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VIA U.S. MAIL AND ELECTRONIC DELIVERY

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Dear Director Lueders, Supervisor Van Every, Colonel Hudson, Colonel Pratt, and Mr. Treviño:

Recently, many of our organizations and members learned for the first time that the Bureau of Land Management (BLM) is offering over 36,000 acres of federal parcels with oil and gas for lease in Texas, Kansas, and Oklahoma, including over 31,000 acres in the Davy Crockett,

Sam Houston, and Sabine National Forests, and several parcels underlying municipal water supplies for the Dallas-Fort Worth Area, Denton, Houston, Brenham and Corpus Christi. Despite the fact that the sale would open up large areas for oil and gas development, BLM has failed to provide the public a full and meaningful opportunity to participate in the agencies' leasing decisions, including its environmental review under the National Environmental Policy Act (NEPA).

NEPA regulations require that “[t]here shall be an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action. This process shall be termed scoping.” 40 C.F.R. § 1501.7. This requirement to provide “an early and open process” cannot be met when the people and communities most immediately affected by the proposed federal action receive no reasonable notice of the action. Effective analysis of “significant issues” requires that those who will feel the impacts of the action be notified and given the opportunity to identify the issues that will affect them.

We strongly urge BLM to postpone the auction, reinstate scoping and provide notice to “those persons...who may be interested or affected” and “solicit appropriate information from the public,” in compliance with NEPA. *See* 40 C.F.R. § 1506.6. Due to the high level of public interest in this sale and the significant public safety issues and natural resources at stake, we further request your agencies to hold public meetings to address the public’s concerns about (a) the risks of using dangerous hydraulic fracturing techniques in sensitive areas, such as Lewisville Lake, which is at risk of a breach; (b) impacts on the habitat of endangered red-cockaded woodpecker and lesser-prairie chicken and other sensitive species; (c) impacts to the Piney Creek Basin and other important watersheds in the Davy Crockett, Sam Houston, and Sabine National Forests; (d) potential air quality impacts, particularly those parcels located in the Dallas-Fort Worth Non-Attainment Area and in Live Oak and McMullen Counties, which could potentially impact the San Antonio near Non-Attainment Area; and (e) climate change impacts due to potential methane and other greenhouse gas emissions from oil and gas drilling and the combustion of extracted fossil fuels.

The only means that BLM used to publicize the sale is its website for the New Mexico State Office, which oversees oil and gas leasing in BLM’s New Mexico, Texas, Oklahoma, and Kansas Field Offices. No public notice was disseminated in any of the communities near the areas for lease, or via the local offices of the surface management agencies—the Forest Service, U.S. Army Corps of Engineers, and Bureau of Reclamation. BLM’s pro forma notice violated NEPA’s mandate for agencies to “invite the participation of... interested persons” and “make diligent efforts to involve the public” in considering the environmental consequences of its actions. 40 C.F.R. §§ 1501.7(a)(1), 1506.6(a).

NEPA regulations repeatedly emphasize the need for early and effective public notice and involvement. NEPA procedures must ensure “environmental information is available to public officials and citizens before decisions are made and before actions are taken.” 40 C.F.R. § 1500.1(b). “[P]ublic scrutiny [is] essential to implementing NEPA.” *Id.* Accordingly, “agencies shall to the fullest extent possible...encourage and facilitate public involvement in decisions.” *Id.* § 1500.2(d) (emphasis added). Specifically, agencies “shall...make *diligent* efforts to involve the public in preparing and implementing their NEPA procedures[,]...provide 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.” *Id.* § 1506.6(a), (b), (d); *see also id.* § 1501.4(b) (“The agency shall involve environmental agencies, applicants, and the public, to the extent practicable, in preparing [environmental] assessments.”). Moreover, as part of the scoping process, the lead agency must “[i]nvite the participation of affected Federal, State, and local agencies, any affected Indian tribe, the proponent of the action, and other interested persons.” 40 C.F.R. § 1501.7(a)(1). “In all cases the agency shall mail notice to those who have requested it on an individual action.” *Id.* § 1506.6(b)(1).

BLM’s efforts here fell far short of “diligent” efforts and public notice “so as to inform those persons... who may be interested or affected” by its leasing decision. Many of our groups’ leaders and members live in and around the national forests at issue, regularly visit these forests, participate in forest planning, and are on the Forest Service’s list of interested parties that the Service must notify regarding proposed projects. For example, Larry Shelton, a member of Texas Conservation Alliance who lives in Nacogdoches County, is on the Davy Crockett National Forest’s list of interested parties who must be notified about proposed projects and planning; has served for seven years on the Resource Advisory Committee for this forest; and has participated in project development on the National Forests and Grasslands in Texas for the past 30 years. Yet, neither BLM nor the Forest Service made any attempt to reach out to Mr. Shelton, other stakeholders, and residents living around or in the forests. In addition, the Lone Star Sierra Club Chapter has previously requested BLM to place it on the mailing or e-mail list for notice of leasing proposals in the National Forests and Grasslands in Texas, but the Chapter did not receive notice of this sale, in violation of 40 C.F.R. § 1506(b)(1). *See* Ex. A.

Likewise, BLM failed to notify communities neighboring Lake Lewisville, Lake Somerville, Choke Canyon Reservoir, Lake Conroe, Heyburn Lake, and Canton Lake, and the various municipalities that rely on these lakes for drinking water, about the potential for fracking beneath or near these lakes.¹ And despite that the Army Corps and Bureau of Reclamation both approved BLM’s offer of these parcels and necessary leasing stipulations, these agencies neither made any efforts to notify the public, or local governments and officials.

BLM routinely issues news releases about upcoming lease sale public comment opportunities in other field offices, but BLM made no such effort here. *See, e.g.,* Ex. B (BLM public comment notices for Nevada and Wyoming lease sales). The New Mexico State Office’s historical practice is to only send out a news release on the day before the lease sale, *after* the public comment period has closed, and shortly after the sale, to announce the sale’s gross proceeds. *See* Ex. C. If BLM can put out a news release to tout the sale results after an auction, it can surely do the same before the auction to “encourage and facilitate public involvement in [its leasing decisions].” BLM’s paltry efforts here do not encourage public involvement “*to the fullest extent possible.*” 40 C.F.R. § 1500.2(d); *see also Dine Citizens Against Ruining Our Env’t v. Klein*, 747 F. Supp. 2d 1234, 1262 (D. Col. 2010) (agency notice did not constitute “meaningful effort to provide information to the public affected by an agency’s actions” where it failed to provide notice of Environmental Assessment via news outlets that community relied on, as it had done previously).

¹ BLM’s Environmental Assessment (EA) also failed to provide maps of some of the areas for lease. *See* EA at 97-105 (missing maps of parcels 15, 16, 25, 26, 27, and 28). Some of the maps did not clearly depict that lease parcels were located beneath water bodies. *See, e.g.,* EA at 96, 101-105.

The Forest Service was also remiss in its failure to involve the public in its decision to allow new leasing of over 31,000 acres of national forest. Before BLM may allow new leasing of national forests, it must obtain the Forest Service's consent. *See* 30 U.S.C. § 226(h).² Generally, the Forest Service takes the position that NEPA compliance as to specific leasing decisions can be fulfilled with a programmatic "leasing analysis" performed under 36 C.F.R. § 228.102(c). The leasing analysis identifies lands available for oil and gas leasing and projects and analyzes the reasonably foreseeable impacts of leasing. 36 C.F.R. § 228.102(c). But "[i]f NEPA has not been adequately addressed [in the leasing analysis], or if there is significant new information or circumstances... requiring further environmental analysis, additional environmental analysis shall be done *before* a leasing decision for specific lands will be made." 36 C.F.R. § 228.102(e)(1) (emphasis added).

According to Forest Supervisor Mark Van Every, who oversees management of all of the Texas national forests, the Forest Service's decision to allow new leasing of the parcels at issue here was purportedly addressed in the 1996 Revised Land and Resource Management Plan and its underlying Environmental Impact Statement (LRMP and EIS). This severely outdated plan and EIS, however, do not adequately support the Forest Service's approval of new leasing. The 20-year old LRMP and EIS—which predate the Barnett shale fracking boom—do not take into account at all the potential impacts of hydraulic fracturing. These include the increased risks of water contamination from wastewater production, storage, transport, and disposal, and the underground injection of thousands of pounds of toxic fracking chemicals; seismic risks from wastewater injection; the increased potential of ozone pollution and other public health risks resulting from methane and other volatile organic compounds emissions; and the impacts of more intensive fracking operations on wildlife, soil, and vegetation. The LRMP and EIS also lack any analysis of the impact of greenhouse gas emissions on climate change, which would certainly result from new oil and gas development.

The Forest Service should have prepared a supplemental EIS, or at minimum an Environmental Assessment (EA) to determine whether a new EIS is required, either of which would have triggered its public notice and comment procedures. *See* 36 C.F.R. § 218.22. Instead, the Service failed to initiate any NEPA or other public notice, review, and comment process.

Given your agencies' utter failure to notify and involve the public, BLM should postpone the lease sale, reinstate scoping, and provide adequate notice of BLM's proposed leasing decisions. With respect to the Forest Service parcels, the Forest Service cannot rely solely on its decades-old, pre-fracking management plan, and should prepare a supplemental EIS for these lease parcels and initiate its public notice and comment procedures in compliance with 36 C.F.R. § 218.22.

We also request that your agencies hold public meetings regarding the proposed parcels for lease. "Agencies shall...hold or sponsor public hearings or public meetings whenever appropriate or in accordance with statutory requirements applicable to the agency." 40 C.F.R. 1506.6(c). The criteria for whether a public meeting is appropriate includes:

² "The Secretary of the Interior may not issue any lease on National Forest System Lands reserved from the public domain over the objection of the Secretary of Agriculture." 30 U.S.C. § 226(h).

- (1) Substantial environmental controversy concerning the proposed action or substantial interest in holding the hearing.
- (2) A request for a hearing by another agency with jurisdiction over the action supported by reasons why a hearing will be helpful....

Id. § 1506.6(c)(1)-(2).

Our organizations and members are deeply concerned about the risks of fracking beneath major municipal water supplies, including contamination of drinking water, which BLM's EA does not even discuss. With respect to Lake Lewisville, the EA fails to mention the dam's structural integrity problems ("one of the nation's most dangerous") and whether drilling beneath the lake could increase the risk of a breach. *See* George Getschow, *The Dam Called Trouble*, *The Dallas Morning News* (Dec. 12, 2015), <http://interactives.dallasnews.com/2015/lewisville-dam/> (Ex. D). A breach could result in the destruction of billions of dollars of property, including flooding in downtown Dallas, and put hundreds of thousands of people in harm's way. *Id.* We are also concerned that earthquakes induced by fracking beneath the dam or wastewater injection in neighboring areas could exacerbate this risk, but the EA has never addressed this issue. Wastewater injection and fracking have already been linked to numerous earthquakes in Texas and Oklahoma and significant property damage, including near Lewisville and many of the other areas for lease.³ *See* Ex. E (maps of earthquake activity).

In addition, numerous watersheds within the Davy Crockett, Sam Houston, and Sabine National Forests could be degraded by pollution from oil and drilling operations and increased runoff resulting from new wellpads and roads. BLM's maps show that numerous streams are within the national forest areas for lease. This includes the Piney Creek Basin, which represents the most miles traveled and most acreage drained of all the creeks on Forest Service lands within the Davy Crockett National Forest, and which provides important habitat for wildlife including the endangered red-cockaded woodpecker.

Several areas for lease are within the heart of the Piney Creek Conservation Corridor (PCCC), which Texas Conservation Alliance (TCA) has nominated as a Special Management Area (SMA). Public collaboration between the Forest Service and TCA over the PCCC proposal has been ongoing for several years. Any oil and gas development in this proposed SMA would have detrimental effects on the unique attributes of this area, and a decision to lease any portion of the PCCC during ongoing collaboration represents a breach of faith on the part of the BLM and Forest Service. The stale 1996 LRMP is currently being revised and could potentially result in special protection for the PCCC. Opening up the PCCC to oil and gas drilling before this update is completed could prejudice the consideration of special management of this area.

Several of the Kansas parcels also fall within important "focal" areas needed for conservation of the imperiled lesser-prairie chicken. Ex. F. Other imperiled species that could be potentially affected are the whooping crane, Sprague's pipit, and interior least tern. Given the highly important public resources and natural areas at stake, a public meeting regarding the safety of drilling within these sensitive areas is necessary to answer the public's concerns. Public

³ Hornbach, Matthew J et al. Causal factors for seismicity near Azle, Texas. *Nature Communications*, vol. 6, no. 6728 (April 21, 2015), available at <http://www.nature.com/ncomms/2015/150421/ncomms7728/full/ncomms7728.html> (Ex. G).

meetings in the Dallas Fort Worth Area, Houston, Brenham, Corpus Christi, Lufkin, Oklahoma City, and Wichita, Kansas would be appropriate.

Proceeding with the April oil and gas leasing auction without allowing the public a full opportunity to voice their concerns and have their questions answered does not comport with NEPA's public participation requirements. BLM should postpone the sale, and each of your agencies should comply with NEPA and public notice obligations, and hold public meetings to address the significant environmental controversies raised by the proposed leasing decisions. Our organizations would be happy to assist in reaching out to communities and local leaders to help ensure these public meetings are useful and productive.

Thank you for considering our request. If you have any questions, please do not hesitate to call us at the contact information below.

Sincerely,

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