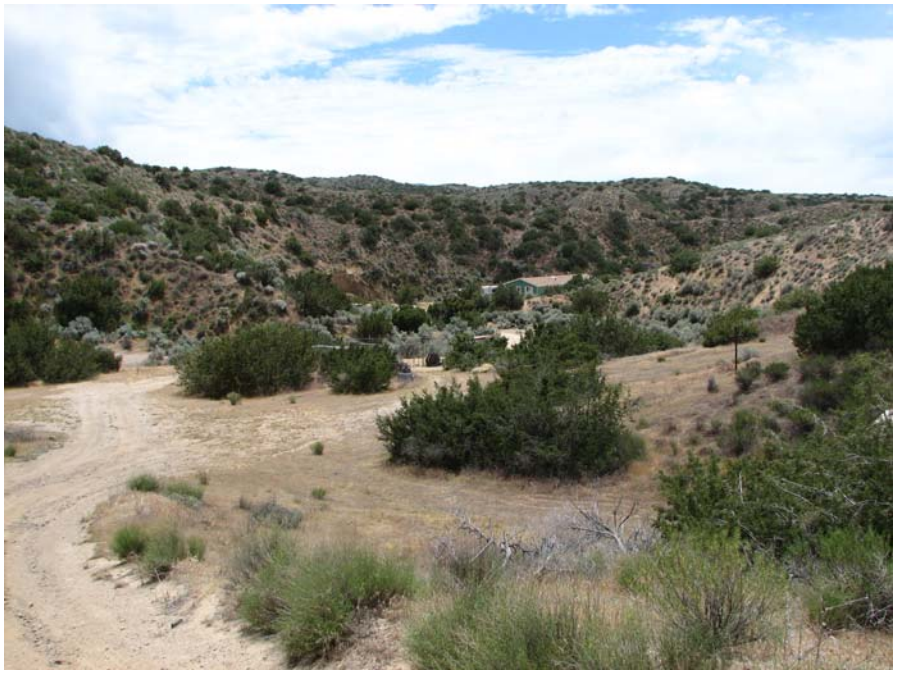


The parties to this protest are Los Padres ForestWatch and the Center for Biological Diversity (hereinafter referred to as "the Parties"). **Los Padres ForestWatch** ("ForestWatch") is a non-profit 501(c)(3) organization that formed in 2004 to protect and restore the natural and cultural heritage of the Los Padres National Forest and surrounding lands through community involvement, scientific collaboration, and legal advocacy. The **Center for Biological Diversity** ("the 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 live in each of the counties where these lease parcels would be offered. Our members regularly use and enjoy these lands for hiking, backpacking, bicycling, hunting, fishing, photography, wildlife viewing, scientific study, and other recreational, aesthetic, and educational purposes. The Parties are both actively involved in BLM oil and gas activities in this region and participate in all stages of BLM oil and gas projects by involving our staff and members in submitting comments and attending public meetings. Consequently, ForestWatch, the Center, and their respective members would be adversely affected by the sale of the lease parcels at issue here and have an interest in this matter.



We ask that you carefully consider this area's unique recreation, rare plants and animals, wildlife habitat, and scenic values before irretrievably committing these undeveloped lands to oil and gas development. Because of the importance of these lands, 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, and adequately notifies and involves members of the public interested in, and affected by, oil and gas leasing.

Unfortunately, the EA prepared by the BLM falls far short of these important standards. The BLM failed to properly notify the Parties and expert agencies about the availability of the environmental documentation. The BLM also overlooked its obligation to notify rural landowners whose property will be affected by leasing the mineral rights below their land. 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.



The Parties realize that a lease itself does not necessarily create immediate surface disturbances. However, and as BLM well knows, leases without "no surface occupancy" (NSO) stipulations convey the right to the buyer to some level of surface development. In other words, it is near impossible for BLM to completely say "no" to future oil and gas activities, even if sensitive resources could be harmed, once it sells a non-NSO lease. For this reason, the leasing stage is extremely critical as it represents an irretrievable and irreversible commitment of resources. The BLM tries to downplay the importance of this stage of the analysis, stating that "no new surface disturbance is authorized" and that "further analysis and approval would be required prior to actual surface disturbance." EA at p. 4. This is misleading, as some level of surface disturbance

is granted through issuance of a non-NSO lease. With the agency's increased reliance on categorical exclusions and other exemptions from environmental study, it is likely that future site-specific analyses may maybe even more inadequate than this one. A comprehensive analysis at this leasing stage is of the utmost importance, given the fact that this is the agency's only chance to collectively analyze the combined impacts of development on all the leases. Piecemeal and analysis of individual drilling applications in the future does not obviate the BLM's legal responsibility to conduct an accurate and complete analysis of impacts now.

REQUEST FOR RELIEF

Given this level of importance, and particularly due to the legal violations described in the attached Statement of Reasons that have occurred or will occur on the date of the sale of the parcels at issue here, the Parties are filing this protest.

1. We respectfully request that BLM withdraw the above-referenced parcels from the lease sale 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. These parcels include 6-06-8, 6-06-22, 6-06-23, 6-06-24, 6-06-25, 6-06-26, 6-06-27, 6-06-28, 6-06-29, 6-06-30, and 6-06-31.

2. We request that the agency prepare a full Environmental Impact Statement before making the above-referenced parcels available for leasing. A full EIS is required due to the proximity of these lands to the Los Padres National Forest, the Bitter Creek National Wildlife Refuge, the Carrizo Plain National Monument, the Cuyama River, several Areas of Critical Environmental Concern, the Upper Cuyama River Valley Area of High Ecological Significance, and also due to the impacts of the proposed action to air and water quality, groundwater, Native American cultural sites, recreation, viewsheds, noise, and the rural quality of life of the area.

3. We insist that the agency more fully involve affected landowners and the interested and affected public before making these parcels available for leasing.

Sincerely,

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STATEMENT OF REASONS

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

The National Environmental Policy Act (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).

The public process afforded by BLM on this action falls far short of these requirements. First, the BLM failed to notify the Parties of the availability of the EA and the public comment period, even though ForestWatch had previously requested such notice. The BLM also failed to notify approximately 43 affected landowners whose property will be directly affected by the lease sale. Then, during the public comment period, BLM denied ForestWatch's request for documents cited in the EA, severely hampering their ability to participate in the NEPA process. Next, the BLM failed to provide the Parties with a timely copy of the lease sale notice. And finally, the BLM failed to circulate the FONSI for public comment before issuing the Decision Record.

The BLM seems to believe that since it accepted public comment on the Caliente Resource Management Plan over ten years ago, that it is now absolved of its responsibility to solicit further public review of any lease sales. For example, the BLM goes to great lengths in the Decision Record to emphasize how the RMP was prepared "with extensive public involvement." DR at p.1. Despite the fact that ForestWatch did not even exist in 1996, BLM remains under a continuing obligation to maximize public involvement at each step of its oil leasing program, including the lease stage.

These serious violations of NEPA resulted in great harm to the Parties' ability to fully participate in this process. For these reasons alone, the BLM should re-issue the EA and FONSI, properly notify ForestWatch, the Center, and other interested or affected parties, and reinstate the public comment period to fully encourage public involvement as required by NEPA.

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). A copy of ForestWatch's request, and BLM's response, is included as **Exhibit 1**.

By sending this request, ForestWatch intended to notify the BLM of ForestWatch's interest in oil and gas leasing and drilling operations and proposals on lands within the jurisdiction of the Bakersfield Field Office. ForestWatch also intended to notify the BLM that oil and gas leasing, exploration, and drilling operations would affect ForestWatch and its members.

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 several days of the comment period had already passed, and only because ForestWatch happened to stumble upon it on the agency's website. The BLM's failure to notify ForestWatch of the comment period effectively denied ForestWatch from participating fully in this process. *See* Citizens for Better Forestry v. US Dep't of Agriculture, 341 F.3d 961, 970-71 (9th Cir. 2003) (holding that a failure to involve or even inform the public about an agency's preparation of an EA and a FONSI violates NEPA regulations and results in a procedural injury).

The Decision Record states that "the public was notified of the availability of the environmental assessment via a press release and notices on BLM web pages." DR at p.1. Neither of these methods is recognized as an appropriate way to notify interested and/or affected parties about the availability of environmental documents. The BLM's press release garnered zero press coverage, a fact that demonstrates why this is not an acceptable method of notifying the public.

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 our 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. The BLM was clearly 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."

The BLM also failed to notify landowners affected by the lease sale. Approximately 85% of the lands subject to this lease sale are "split-estate" parcels, privately-owned lands with federally-owned mineral rights. Without a doubt, these affected surface owners are "interested or affected" parties, and pursuant to NEPA, should have received notification of the EA comment period and lease sale. Neighboring landowners should have received notification as well.

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

Under NEPA, no material may be incorporated by reference "unless it is reasonably available for inspection by potentially interested persons within the time allowed for comment." 40 C.F.R. § 1502.21. 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. The parties expressed their 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. The BLM claimed that the requested documents were the subject of litigation. It is true that some of these requested documents are the subject of pending litigation between ForestWatch and the BLM. This is because the BLM denied ForestWatch's request for these very same documents under a Freedom of Information Act request last year. See **Exhibit 2** for this related FOIA request, the BLM's response, our appeal, and our complaint to the U.S. District Court for the Eastern District of California. Pending litigation is not a recognized exemption from the BLM's duty to provide these documents to us under NEPA, FOIA, or any other law. A true and complete copy of our request, our follow-up telephone calls, and the BLM's response, are attached as **Exhibit 3**.

"[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 notified ForestWatch that it would charge $0.13 per page to copy some of the requested documents, but offered no explanation as to why it was not "practicable" to provide ForestWatch with the requested documents free of charge.

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 Have Made the FONSI Available for Public Review Before Issuing the Decision Record

The BLM must circulate the FONSI for public review and comment for thirty 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. 40 C.F.R. §§ 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. *See* 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).

In their comment letter, the Parties made a strong argument for the preparation of an EIS. The BLM should have made the FONSI available for public review and comment for thirty days *before* issuing the decision. It did not, and this is a violation of NEPA.

d. The BLM Failed to Provide the Parties With a Timely Copy of the Lease Sale Notice

In our comments to the BLM on the Environmental Assessment, we requested a copy of the lease sale notice. ForestWatch is also on record as having requested a copy of the lease sale notice in August 2005. The BLM did not notify the Parties of the availability of the lease sale notice until May 3, 2006, and did not provide the Parties with a copy of it until it was published on the BLM website on May 5, 2006. This provided the Parties with less than the required 45-day notice. The BLM also failed to publish the notice in the *Federal Register*, as promised in their August 2005 letter to ForestWatch. A copy of the BLM's email notifying the Parties of the availability of the lease sale notice on May 3, 2006 is attached as **Exhibit 4**.

2. The BLM Should Have Prepared a Full Environmental Impact Statement

The BLM only prepared an EA for this project. However, because the information in the EA indicates that the proposed lease sale may have significant impacts, the BLM is required to go one step further and prepare a full EIS. *The BLM can avoid preparing an EIS 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 EA Relies on a Faulty Reasonable Foreseeable Development Scenario that Severely Underestimates the True Amount of Surface Disturbance Caused by New Oil Development

In the EA, the BLM calculates the amount of oil development that is reasonably expected to occur as a result of the proposed leasing action. This calculation is referred to as the "Reasonable Development Scenario." The RFD scenario lies at the foundation of the BLM's analysis. The BLM uses the RFD scenario to project the amount of future development, the amount of projected surface disturbance, and the extent of environmental damage caused by future exploration and development. For example, the EA's air quality analysis "is based on the same assumptions as to a normal expected activity level as reflected in the discussion in the RFD." EA at p.22. The EA relies primarily on the RFD to estimate the extent wildlife, water quality, and other impact areas as well.

Under this RFD, the BLM claims that the leasing will result in only 15 acres of permanent surface disturbance, 27 acres of temporary disturbance, and 30 acres of transient disturbance, for a total of 72 acres. EA at pp. 20-21. Frankly, it is difficult for the Parties to comprehend how the proposed action (leasing nearly 20,000 acres of land) will result in the permanent disturbance of less than 0.1% of these lands. The BLM failed to provide citations for any of the assumptions it used to arrive at this amount. How did the agency come up with its estimates in Table 1 (EA at pp. 20-21) of ten exploratory wells, ten producing wells, two tank batteries, and twenty miles of cross-country seismic lines? What criteria did the agency use to determine whether disturbance was permanent, temporary, or transient? And how did the BLM arrive at the figures in this table stating that ten wells equate to ten acres of surface disturbance? That two tank batteries disturb only two acres? That ten exploration wells disturb thirty acres? And that twenty miles of seismic lines disturb thirty acres? The BLM apparently pulled these numbers out of its bureaucratic hat without providing the public with any of the supporting analysis or assumptions inherent in these figures.

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. This IM is attached to our protest as **Exhibit 5** and 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</u>

> or circumstance discovered after the RFD study is completed, a new RFD may be necessary.
>
> …The study must be credible, supported by technical information, well documented, and incorporate reasonable assumptions as a basis for estimates of future activity.
>
> …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 EA merely states that the twenty-well figure is "based on historical records" and "based on existing estimates for oil and gas development" but fails to disclose what these historical records and existing estimates are or the nature of the underlying data. EA at p. 20. For example, the EA states that "95-97% of the wells projected to be drilled during the next ten years will be development wells (as opposed to exploratory wells)" and that "90-95% of the development wells will be successful." Where did the BLM get these numbers from? How many wells per pad does this assume, and why? The BLM must disclose the source of these figures, and provide the assumptions used to derive them. It did neither in the EA.

The BLM's RFD scenario is also flawed because it only projects development on *public* land, while the majority (85%) of land offered in this lease sale is *private* land with federal mineral rights. The EA states that "it is projected that no more than 20 new wells will be drilled during the next ten years *on public lands* offered in this lease sale." EA at p.20. If twenty wells are going to be drilled on 15% of the land offered in this sale, obviously a much higher number of wells will be drilled on the private lands that comprise most of the land being offered at this lease sale. The failure of the EA to disclose the amount of wells drilled on private lands subject to leasing violates NEPA.

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 California 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 total acres of surface disturbance from leasing nearly 19,780 acres of land. 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 ten exploration wells and accompanying roads would only result in thirty 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?

Finally, the agency's RFD appears to account for the "proximity of leases to existing fields." EA at p.20. Nearly all of the protested leases are in undeveloped areas, quite far away from existing fields. For example, according to the parcel map ("June 14, 2006 Proposed Oil and Gas Lease Sale EA Parcels") released along with the draft EA, portions of several parcels are nearly ten miles away from existing oil fields (indicated by the shaded gray areas on the map). All of the parcels we challenge in this protest appear to be located *outside of* the administrative boundaries of existing oil fields, and will thus require an additional network of roads, pipelines, tanks, transmission wires, and other infrastructure. The EA fails to explain exactly how the agency applied the "proximity" factor to its RFD scenario. While some of the assumptions in the RFD may hold true for those parcels located *inside* of existing oil fields, they do not account for the higher level of infrastructure needed to expand exploration and drilling operations to parcels that are far removed from existing oil fields.

In addition, the agency's RFD scenario fails to account for the much larger acreage that will be impacts by the roads, other infrastructure, and other impacts resulting from exploration, development, and operational activities. Whatever the surface disturbance acreage truly is, it surely will not be confined to a single neatly defined sacrifice area. Instead, roads, pipelines, power lines, and well pads will be dispersed over large tracts of the project area, fragmenting wildlife habitat, disturbing vegetative communities, and spoiling the rural character of the area. The BLM's limited view of what constitutes "surface disturbance" severely underestimates the true extent of disturbance to surface resources.

The BLM added additional language to its final EA, suggesting that any new surface disturbance will be "offset by rehabilitation of land associated with wells being abandoned." EA at p.20. This assumption is also incorrect. Abandoning a well in one part of the district does not mitigate for new surface disturbance in another part of the district hundreds of miles away, nor does it mitigate for new surface disturbance in new, undeveloped areas. The BLM's explanation also assumes that abandonment will continue to occur at the same rate, and that abandonment and remediation is always successful. However, the abandonment of wells on unrelated leases is not a part of the proposed action, and thus it cannot be relied upon to mitigate the impacts of the proposed action. Oftentimes, oil companies fail to reclaim drilling sites and restore them to pre-drilling condition. In an analysis of oil drilling on National Wildlife Refuges across the country, the General Accounting Office concluded that "oil and gas operators have not consistently taken steps to reverse environmental damages that have occurred from oil and gas activities" and that "reclamation of oil and gas facilities following their use is also inconsistent." GAO 2005, pp. 25-

26. The same quite likely holds true for drilling activities on lands right along the boundaries of the Bitter Creek National Wildlife Refuge and other areas subject to the proposed lease. A copy of the GAO report is attached as Exhibit 6.

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

The intensity and severity of the environmental impacts also demonstrate the need to prepare an EIS (40 C.F.R. § 1507.27(b)). 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 nearly 20,000 acres, and these individual parcels are spread out over a much larger area.

The geographical context of this action is extremely broad and therefore necessitates the preparation of an EIS. The BLM is proposing to lease nearly 20,000 acres of land across five separate counties – Kings, Kern, Ventura, Santa Barbara, and San Luis Obispo counties. These 32 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 context of the proposed action requires preparation of an EIS.

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. EA at pp. 5-6. 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 development of the proposed leases:

> 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. 20, 22-23. This prediction is "based upon existing estimates for oil and gas development," but the EA fails to disclose what these estimates are so that the public can verify their accuracy. *Id.* 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. *Id.*

The BLM's characterization of these new emissions as "deminimus" is incorrect. The emissions, collectively and possibly individually, would exceed the applicable de minimus thresholds. 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 EA also failed to adequately account for the unique characteristics of the geographic area affected by the proposed action. 40 C.F.R. § 1508.27(b)(3).

Historic or cultural resources. 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. *Id.* 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.

Parklands. 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 6,044 acres (Parcels 6-06-24, 6-06-26, 6-06-27, and 6-06-28) share a boundary with the Los Padres National Forest. Another four parcels totaling 1,876 acres (Parcels 6-06-8, 6-06-22, 6-06-25, and 6-06-31) share a boundary with the Carrizo Plain National Monument. Another two parcels totaling 2,160 acres (Parcels 6-06-22 and 6-06-24) share a boundary with the Bitter Creek National Wildlife Refuge. Another two parcels totaling 1,080 acres (Parcels 6-06-29 and 6-06-30) are within one mile of these parklands. All together, there are twelve parcels totaling 11,160 acres that are within one mile or less of these parklands. *Thus, over half of the 19,780 total acres that are the subject of the proposed lease sale are in extremely close proximity to parklands.*

Prime farmlands. The final EA discloses, for the first time, that "approximately 4,598 acres are either currently under cultivation or else have historically been cultivated" on the proposed lease properties. EA at p.32. 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 attempts to downplay the potential impacts to these farmlands by assuming that the projected surface disturbance would be "uniformly distributed" across all 19,780 acres proposed for leasing. EA at p.32. This is an erroneous assumption made without any supporting evidence. The EA must evaluate the impact to farmlands if the surface disturbance is not "uniformly distributed."

The EA does not disclose whether these farmlands are considered "prime." Instead, the BLM merely added a statement to the final EA stating that "only a portion of these lands could be considered 'prime farmland'." This is not sufficient, and many of the farmers in the area whose land is currently under cultivation would be surprised to hear that their farmlands are not "prime." The EA must identify exactly how many of the lands are considered "prime" and what method the agency used to classify them as such. Simply including a statement that some of the farmland is prime, and some isn't, is not legally adequate and violates NEPA. Instead of relying on unsubstantiated statements, the BLM 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.")

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 6-06-26, 6-06-27, and 6-06-28. 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] Excerpts from the report that identifies AHESs throughout southern California is attached as **Exhibit 7**.

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

[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.

that "[t]here are several lease sale parcels that are adjacent to ACECs" including the Lokern, Chico Martinez, and Carrizo Plain National Monument ACECs. EA at p.21. Several of the parcels are in close proximity to these ecologically critical areas, further evidence than an EIS is warranted in this case.

The EA, unfortunately, only analyzes visual impacts to these ACECs, stating that oil development would be "outside of the viewshed" and "facing away from the Monument." EA at p.21. The EA must disclose more than just visual impacts to ACECs.

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

The EA fails to 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 without a doubt. Tremendous controversy was stirred when the BLM proposed many of these very same parcels for leasing in December, a controversy that garnered significant press coverage. A sampling of the press coverage documenting the controversy of leasing these parcels for oil development is attached as **Exhibit 8**.

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 protest, and should be included in the administrative record.

The fact that several landowners affected by this lease sale have also filed protests, even though they were not notified by BLM, further testifies to the highly controversial nature of this proposal.

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 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 BLM 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 only approve NSO leases, or no leases at all. 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 past, present, and reasonably foreseeable future 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, 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 across 52,075 acres of the Los Padres National Forest. This plan allows new oil drilling to occur in three High Oil and Gas Potential Areas (HOGPAs). The largest HOGPA – the 80,258-acre South Cuyama HOGPA – is directly 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 Record of Decision approving this plan, along with a map, is attached as **Exhibit 9**.

The final EA still 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. The EA tiers its cumulative impacts analysis to the ten-year-old Caliente Resource Management Plan and EIS. Not only is this analysis outdated, it does not take into account the Forest Service's recent 2005 drilling expansion plan, does not satisfy NEPA's requirements for tiering (see 40 C.F.R. § 1502.20, "the subsequent…environmental assessment need only summarize the issues discussed in the broader statement by reference") or incorporation by reference (see 40 C.F.R. § 1502.21, "incorporated material shall be cited in the statement and its content briefly described).

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. The EA does not comply with NEPA's requirement for disclosure of incomplete or unavailable information at 40 C.F.R. § 1502.22. 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.

The EA also failed to adequately consider the degree to which the proposed action may adversely affect an endangered or threatened species or its habitat. 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 of any 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 (pp. 7-17), 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 our comment letter on the draft EA, the Parties 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. Ten 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 tiering also does not comply with NEPA's tiering regulation set forth in 40 C.F.R. § 1502.21.

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), changes in transportation facilities and other infrastructure, and changes in regulatory affairs that make it easier to drill for oil and increase supplies and demand.

Leasing on the scale of the proposed action 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).

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 were 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. 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 p.33.

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.

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

As we pointed out during the comment period, 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 possibility that a site-specific NEPA document will be prepared prior to approval of any surface-disturbing activities (EA at p.4) 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 may not have the right to deny an application for permit to drill based on environmental concerns.** *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 BLM 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 or other contamination entering the Cuyama River and Santa Barbara Creek channels." (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.27)

> "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)

This "do now, study later" approach is completely backwards and 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 19,780 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 lands are 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. 21. 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. 25. 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. 26. 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. Rare 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. 7-18) and the Environmental Consequences section qualitatively describes very general impacts, such direct mortality, soil disturbance, and introduction of weedy species (EA at pp. 24-31).

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.

c. Water Quality, Wetlands & Riparian Vegetation Impacts

The draft EA refered 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." Draft EA at p.7. Our comment letter criticized the BLM for failing to incorporate the Watershed Concept into any of its analysis. Instead of applying the watershed concept to the Final EA, the BLM has deleted any reference to the watershed concept. EA at p.7.

The draft EA also incorrectly concluded that "[l]ands within these parcels contain no naturally occurring streams, lakes, or ponds containing fresh water." Draft EA at p.23. The final EA now correctly states that "portions of Parcels 25, 28, and 36 are within the 100-year floodplains of Santa Barbara Canyon Creek or the Cuyama River." EA at pp.7, 21. However, it also appears that portions of Parcel 37 (listed as Parcel 6-06-30 in the lease sale notice) are within the floodplain of the Cuyama River. We identified this omission in our comments on the draft EA, and the final EA's omission of this parcel from the list of parcels within the 100-year floodplains is a violation of NEPA.

Oil exploration and drilling operations and associated infrastructure (especially roads) could have a significant impact on water quality, wetlands, floodplains, and streamside vegetation. The draft EA failed to provide any supporting evidence for its conclusion that there would be no impacts to water quality, wetlands, or riparian vegetation. Draft EA at p.21. The final EA now includes a section on "Impacts to Water." EA at pp. 23-24. This section still does not contain any analysis of impacts to water quality. Instead, it merely recites a host of laws, regulations, policies, and conditions that are designed to protect water quality, with no analysis as to how these measures will be applied to the proposed action or to future oil and gas exploration and development activities.

The "Impacts to Water" section is limited to the Cuyama River and Santa Barbara Canyon Creek, even though other waterways and waterbodies occur on other parcels. EA at p.24. 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 p. 14. The Valley Floor Unit (Parcels 9 and 10) includes "shallow drainages crossing the landscape." EA at p.16. The final EA still contains no discussion about impacts to these waterways, which stipulations apply to them, and other measures to mitigate damage.

The final EA identifies a new Special Stipulation 7, which will apply only to parcels 25, 28, and 36 and will "prevent facilities/wells from being installed within those 100-year floodplains." EA at p.24. The complete text of Special Stipulation 7 reads as follows:

> Portions of this parcel are located within the 100-year floodplain of the Cuyama River and/or Santa Barbara Canyon Creek. Siting of oil/gas wells, pipelines, facilities, and other equipment will be prohibited in the portions of these parcels that are within the 100-year floodplains. Please contact the Authorized Officer at the address below for a detailed map of the areas.

EA at p.43. The EA states that this stipulation is adequate to protect these waters from contamination related to floods. EA at p.24. Facilities *near* the 100-year floodplain – not just those *inside* the floodplain – could introduce oil spills and other contaminants into these waterways. This stipulation does nothing to prevent that from occurring. Moreover, the stipulation fails to prohibit other forms of surface disturbance in the floodplain, such as exploration activities and the construction of roads. The stipulation should also prohibit the construction of roads and the entry of tanker trucks in or near the floodplains, to lessen the risk of contaminants entering the creek. Finally, this stipulation does not protect against the contamination of groundwater.

In the final EA, the BLM for the first time discloses that "many of the parcels are in areas where there are or may be fresh water aquifers." *Id.* However, the analysis in the Environmental Consequences section does not analyze any potential impacts to these aquifers. Instead, the final EA concludes, without supporting evidence, that "aquifers will be fully protected by using standard oilfield practices such as requiring a string of casing to be cemented across all fresh water aquifers and by requiring compliance with all appropriate laws, regulation, and BLM

policies." EA at p.23. In order to comply with NEPA, the EA must contain an analysis of potential impacts, not just a brief mention of the measures that will be taken that may or may not fully prevent significant impacts. The EA also fails to identify where these aquifers occur in relation to the lease parcels, stating instead that "a list of areas where there are aquifers that are considered to be fresh can be found in Volumes I, II, and/or III of California Oil and Gas Fields, published by the California Conservation Division." *Id.* This does not satisfy NEPA's incorporation by reference requirement in 40 C.F.R. § 1502.22.

In our comment letter on the draft EA, we stated that the groundwater 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. A list of specific impacts to groundwater is included in **Exhibit 10** and must be analyzed before the BLM offers any of the parcels for lease. 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 does not disclose how much water could be consumed by future oil exploration and development on the proposed parcels, and whether this would contribute to cumulative drawdown of the aquifer.

We also asked the BLM to 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. Road construction is not analyzed in the 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). EA at pp.5-6. 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 predicts emissions of less than 1,000 pounds of PM_{10} emissions and less than 1200 pounds of NO_x per year. EA at p.23. The EA states that these estimates are "based upon existing estimates for oil and gas development." *Id.* The BLM cannot base estimates on estimates without disclosing what those estimates are. How did the agency arrive at these numbers, and what are the "existing estimates" upon which the agency based its estimates? The failure to disclose these basic assumptions in the EA prevented the public from verifying their accuracy, and is a violation of NEPA. The failure of the EA to provide estimates for the host of other air pollutants generated by oil exploration and development is also a violation of NEPA.

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 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 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.

Many of the parcels are also within the viewshed of Highway 33, designated a Scenic Highway by the State of California.

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 directs 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).

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.

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 our comment letter, 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. EA at p.3. 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.

5. The BLM Failed to Consult With the U.S. Fish and Wildlife Service as Required by the Endangered Species Act

The Endangered Species Act requires all federal agencies, including the BLM, to consult with the U.S. Fish and Wildlife Service on activities that may affect threatened or endangered plants and animals, or adversely modify critical habitat. ESA § 7(a)(2). The BLM failed to conduct this legally-required consultation for this lease sale.

The Caliente RMP Biological Opinion dated March 31, 1997 (EA at p.4) is nearly ten years old and does not account for current conditions and new information. The Kings and Kern Counties Oil and Gas Programmatic Biological Opinion (EA at pp. 26, 27) is more recent, but it does not adequately account for the entire project area, including portions of Santa Barbara, Ventura, San Luis Obispo, and Kern counties.

The BLM must re-initiate consultation with the U.S. Fish and Wildlife Service before proceeding with this lease sale. This is of particular importance, since every parcel being offered at this lease sale contains at least one listed species.

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 draft EA contained a section on mitigation measures. In our comments, we criticized these measures because they simply involved complying with existing regulation, conducting site-specific NEPA and ESA review, and subjecting leases to Limited Surface Use. We asked for additional mitigation measures to ensure full protection of the resources and full compliance with NEPA.

Instead of proposing additional mitigation measures, the final EA removed these mitigation measures. The only statement regarding mitigation measures in the final EA is that "Appropriate mitigation measures are incorporated into the proposed action, and no additional mitigation should be necessary." EA at p.34. The EA fails to include additional mitigation measures that would apply when LSU stipulations and the BLM's 200-meter discretion are not sufficient to reduce impacts to less than significant levels.

Even though the BLM deleted its section on mitigation measures from the final EA, there are still references to mitigation measures throughout the document. For example, the document contains mitigation measures for air quality impacts (EA at p. 23, referring to dust control, low-emission construction equipment, and use of electricity rather than diesel generators); soils (EA at p.23, referring to spill prevention and control plans); wildlife (EA at pp.2631, referencing general mitigation measures and specific measures for a variety of species); and other resources.

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 attached to this protest as **Exhibit 11**. 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.

[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.

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,

> [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. 23. 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.*

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.

Because most of the parcels are split-estates, these parcels should include stipulations that ensure compliance with BLM IM No. 2003-131, related to operations on split estates. While BLM may seek to meet the requirement of this IM at the APD stage of development, it will be in a far better position to meet the requirements of this IM if it reserve the authority to do so at the leasing stage, and not trust to being able to meet the requirements of this IM at the APD stage where its ability to regulate development is greatly diminished. The lease parcels should not be offered for

sale until they contain a stipulation that allows compliance with IM 2003-131. This IM is attached as **Exhibit 12**.

As a final note, the EA must disclose whether the proposed stipulations can be waived, along with the criteria that the BLM will use to determine whether to waive the stipulations. If the stipulations can be waived, they cannot be relied upon as mitigation measures.

For these reasons, the Parties' request for relief should be granted in full.